

**FRAMEWORK POLICY  
OF THE MINISTRY OF FINANCE ON  
CONSUMER PROTECTION IN THE  
FINANCIAL MARKET**

**Ministry of Finance of the Czech Republic**

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## **Glossary**

The following terms are used in this document:

- **cooling-off period** – the period in which a consumer can unilaterally and without penalty withdraw from a contract concluded with a financial institution (provided it does not go against the nature of the product)
- **financial institution** – distributor (i.e., the direct provider or intermediary) of a financial product or financial service
- **financial market** – the place of supply and demand of financial products and services of a credit, investment, insurance, or savings nature, including payment and foreign exchange products
- **learning costs** – costs borne by the consumer in connection with obtaining information about products offered by other financial institutions or, as the case may be, other products offered by the same institution
- **self-regulation (auto-regulation)** – an activity performed by market institutions or, as the case may be, their respective professional associations, where their own binding body of rights and regulations (applicable to the entities in question), as well as the institutional safeguards for adherence and enforcement of these rights and regulations, are created
- **consumer, client, customer** – a natural person who concludes a contract, and acts in accordance therewith, for purposes unrelated to his/her own commercial or business activities

## List of abbreviations

The following abbreviations are used in this document:

- **AČSS** – Asociace českých stavebních spořitelén (Association of Czech Building Savings Banks)
- **ADŽ** – Asociace družstevních záložen (Association of Savings and Credit Cooperatives)
- **AFAM** – Asociace fondů a asset managementu ČR (Czech Association of Funds and Asset Management)
- **AFIZ** – Asociace finančních zprostředkovatelů a finančních poradců ČR (Association of Financial Intermediaries and Financial Advisers of the Czech Republic)
- **AKAT** – Asociace pro kapitálový trh (Czech Capital Market Association)
- **APF ČR** – Asociace penzijních fondů ČR (The Association of Pension Funds of the Czech Republic)
- **ČAP** – Česká asociace pojišťoven (Czech Insurance Association)
- **ČBA** – Česká bankovní asociace (Czech Banking Association)
- **ČNB** – Česká národní banka (Czech National Bank)
- **ČOI** – Česká obchodní inspekce (Czech Commercial Inspection)
- **CR** – Czech Republic
- **DG SANCO** – Directorate General for Health and Consumer Protection of the European Commission
- **DG MARKT** – Internal Market and Service Directorate General of the European Commission
- **EC/EU** – European Community/European Union
- **FSA** – Financial Services Authority
- **FP** – financial product(s), finance service(s)
- **FM** – financial market
- **IFSRA** - Irish Financial Services Regulatory Authority
- **IOSCO** – International Organization of Securities Commissions
- **MF** (or the Ministry) – Ministry of Finance of the Czech Republic
- **MIT** – Ministry of Industry and Trade
- **MJ** – Ministry of Justice

- **MEYS** – Ministry of Education, Youth, and Sport
- **OECD** – Organisation for Economic Co-operation and Development
- **CP, CPFM** – consumer protection, consumer protection in the financial market
- **UN** – United Nations
- **SČS** – Sdružení českých spotřebitelů (Association of Czech Consumers)
- **SOS** – Sdružení obrany spotřebitelů (Consumer Defence Association)
- **ÚOHS** – Úřad pro ochranu hospodářské soutěže (Office for the Protection of Competition)
- **ÚOOÚ** – Úřad pro ochranu osobních údajů (Office for Personal Data Protection)
- **USF** – Unie společností finančního zprostředkování a poradenství (Union of Financial Intermediaries and Advisors)
- **WB** – World Bank

## **1. Preamble**

This document aims to **define the framework policy of the Ministry of Finance** (the “Ministry” or the “MF”) on consumer protection in the financial market (“CPFM”), both in terms of the MF’s future focus and in terms of its relationships to the other relevant persons involved in this area.

The MF’s central role in this document is due to the MF’s responsibility for CPFM, such authority having been extended to it by the amendment to Act No. 2/1969 Coll., on the Establishment of Ministries and Other Central Institutions of State Administration, implemented by Act No. 57/2006 Coll., on Amendment of Laws in Accordance with the Unification of Supervision over the Financial Market, effective 1 April 2006. The general authority for consumer protection is the MIT, with which the MF works closely.

The concept of CPFM is derived from professional publications, the results of the MF’s internal analyses, and the international context, namely against the backdrop of a number of legislative and non-legislative activities at the EU level and the nearing Czech Presidency of the Council of the European Union, as well as with regard to the significance that other international organisations (UN, OECD, WB, and the like) place on this issue. In connection therewith, the MF express its ambition to promote its CPFM vision, not only at the national level (i.e., as permitted by the transposition of European legislation), but also at the relevant European institutions, where it will present its ideas and strive to garner support for them.

This document serves as **background material** setting out the **main objectives, areas, and principles** that the MF will focus on in CPFM. **A specific proposal for implementing measures in each of the areas described in chapter 6 will be the subject of other documentation prepared by the MF in this connection.**

This document looks at the issue of CPFM from two sides. The first is the State’s approach to consumer protection (chapter 2), the main consumer protection instruments (including the possibilities for using them), and the entities involved in

consumer protection (chapter 3). The second is then the application of the described approach to CPFM to the Czech market, from defining the target state (chapter 2) as opposed to the current state (chapter 5), to choosing the specific areas that the MF will focus on.

## **2. Why the consumer should be protected**

Consumer protection in the financial market is one of the objectives of FM regulation. The position of the consumer in the market is actually “weaker” with respect to FP providers, and to ensure an effectively functioning market and to limit the negative social implications, it is necessary to protect the consumer to a certain degree. According to literature and experience from abroad, the specific reasons for it being necessary to regulate the financial market and to continually and effectively protect consumers are **market failure, distributive justice issues, paternalism,<sup>1</sup> and social values** as laid down in society. In the world, no single universal concept for consumer protection exists, with the FM regulation and consumer protection system in each country trying to find an adequate solution appropriate to its environment.

