



EMF >

THE PROTECTION OF THE MORTGAGE
BORROWER IN THE EUROPEAN UNION



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CONTACT DETAILS

Annik Lambert
Secretary General
E-mail: alambert@hypo.org
Tel: +32.2.285 40 44

Matthias Tiemer
Head of Legal Affairs
E-mail: mtiemer@hypo.org
Tel: +32.2.285 40 40

LIST OF CONTRIBUTORS

BELGIUM

Mr Jo T'Jampens
Premier Conseiller
Union Professionnelle du Crédit (Febelfin)
E-mail: jt@febelfin.be

DENMARK

Ms Trineke Borch-Jacobsen
Lawyer
Realkreditrådet
E-mail: tbj@realkreditaadet.dk

GERMANY

Ms Inga Hager
Lawyer
Verband deutscher Pfandbriefbanken
E-mail: hager@pfandbrief.de

Ms Katharina Edzard-Heinke
Abteilung Kapitalanlagen
Gesamtverband der deutschen Versicherungswirtschaft
E-mail: k.edzard-heinke@gdv.org

GREECE

Mr Konstantinos Panagopoulos
Hellenic Banks Association
E-mail: Pang@enternet.gr

SPAIN

Mr Juan Garcia Muñoz
Secretary General
Spanish Mortgage Association
E-mail: jgarcia@ahc.es

Mr Rafael Sanz Company
Director, Servicios Jurídicos de Negocio Hipotecario
y Contratación Singular
BBVA
E-mail: rsanz@grupobbva.com

FRANCE

Mr Alain Gourio
Coordination Juridique Group/Affaires Européennes
BNP Paribas
E-mail: alain.gourio@bnpparibas.fr

Mr Pierre Eric Fuzier
Chef de bureau
Secrétariat Général
Credit Foncier de France
E-mail: pierre-eric.fuzier@creditfoncier.fr

HUNGARY

Mr András Botos
Secretary General
Association of Hungarian Mortgage Banks
E-mail: botos.andras@jelzbank.hu

IRELAND

Ms Eimer O'Rourke
Head of Retail Banking
Irish Banking Federation
E-mail: eimer.orourke@ibf.ie

ITALY

Ms Teresa Broggiato
Legal Department
Italian Banking Association
E-mail: t.broggiato@abi.it

Mr Giancarlo Pompei
Head of Credit Department
Banca Monte dei Paschi di Siena
E-mail: Giancarlo.Pompei@banca.mps.it

THE NETHERLANDS

Mr Wil Filott
Assistant General Manager
Legal and Tax Department
Rabobank Nederland
E-mail: W.H.G.A.Filott@rn.rabobank.nl

AUSTRIA

Mr Christoph Hiesberger
Deputy Secretary General
Federation of Austrian Mortgage Banks
E-mail: hiesberger@hypoverband.at

POLAND

Ms Agnieszka Drewicz-Tułodziecka
President
Polish Mortgage Credit Foundation
E-mail: a.tulodziecka@ehipoteka.pl

PORTUGAL

Mr João Dias Garcia
Secretary General
Caixa Geral de Depositos
E-mail: joao.garcia@cgd.pt

SWEDEN

Mr Tomas Tetzell
Chief Lawyer
Swedish Bankers' Association
E-mail: tomas.tetzell@bankforeningen.se

UNITED KINGDOM

Mr Andrew Heywood
Deputy Head of Policy
Council of Mortgage Lenders
E-mail: andrew.heywood@cml.org.uk

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I. EXECUTIVE SUMMARY

Preliminary remark: the coverage of the current study extends to 15 Member States (MS).

1. SCOPE

1.1 The protection of the mortgage borrower is regulated by a specific regulation

Yes, specific regulation on the protection of the mortgage borrower (7 MS): Belgium; Denmark; Germany; Spain; France; Ireland; the UK (for 1st charge loans/FSA regulation under the Financial Services and Markets Act 2000; for 2nd charge loans and consumer credit the Consumer Credit Act 1974, as amended).

- No:
- > Greece and Sweden: protection of the mortgage borrower is regulated in the Civil Code and in general Consumer Credit legislation.
 - > Hungary: protection of the mortgage borrower is regulated in the Civil Code, consumer protection legislation, the law on Credit Institutions and Financial Enterprises and the law on Mortgage Loan Companies and Mortgage Bonds.
 - > Italy: protection of the mortgage borrower is regulated by general contract law and mortgage law;
 - > The Netherlands: protection of the mortgage borrower is regulated in the Civil Code, the Financial Services Act and through the Code of Conduct;
 - > Austria: protection of the mortgage borrower is regulated in the general consumer protection law and the Banking law;
 - > Poland: protection of the mortgage borrower is regulated through consumer protection legislation, the Civil Code and the Banking Law Act.
 - > Portugal: protection of the mortgage borrower is regulated in the Civil Code.

1.2 The protection is limited to loans to private persons:

Yes (12 MS): Belgium (from 1 January 2004, a private person will be defined as a physical person who acts primarily with an aim, which can be considered to be separate from his commercial or professional activities); Denmark (with a few exceptions for owner operated business); Germany; Spain (except for the law on subrogation that applies for all loans granted by financial institutions); France; Italy; the Netherlands; Austria; Poland; Portugal; Sweden; the UK (with small exceptions in case of own home given as surety for business loan).

No: Greece (both private and legal persons benefit from the consumer protection law); Hungary (but some sections refer only to private persons). Ireland, some provisions refer only to private persons, some extend to a wider definition of consumer.

1.3 The protection is limited by 1) the housing purpose of the loan or 2) the existence of the surety:

Yes, the 2 limitations apply: Belgium; the Netherlands (the housing purpose and a mortgage on a house in the EU).

None of these limitations apply: Denmark; Germany; Greece; Hungary; Italy; Austria and Portugal.

Only one limitation based on the existence of the surety/land charge applies: Spain and Ireland.

Only one limitation based on the housing purpose applies: France and Sweden (for the provisions specific to mortgage credit in the Consumer Credit Act to apply, the housing purpose is a prerequisite). In the UK regulation does not apply unless the house is to be at least 40% owner occupied.

2. PRE-CONTRACTUAL INFORMATION TO BE DISCLOSED TO THE MORTGAGE BORROWER

2.1 The national legislation imposes information requirements on the lender and/or intermediary at the advertising stage:

Yes, extensive information requirements: Belgium; France; Greece (all pre-contractual information); Ireland; Italy; the Netherlands.

Yes, minimum information: Hungary; Austria; Portugal (the lender must give information on price, rates and all costs relating to the advertised product); Sweden (the name of the lender and the APRC); the UK (for 1st and 2nd charge loans).

Yes, on the condition that the product is advertised to the extent that it contains cost information:

- > Germany: the APRC must be given;
- > Spain: the effective rate of interest must be given with a meaningful example (after preliminary authorisation by the bank of Spain);
- > France: information requirements are even more stringent if cost elements appear in the advertisement i.e. the APRC;
- > Ireland: the APRC and extensive information must be given;
- > The Netherlands: extensive information, including APRC, must be given on the basis of the Code of Conduct;
- > Austria: the APRC and example of calculation of the cost of a loan;
- > Poland: the APRC must be given.

No: Denmark (but there are general regulations concerning misleading advertising).

Remark: With the exception of France, which has one specific restriction that concerns loans advertisements made by persons who do not have an official address/office in the country, no Member State has legal advertising limitations specific to mortgage credit. All Member States however have limitations based on public morality, good practice, etc. Furthermore, in all Member States, advertisement must comply with legislation on misleading and comparative advertisement.

2.2 The national credit institutions apply the Code of Conduct for Home Loans and disclose the listed pre-contractual information:

- > **They disclose all information listed in the Code's general information list and standardised in the European Standardised Information Sheet:** Belgium; Denmark; Germany; Greece; France; Hungary; Ireland; Italy; the Netherlands; Austria; Portugal and Sweden.
- > **They disclose additional information according to national legislation or practice:**
 - Belgium: Code and 3 complementary items of information;
 - Denmark: Code and a few items prescribed by the Consumer credit Act;
 - Greece: Code and a number of items given in a separate document;
 - Ireland: Code and numerous items including stringent "risk" warnings;
 - Italy: Code and economic additional information;
 - The Netherlands: Code and financial instruction leaflet;
 - Portugal: Code and some additional information;
 - The UK: Code and additional information contained in the UK's Key Facts Illustration.

Remark: Amongst the Member States where the Code of Conduct is applied, there is no case where some of the Code of Conduct listed information is not disclosed.

- > They do not apply the Code of Conduct as such but they do give the complete information, although not harmonised: Spain (brochure parallel to the general information list, and binding offer) and Poland.

