



COMMENTS OF THE CZECH REPUBLIC ON THE COMMISSION SERVICES WORKING DOCUMENT - MORTGAGE CREDIT IN THE EU

Referring to the European Commission (Government Expert Group on Mortgage Credit) Working document of 31 May 2006, the Czech Ministry of Finance hereby gives the comments of the Czech Republic.

This document was prepared in cooperation with the Ministry of Industry and Trade, the Ministry of Justice, the Czech Banking Association, Czech Office for Surveying, Mapping and Cadastre and other experts.

Along with the analysis of answers, we recommend follow-up of the previously elaborated statements in Comments of the Czech Republic on the Commission services Green Paper – Mortgage Credit in EU, which is the general basis of this subsequent paper.

1. CONSUMER PROTECTION

1 (1)

- **Consider and advise on the feasibility of defining the stage at which the ESIS should be provided to the consumer. Is this stage defined at the national level?**

We recommend the same approach as in the proposed Consumer Credit Directive, i.e. this information should be given well in advance. The term “well in advance” would be left to member states for interpretation. For our purposes we could consider a period of one month at maximum before signing the mortgage contract and before the time when both parties actually start incurring costs.

Currently, there is no regulation of pre-contractual information in place in the Czech credit law.

1(2)

- **Assess the relevance of the ESIS: are there studies or research available on the efficiency of the ESIS.**

Since the Czech banks have just recently applied ESIS and not all of them yet, such studies are not available. In this regard we note that it is very important that pre-contractual information is provided in the form of ESIS by all banks in the same way, so that the

consumer has a chance to effectively compare products on the market. This is a clear advantage of the standardised form of ESIS.

1(3)

- **Assess whether all ESIS information fields are clear and understandable and discuss whether the structure could be improved.**

From our point of view, ESIS contains all relevant information. At the same time, ESIS enables evolution and development of new products by the mortgage providers, which is very important attribute. The importance of maintaining enough scope for development and evolution is also a reason why the mortgage providers strongly insist on the flexibility of ESIS. Due to a lack of experience with ESIS in the Czech Republic, we can not examine the appropriateness of any structure changes.

1(4)

- **Deliberate on what information could be added (or removed) from the ESIS to enhance its efficiency.**

With respect to gradual implementation of ESIS in the Czech Republic we do not have enough experience to give any detailed suggestions on any modification of it. Nevertheless, we believe that ESIS should be obligatorily available on web sites of individual mortgage providers, preferably in the form of mortgage calculator where the applicant would obtain ESIS by filling in required data without any personal contact with the provider. Another information which could be added into ESIS is the information on advance payment (i.e. first payment which is higher than later regular payments) and the percentage rate depending on estimated price of the real property and amount of loan. In addition we note that the value of ESIS could be increased by adding a factor of client credit-worthiness (or credibility) assessment. Only with this knowledge client can receive complete information about the requested product. It should be further analysed whether it is possible to assess the client in this stage.

1(5)

- **Consider whether the ESIS should be made binding or not.**

From the question it is not clear whether it should be binding for the provider to provide ESIS in accordance with the relevant legal rules or whether data stated in the particular ESIS with respect to individual client are binding on the provider.

We support bindingness of ESIS provision (and its structure). As the ESIS is a standardised information document whose purpose is to digestedly unify provided information, it is very important that all mortgage providers in the EU provide ESIS in a unified form enabling consumer to compare their products. If ESIS is not provided by all mortgage providers, the whole regulation is senseless. That is why we propose it's bindingness in a form of maximum harmonization.

However, we do not agree with bindingness of data stated in ESIS (which would then in practise be a binding mortgage offer) as this would cause rise in price of mortgage loans.

1(6)

- **In the contributions to the Green Paper, the majority of respondents supported the idea of extending information requirements to**

intermediaries, e.g. brokers. It was however unclear to exactly which intermediaries. Member States are therefore asked to contemplate what entities should be subject to the information provision regime for mortgages?

We believe that intermediaries' activity should be regulated similarly to other sectors of the financial market (insurance, capital market). The regulation could be based on the proposed Consumer Credit Directive, however tightening up of some conditions should be further considered, due to higher credit amounts of mortgages. From our point of view, there should not be any differences between intermediaries and providers of the core service as to the information provision requirements and rules on conduct. The information provision rules should apply to all kinds of intermediaries. Each client should get comparable standard of information and be approached regardless the product distribution channel (bank branch, tied agent or distribution firm offering products of more banks).

ADVICE PROVISION

2(1)

- **Explore the definition of and standards for the provision of advice. Are there legal or self-regulatory obligations regarding the definition and standards in Member States?**

Public discussion on horizontal regulation of the distribution of financial products in the financial market is currently in progress in the Czech Republic. The advice provision in the area of mortgage credit is not regulated in the Czech Republic.