The most important reason for protecting consumers is market failure. One of the reasons for market failure with the greatest impact on the consumer is **information asymmetry**. This not only means unequal access to information and varying degrees of ability to process this information and to make a qualified decision, but also a different scope of opportunity or ability to protect one’s own interests in the market.

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<sup>1</sup> **Paternalism** represents a restriction on an individual’s freedom to decide and act, which is justified in the interests of achieving prosperity and benefit for, or protection of the interests of, the affected individual. The contents of these restrictions include, for example, providing a better position in the event of various approvals or conclusion of contracts (cooling-off period) in those cases where approvals are provided or contracts concluded without sufficient opportunity to assess the consequences of such actions. Among those situations where greater difficulty in assessing consequences is presumed are cases where products or services are deemed complex, where the purchase of services or products is infrequent (thus providing little opportunity for the consumer to “learn from mistakes”), where the consumer has little or no knowledge and experience with the service or products, or where the products or services are purchased by consumers who have a very low level of ability to acquire and assess information about a service or product.

The concept of **distributive justice** stems from the idea that it is necessary in some way to protect the most vulnerable members of society for whom it is difficult for various reasons to be full-fledged participants in market relationships and that social resources should be distributed according to what is “fair” and not according to what is most effective in the market.

**Social values** represent certain general accepted norms of behaviour that are deemed desirable by society. Behaviour that is not accepted is, as a rule, prohibited. A typical example is the illegality of usury.

As regards the consumer in the Czech FM, the following are examples of the negative state:

- Difficult **access to information** about products and services and about their providers (especially with respect to complex products and in the case of ensuring information about the “trustworthiness” of providers of financial products)
- Decreased or very low **ability to process and assess information** about financial products and about the providers and the market as a whole, and to arrive an independent and reasoned financial decision
- Decreased or very low **ability to promote one’s own interests in the market**.

Effective regulation, which takes into account CPFM, contributes to preventing market failure, thereby improving the consumer’s position in the market – the consumer being a less qualified and less informed player with less potential to decide effectively. More informed decision-making by the consumer contributes without a doubt to a more effective and stable financial system and to the overall more effective allocation of resources in the FM.

### **3. Consumer protection instruments and subjects**

The CPFM objectives and policies can be implemented by various entities using various legislative and non-legislative instruments. These instruments can take on various forms and likenesses – in the interests of transparency and clarity, a general

“catalogue” of these instruments has been compiled in the form of a table, which forms Appendix 1 hereto.

The selection and use a specific CPFM instrument should always be preceded by an assessment of the costs expected in connection with its implementation and of the benefits the measure should provide (cost-benefit analysis). However, feedback on how effective this instrument is and to what extent the set and expected goal has been met is an integral part of this process. The criteria for such assessment should fulfil the requirements for verifiability (measurability) and objectivity. The following are examples of possible criteria for assessing the effective use of instruments:

- a) Number of complaints and disputes in the given area
- b) Financial volume of disputes, complaints, penalties, and fines
- c) Extent of consumer satisfaction ascertained through public opinion surveys
- d) Growth of interest in financial market products within certain population groups
- e) Provision of services by distributors above that imposed on them by regulations (e.g., provision of information), and the like.

The issue of selecting a suitable instrument or strategy for implementing policies and activities leading to CPFM is always tied to limited financing possibilities, as is the possibility to assess ex-ante and ex-post the effectiveness and extent of fulfilment of the expected goal. The kinds of instruments that can be used to implement measures and assess the effectiveness of such measures can then be limited in practice due to restricted funds. The possibility for the private sector to take part in financing selected activities or projects,<sup>2</sup> for other public institutions (e.g., the ČNB) to be involved in their co-financing, for professional associations and consumer organisations to be involved in them, and for EU funds to be utilised for them, should be considered in each case.

Practically all entities that appear in the financial market can be deemed to have a stake in consumer protection. Each has a different role in the FM and can take part in

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<sup>2</sup> For example, financial education projects, provision of information to consumers by an independent entity, implementation of professional standards, etc.

the application of the above CPFM instruments to a certain degree. The following entities in particular are those that can be included in this group:

- 1) **International organisations and EC/EU institutions** – their main tasks include legislative and non-legislative activities, organisation of international panels and Twinning Projects, compilation of reports on FM developments in the context of CP in specific countries, and overall responsibility for the issue of CPFM at the international level (e.g., European Commission, OECD, World Bank, UN, IOSCO, DG SANCO, DG MARKT)
- 2) **Domestic public authorities** – they set the main CPFM rules for all subjects and oversee their application in practice. They coordinate the use of CPFM instruments and supplement the activities of market entities in areas where market deficiencies exist.
  - a) Regulatory institutions (MF, ČNB)
  - b) FM supervisory institutions (ČNB, MF, ČOI)
  - c) Other government institutions [other ministries – MIT, MEYS, MJ, Ministry of the Interior; other institutions - ÚOOÚ, ÚOHS, Rada pro rozhlasové a televizní vysílání (Council for Radio and Television Broadcasting)]
  - d) Complaint and dispute resolution institutions (courts, financial arbiters, and arbitrators)
- 3) **Financial institutions** and their **professional associations or chambers** – they set the main CPFM rules for themselves and for their members (in the form of codes of conduct<sup>3</sup>) and coordinate the use of CPFM instruments in the sectors where their members are active (ČBA, AČSS, ADŽ, AKAT, AFAM, USF, AFIZ, ČAP, and APF ČR)
- 4) **Other non-governmental CPFM institutions** – they participate in implementing CPFM instruments of a non-legislative nature, mainly through informational and advisory activities targeting consumers, possibly also taking

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<sup>3</sup> A professional association's authority to check adherence to the obligations stipulated in the code of conduct and impose sanctions against its members is not always made possible by the association's statutes (see, for example, ČBA).

part in preparing and negotiating legislative instruments, formulating CPFM rules, and the like.