2.3 The borrower has a legal obligation to disclose exact and full information as to his personal circumstances:

Except in Greece, none of the Member States imposes a legal obligation on the mortgage borrower to disclose exact and full information as to his personal circumstances. However, on signing his application form the borrower will be asked in a number of Member States to confirm in writing that the information provided by him is correct. In case he provides incorrect information he may be held liable accordingly.

2.4 The lender has a legal obligation to disclose pre-contractual information in the form of a formalised offer.

Yes: Spain, France and Ireland.

2.5 There is a legal obligation to disclose an Annual Percentage Rate of Charge (APRC):

Yes (12 MS): Belgium (subject to the reservations in the two following indents); Denmark; Germany; Spain (Transaction Effective Cost); France (in the offer); Hungary; Ireland (the European APRC formula for consumer credit is applied to mortgage credit with some specific amendments); Italy; Austria (the European APRC for consumer credit is applied to mortgage credit); Portugal; Sweden; the UK.

- > The following methods of calculation are applied: Belgium (corresponding annual rate i.e. actuarial equivalent method); Germany (mathematical formula in the annex of the German quotation on prices); Spain (equivalent method); France (proportional method); Ireland (equivalent method); Austria (equivalent method); Sweden (equivalent method); the UK (equivalent method)
- > The following components are included in the APRC: Belgium (only general management costs); Germany (all costs related to the credit contract, for example, the nominal interest rate, service fees and the disagio, with the exception of costs relating to third parties); Spain (inclusion of insurances when imposed by the lender); France (all costs and fees, including insurances imposed by the lender, but not taxes and costs linked to the surety); Ireland (all costs and fees imposed by the lender but excluding life and property insurance); Portugal (fees, insurance costs and all costs related to the operation); Sweden (all costs and fees imposed by the lender); the UK (all costs and fees imposed by the lender including any insurance required as a condition of the loan, and any fee paid to a mortgage intermediary)

No legal obligation, but credit institutions adhering to the Code of Conduct do nevertheless disclose an APRC on a voluntary basis: Greece and the Netherlands.

2.6 These information requirements apply to (mortgage) credit intermediaries:

Yes (8 MS): Belgium; Denmark; France (only as far as advertisement is concerned); Ireland (intermediaries have broadly the same obligations as lenders); Italy; the Netherlands (the contract between the lender and the intermediary imposes the application of the Code of Conduct on the intermediary); Poland; the UK (intermediaries have exactly same obligations as lenders).

No: Germany; Spain; Greece; Austria; Portugal.

Remark: not applicable to Sweden, which does not work with credit intermediaries.

3. PRE-CONTRACTUAL AND CONTRACTUAL OBLIGATIONS IMPOSED ON THE LENDER

3.1 Databases

> The lender has access to negative and/or positive central databases on the candidate borrower:

- Negative database (repayment default): Denmark; France and Hungary.
- Negative and positive databases (12 MS): Belgium (Centrale des Crédits aux Particuliers run by the National Bank of Belgium); Germany (private and registration subject to consumer's agreement); Spain (positive database run by the Bank of Spain); Greece (run by a private company established on the initiative of the Hellenic Bank Association); Ireland (private); Italy (private and public; all banks must participate in public database run by the Bank of Italy; positive database includes loans from EUR 31.000/EUR 75.000 upwards); the Netherlands; Austria; Poland (run by a private company); Portugal; Sweden (private); the UK (2 main agencies).

> It is compulsory for the lender to consult the existing database(s):

Yes: Belgium and the Netherlands.

- Belgium: minimum 15 days before handing over the mortgage credit offer/consultation valid for 4 months/various penalties if not consulted;

No: Denmark (but it is common practice); Germany (but it is common practice); Spain (it is compulsory to send information to positive database –CIRBE–, not to consult them, but consultation is common practice); France (but common practice, does not bind the lender); Greece; Ireland; Italy; Austria; Poland; Portugal; Sweden (but common practice and Recommendations by the Financial supervisory authority); the UK (in practice responsible lending usually requires consultation).

> The national databases are accessible to foreign lenders/bodies on a cross-border basis:

Yes:

- Belgium: accessible for foreign credit databases under condition that 1. their objectives (finalités), the registered data and the protection they guarantee as to privacy, are equivalent to those of the Centrale des Crédits aux Particuliers, and 2. they communicate their data, on the basis of reciprocity, to the Centrale des Crédits aux Particuliers;
- Denmark, Ireland, Sweden: subject to subscription;
- Germany, Portugal: subject to bilateral agreements (Germany + legitimate interest);
- Spain: accessible to branch offices in Spain
- France: no condition (negative database)
- Austria: but not usual because cross-border mortgage finance is not usual.

No: Greece; Italy; the UK; the Netherlands (but an exchange of data exists with other databases) and Poland.

3.2 According to the national legislation, the lender has a duty to provide advice to the candidate borrower:

No Member State imposes a duty to advise, but extensive information is compulsory everywhere as well as stringent professional diligence: Belgium; Denmark (duty to advise based on practice); Germany; Spain; France; Greece; Hungary; Ireland (suitability requirement); Italy; the Netherlands (the Financial Services Act implies that the lender gives advice unless he mentions that he does not give advice); Austria (but usual practice); Poland; Portugal; Sweden (but recommended by the Financial Supervisory Authority); the UK (the law gives the option: with or without advice depending on parties' choice, but if the advice option is chosen, then it involves responsibility).

3.3 Does specific legislation exist, which endorses the principle of “responsible lending”:

Yes: The UK (3 criteria).

No, but lenders’ practice is monitored by supervisory Authorities (insofar as risk policy is concerned): Belgium (but exists for consumer credit); Denmark; Germany; Spain; Greece; France; Hungary; Ireland; Italy; the Netherlands (but exists for consumer credit); Austria, Poland; Portugal; Sweden (a somewhat similar principle does exist in the Consumer Credit Act and is known as “good business practice when granting a loan”).

Furthermore, in the event of problems, the courts assess the lender’s behaviour on the basis of the special professional diligence and caution, which is expected from qualified professionals and which involves higher levels of responsibility.

3.4 Based on the European Directive on Unfair Terms, the national legislation provides for specific terms considered unfair in the field of mortgage credit and therefore forbidden by law:

Yes: Belgium; Greece (case law, not closed yet) and Italy.

No: Denmark; Germany; Spain; France (but some recommendations); Hungary; Ireland; the Netherlands; Poland; Portugal; Sweden; the UK (but some guidance by the Office of Fair Trading).

Definition/principle:

- > Belgium; Spain; France; Greece; Hungary; Ireland; Italy; The UK: contrary to good faith and significant imbalance between parties’ rights and obligations to the detriment of the borrower;
- > Germany: good faith, excessively detrimental or unclear terms are null;
- > Hungary: good faith, if contract clause unilaterally and unjustifiably establishes contractual rights and obligations to the detriment of one of the parties;
- > The Netherlands: term that is unreasonable for the consumer;
- > Austria: term that infringes law or public order;
- > Poland: terms in conflict with public decency and in flagrant violation of the consumers’ interests.
- > Portugal; Sweden: term that is unbalanced and contrary to good faith.

3.5 There is a legal link between the property transaction contract and the credit contract (at conclusion and/or execution of execution stage of contract):

Yes: France (the conclusion of the property transaction subject to the condition of the conclusion of the credit contract and vice versa); Austria (in case of housing development).

No: Belgium; Denmark; Germany (generally no, only under very restrictive conditions); Spain; Greece; Hungary; Ireland; Italy; the Netherlands; Portugal; Sweden; the UK.

3.6 National legislation provides for a joint and several liability between the supplier of the property/services and the lender funding the purchase:

Yes: Sweden (limited in the Consumer Credit Act in various ways e.g. the financial liability of the creditor to compensate the borrower is limited to the amount of money that the creditor has received).

No: Belgium; Denmark; Germany (only under very restrictive conditions in case of a “commercial unit” see 3.5); Spain; France; Greece; Ireland; Italy; the Netherlands (not for mortgages); Austria; Portugal and the UK (not for mortgages).

3.7 The national legislation authorises/forbids the linking of services to the granting of mortgage credit:

Authorised (1)/not regulated (2): Belgium (1) (under certain conditions and for certain services (e.g. mortgage credit and insurance); Denmark (2); Germany (1); Spain (2); Greece (2); the Netherlands (2); Austria (2); Portugal (2); Sweden (2); the UK (regulated).

Prohibited: France; Ireland;

- > Belgium: prohibition in principle, but the granting of conditional preferential rates is authorized in the case of mortgage credit. Legislation does not prohibit the linking of services, which results from individual negotiation, but it does prohibit the joint offer to consumers in general (interpretation by the courts and tribunals).
- > France: prohibition in principle, but authorized under certain strict conditions (subject to further interpretation of legislation).