However, difficult question is how to effectively distinguish between:

- 1) "basic advice provision" on financial products offered by intermediary or bank occurring in the process of distribution of financial product.
- 2) "independent advice provision" based on representative research of the market resulting in the objectively best product recommendation for client.

2(2)

- **Consider whether the approach currently proposed in the Consumer Credit Directive should be applicable to mortgages.**

Certainly yes. Analysis on appropriateness of unification of rules on distribution of financial products and advice provision in the whole financial market is currently in progress in the Czech Republic.

2(3)

- **Reflect on who should give advice: lenders; specialised advice providers; etc.**

Certainly providers and intermediaries, similarly to the proposed Consumer Credit Directive. Specialised advice providers should have this obligation automatically in the object of their business. However, it is necessary to distinguish between "basic advice provision" on the products in the offer and truly objective and independent financial advice provision (see 2.2)

EARLY REPAYMENT (ERP)

3(1)

- **Clarify whether ERP is based on legal provisions in their country. In particular, Member States should specify whether the provisions are based on law or case-law. If such a right to ERP exists, is it possible for the consumer to waive this right? Under which conditions? Member States should advise on whether a legal right be established at the EU level and whether a waiver should be made possible.**

ERP is regulated only in the consumer credit law. Concerning mortgages, according to our industry, regulation of ERP would cause immediate rise of interest rates to the detriment of consumers, because it would lower the effectiveness of current practise of fixed rates for certain period and the way of refinancing by the Mortgage Backed Securities.

We believe that Consumer should not be allowed to waive this right under any circumstances, see the Czech position on Green paper. Furthermore we note, it is necessary to carry out Cost and benefit analysis on what is the real impact of ERP on Mortgage Backed Securities secondary market.

3(2)

- **Explain (if such a right to ERP exists) whether the right is conditional or unconditional (i.e. it can be executed under any circumstances and at any time). Member States are asked to consider if a legal right were to be established at the EU level whether it should be conditional or unconditional.**

The right to ERP is not guaranteed in law in the Czech Republic, however it could be agreed between the parties of the mortgage contract. We propose unified Directive regulation. ERP right should be unconditional without the possibility to waive it.

3(3)

- **Describe whether, early repayment fees may be charged? If yes, how are these fees calculated and are there any caps on them? Member States are requested to discuss whether it is advisable and feasible to address ERP fees at the EU level.**

In the cases where ERP causes damage to creditor, it is necessary to carry out analysis whether and to which amount damage occurs and what indemnity should be paid by the debtor. The creditor shall be entitled to claim a fair and objective indemnity for ERP. We do not agree with stipulation of any ERP fees at the EU level.

4. ANNUAL PERCENTAGE RATE (APR)

4(1)

- **assess the merits of having a specific mortgage APR and in particular consider whether the APR proposed in the Consumer Credit Directive should also apply for mortgage credit;**

APR is an essential information for client. It is necessary to have a special regulation for mortgage loans, because of dissimilarities in the total amount of transaction, contract duration and the existence of costs of other products connected to a mortgage loan and modifying its costs (in the Czech republic e.g. necessity to open an account with the bank and pay account administration fees, capital life insurance, realty insurance, insolvency insurance). Methods of calculation shall be harmonized at the EU level.

4(2)

- **discuss which costs should be included and which costs should be excluded;**

In the APR calculation should be included all the future costs which are not evitable for the client and which the client will have to pay in connection with the loan directly to bank or more precisely the costs which the client in the case of loan provision will be contractually obliged to pay to bank/building society and the costs for possible obligatory client insurance, especially risk life insurance and the like (even in the cases where this insurance is not paid to the bank, but to a different subject).

4(3)

- **reflect on how the consumer can be made aware of the costs excluded from the APR.**

In our opinion, APR shall include all possible costs which consumer must pay in order to acquire the loan. In the case where some of those costs are not included in APR, it is important that the client is informed about them, i.e. that the client has information in hand about the costs which he is going to pay extra. These kinds of information shall be provided within the pre-contractual as well as contractual information. It is also important to include into APR the costs related to mortgage loan administration (account administration, transactions, nonrecurring payments for the contract signing, real property evaluation, etc.)

5. CLIENT CREDIT-WORTHINESS

5(1)

- **Consider whether the approach currently being proposed in the Consumer Credit Directive would also be suitable for mortgage credit. In particular, how non-discriminatory access to credit information could concretely be ensured?**

We definitely agree with the approach established in the Consumer Credit Directive. It is necessary only to ensure the possibility to get the information from credit registers all over the EU.