- a) Consumer organisations (SOS, SČS)
- b) Media and their associations (financial servers, TV, financial publications and their specialised supplements, Rada pro reklamu [Czech Advertising Standards Council], and the like)
- c) Educational institutions (schools)
- d) Other institutions (European Consumer Centre)

5) **Consumers** – the CPFM subject bearing responsibility for the FP purchase.<sup>4</sup>

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<sup>4</sup> See glossary of terms (page 3)

## ROLE OF THE STATE

Generally speaking, the State's mainly role in the financial market is to ensure its **development and stability** and to **protect participants** (i.e., consumers and other entities) entering this market. At this same time, it should take into account the implemented policies in terms of whether they are sufficiently balanced, conceptual, and prescient to achieve these objectives. In the CR, the State exercises public authority over the financial market through the MF or, as the case may be, the ČNB. It also authorises some of the other aforementioned institutions to carry out certain tasks in the implementation of CPFM instruments.

The role of the State in CPFM should comprise the **creation of a concept for utilising** the instruments contained in the below-mentioned catalogue,<sup>5</sup> the **implementation** of the instruments, or the **support** in the implementation of the instruments by other entities, and a **review of the effectiveness** of their use. These CPFM instruments should contribute to ensuring credibility of the financial market and legal certainty for its participants and to reducing certain risks borne by consumers when acquiring financial products<sup>6</sup>. They should also support rational decision-making by the consumer, promote desirable behaviour of the financial institutions and distributors towards clients/consumers, ensure an ongoing awareness of current and real consumer protection issues in the capital market, and so on.

## **4. Target state of consumer protection in the Czech Republic**

The proposal for defining the target level of CPFM in the CR stems from the general concept laid out above in chapter 2 and focuses mainly on limiting the negative consequences of market failure. The described target state is the MF's starting point for discussions which are necessary to reach the greatest possible consensus among all stakeholders in the FM on the approach to be taken with respect to CPFM.

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<sup>5</sup> See Appendix I

<sup>6</sup> That is first and foremost the consumer's lack of information, the risk of insolvency of the financial institution, the risk of the consumer being in a substantially weaker position in the event of a dispute with the financial institution, and the like.

From the MF's perspective, the general objective of CPFM is to attain the state where the consumer **makes responsible and appropriate decisions in the financial market with regard to his current situation**, i.e., he obtains services or acquires products that best suit his current needs and possibilities and **has the possibility to promote and protect his rights and interests effectively**. This target state can be achieved through actions in three areas, designated the three **pillars of CPFM**:

**A. Information**

- Consumers have access to basic information about financial products and their providers, and this information is complete, comprehensible, balanced, transparent, comparable, and available (provided) at the appropriate time.
- Independent providers of information about financial products and financial institutions exist.
- A focused, clear catalogue of rights and obligations pertaining to a FP exists (in the form of product info lists).

**B. Ability to work with information**

- An adequate level of financial literacy is achieved.
- A high quality system of commercial financial advisory exists alongside analysts and rating companies.

**C. Possibility for the consumer to promote and protect his interests and rights**

- Clear and, in the relevant aspects, uniform legislation exists that is comprehensible to both the financial institution and the consumer.
- Effective and transparent mechanisms for making and resolving complaints exist in all financial institutions
- An effective, transparent, and operative mechanism exists for handling complaints and disputes between consumers and financial institutions, a part of which is a functional and visible (via the media) system of out-of-court settlement of disputes, and is used and supported by financial institutions.
- If the position of the consumer in relation to the financial institutions is substantially weaker, mechanisms exist that at least partially eliminate this fact (e.g., product mobility rules, obligatory cooling-off period).

- An effectively functioning consumer organisation exists that monitors on a continuous basis and formulates the key problems with which consumers encounter in the financial market and communicates actively with representatives of financial institutions and the state.
- Consumer organisations are actively authorised to represent consumers in the event of disputes with the financial institutions.
- Functional, effective, and fair guarantee systems exist in the FM.

A fundamental condition to achieving the above-described target state is the existence of **adequate public regulations on institutional structure**.

## **5. Current state in the CR**

Based on a survey of market conditions, current legislation and its practical application, the MF carried out a number of internal studies that identified the various kinds of problems in the FM. These findings form the basis for creating the concept of consumer protection in the financial market. Its primary content will be removing or limiting current deficiencies and moving the entire consumer protection regime to the target state described above in chapter 4.

### DEFICIENCIES IN EACH CPFM AREA

It can be stated that, at this time, the desirable target state of CPFM described above – i.e., access to necessary information, ability to process the acquired information, and the possibility for the consumer to exercise his interests and rights – is not fulfilled. The basic reasons for this unfavourable situation are probably the **absence of a conceptual CPFM policy** and the **lack of uniformity** arising from this; a **lack of balance and sufficiency**; and **ineffective** use of the various CPFM instruments in the current system. The table below provides a brief description of the current state compared to the target state defined in the previous chapter. The provided assessment is derived from the MF's internal analyses.

**Table 1 – Current state of CPFM**

<b>Target</b>	<b>Current state</b>
1. Information	<ul style="list-style-type: none"> <li>▪ serious deficiencies in legislation governing the obligation to provide information and the actual provision of the information (in terms of content, form, phase of provision of information, imbalance between sectors in their obligation to provide information, type of product, type of distribution channel,<sup>7</sup> and the like)</li> <li>▪ very limited FM and FP information system for the consumer run by independent institutions similar to FSA in Great Britain or IFSRA in Ireland<sup>8</sup> (e.g., by providing references about financial institutions, comparing financial products in terms of cost, and the like)</li> <li>▪ insufficient assurance of the expertise of FP distributors when providing necessary information to the consumer at the necessary level</li> </ul>
2. Ability to work with information	<ul style="list-style-type: none"> <li>▪ insufficient diversity of independent providers of information about FP</li> <li>▪ insufficiently developed system of commercial financial advisory</li> <li>▪ fragmented activity in financial education</li> <li>▪ insufficient knowledge on the part of the consumer about the fundamentals of more complicated and complex products, the related rights and obligations, and the relevant product terminology</li> </ul>
3. Possibility for consumer to promote his interests	<ul style="list-style-type: none"> <li>▪ ineffective oversight and supervision over the activities of financial institutions in certain areas and aspects of CPFM</li> <li>▪ ineffective functioning of current guarantee and warranty systems</li> <li>▪ insufficient regulation of the consumer’s right to withdraw from concluded financial services contracts within a certain period of time and without penalty – so-called cooling-off period (provided it does not go against the nature of the product)</li> <li>▪ insufficient assurance of a fast and fair resolution of</li> </ul>