3.8 The National legislation obliges the borrower to take out specific insurance with regard to the mortgage credit:

Yes: Denmark (fire insurance); Spain (property damage insurance); Greece (fire and earthquake); Ireland (life insurance).

No, but contractual practice: Belgium; Germany, France; Hungary; Italy; The Netherlands; Austria; Poland; Portugal; Sweden; the UK.

4. CONCLUSION OF THE CREDIT AGREEMENT

4.1 The national legislation provides for a compulsory written offer containing a number of identified information on the future contract to be given to the borrower:

Yes: Belgium; Denmark; Germany; Spain; France (especially stringent and detailed); Ireland (especially stringent and detailed); Poland; Sweden; the UK.

No: Greece; Hungary; Italy (but the introduction of new transparency rules as of 1 October 2003 makes it compulsory to give the borrower a full copy of the future contract so that he can make a "considered assessment of its contents"); the Netherlands (a written offer is compulsory according to the Code of Conduct); Austria (such information is given on the request of the borrower and Code of Conduct pre-contractual information); Portugal (no legal obligation but provided in practice).

> The offer is binding:

Yes: Belgium; Denmark; Germany; Spain (the offer shall have to specify the financial conditions relative to the financial clauses stated by the legislation); France; Hungary; Ireland (some items such as the interest rate are subject to variation); the Netherlands (in principle); Austria; Poland; Portugal (when given in writing); Sweden (but not the rate in the offer).

No: Italy and the UK.

> The offer is standardised:

Yes: the UK.

No: Belgium (but documents registered with supervisory authority); Denmark; Germany; Spain; Greece; France; Ireland; Italy; the Netherlands; Austria (but some terms of the contract are); Poland; Portugal; Sweden.

> The offer is valid for a legal set duration:

- Yes:
- Denmark: the loan offer is binding for the lender for 6 months;
 - Spain: the offer is binding for a period of 10 working days;

- France: the offer remains valid for a minimum period of 30 days. The borrower is not permitted to accept the offer before a period of 10 days has elapsed since the offer. He cannot renounce this right of reflection;
- Portugal: if no deadline is agreed upon, the offer is valid for 5 days.

No (10 MS): Belgium (the law provides that the offer must specify its duration of validity, which in practice is 2 to 3 months); Germany (the offer specifies its duration of validity, generally no more than 2 weeks); Greece; Hungary (the period of validity is specified in the offer); Ireland (no legal provisions but a contractual 21 days is typical); the Netherlands (the offer specifies the duration of its validity); Austria (from 1 to 12 months); Poland (the creditor may specify the period of validity); Sweden (adequate time to be fixed in the offer); the UK (under the FSA rules, lenders are required to set out in the mortgage offer how long the offer is valid for – but there is no prescribed period – lenders can choose the length of time to be applied).

4.2 The National legislation grants the borrower a right of reflection:

Yes, a right of reflection: France.

No, but the offer is binding for a set duration: Belgium; Denmark; Spain; the UK.

No (except for distance selling contracts): Germany; Greece; Hungary; Ireland; Italy; the Netherlands; Austria; Poland; Portugal; Sweden.

Conclusion: In practice, a right of reflection automatically ensues from the existence of a legal minimum duration of validity of the offer (Belgium; Denmark; Spain; France; Portugal). In France, this right is extended to the individual guarantor. The absence of a legal period of validity of the offer does not however necessarily mean that the borrower has no such right of reflection, but if this is the case, the right will be contractually based.

4.3 The credit agreement comes into effect when:

- > **Belgium**: the candidate borrower has returned the signed offer to the lender. However, since loans (as opposed to credit openings) are “real contracts”, this type of credit agreement only comes into effect once the funds are transferred;
- > **Denmark**: the loan offer is accepted, the bonds behind the loan are sold, the mortgage has been registered and the funds have been transferred;
- > **Germany**: the offer is accepted;
- > **Spain**: the loan deed is executed before a public notary. The creditor is bound by the offer;
- > **Greece**: both parties sign the contract at the premises of the bank;
- > **France**: the offer is accepted;
- > **Hungary**: the offer is signed or put down in a deed by a notary public;
- > **Ireland**: the funds are transferred;
- > **Italy**: the funds are transferred;
- > **The Netherlands**: documents are signed by both parties;
- > **Austria**: notary deed, depends on the type of agreement
 - “Kredit”: the contract has been signed,
 - “Darlehen”: the funds have been transferred;
- > **Poland**: the contract has been signed;
- > **Portugal**: the contract has been signed;
- > **Sweden**: the borrower signs the credit contract;
- > **The UK**: the agreement and other documents have been executed and the loan transaction has been completed.

4.4 In the event that the borrower applies for several credits for one and the same purchase, there is a link between the different credits, according to which, the failure of one credit to be granted would allow him to cancel the others?

Yes: France.

Functioning:

- > France: the link depends on two conditions - the borrower must inform his lenders that he is applying for several loans for the same purchase and only those loans, the value of which is more than 10% of the total credit, are taken into consideration, and has the effect that the failure of 1 loan nullifies all the other loans.

No, there is no legal link but it can be agreed in the contract (11 MS): Denmark; Germany; Spain; Greece; Ireland; Italy; the Netherlands; Austria; Portugal; Sweden; the UK.

Not applicable: Belgium (theoretically the borrower could request the insertion of a suspensive condition relating to the obtaining of complementary credits, but no lender would actually accept to insert such a clause).

4.5 The mortgage credit contract is:

- > a «real» contract: Belgium (in the case of loans, “real” means that the contract comes into effect with the transfer of the funds); Denmark (insofar as the transfer of property must be registered); Spain (the public deed must be inscribed in Land the Registry); Ireland, Italy (in relation to the transfer of the funds); the Netherlands (if the loan contract and the mortgage are included in 1 deed); Austria (if the credit agreement is a “Darlehen”); Portugal (directly linked to the property); Sweden (the contract is linked to the collateral); the UK.
- > a consensual contract (acceptation of the offer): Belgium (in the event of credit openings); Germany; Greece; France; the Netherlands; Poland; Austria (if the credit agreement is a “Kredit”).
- > a solemn agreement: Belgium and France (it is the agreement on the mortgage guarantee that asks for solemnity); Portugal (depending on the fact that the credit contract is included in the mortgage contract).

4.6 The lender can unilaterally lay down the conditions, according to which he will transfer the funds to the borrower:

With the exception of Hungary and Poland, no Member State allows lenders to unilaterally lay down the conditions of the transfer of the funds:

- > Belgium: conditions for transfer of funds set in the prospectus communicated before signature of the contract; the lender lays down unilaterally the provisions of the contract (the models of contracts must be supervised by the control authority but the specific terms and formulas of the agreement are chosen by and negotiated with the borrower).
- > Denmark; Germany; Spain; France; Ireland; the Netherlands; Austria; Portugal; Sweden; the UK: conditions are laid down contractually.

5. SURETY AGREEMENTS

> Guarantors come under the same consumer protection law as the borrower:

Yes: Greece (case law); Hungary; Poland; the UK.

No (11 MS): Belgium; Denmark; Germany; Spain; France (but they must receive a copy of the offer); Ireland; Italy; the Netherlands; Austria; Portugal; Sweden (but Recommendations by the Financial Supervisory Authority).

Principle for the protection?

- Belgium: the Civil Code;
- Denmark: mortgage banks are required to limit the use of “private” guarantors, and are obliged to keep the guarantor informed of any default on the borrower’s side;
- Germany: specific rules in the Law on Collateral;
- Spain: the principles are the same as in the Consumer Credit Directive;
- Greece: the current trend treats the guarantor in the same way as a consumer so as to ensure that he receives the same protection as the borrower;
- France: the guarantor must receive the same information as the borrower (loan offer) and the lender must verify his solvency in the same way he does with the borrower;
- Hungary: the same principles as for the borrower apply to the guarantor;
- The Netherlands: the surety must be concluded in writing, it must be limited to a fixed amount and sureties for future debts are strictly regulated;
- Poland: the principles are the same as under item 1.1.
- Austria: the Consumer Protection Act and certain articles of the General Banking Act do not distinguish between borrower or guarantor, but rather whether they are “consumers” as defined by the Consumer Protection Act;
- Sweden: according to a Recommendation by the Financial Supervisory Authority, guarantors shall have all the relevant information concerning their responsibility in case of the borrower’s failure to repay;
- The UK: Under the Consumer Credit Act, a guarantor must be given a copy of the guarantee document, including all the terms of the loan and a prescribed Statement of Rights. This guarantee document must be in a format prescribed by legislation and must be signed by the guarantor. The guarantor must also be given a copy of the actual loan agreement.