5(2)

- **Discuss the different options for facilitating cross-border access: legislation, memorandum of understanding, etc. Are there rules which hinder the negotiation of bilateral or multilateral agreements to facilitate the cross-border access? Member States are also asked to provide information on any bilateral or multilateral agreements which they are currently aware of in this area.**

We would welcome an automated access without any need of bilateral or multilateral agreements, based on the right of provider to trace the information about the client without his agreement. In this area we support market-led initiative, as according to our experience these registers tend to join together to get the most comprehensive information about the client.

6. Property Valuation

6(1)

- **Whether their national valuation standards are in line with International Valuation Standards (IVS) and/or European Valuation Standards (EVS published by TEGoVA) or whether there are material differences? For example, in some Member States, IVS have already been integrated into national valuation standards. If international standards would be applied, as some contributions to the Green Paper have proposed, would there be any contradictions between the international standards used and national legal provisions?**

There are certificates for those valuers in the Czech Republic, who satisfy IVS or EVS. These standards are not binding though in the mortgage area and banks set out their own requirements, which valuers accepted by the banks have to fulfil.

There is the Czech chamber of Appraisers in the Czech Republic, a member of TEGoVA and IVSC. This chamber works on creation of the Czech valuation standards, which in fact will be a copy of the European one, only accommodated to the Czech conditions. These standards would be binding for members of the Chamber (valuers).

6(2)

- **What possible solutions could be considered for the issue of valuation requirements? Legislation? Recommendations? Market initiatives? Other options?**

The best way how to achieve the most advantageous solution for the European single market with mortgage credit is to unify methods of valuation. This could be achieved in a directive by requiring obligatory application of EVS standards. Multiplicity of national standards is undesirable. As a solution we see general uniform European valuation standards. These general standards would be implemented by more detailed national rules based upon stage and development of realty market in individual state, county, region etc. (i.e. system analogical to the accounting standards).

6(3)

- **Valuers qualifications. The Green Paper consultation highlighted valuers qualification as a significant barrier to cross-border activity due to differences in the regulation of the profession in different Member States. In which Member**

States is the profession regulated and how? Are the professional qualifications for valuers available? If yes, what are they?

Valuers used by banks for evaluation of the cross-border mortgages should satisfy not only criteria of European standards, but also prove knowledge of the local property market (this is related also to the European rules on accepting national qualification statements). It means that they have to be licensed in the country, where the realty is situated. Different legal regulation would cause lower quality of valuation caused by lack of knowledge of local conditions.

In the Czech Republic the legal regulation of valuers activity is included in the Act No. 37/1967 Coll., on the Authorized Experts and Interpreters.

Experts on realty valuation are booked in records (registers) operated by regional courts.

6(4)

- **What possible solutions could be considered for the issue of valuers qualifications? Legislation? Recommendations? Market initiatives? Other options?**

Uniform qualification standard for valuers is not necessary. Banks entering foreign financial market usually use services of local valuers, who know the local specificity of property market, in order to reduce risks of wrong evaluation.

6(5)

- **Whether there are any systems in place for monitoring the quality of valuation undertaken by a valuer.**

There is not any system for monitoring quality of valuation and work of valuers in the Czech Republic. Valuer acting unlawfully shall be removed from the register according to the Art. 20 of the Act No. 36/1967 Coll., on the Authorized Experts and Interpreters, or penalised by an administrative or criminal sanction (provision of untrue, distorted, false assessment, false testimony). The monitoring is minimal and ineffective in practise.

Banks currently run their own systems for monitoring and checking the quality of valuation from valuers, who are either employees of bank or have a contractual relationship with a bank.

7. Forced Sales Procedures

7(1)

- **Whether they are willing to work with the Commission in developing any scoreboard, for example, by providing information for publication.**

Yes, we are ready to cooperate with the Commission services, as we believe that publicity of relevant information is key for cross-border provision of mortgage credit.

7(2)

- **If the Commission were to develop a scoreboard, what information should be included?**

We consider information about the following as the most important:

- The methods and process for acquiring legal titles of sales or auction sales, and the length of this process should be included.
- The methods and process of satisfaction from collateral and average length of its realisation should be included.

7(3)

- **Whether there is a maximum limit for the duration of foreclosure procedures in your country.**

In the Czech Republic there is no maximum limit for the duration of foreclosure procedures.

8. LAND REGISTERS

8(1)

- **Contributions to the Green Paper indicated that accessibility to mortgage/land registers varied considerably across Europe. Consequently, the Commission services would like to obtain further information as to the precise nature of the problems. In this respect, it would be useful to know: who has the right to access the register (e.g. only persons who can prove a justified interest, anyone, etc.); whether the register is accessible on a cross-border basis; and finally, if the register is accessible on a cross-border basis, whether the same conditions and rights apply as for nationals.**

Everyone has the right to access the land register, without proof of competent legal interest and can access its records via the Internet. In accordance with the legal provisions on personal data protection, right to access the land registers is limited for entities from countries that do not ensure the legal protection of personal data. This limitation is not applied to entities from the EU countries, thus they have the same access rights and conditions as the Czech entities.