<sup>7</sup> For more details about this issue, see point 2 of Appendix II

<sup>8</sup> The mentioned countries are referred to in particular due to their similar, proven approach to CPFM (i.e., an approach built on similar principles), the maturity of their financial markets and, in the case of Ireland, the size of the market and the great openness toward the MF in term of communication and information about FM matters. In its analyses and any subsequent proposals for specific measures, the MF also monitors the experience of other developed countries whose economies and FM are similar to that of the Czech Republic (Germany, Austria, Italy, and so on)

	<p>complaints made by the consumer and disputes with the financial institution, non-existent functional system of out-of-court settlement of disputes (with the exception of the limited activity of the financial arbiter)</p> <ul style="list-style-type: none"><li>▪ ineffective assurance of consequential adherence to codes of conduct and other codices of financial institutions aimed at securing the rights of the consumer</li></ul>
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*Source: MF*

A list of the most significant causes of discrepancies between the current state and the target state are listed in Appendix II. The current state of CPFM legislation is described in the document entitled “Consumer Protection When Providing Financial Services in the Czech Republic – Overview of Legal Regulations”<sup>9</sup> (see Appendix IV).

## **6. Proposed measures**

The subject of this chapter is clarification of the MF’s basic framework for proposing and implementing specific measures.<sup>10</sup>

A specific proposal for **implementing each measure** stemming from this framework policy, including a time schedule for the implementation, will be the subject of other documents prepared in this connection by the MF.<sup>11</sup>

### **6.1 Areas where the MF will initiate measures**

Based on the above findings and the ascertained discrepancy with the target state, the MF is initiating measures in the following areas:

#### **1) Adequate information**

- ensuring optimum scope and quality of information for the consumer
- ensuring an adequate level of expertise of the distributors of financial services

#### **2) Ability to work with information**

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<sup>9</sup> This material was prepared by the Working Group for Consumer Protection Legislation and for Resolution of Disputes between Clients and Financial Institutions and approved by the Expert Group for the Financial Sector.

<sup>10</sup> The proposed measures comply with EU policies on detailed financial services.

<sup>11</sup> E.g., the National Strategy for Financial Education.

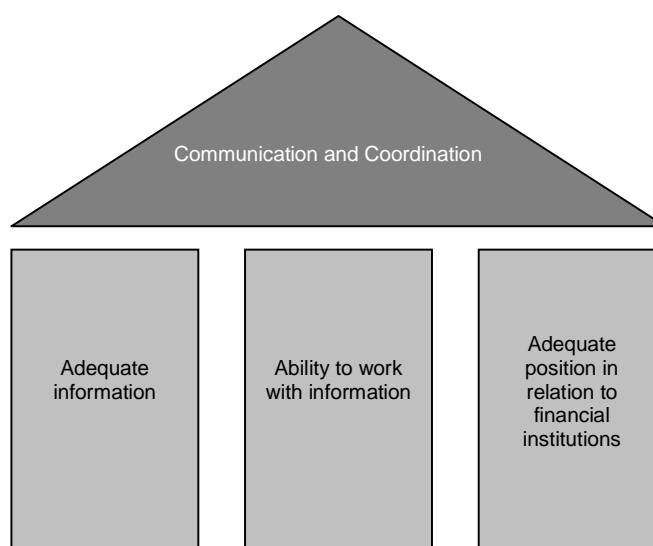
- improving financial literacy

### **3) Adequate position of the consumer in relation to financial institutions**

- securing the consumer’s right to use the so-called cooling-off period (provided it does not go against the nature of the product)
- supporting product mobility<sup>12</sup>
- setting the rules for dealing with customers (e.g., the “best execution” principle)
- securing the right of the consumer to quick and effective resolution of complaints and disputes

### **4) Communication and coordination of actions with the market and the public**

**Diagram 1 – Area of the MF’s interest when implementing CPFM measures**



Source: MF

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<sup>12</sup> **Product mobility** (“PM”) means the possibility for the consumer to carry out changes to contractual conditions, which means either a change in the parameters for acquiring the financial product or terminating the contract and purchasing a different product, be it within a financial institution or outside of it. The extent to which the consumer has this possibility at his disposal represents an important criterion for him to make a rational decision on a possible purchase of a financial product and influences the quality of the competitive environment on the FM. PM can be monitored or measured using various cost indicators that can take the form of so-called “switching costs” – direct monetary or other transaction costs stipulated by the institution for transferring – and “learning costs” – costs associated with acquiring information about products offered by other institutions or different products offered by the same institution to which the consumer can “transfer”.

## **ADEQUATE INFORMATION**

Various channels can be used to make sure that consumers are informed. In this area, the role of the MF will lie in particular in setting a certain information standard in terms of **optimum scope and quality of information** that the financial institutions and distributors of financial products should provide to the consumer in each phase of the contractual relationship, and in terms of the adequacy of, and accessibility to, various communication channels. Information provided to the consumer that is deemed adequate should have the following desirable characteristics:

- a) **Accuracy**
- b) **Completeness**
- c) **Transparency**
- d) **Comparability**
- e) **Comprehensibility**
- f) **Balance**
- g) **Timeliness** (information provided at the appropriate time)

In addition to this, different kinds of information exist to help the consumer decide rationally about purchasing financial services, but the distributor cannot be required to provide such information.<sup>13</sup> In the current state, where no independent provider of such comprehensive information exists (such as FSA in Great Britain or IFSRA in Ireland), it should be the MF's role to initiate the filling in of these gaps. Achieving the optimum state of knowledge and awareness also presumes an adequate level of expertise of the distributor of financial information. The role of the MF will, thus, also be setting a certain standard of expertise for providers and intermediaries of financial services (as with the information standard). A standard of expertise should contain minimum requirements for knowledge and skill on the part of distributors of financial products and services, in addition to the mechanisms for implementing these requirements and the instruments for overseeing their fulfilment in practice.