> National legislation stipulates restrictions to the surety, which are independent from the duration of the contract or mortgage:

- A limit as to the time:

Yes: The Netherlands (in case of surety for future debts).

No (credit contract or mortgage duration): Belgium; Denmark; Germany; Greece; Spain; France (set in contract plus 2 years); Hungary; Ireland; Italy; the Netherlands (except in the case of a surety for future debts); Austria; Poland; Portugal; Sweden; the UK.

- A limit as to its amount:

Yes: Austria (indirectly, through the tax regulation as surety contracts are free of charges only as far as sureties do not cover more than 130 % of the loan amount).

No: Belgium; Denmark; Germany (in the case of a mortgage); Greece; Spain; France (must be set in contract); Hungary; Ireland; Italy; the Netherlands; Poland; Portugal (but must be determinate or determinable); Sweden; the UK.

The general principle is that the amount of the surety is limited to the amount of the loan.

- The lender has a legal obligation to take action against the borrower first before acting against the guarantor:

Yes: Belgium (in principle, although in most contracts, the guarantor renounces this right); Greece; the UK.

No (12 MS): Denmark (though depends on the guarantee construction); Germany (but taking action against the guarantor first would be contradictory to the “good faith” principle); Spain; France (but the lender must inform the guarantor of the borrower’s default); Hungary; Ireland (the lender usually has to make a demand against the borrower first and in the event of default is then entitled to require the guarantor to pay under the guarantee); Italy (but this can be stipulated in the contract); the Netherlands (but the lender must inform the guarantor of the borrower’s default); Poland; Austria (depends on the contract, both options are possible); Portugal; Sweden.

6. RIGHT OF WITHDRAWAL

> **National legislation entitles the borrower to cancel the contract after its signature:**

Yes: Germany (new legislation dated 08/2002 allowing the borrower a right of withdrawal of 2 weeks); Hungary (but the borrower has to pay a cancellation fee) and Poland.

No legal right but accepted in practice: Ireland.

No (but early repayment is possible): Belgium; Denmark; Spain; Greece; France; Italy; the Netherlands; Austria; Portugal; Sweden; the UK.

Remarks:

A right of withdrawal does exist for mortgage credit contract in the conditions set by the doorstep selling directive, but this is a right linked to the selling technique, not to the product.

> **There is a deadline for exercising this right of withdrawal that amounts to:**

Deadline:

- Germany: 2 weeks (The lender is entitled to register the fact that the borrower has exercised the right of withdrawal);
- Hungary: the borrower can exercise his right as long as the capital has not yet been transferred;
- Poland: 14 days counted from the conclusion of the contract or provision of information (in case of distance marketing) and 10 days for mortgage loans that come under the Consumer Credit Act.

> **The exercising of the right of withdrawal is subject to formal and/or procedural requirements:**

Requirements:

- Germany: the right of withdrawal must be exercised in writing or by returning the documents obtained relating to the contract. Both parties must make restitutions concerning the benefits received from one another. The customer has to repay the net loan amount received from the bank plus a compensation fee. The bank returns the paid interest and amortisation rates for the period of allocation of the capital plus an adequate yield;
- Hungary: the same rules as for the conclusion of the mortgage credit contract apply;
- Ireland: the borrower must repay the funds and the interest due;
- Poland: a written announcement;
- Portugal: the borrower must repay the funds and the interest due + stipulate reasonable term.

7. RIGHT OF EARLY REPAYMENT

> The national legislation entitles the borrower to repay early:

Yes, subject to conditions (13 MS):

- Belgium: total repayment always allowed, partial repayment subject to conditions set by law and contract;
- Denmark: in principle always possible through purchase of the bonds on the market, with the exception of non-callable bonds;
- Germany: In the case of fixed interest loans early repayment is only possible if the fixed rate interest period ends before the end of the loan contract at the end of the fixed rate period; the length of this period being determined by the contract; in any case after a period of ten years. In these cases the early repayment of the loan is not subject to an indemnity. During the length of a fixed rate period a mortgage borrower is only entitled to cancel the loan under very restrictive conditions i.e. in case of a legitimate interest and subject to a cancellation period of 6 months. This legitimate interest mainly exists when the property is sold or if the borrower wants to increase the amount of the loan, which the lender refuses. Prepayment of the loan for speculative reasons is not possible. In these cases early repayment is subject to an indemnity.

In the case of a variable interest rate the borrower is allowed to cancel the loan at any time in compliance with a cancellation period of 3 months without paying an indemnity. In addition, the parties are at any time free to change the loan contract by agreement.

- Greece: the terms of the procedure are fixed on a contractual basis;
- Spain: subject to contractual conditions. Maximum amount of the commission: see below.
- France: the contract may forbid partial repayments below 10% of the loan amount;
- Hungary: subject to contractual conditions;
- Ireland: at any time and any amount;
- Italy: subject to the payment of a contractually all-inclusive fee;
- Poland: in case the Consumer Credit Act applies.
- Austria: any time in case of variable interest rate, at the end of contractually set periods in case of fixed interest rate;
- Portugal: all interest must be paid. The credit contract can however stipulate the early repayment and its conditions
- Sweden: possible as far as fixed rate credits are concerned, subject to the payment of an indemnity to the creditor.

No legal provision, but early repayment is always possible: The UK (conditions depend on the contract).

No, but the national code of conduct provides for it: The Netherlands (it covers all costs involved + loss of interests in the case of fixed interest rate loans; 10% of the original amount of the loan can be repaid in a year without any penalty).

> The lender is allowed by law to charge the borrower with an indemnity for the costs involved by the early repayment:

Yes (15 MS): Belgium; Denmark (automatic as costs are included in the price of the bonds); Germany only in case of fixed rate interest (during fixed rate period in case of legitimate interest subject to an indemnity, at the end of contractually defined fixed rate period or legally at least after 10 years without payment of an indemnity); Greece (subject to contractual terms); Spain, France; Hungary; Ireland (only for fixed interest rate loans and subject to contractual terms); Italy (the amount of the

all-inclusive fee is set by contract); the Netherlands (early repayment charge); Poland; Austria (in case of fixed interest rate); Portugal; Sweden (interest difference indemnity in case of fixed interest rate); the UK (early repayment charge/the method of calculation must be communicated to the borrower before the signature of the contract).

The indemnity covers all the costs incurred by the early repayment: Denmark; Germany; Hungary; Austria; Portugal.

The indemnity is capped / covers an estimate of the cost based on legal method of calculation:

- Belgium: maximum 3 months interests;
- Spain: maximum 1% of the lent capital for variable interest rate loans. Fixed interest rate: commission is set in the contract (usually 2.5 %);
- France: 1 semester of interests on capital still due and only if repayment is not due as a result of events beyond the borrower's control with a limit of 3% of the capital remaining due (in practice always 3%);
- Sweden: limited to an interest difference indemnity in case of fixed interest rate.

> Can the parties suppress the repayment option in the contract:

Yes: Germany (if fixed rate interest in course of fixed rate period); Hungary; Austria (if fixed rate interest in course of fixed period).

No (12 MS): Belgium; Denmark (but not possible in case of non-callable bonds); Greece; Spain; France; Ireland; Italy; the Netherlands (according to the Conduct of Conduct); Poland; Portugal; Sweden; the UK (determined in contract, not in legislation).

> In addition to the indemnity, the lender is entitled to claim for further contractual penalties:

Yes: Germany (possible on contractual basis); Ireland (the prepayment fee must be detailed in precontractual documentation); Italy; the Netherlands (in principle yes, but in practice the only penalty is the restitution of the loss of interests); Poland (subject to the regulation on unfair contract terms, see item 3.4); Austria.

No: Belgium; Denmark; Greece; Spain; France; Portugal; Sweden; the UK.

> In the event of the transfer of the property, the loan:

Can be transferred, subject to the lender's agreement: Belgium; Denmark; Germany; Spain; France (unusual); Hungary; Italy; Austria; Poland; Sweden (unusual).

Must be repaid: Ireland; the Netherlands (with some exceptions); Portugal; the UK.

The loan remains: Greece.

Remark: in Spain the borrower is in all cases always able to subrogate the lender without needing the consent of his current lender.

8. USURY

> Usury is regulated by specific legislation:

Yes: Denmark; Germany; Spain; Greece; France; Hungary; Italy; Austria; Poland; Portugal; Sweden.