8(2)

- **Some contributions reported difficulties in accessing databases as the information required to access was not readily available. What information is therefore needed in order to access a registered property? What are the costs of accessing the register? Are there any differences between national and cross-border inquiries?**

Internet access to the land register can be established by anyone using a standard application form. The content requirements are determined in art. 10 par. 2 Decree No.162/2001 Coll., on Providing Data from the Cadastre of Real Estates of the Czech Republic as worded in the latest version.

The application form is available on the website of the CZECH OFFICE FOR SURVEYING, MAPPING AND CADASTRE (COSMC) www.cuzk.cz. After obtaining the application form, a customer account is created and a password for remote access to the land register records is sent to the customer. One page of records costs 50,- Kč.(1.75 EUR) Searching within the database of land register is not difficult and can be done by realty record data, proprietary page number or registered owner.

Access for nationals is the same as for entities from EU member states. However, at this moment the English version of the application form is not available.

8(3)

- **Several contributions to the Green Paper consultation noted that hidden charges should be abolished. It is therefore important to know in which countries these hidden charges exist. As such, are there any hidden charges/mortgages/preferences (charges that could affect property rights but are not reflected in the register) that would rank higher than any registered mortgage in your Member State? These hidden charges may be a result of either State claims (e.g. taxation) or other claims (e.g. an employee's right on the payment of salaries in the wake of an insolvency of the employer).**

In the Czech Republic all rights of lien have the same rank. In case of bankruptcy, creditors whose claims have been secured by lien are entitled as individual creditors to have their claims separately from other creditors settled from the proceeds of the sale of the property securing their claim.

In the Czech Republic hidden charges don't exist, however, the case described in the second point of the answer to the question 8.4 might be in some aspects considered as similar to hidden charge.

8(4)

- **Responses to the Green Paper consultation indicated that one problem in relation to land registration is understanding fully the ranking of different land registers. The Commission services seek additional information on whether, apart from possible hidden charges, your country applies the principle for establishing the creditor's ranking "first registered, first in rank and priority". If not, what is the ranking based upon? How could this problem be addressed, for example, enhancing the transparency of the ranking by making information on ranking easily available?**

The order of precedence of liens is applied by the rules set out in the Civil Code that state that the ranking of lien shall be decided the day the lien is created.

1) Rights of lien from contracts are created on the day of entry into the land register, which is the day when the draft of its registration has been exhibited.

2) Rights of lien from the decisions of the administrative authorities have a day of creation, which is when the decision is enforced. A judge's lien holds exception. The date of creation is not decided by the date of enforcement, but by the day when the draft of establishment has been delivered to the court. The delivery of the draft is recorded in the land register.

The day of enforcement of the right of lien from contracts is kept in the land register. The rights of lien from decisions can be located by the date of enforcement indicated in the decision.

Concerning the transparency of information of the ranking of rights of liens, it would be better, if all types of rights of liens would be enforced on the day, when the draft of

registration has been delivered to the land register and if each right of lien could be recorded by the day that the ranking of lien has been determined.

9. Non-Deposit taking Institutions

9(1)

- **Does your Member State allow non-deposit takers to provide mortgage loans?**

Yes, the Czech law does not regulate providers and provision of mortgage credit. Mortgages as credit (in the widest sense of the word), can be provided by anybody; nevertheless, we are not aware of any cases when mortgage credit is provided by entities other than banks.

9(2)

- **If yes, what regulatory and supervisory requirements is this under? For example, are there: capital requirements (are these the same or slightly different from the capital requirement for deposit takers?); conduct of business rules (consumer protection legislation, etc.)?**

In the Czech Republic there are neither capital nor other requirements for non-banking providers mortgage credits. Majority of individual entities providing financial services, are under the supervision of the Czech National Bank. In the Czech Republic there are neither restrictions nor regulations of mortgage providers that are not banks.

9(3)

- **Are non-banks, for example, able to use capital market funding (MBS or bonds)? Can, for example, non-deposit takers issue covered bonds and/or MBS**

Mortgage bonds may only be issued by a bank pursuant to a special legal regulation governing the activity of banks, which are seated in the Czech Republic (hereinafter “issuer of mortgage bonds“). An amendment, which regulates income tax exemption on interest rate yields, has put mortgage bonds issued according to the Act on Bonds on an equal footing with similar instruments issued abroad. The “similarity” of foreign instruments will be examined in each individual case.