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<sup>13</sup> This can in particular be the provision of independent information about the offered financial products, the performance of comparative analyses, and issuance of product info lists.

## **ABILITY TO WORK WITH INFORMATION**

The MF's activities will also comprise revising the current, and creating (or, more precisely, cooperating<sup>14</sup> in the creation of) a new, functional, and comprehensive system of financial education. The aim will be to strengthen the consumer's ability to work with the information obtained, process it, and reflect it in his own rational decision-making.<sup>15</sup> The significance of the connection between the expertise of the distributor of financial services, the provided information, and the consumer's financial literacy in the process of educating the consumer is illustrated by the diagram in Appendix V.

## **ADEQUATE POSITION OF THE CONSUMER IN RELATION TO FINANCIAL INSTITUTIONS**

A significant aspect of CPFM where there is still room for action by the MF is also the issue of resolving complaints and disputes in the FM. The MF's actions in this area focus on the clear and explicit delegation of responsibility within the distribution chain and the creation of mechanisms that, as opposed to the current state, will ensure a faster, cheaper, and more effect opportunity to resolve complaints against financial institutions and initiate litigation. One possible suitable instrument that can be used to achieve this objective is out-of-court settlement. In addition to the above, the MF will, based on foreign experience and recommendations (IFSRA,<sup>16</sup> World Bank), focus on other aspects for improving the consumer's position in relation to financial institutions.<sup>17</sup> At the same time, the MF will continue monitoring CPFM to identify new problems areas or revise own measures.

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<sup>14</sup> In particular with MEYS, MIT, professional associations of financial institutions, consumer associations. An integral part of this project should also be a financing system proposal.

<sup>15</sup> This objective will be pursued in the form of drafting a National Financial Education Strategy and System for Building Financial Literacy at Basic and Secondary Schools. The MF's main areas of interest will be education in particular.

<sup>16</sup> For more information about particular IFSRA projects in Ireland, see Appendix III.

<sup>17</sup> For example, through the issue of product mobility and the possibility to utilise the so-called cooling-off principle, the functioning of guarantee and warranty systems, the effectiveness of the current system of oversight and supervision, and so on.

## **COMMUNICATION AND COORDINATION OF ACTIVITIES WITH THE MARKET AND THE PUBLIC**

The MF will consult and communicate the preparation and implementation of all measures with the market and the public, from which it will be receiving suggestions identifying the actual needs and problems faced by consumers. It will strive for maximum coordination of its activities with the stakeholders.

### **6.2 Institutional structure**

Alongside the MF's own envisaged field of activity, there are other entities that will (co-)organise or should (co-)organise the implementation of CPFM policy. The starting point for the MF is a structure that arose on the basis of the ongoing integration of supervision over the FM. The MF will **analyse on a regular basis** this institutional structure for implementing CPFM and its effectiveness in achieving the desired results for consumers, and, as **the body with the main responsibility for this area, will initiate change**, taking into account in particular the ongoing integration of supervision over the financial markets and the consequences thereof. With the goal of finding maximum possible consensus with other FM entities, the MF will be consulting its visions for the CPFM institutional structure at various FM discussion platforms. The MF's initial vision of the role of the other entities is summarised in table 2.

**Table 2 – Initial vision of the role of other CPFM entities**

<b>Entity</b>	<b>Area and focus of CPFM policy</b>
1. ČNB	<ul style="list-style-type: none"><li>▪ Public oversight over the FM; in terms of this document, this means in particular:</li><li>▪ Supervision over adherence by financial institutions to the information obligation, including authority to impose sanctions</li><li>▪ Supervision over adherence by financial institutions to the rules for dealing with clients, including authority to impose sanctions</li><li>▪ Involvement in financial education programmes</li></ul>
2. MIT	<ul style="list-style-type: none"><li>▪ Support of consumer organisations through grants</li><li>▪ Cooperation with improving or creating a comprehensive legal and institutional framework for court and out-of-court settlement of consumer disputes (not only in the FM)</li></ul>

3. Financial arbiter	<ul style="list-style-type: none"><li>▪ Out-of-court settlement of consumer disputes in the FM<sup>18</sup></li></ul>
4. ČOI	<ul style="list-style-type: none"><li>▪ Supervision over providers of consumer loans (lenders)</li></ul>
5. MEYS	<ul style="list-style-type: none"><li>▪ Implementation and coordination of financial education policies</li></ul>
6. ÚOOÚ	<ul style="list-style-type: none"><li>▪ Supervision over adherence to statutory conditions for handling personal data</li><li>▪ Receipt and handling of suggestions and complaints from the public about personal data protection</li></ul>
7. ÚOHS	<ul style="list-style-type: none"><li>▪ Supervision over adherence to statutory competition rules</li></ul>
8. Financial institutions and their associations□	<ul style="list-style-type: none"><li>▪ Stipulation of self-regulation rules</li><li>▪ Cooperation at various levels in the regulation process</li></ul>
9. Consumer organisations	<ul style="list-style-type: none"><li>▪ Defence of consumer rights in complaints and disputes</li><li>▪ Information and advisory service for consumers</li><li>▪ Cooperation at various levels in the regulation process</li></ul>

### ***6.3 Main principles observed***

When drafting each CPFM measure, the MF, where relevant, will do its utmost to observe the following principles:

***1) Balance between these three aspects: CPFM, FM development, FM stability***

When drafting specific measures, in addition to CP, it is necessary to ensure that the impact of the measures support the development of the FM (i.e., the offer of FP in the FM, development of a competitive environment, and the like) and does not jeopardise its stability.