Principle:

- Spain: the law of 1905 stipulates the nullity of the loan agreement whenever the interest rate reaches a level markedly higher than the normal market rate for money and is clearly disproportionate to the circumstances of the case or whenever the interest rate becomes significantly higher than the market rate, and it can be surmised that the borrower has been forced to accept this rate increase due to his financial situation, or inexperience or by virtue of him not being of full mental capacity;
- Germany: Case law is derived from Art. 138 BGB. According to a ruling of the Federal Supreme Court, usury occurs if a basic rate set by the Federal Bank which German jurisprudence refers to is exceeded by 100%;
- France: usury is considered to be when the APRC exceeds by more than one third the APRC imposed by credit institutions for the previous quarter for the same operations carrying the same risks (does not apply to consumer credit);
- Hungary: it is considered usury if a contracting party has stipulated an unreasonably disproportionate advantage on conclusion of the contract by exploiting the other party's situation;
- Italy: The Penal Code punishes "any person who acts in such a way as to be given or promised, in whatever form, for himself or for others, in return for the loan of money or other valuables, interest or other benefits that are usurious". The law determines a threshold above which interest is always usurious (rate above the average rate published in the Official Journal for the same type of loan). In addition, even interest rates and other benefits below that threshold may be usurious depending on circumstances of the loan;
- Poland: if one of the contracting parties stipulates an unreasonably disproportionate advantage on conclusion of the contract by exploiting the other party's situation, this is considered to be usury. Since 20 February 2006 the Anti-Usury Act is in force;
- Austria: The Usury Act stipulates that the lender must not profit from the exigencies of the borrower and the interest must not exceed an average rate;
- Portugal: The Civil Code specifies that "a loan contract stipulating an annual interest rate, which exceeds the legal interest rates by more than 3% or 5% depending on whether or not an in rem security exists, is considered usurious". A penalty clause for failure to repay the loan on the due date with a compensatory rate corresponding to 7% or 9% in excess of the legal rate, depending on whether or not an in rem security exists, is also considered to be usurious;
- Sweden: the Law on Contracts stipulates that "when a person exploits the distressed circumstances, lack of mental capacity, irresponsibility or dependence of another, in order to attain for himself...benefits, which are manifestly disproportionate to the compensation paid or promised....such legal act shall not be binding on the person exploited".

No: Belgium; Ireland; the Netherlands (only for consumer credit); the UK.

Principle:

- Belgium: According to Penal Law, the lender who abuses the ignorance of the borrower by charging rates of interest, which obviously exceed the normal interest rate and the coverage of the credit risk, is in fact committing a crime;

- Ireland: Usury would mean excessive or illegal interest;
- The Netherlands: Application of the general principle of good faith;
- The UK: FSA rules make no such provisions. 2nd charge loans regulated under the Consumer Credit Act will be covered by the new “unfair relationships” provisions from April 2008.

Possible consequences:

- Germany: the borrower must pay back the capital and can claim back the interest he has paid, provided it does not date back more than 4 years. Intervention by the Federal supervisory authorities against usury in mortgage credit is unknown.
- Greece: Under civil law, usury results in the contract becoming null and void. Under supervisory law, usury is sanctioned through penalties, usually in the form of fines. There are also penal sanctions for usury.
- Spain: If the court decides that usury is being practiced, they would decide on the interest rate to be applied.
- France: From a civil point of view, excessive interest is automatically charged on normal accrued interest and, in addition, on the capital. From a penal point of view, the penalty for usury is a prison sentence of up to 2 years and a fine of up to €45,000.
- Hungary: a usurious contract is null and void;
- Ireland: Money lenders under license from the Consumer Director would be entitled to charge high interest rates. However if they charged excessive interest rates, a consumer could apply to Court to have the rate declared excessive. However this remedy is not open to loans under a credit agreement relating to credit advanced by a credit institution. From a civil law point of view, an excessive rate of interest could be struck down by the Court as being unconscionable and therefore unenforceable.
- Italy: Penal sanction. Civil Law also provides that in case of usury, the clause is void and no interest is due. As for the supervisory regulations, in the case of usurious interest, the Bank of Italy may levy a fine.
- The Netherlands: In the event of uncommonly high interest rates, review could be imposed on the lender on the basis of case law. If the above mentioned conditions are met, the other party is entitled to demand to decrease his performance according to the Civil Code and if this is excessively difficult to null and void the contract;
- Austria: From a penal point of view, there is criminal liability; from a civil point of view, the contract is invalid, and, if a bank is guilty of usury, the supervisory authority may withdraw the concession;
- Portugal: Usury is a penal infringement. On the Civil Code, the contract may be annulled or the usurious legal act may be amended by court decision;
- Sweden: The contract might be declared null and void by the court. Furthermore, the Financial Supervisory Authority could take action against the institution using this kind of conditions;
- The UK: The courts are able to invalidate any mortgage term, which they consider ‘oppressive or unconscionable’.

Remark: Belgian and French legislation both permit the capitalisation of interest, but only once the interest is due for a complete year.

9. LEGAL CONSEQUENCES IN THE EVENT OF INFRINGEMENT OF THE LOAN CONTRACT BY THE BORROWER

> Normal consequence/practice if the borrower does not meet the payment conditions:

- Belgium: the lender may grant payment facilities to ease repayment. If this is not successful: the National Bank's central database is informed; increased annual interest is applied; the borrower must appear before the judge of the court of first instance competent in matters of seizure in order for an amicable arrangement to be established and, failing an agreement, the enforcement procedure is initiated. The lender may also enforce all the other sureties available;
- Denmark: at first, a reminder is sent with a warning that in the event of continued failure to pay, the loan is up for repayment;
- Germany: the bank may declare the amount of the loan payable after setting a deadline. The borrower is in default, if he does not meet his payment conditions, he is obliged to pay default interest;
- Greece: if the amount of the loan already paid out at that time, is more than 50% of the total value, the lender may call in the loan. If two or three installments are not paid, forced sale proceedings are initiated;
- Spain: there is interest on the late payment, and if the situation continues, payment is sought through the courts;
- France: there are two options:
 - > The lender charges increased interest on the late payment;
 - > The lender demands the immediate repayment of the loan together with accumulated interest and a possible indemnity (if contractually agreed);
- Hungary: Withdrawal, assertion of lender's claim or the lender may grant a respite for payment. The lender may then resort to enforcement;
- Ireland: the lender will firstly attempt to contact the borrower with a view to resuming payment or re-scheduling the debt. If this is unsuccessful, the lender may choose to enforce the debt;
- Italy: Action for credit recovery is initiated;
- The Netherlands: the lender is allowed to claim the amounts due and payable;
- Poland: the lender may grant a "respite" for payment. According to the Civil Code the borrower is in default, if he does not meet his payment obligations;
- Austria: if several reminders prove ineffective, the mortgage will be subject to early maturity;
- Portugal: the lender can terminate the contract and demand full repayment of amounts due and payable;
- Sweden: if the lender has introduced such a provision in the contract he is entitled to repayment prior to the due date. Otherwise, the normal enforcement procedure is initiated;
- The UK: the lender has the right to foreclose on the loan contract.

> In the event of default by the borrower, the national legislation entitles the lender to claim, on top of the outstanding debt, for:

- The unpaid interest due: Belgium; France; Ireland; the Netherlands; Austria; Portugal; Sweden; the UK (new FSA rules);
- The cost of an external debt collector company: Denmark; Sweden;
- The interest not yet due: The Netherlands;

- Default interest: Germany; Poland. The interest rate exceeds the basic interest rate by 2.5 %. Other consumer loan contracts: the default interest rate exceeds the basic interest rate by 5%;
- A lump sum: France (maximum 7% if contractually agreed);
- Interest supplements: Belgium; Denmark; Germany; Spain; France; Ireland; Italy; the Netherlands; Austria; Portugal; Sweden;
- Contractual penalties: The Netherlands; Spain (penalties must be stipulated in the contract, and could be moderated by court order);
- No supplements in the event of default: Hungary.

> Legal consequences in the event of neglect of borrower's duty to maintain the building:

- Belgium: the lender may enforce the clause in the credit contract permitting him to call in the loan;
- Denmark: depending on the extent of the neglect, the loan can be up for repayment;
- Germany: the lender may cancel the loan;
- Greece: if the borrower does not take all necessary measures requested, the lender may demand immediate settlement of the debt;
- Spain: the lender may either terminate the agreement early and demand full payment of the outstanding debt or negotiate additional surety;
- France: the lender can either cancel the contract and pursue immediate repayment by taking possession of the property, or negotiate additional surety;
- Hungary: the lender may cancel the loan contract if the condition or loan security value of the mortgaged property permanently deteriorates;
- Ireland: if prescribed in the loan contract, neglect of such a duty would amount to a breach of contract;
- The Netherlands: in principle, the lender can call in the loan but in practice, he seldom does;
- Austria: the lender may be entitled to early maturity;
- Portugal: the lender can demand additional surety;
- Sweden: if the lender has included such a provision in the contract, he has the right to repayment prior to the due date;
- The UK: if prescribed in the loan contract, neglect of such a duty would amount to a breach of contract.