***2) Balanced approach to regulation of similar FP and of the various FM sectors***

The proposal for specific measures will always correspond to products fulfilling a similar purpose, so-called product groups, which will prevent sector-related discrimination and distortions in the market. If relevant, the same logic will be applied to the creation of rules for various distribution channels and various types of distributors (end providers, intermediaries).

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<sup>18</sup> The scope of the competencies of the subject or subjects overseeing the out-of-court settlement of complaints and disputes will be the subject of future consultations between the MF and the relevant FM entities.

**3) Preference for self-regulation (or, as the case may be, joint regulation) over regulation**

The MF supports the active role of professional groups and associations and cooperation between the state and the FM, which creates the conditions for more effective and efficient CPFM, especially with regard to the dynamically developing FM and knowledge of consumers' needs. When implementing each measure based on ongoing evaluation of the current state of the area of CPFM, non-legislative measures will be given preference over legislative measures, provided the pursued objective is achieved.

**4) Emulating foreign best practices**

Implementation of each of the measures will be inspired by best practices from abroad. To make the **legislative process** in (not only) the FM **more effective** and to increase its benefit for the creation of a quality legal environment, we believe it desirable to look to the British "better regulation concept"<sup>19</sup> and the programme documentation of the European Commission<sup>20</sup> that incorporate the general rules both for the creation of the conceptual framework and specific regulations and for their implementation and practical exaction in the chosen area – e.g., financial services. Such regulations include:

- a) Creation of measures based on market analyses and evaluation of the anticipated implications of adopted measures (impact assessment)
- b) Inclusion of all potential affected persons, institutions, and the general public already during the preparatory phase of the implementation process (consultation procedure)
- c) Correct and quality transposition of EC law into Czech law
- d) Transparency and exposure of key documents of the implementation process
- e) Pursued objectives of solidarity, consistency, lucidity, and comprehensibility of the legal system when drafting legislative norms

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<sup>19</sup> See, for example, [http://ec.europa.eu/governance/better\\_regulation/index\\_en.htm](http://ec.europa.eu/governance/better_regulation/index_en.htm)

<sup>20</sup> See the document entitled *A Strategic Review of Better Regulation in the European Union – COM(2006) 689* dated 14 November 2006, and the European Commission's *Green Paper of Financial Services Policy (2005-2010) – COM(2005) 177*

In addition to the implementation process, it is possible to look to the experience applied in specific countries and recommendations issued by certain institutions (e.g., WB) also as early as at **the time each measure is formulated.**

## Appendix I – General catalogue of CPFM instruments and examples of their use in the CR

Instrument	Forms and fundamentals	Example	Implemented in the CR	Implementing entity
1. Public and private law (material content of regulation)	<ul style="list-style-type: none"> <li>▪ Regulation of entrance onto financial market</li> <li>▪ Regulation of activities of financial institutions (distributors of financial services)</li> <li>▪ Regulation of issuance and offering of financial instruments</li> <li>▪ Regulation of information obligation</li> <li>▪ Regulation of resolution of complaints and disputes</li> <li>▪ Imposition of relevant fines</li> </ul>	<ul style="list-style-type: none"> <li>▪ Conditions for obtaining licences and other authorisations</li> <li>▪ Information standards of financial products</li> <li>▪ Professional standards of distributors in the FM</li> <li>▪ System of out-of-court settlement of complaints and disputes</li> </ul>	<ul style="list-style-type: none"> <li>▪ E.g., stipulation of the conditions for obtaining licenses and other authorisations for entering and being active in the FM, regulation of aspects of various kinds of agreements, and the like.</li> </ul>	<ul style="list-style-type: none"> <li>▪ MF</li> <li>▪ ČNB</li> <li>▪ MIT</li> <li>▪ EC/EU institutions</li> </ul>
2. Supervision over financial market (procedural assurance of regulation)	<ul style="list-style-type: none"> <li>▪ Verification of conditions for entering the FM</li> <li>▪ Checking of adherence to rules for activity of financial institutions and issuers of financial instruments</li> <li>▪ Checking of adherence to market rules</li> <li>▪ Enforcement of rules</li> </ul>	<ul style="list-style-type: none"> <li>▪ Supervision over fulfilment of information standards and professional standards</li> <li>▪ Imposition of fines for failure to fulfil information obligation</li> </ul>	<ul style="list-style-type: none"> <li>▪ So-called discretionary supervision (over fulfilment of conditions for obtaining licences or other authorisations for entering the FM, imposition of fines for failing to fulfil these conditions), supervision over adherence to CPFM rules (e.g., fulfilment of the information obligation with respect to consumer loans, insurance of persons, investment in the capital market, and the</li> </ul>	<ul style="list-style-type: none"> <li>▪ ČNB</li> <li>▪ ČOI</li> <li>▪ Trade licensing offices</li> </ul>