10. THE NATIONAL LEGISLATION ENTITLES THE LENDER TO SET OR CHANGE UNILATERALLY THE CONTRACTUAL CONDITIONS DURING THE LOAN

In no Member State are lenders allowed to set or change unilaterally the contractual conditions of the contract during the loan. However, in the case of variable rate loans, interest rates may be subject to variations throughout the course of the loan depending on the national regulation and contractual terms.

11. THE OVERINDEBTEDNESS OF CONSUMERS IS REGULATED BY LAW

Yes (8 MS): Belgium; Denmark; Germany; France; the Netherlands; Austria (covered in the Bankruptcy Act); Sweden (subject to the Legal Debt Restructuring Act); the UK.

Definition/principle:

- > Belgium: the Overindebtedness Law aims at the reestablishment of the over-indebted person's financial position;
- > Germany: according to the Insolvency Act, over-indebtedness of natural persons exists when the borrower's capital does not cover the existing commitments;
- > France: Consumer credit legislation lays down a procedure according to which, borrowers in good faith, who are unable to meet their non-professional loan commitments, have the right to an administrative commission (the overindebtedness commission) to find appropriate solutions (especially new repayment schedule) to their financial difficulties. The application of the proposals of this Commission depends on their endorsement by a court. The French legislator has just adopted additional provisions introducing Civil bankruptcy;
- > The Netherlands: legal debt restructuring is possible (in the Bankruptcy Act);
- > Austria: The regulations for debt settlement for consumers are based on the principle that private people should have the same legal possibilities as businesses to be freed from their debts within a manageable period (within 2 to 7 years depending on the chosen proceedings). There are three possibilities: the compulsory settlement of debts (Zwangsausgleich), an installment plan and a procedure for the skimming off of income (Abschöpfungsverfahren);
- > Sweden: the borrower can enter into a binding agreement with the creditors on how to repay or restructure the loan, normally within a 5 year period.

No: Greece; Spain (legislation is under way); Hungary; Ireland; Italy (legislation is under way); Poland (but a draft on consumer insolvency does exist); Portugal.

12. OTHER PROBLEMS RELATING TO CONSUMER PROTECTION

12.1 The national legislation provides for limits/maximum loan-to-value ratio:

Yes: Denmark; Hungary; Austria.

Percentage/Definition:

- > Denmark: the loan must not exceed 80% of the market value of a primary residence;
- > Hungary: the value of the principle claim portfolio arising from mortgage loans may not exceed 70% of the total value of the real estate serving as a security on which the loan was granted.

No (13 MS): Belgium; Germany; Greece; Spain (however if the mortgage loan is subject to the Law on Mortgage Markets, the maximum loan-to-value ration is 80%); France; Ireland (regulator does however apply prudential supervision conditions and LTVs over 95% are rare); Italy; the Netherlands (Code of Conduct: the lender checks the payment capacity of the borrower); Austria; Poland (however, mortgage banks are subject to a limit of 100% mortgage lending value); Portugal; Sweden (no legal LTV but loans usually limited to 75-80%), the UK.

12.2 When granting the loan, the lender must respect a number of legal restrictions, based on the consumer's repayment capacity:

No: Belgium (practice is 33% of borrower's net income); Denmark (in practice, the lender checks the payment capacity of the borrower); Germany; Greece; Spain; France; Hungary; Ireland; Italy; the Netherlands; Austria; Poland; Portugal; Sweden; the UK (but lenders are under an obligation to lend responsibly).

However, in Sweden banking legislation stipulates that credit institutions must be reasonably sure of the borrowers' repayment capacity and must ask for sureties (collateral) if they consider this necessary.

12.3 The lender has a legal obligation to give further information after the conclusion of the contract:

Yes (11 MS):

- > Belgium: variation of interest rate + date on which the variation will take place + new amortization schedule;
- > Denmark: After the conclusion and execution of the contract the lender must adjust and specify the information given prior to the contract according to the consumer credit act. This is necessary because the exact «price» of the loan cannot be given until after the bonds behind it are sold, and this only happens after the closing of the contract. The information given follows exactly the same pattern, but the postcontractual information is the true information, whereas the precontractual information is the best possible estimate at the time of the offer;
- > Germany: the lender is obliged to provide all the information, which is necessary for the execution of the contract, so that the contracting party is able to fulfill its obligations;
- > Greece: in specific cases provided for in Act 2501/2002;
- > Spain: the lender must inform the borrower of interest rate changes;
- > Ireland: a mortgage lender shall in respect of a housing loan, issue to the borrower a statement of the total amount outstanding on the loan on a specified date occurring not more than one year after the making of the loan and at intervals of not more than one year thereafter until the loan is fully repaid, such statement being issued as soon as practicable after the date specified; and must provide specific information in respect of accounts in arrears;
- > Poland: According to general rules of law the lender is obliged to give further information which is necessary for the execution of the contract in order to enable the borrower to fulfil his obligations;
- > Austria: about every change in the interest rate and annual information about the outstanding amount as well as about annual payments and charges;
- > Portugal;
- > Sweden: the lender shall notify the consumer of variations in the interest rate or charges. Furthermore, the recommendation the Financial Supervisory Authority stipulates that the creditor shall inform the guarantor if the borrower's financial situation is steadily deteriorating;
- > The UK: the FSA rules require lenders to give consumers specified information at least once a year after the conclusion of their contract.

No: France (but he must inform the guarantor of any payment default by the borrower); Italy (apart from periodic bank statements); the Netherlands.

12.4 The lender has a legal obligation to disclose the existence and amount of any commission (to an intermediary, other) that he would have to pay on the occasion of the conclusion of the loan contract:

Yes:

- > Denmark: the existence of a commission but not the amount;
- > Italy;
- > Austria: if the borrower is charged for the commission in addition to the costs mentioned in the contract;
- > The UK.

No (11 MS): Belgium (but cannot be charged to the borrower in any case); Germany; Greece; Spain (all commissions must be agreed in the contract); France; Ireland; the Netherlands; Austria (in principle); Portugal and Sweden.

II. QUESTIONNAIRE

The Protection of the Mortgage Borrower in the EU - Questionnaire

1. Scope

- 1.1 What significant legislation is there in your country regulating the protection of the mortgage borrower?
- 1.2 Do the consumer protection measures only concern loans to private persons?
- 1.3 Are the consumer protection measures limited by the purpose of the loan (e.g. for housing) or the existence of the surety?

2. Pre-contractual information to be disclosed to the mortgage borrower

- 2.1 Is any minimum and/or compulsory information on the lender and the transaction on offer (type, object, duration, costs, etc.) required at the advertising stage?
- 2.2 Are there any advertising restrictions imposed on credit institutions?
- 2.3 Assuming that your national credit institutions apply the Code of Conduct for Home Loans, please confirm disclosure of all information listed under the Code's general information list and European Standardised Information Sheet (see Annex I) and indicate any additional information given to consumers according to national legislation or practice. Please indicate if any listed information is not disclosed, and include the reason for that exception. Is there any legal or contractual obligation to disclose exact and full information as to his personal circumstances imposed on the borrower?
- 2.4 Is there a legal obligation to disclose an Annual Percentage Rate of Charge (APRC) to the mortgage borrower? What is the method of calculation applied? What are the components included in the APRC? Does the calculation of the APRC imply that the lender makes any specific assumptions as to the evolution of the rate (in case of a variable rate or an initial fixed rate)?
- 2.5 Do these information requirements impact on the credit intermediaries? To what extent?

3. Pre-contractual and contractual obligations imposed on the lender

- 3.1 Are there negative and/or positive central databases or other sources of data on the candidate borrower, which are accessible to the lender? Is it compulsory for the lender to consult them and what is the consequence if he does not? Is it possible to access databases on a cross-border basis? Under what conditions?
- 3.2 Does the lender have a legal duty to provide advice to the candidate borrower? What is the extent of this obligation and its possible consequences?
- 3.3 Is there any kind of responsibility based on the "responsible lending" principle imposed on the lender?
- 3.4 Assuming that the European Directive on unfair terms was implemented in national law, what is the definition of an "unfair term" in your legislation? Are there typical terms for mortgage credit, which are forbidden by law?
- 3.5 Is there a legal link between the goods/services contract and the credit contract? Is there a joint and several liability between the supplier of the goods/services and the lender funding the purchase? What is the extent of this responsibility? Does the borrower have a legal obligation to possibly take action against the supplier before taking action against the lender?
- 3.6 Is the linking of services to the mortgage credit regulated? Is it forbidden or authorised under a number of conditions?
- 3.7 Are there certain legal requirements, which oblige the borrower to take out specific insurance with regard to the mortgage credit (for example, life insurance)?