<b>Instrument</b>	<b>Forms and fundamentals</b>	<b>Example</b>	<b>Implemented in the CR</b>	<b>Implementing entity</b>
			like)	
3. Guarantee and warranty systems	<ul style="list-style-type: none"> <li>▪ Coverage of statutory claims against financial institutions that are unable to meet their client-related obligations</li> </ul>	<ul style="list-style-type: none"> <li>▪ Systems allowing clients to receive damages from deposits and investments in the event of bankruptcy of financial institution</li> </ul>	<ul style="list-style-type: none"> <li>▪ Three guarantee systems in place at this time (Deposit Insurance Fund, Credit Union Security Fund<sup>21</sup>, Securities Brokers Guarantee Fund)</li> </ul>	<ul style="list-style-type: none"> <li>▪ MF</li> <li>▪ Financial institutions</li> </ul>
4. Mechanisms for resolving complaints and disputes	<ul style="list-style-type: none"> <li>▪ Possibility to make complaint</li> <li>▪ Mechanisms for litigation and settlement of disputes between consumers and financial institutions</li> </ul>	<ul style="list-style-type: none"> <li>▪ Justice system</li> <li>▪ Institutions for out-of-court settlement of disputes</li> </ul>	<ul style="list-style-type: none"> <li>▪ Justice system</li> <li>▪ Arbitration proceedings</li> <li>▪ Performance of function of financial arbiter</li> <li>▪ Existence of ombudsman for financial institutions</li> </ul>	<ul style="list-style-type: none"> <li>▪ Courts</li> <li>▪ Arbitrators</li> <li>▪ Financial arbiter</li> <li>▪ ČNB<sup>22</sup></li> <li>▪ Professional associations<sup>23</sup></li> <li>▪ Internal departments within some financial institutions</li> </ul>
5. Accessibility of information for consumer by an independent subject	<ul style="list-style-type: none"> <li>▪ References about financial institutions</li> <li>▪ Maintenance of registers of authorised providers of financial services</li> <li>▪ Comparative analyses of financial products</li> </ul>	<ul style="list-style-type: none"> <li>▪ Description of performance of financial products, their price, and cost comparison using model clients</li> <li>▪ Cost-benefit analysis of FP</li> <li>▪ Product leaflets (i.e., leaflets, brochures)</li> <li>▪ Rating/scoring of financial institutions and own FP</li> </ul>	<ul style="list-style-type: none"> <li>▪ Operation of web and financial portals</li> <li>▪ Financial information in the press</li> <li>▪ Courses and training programmes in finance</li> </ul>	<ul style="list-style-type: none"> <li>▪</li> </ul>
6. Financial education projects for the populace	<ul style="list-style-type: none"> <li>▪ Improvement of level of economic and financial literacy of the</li> </ul>	<ul style="list-style-type: none"> <li>▪ System of building financial literacy at secondary schools</li> </ul>	<ul style="list-style-type: none"> <li>▪ Existing projects in financial education for adults covering only a</li> </ul>	<ul style="list-style-type: none"> <li>▪ MF</li> <li>▪ Other governmental institutions (e.g., MEYS)</li> </ul>

<sup>21</sup> No longer active *pro futuro*

<sup>22</sup> Resolution of consumer complaints about the services provided by entities licensed by the ČNB

<sup>23</sup> See, for example, the AFIZ SMÍR service

<b>Instrument</b>	<b>Forms and fundamentals</b>	<b>Example</b>	<b>Implemented in the CR</b>	<b>Implementing entity</b>
	population	<ul style="list-style-type: none"> <li>▪ Education of over-indebted households</li> <li>▪ “Radce investora” [Investor Advisor] project</li> </ul>	number of relatively narrow target groups of the adult population	<ul style="list-style-type: none"> <li>▪ Financial institutions and their professional institutions or chambers</li> <li>▪ Other non-governmental institutions (schools, consumer organisations)</li> </ul>
7. Support of certain methods of financial decision making and behaviour, creation of FP	<ul style="list-style-type: none"> <li>▪ Creation of FP</li> </ul>	<ul style="list-style-type: none"> <li>▪ Creation of simplified and standardised FP</li> </ul>	<ul style="list-style-type: none"> <li>▪ Not implemented</li> </ul>	<ul style="list-style-type: none"> <li>▪ Not implemented</li> </ul>
8. Communication of public authorities with relevant entities in the financial market	<ul style="list-style-type: none"> <li>▪ Finding and setting of a balance between the interests of private market entities and special interest groups on one side and public interest groups on the other</li> </ul>	<ul style="list-style-type: none"> <li>▪ Roundtables</li> </ul>	<ul style="list-style-type: none"> <li>▪ Implemented at the level of working groups and expert groups in the FM, at the level of meetings with European institutions, at conferences and forums about the FM, and the like</li> </ul>	<ul style="list-style-type: none"> <li>▪ MF</li> <li>▪ ČNB</li> <li>▪ FT entities</li> <li>▪ International institutions and organisations</li> <li>▪ Other governmental institutions</li> </ul>
9. Communication of public authorities with the public	<ul style="list-style-type: none"> <li>▪ Active monitoring of problems and receiving suggestions from consumers</li> </ul>	<ul style="list-style-type: none"> <li>▪ MF website</li> <li>▪ Press releases</li> <li>▪ Processing of filed requests</li> <li>▪ Public opinion surveys</li> </ul>	<ul style="list-style-type: none"> <li>▪ Takes place at the level of operating the MF website, issuing press releases, processing filed requests, performing public opinion surveys, and so on.</li> </ul>	<ul style="list-style-type: none"> <li>▪ MF</li> <li>▪ Other governmental institutions</li> </ul>
10. Protection of economic competition	<ul style="list-style-type: none"> <li>▪ Regulation and institutional safeguards on adherence to competition rules</li> </ul>	<ul style="list-style-type: none"> <li>▪ Prohibition to act in a manner that restricts or excludes competition</li> <li>▪ Prohibition to act in a manner that distorts</li> </ul>	<ul style="list-style-type: none"> <li>▪ Legislatively ensured by the Act on Protection of Economic Competition and by certain provisions of the</li> </ul>	<ul style="list-style-type: none"> <li>▪ ÚOHS</li> <li>▪ Courts</li> </ul>

<b>Instrument</b>	<b>Forms and fundamentals</b>	<b>Example</b>	<b>Implemented in the CR</b>	<b>Implementing entity</b>
		competition	Commercial Code on unfair competition	
11. Professional and ethical rules	<ul style="list-style-type: none"> <li>▪ Determination of rules of action and negotiations with clients and creation of mechanisms for adherence to them</li> </ul>	<ul style="list-style-type: none"> <li>▪ Codes of conduct between financial institutions and consumers</li> </ul>	<ul style="list-style-type: none"> <li>▪ E.g., codes of conduct between financial institutions and consumers<sup>24</sup></li> </ul>	<ul style="list-style-type: none"> <li>▪ Financial institutions or, as the case may be, their professional associations</li> </ul>

<sup>24</sup> Code of Conduct between Banks and Clients. European Agreement on a Voluntary Code of Conduct on Pre-contractual Information for home loans.

## **Appendix II – Causes of current state of CPFM in the CR<sup>25</sup>**

**The non-existence of a single and balanced** approach of the State to legislative and institutional safeguards of client rights to the maximum possible extent across the entire FM manifests itself in particular by the following:

1. The varying extent of specific and procedural CP regulations in various FM sectors<sup>26</sup>
2. The varying extent of specific and procedural CP regulations and the lack of a single approach to supervision and oversight within the sector<sup>27</sup>
3. The varying extent of guarantee and warranty elements in the financial market with respect to products where the risk associated with these products is by nature contiguous<sup>28</sup>

Based on an analysis of the current state of CPFM, the following can be considered manifestations of the **inadequacy** of security of CPFM:

4. Insufficient obligations on the part of financial institutions to provide the consumer with the information necessary to make a rational decision to purchase or to refuse to conclude a contract on a certain financial product in each specific phase of the contractual relationship, under specific conditions<sup>29</sup>, and in a specific form (i.e., in the form of a presentation)
5. Absent regulation of the consumer's right to withdraw from a concluded contract on financial services within a certain period of time under no penalty (or, as the case may be, the consumer's right to acquaint himself with the

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<sup>25</sup> Findings from internal analyses performed by MF as part the projects “CPFM - Consumer Protection on the Financial Market“ and “Harmonisation of the Rules for Distributing Products on the Financial Market “

<sup>26</sup> E.g., in regulation of the information obligation, supervision and oversight over the activities of financial institutions, requirements on their expertise, and so on.

<sup>27</sup> E.g., according to type of product within product group – significantly different levels of regulation of the information obligation apply to, e.g., insurance of persons and for other types of insurance, non-uniform supervision over the activities of credit products; furthermore, various regulations according to type of distributor, distributor channel, and the like.

<sup>28</sup> E.g., guarantee system with respect to securities brokers in comparison to regulations for collective investment, pension funds, and life insurance

<sup>29</sup> I.e., e.g., automatically or upon the client's request.

- contractual conditions sufficiently in advance) – the so-called cooling-off period – in cases where the nature of the product allows for this
6. Absent comprehensive regulations securing the consumer's right to fast and fair resolution of complaints and disputes against financial institutions
  7. Space for expanding the activities of relevant entities leading to strengthening of the financial literacy of the population
  8. Very limited information service about the FM and financial services for the consumer from independent institutions similar to FSA in Great Britain or IFSRA in Ireland<sup>30</sup>
  9. Insufficient assurance of expertise of distributors of financial products
  10. Undeveloped system of financial advisory

The significant number of CP issues can in the end also be seen as a reflection of the **ineffectiveness** of the State's current approach in this area. Ineffectiveness should be understood as an insufficient manifestation of existing measures and instruments utilised in favour of CPFM according to the client's actual position. In this respect, it is necessary to call attention to the following:

11. Insufficient emphasis on regulation of the forms and methods of presentation of the information obligation
12. Space for improving co-regulation and self-regulation as alternative instruments to legislative regulation<sup>31</sup>
13. Consequences of an ambiguous definition of the rights and obligations of FM entities<sup>32</sup>
14. Consequences of ambiguously set supervisory and oversight competencies stemming from certain legal regulations<sup>33</sup>

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<sup>30</sup> This information can be in the form of, e.g., references about financial institutions – e.g., in the form of accessible registers, ratings/scorings, and so on; another possible instrument could be, e.g., cost comparisons of financial products – e.g., by creating so-called model clients, preparing comparative analyses, and so on.

<sup>31</sup> These appear to be desirable, e.g., when ensuring expertise of distributors active on the FM, codes of conduct of financial institutions, product terminology in use, supporting client mobility with respect to certain products of the financial markets – be it in the form of direct financial costs, time constraints, or so-called learning costs, and so on.

<sup>32</sup> E.g., interpretation of the provisions of Act No. 321/2001 Coll., on Consumer Credit and on Amendment of Act No. 64/1986 Coll., on the Content of Relative Cost Indicators for Loans, i.e., APR.

15. Ineffectiveness of certain aspects of “reactive” (ex-post) supervision and oversight<sup>34</sup>
16. Unorganised (fragmented) consumer education activities and policies in finance
17. Space for improving communication between the State, consumers, and consumer organisations
18. Problems with current guarantee system with respect to securities brokers

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<sup>33</sup> E.g., Act No. 634/1992 Coll., on Consumer Protection, as amended, and Act No. 64/1986 Coll., on the Czech Commercial Inspection, as amended, in the case of authority to perform oversight

<sup>34</sup> This concerns in particular supervision over adherence to conditions for providing consumer loans, enforcing unfair business practice, and so on.

## **Appendix III – Overview of certain activities of IFSRA**

<b>Area</b>	<b>Content</b>	<b>Projects and activities</b>
Financial education	“We provide consumer information and education about the costs, risks and benefits of financial products, using comparison tables on our web site to draw particular attention to the costs.”	<ul style="list-style-type: none"> <li>▪ Financial products guides</li> </ul>
Provision of information about products in the FM	<p>“We provide impartial information about common financial products to help you assess and choose what is suitable for you. The more information you have, the less likely you are to buy something that you do not need or that is unsuitable.”</p> <p>“We promote the interests of consumers of financial products.”</p>	<ul style="list-style-type: none"> <li>▪ Cost surveys</li> </ul>
Creation of Rules for FM	“We impose and enforce rules on financial services firms regarding how they deal with consumers, particularly how they sell financial products.”	<ul style="list-style-type: none"> <li>▪ Regulations and codes</li> <li>▪ Lists and registers (of financial institutions)</li> </ul>
Resolution of complaints and disputes	“We provide information and assistance to consumers who have a general service complaint, e.g. charges, quality of service, administrative errors as well as enquiries about a firm, product or service.”	<ul style="list-style-type: none"> <li>▪ Financial Services Ombudsman</li> <li>▪ Pension Ombudsman</li> </ul>

□Source: <http://www.ifsra.ie>

**Appendix IV – Document entitled “Consumer Protection when Providing Financial Services in the CR – Overview of Legislation”**

See separate document

## Appendix V – Information and ability to work with information when educating the consumer