4. Conclusion of the credit agreement

- 4.1 Must the borrower receive a copy of all the conditions of the future credit agreement in the form of a written offer or in any other form? What information must this offer contain? What are the consequences of not complying with this legal requirement?
- 4.2 Must the offer comply with the contractual conditions of a specific standard agreement? Who lays down this standard agreement? What are the consequences of not complying with this legal requirement?
- 4.3 What rights and commitments arise for the creditor and the borrower from handing over the offer?
- 4.4 Is the borrower entitled legally or contractually to a right of reflection? What are the conditions linked to the exercising of this entitlement?
- 4.5 How does the acceptance of the offer by the borrower take place? Are there specific formal and procedural requirements to be observed?
- 4.6 What commitment deadlines apply to the offer?
- 4.7 When does the credit agreement come into effect?
- 4.8 In the event that the borrower applies for several credits for one and the same purchase, is there a link between the different credits, according to which, the failure of one credit to be granted would allow him to cancel the others? What are the conditions associated with this link?
- 4.9 Is the contract a «real» contract (directly linked to the property), a consensual contract (agreement by the parties is sufficient) or even a solemn agreement (complementary formalities are required)?
- 4.10 Can the lender unilaterally lay down the conditions, according to which he will transfer the funds to the borrower?

5. Surety agreements

- 5.1 Do the guarantors come under the same consumer protection law as the borrower? What are the principles for the protection?
- 5.2 Does legislation stipulate a limit to the surety i.e. a time limit or a limit as to its amount?
- 5.3 Does the lender have a legal obligation to take action against the borrower first before acting against the guarantor?

6. Right of Withdrawal

- 6.1 After the conclusion of the mortgage credit contract, is the borrower entitled legally or contractually to cancel it, especially in the event that the contract for which the loan has been applied falls through?
- 6.2 What is the deadline for exercising this right of withdrawal?
- 6.3 Is the exercising of the right of withdrawal subject to any formal or procedural requirements?
- 6.4 Is the lender entitled to register in any way the fact that the borrower has exercised the right of withdrawal?
- 6.5 Are the parties subject to specific requirements in the case of withdrawal when winding up the contract?

7. Right of Early Repayment

- 7.1 Is the borrower legally entitled to repay early? If this is the case, what are the terms of the procedure?
- 7.2 Is the lender allowed to charge the costs involved by the early repayment to the borrower? Under which conditions? What is the basis for the calculation of the indemnity?
- 7.3 In addition to the legally established contractual indemnity/penalties, can the lender claim for further contractual penalties?
- 7.4 Is the right to early repayment subject to certain conditions and, if this is the case, which conditions?
- 7.5 Is the lender allowed to suppress the early repayment option under certain conditions and, if this is the case, under which conditions?
- 7.6 In the event of the transfer of the property, what happens to the loan? Can it be transferred or must it be repaid?
- 7.7 Is the borrower allowed to remortgage (refinance his mortgage loan)? Must it be with the same lender or can it be with another? What are the conditions and costs involved?

8. Regulations on usury

- 8.1 Is usury defined by law? What is the principle?
- 8.2 Is this important with regard to the mortgage loan?
- 8.3 What are the consequences of usury from the point of view of civil law and supervisory law?
- 8.4 Are there any other restrictions applicable to interest rates?

9. Legal consequences in the event of infringement of the loan contract by the borrower

- 9.1 What happens if the borrower does not meet the payment conditions?
- 9.2 In the event of default by the borrower, what possibilities does the law give the creditor to claim for the outstanding debt, the unpaid interest due, the interest not yet due, a lump sum or contractual penalties?
- 9.3 Are interest supplements possible in the event of default?
- 9.4 What consequences are there in the event of neglect of duty to maintain the building?

10. Is the unilateral setting of and/or changing of contractual conditions possible during the loan?

11. Regulations relating to overindebtedness

- 11.1 Is overindebtedness defined and regulated by law?
- 11.2 On which principles is it based?

12. Other problems relating to consumer protection

- 12.1 Are there any legal limits to a maximum loan-to-value ratio and what are they?
- 12.2 Does the lender come under any restrictions when granting the loan, based on the consumer's repayment capacity?
- 12.3 Does the lender have a legal obligation to give further information after the conclusion of the contract?
- 12.4 Does the lender have any legal obligation to disclose the existence and amount of any commission he would have to pay on the occasion of the conclusion of the loan contract (to an intermediary, other)?

ANNEX I

General Information to be provided to the consumer

Initial information about home loans offered by institutions subscribing to the Code should include or be accompanied by the following information in the same format as that initial information is itself provided:

A – Lender:

1. Identification and address of the lender;
2. Where appropriate, identification and address of the intermediary.

B - Home Loan:

1. Purposes for which the home loan may be used;
2. Form of surety;
3. Description of the types of home loans available with short description of the differences between fixed and variable rate products, including related implications for the consumer;
4. Types of interest rate – fixed, variable, and combinations thereof;
5. An indication of the cost of a typical home loan for the consumer;
6. A list of related cost elements, such as, administrative costs, insurance costs, legal costs, intermediaries costs...;
7. The different options available for reimbursing the credit to the lender (including the number, frequency, amount of repayment installments if any);
8. Whether there is a possibility of early repayment (if so, its conditions);
9. Whether a valuation of the property is necessary and, if so, by whom it has to be carried out;
10. General information on tax relief on home loan interest or other public subsidies prevailing, or information on where one can obtain further advice;
11. The duration of the reflection period, where relevant;
12. Confirmation that the institution subscribes to the Code, and indication that a copy of the Code is available in the institution.

To recall, the final decision to accept a credit offer from a lender belongs to the consumer.

EUROPEAN STANDARDISED INFORMATION SHEET

This standardised information is an integral part of the "Voluntary Code of Conduct on Pre-contractual Information for Home Loans", a copy of which can be obtained from your lender

Item	Description
Up front text	<p>"This document does not constitute a legally binding offer. The figures are provided in good faith and are an accurate representation of the offer that the lender would make under current market conditions based on the information that has been provided. It should be noted, however, that the figures could fluctuate with market conditions. The provision of this information does not oblige the lender to grant a credit."</p>
1 Lender	
2 Description of product of	<p>This section should provide a brief but clear description of the product. It should be made clear whether it is a mortgage on a property or another commonly used surety. It should be made clear whether the product on offer is an interest only home loan (i.e. that it involves servicing the debt with a lump sum payment at the end) or a repayment home loan (ie. That it involves paying interest and capital over the lifetime of the home loan). It should be made clear whether the home loan terms are dependent on the consumer supplying a certain amount of capital (perhaps expressed as a percentage of house value). Where the home loan terms are dependant on a third party guarantee, this should be clearly stated.</p>
3 Nominal rate (indicate type of rate and duration of fixed period)	<p>This section should provide information on the key condition of the home loan – the interest rate. Where relevant, the description should include details of how the interest rate will vary including, for example, review periods, lock-in periods and related penalty clauses, collars and caps etc. The description should include:</p> <ul style="list-style-type: none"> - whether or not a variable rate is indexed; and - provide details of indexation, where appropriate.
4 Annual percentage rate of charge (APRC) based on national regulation or effective rate, where relevant	Where a national figure for APRC is not set in legislation, the equivalent effective rate should be used.
5 Amount of credit advanced and currency	
6 Duration of home loan agreement	
7 Number and frequency of payments (may vary)	
8 For repayment home loan, amount of each instalment (may vary)	
9 For interest only home loan: - amount of each regular interest payment; - amount of each regular payment to the repayment vehicle. The lender should provide an indication – real or illustrative - of:	<p>a) the amount of each regular interest repayment in accordance with the frequency of the payments (see point 7); b) the amount of each regular payment towards the repayment vehicle, in accordance with the frequency of the payments (see point 7). Where appropriate, a warning should be given that the repayment vehicle may not cover the amount borrowed. If the lender provides the repayment vehicle and has included this in part of the offer then it should be clear whether or not the offer is tied to the consumer's agreement on that repayment vehicle.</p>

Item	Description
10 Additional non-recurring costs, where applicable	<p>A list of initial non-recurring costs which the consumer is expected to pay upon taking out the home loan must be provided.</p> <p>Where these costs are under the direct or indirect control of the lender, an estimate of the costs should be provided.</p> <p>Where relevant, it should be made clear if the cost is to be paid regardless of the outcome of the home loan application.</p> <p>Such costs might include, for example:</p> <ul style="list-style-type: none"> - administrative costs; - legal fees; - property valuation. <p>Where an offer would be dependent on the consumer's receiving these services through the lender (provided this is permitted in national legislation), it should be clearly stated.</p>
11 Additional recurrent costs (not included in 8)	<p>This list should include, for example:</p> <ul style="list-style-type: none"> - insurance against default on payments (unemployment/death) - fire insurance; - building and contents insurance. <p>Where an offer would be dependent on the consumer's receiving these services through the lender (provided this is permitted in national legislation), it should be clearly stated.</p>
12 Early repayment	<p>The lender should provide an indication of:</p> <ul style="list-style-type: none"> - the possibility and terms of early repayment; - including an indication of any charges applicable. <p>Where it is not possible to stipulate the charge at this stage, an indication should be provided that a sum sufficient to recoup the lender's costs in unwinding the transaction would be payable.</p>
13 Internal complaint schemes	Name, address and telephone number of contact point
14 Illustrative amortisation table	<p>The lender should provide an illustrative and summarised amortisation table which includes, at least:</p> <ul style="list-style-type: none"> - monthly or quarterly payments (if it the case) for the first year; - to be followed by yearly figures over the total duration of the loan. <p>The table should contain figures on</p> <ul style="list-style-type: none"> -amount of capital reimbursed; -amount of interest; -outstanding capital; -amount of each instalment; -sum of capital and interest. <p>It should be clearly indicated that the table is illustrative only and contain a warning if the home loan proposed has a variable interest rate.</p>
15 Obligation to domicile bank account and salary with lender	

III. NATIONAL REPORTS

BELGIUM

1. SCOPE

1.1 What significant legislation is there in your country regulating the protection of the mortgage borrower?

General provisions: art. 1905 to 1914 of the Civil code

Specific provisions:

- Royal Decree no. 225 of January 7th 1936 (credit portfolio, subject to this old law that is still in force)
- Law of August 4th 1992 on mortgage credit (hereafter «LCH») and its royal executory decrees of 11 January and 5 February 1993 (+ amending laws and decrees)

1.2 Do the consumer protection measures only concern loans to private persons?

The protection only concerns mortgage credit whose purpose is the financing of the acquisition or preserving of real property rights, granted to a natural person acting exclusively ("mainly" as from 1st January 2004) with an aim that can be considered alien to his/her business, professional or trading activities.

1.3 Are the consumer protection measures limited by the purpose of the loan (e.g. for housing) or the existence of the surety?

The two limitations apply.

2. PRE-CONTRACTUAL INFORMATION TO BE DISCLOSED TO THE MORTGAGE BORROWER

2.1 Is any minimum and/or compulsory information on the lender and the transaction on offer (type, object, duration, costs, etc.) required at the advertising stage?

By virtue of the LCH, any advertising for mortgage credit transactions must mention the identity or name of the mortgage company. If the advertising comes from an intermediary, this fact must be stated together with the intermediary's address.

The mortgage company must provide interested parties with "general" («non-personalised») information in the form of a prospectus.

As regards the types of credit offered, this prospectus must contain the interest rate schedule, including all possible rate reductions or increases and all the granting conditions.

By virtue of the executory decrees, the prospectuses must contain at least the following elements:

1. The name of the mortgage company and its address;
2. A description of the types of credit that the mortgage company grants;
3. The interest rate schedule for the different types of credit;
4. For each type of credit, a representative example of the calculation of the total amount to be paid in capital and interests;
5. Where applicable, the interest rate variation terms and conditions;
6. The schedule of charges and fees asked for by the mortgage company;
7. The nature of the contracts, the appending of which is requested by the mortgage company;
8. The date from which the prospectus is applicable.

The interest rate schedule includes:

1. The periodic interest rates;
2. The corresponding yearly interest rates;
3. All reductions and increases that the mortgage company generally and usually grants or imposes;
4. The conditions for granting the reductions and increases previously referred to;
5. The reference indexes used for interest rate variations.

2.2 Are there any advertising restrictions imposed on credit institutions?

The information and notes referred to in point 2.1 must be stated in a legible, visible and unambiguous way. The King has the legal power to establish the applicable rules pertaining to advertising, prospectuses and application forms.

Furthermore, the Office de Contrôle des Assurances (insurance inspectorate) or OCA (the mortgage company inspectorate, which will be taken over by the Banking, finance and insurance commission on 1st January 2004), may impose certain obligations and prohibitions on mortgage companies by means of regulations in order to make their transactions compliant with mortgage credit general practice and the general interest of borrowers.

2.3 Assuming that your national credit institutions apply the Code of Conduct for Home Loans, please confirm disclosure of all information listed under the Code's general information list and European Standardised Information Sheet (see Annex I) and indicate any additional information given to consumers according to national legislation or practice. Please indicate if any listed information is not disclosed, and include the reason for that exception.

The prospectus includes all the general information provided for by the Code. The general executory decree also provides for three complementary items of information:

- The interest rate schedule for the different types of credit (see first 3. under point 2.1)
- The nature of the contracts whose appending is requested by the mortgage company (see 7. under point 2.1)
- The date from which the prospectus is applicable.

Is there any legal or contractual obligation to disclose exact and full information as to his personal circumstances imposed on the borrower?

There is no legal or contractual obligation to disclose exact and full information as to his personal circumstances imposed on the borrower. However, that's a matter for common liability law. In the application forms the borrower guarantees that the information given is correct.

2.4 Is there a legal obligation to disclose an Annual Percentage Rate of Charge (APRC) to the mortgage borrower? What is the method of calculation applied? What are the components included in the APRC? Does the calculation of the APRC imply that the lender makes any specific assumptions as to the evolution of the rate (in case of a variable rate or an initial fixed rate)?

No. In Belgium there is no system of APRC. However by virtue of art. 47, §4 of the LCH, the King may impose the use of an "actuarial rate" on mortgage companies and intermediaries to make it easier to compare mortgage credits.

In Belgium, by virtue of art. 4, 4. of the LCH, the periodic interest rates (the rate, expressed as a percentage by period, at which the interest is calculated for the same period).

Where a figure relates to an interest rate, the advertising material must always state the yearly interest rate. The yearly interest rate is understood as the result I of the equation $(1 + i)^n = (1 + I)$ in which i is the interest rate according to article 4, 4. LCH and n is the number of periods within a

year. The corresponding yearly rate (equivalent actuarial method) is therefore used.

What are the components included in the APRC?

The response concerns Belgian interest rate practice (see the answer to the previous question):

The general administration costs such as the cost of correspondence, tax certificates and other charges are part of the lender's overall financial management. They must therefore be borne by the proceeds of interest, the rate of which is determined by the lender. If during the credit period the borrower uses certain options or requests certain adaptations that incur costs for the lender, these may of course be charged to the borrower by common agreement (explanatory statement for the LCH, parliamentary document n° 1742 / 1 – 1990-91).

2.5 Do these information requirements impact on the credit intermediaries? To what extent?

The LCH does not provide for any special provisions regarding intermediaries. These intermediaries must of course act in accordance with the law. Art. 47, §1, LCH provides that if advertising material comes from an intermediary, this must be expressly indicated together with the intermediary's address.

3. PRE-CONTRACTUAL AND CONTRACTUAL OBLIGATIONS IMPOSED ON THE LENDER

3.1 Are there negative and/or positive central databases or other sources of data on the candidate borrower, which are accessible to the lender? Is it compulsory for the lender to consult them and what is the consequence if he does not? Is it possible to access databases on a cross-border basis? Under what conditions?

The law of 10 August 2001 relating to the Centrale des Crédits aux Particuliers (CCP) (central retail credit database) institutes a "positive" database alongside the already existing negative database within the Banque Nationale de Belgique.

Consumer credit and mortgage credit contracts are registered when they are granted (positive database). The CCP also registers default payment (negative database).

The Union Professionnelle du Crédit (UPC) mutual for information on risk registers information from financial institutions that are members of the UPC relating to default payment arising in the context of the repayment of the credit granted to their retail and business customers (natural and artificial persons).

The law of 10 August 2001 provides that, to obtain information about the borrower's financial position and solvency, lenders must consult the CCP prior to concluding a consumer credit contract and making a mortgage credit offer.

The executory decree provides that the lender must consult the CCP:

1. in the case of consumer credit, within a period of twenty-four calendar days prior to concluding the credit contract;
2. in the case of a mortgage credit contract, within a period of fifteen calendar days prior to transmitting the mortgage credit offer. This consultation remains valid for four months. If the mortgage credit contract has not been concluded within four months of this consultation, the lender must consult the CCP again. If he does not, various civil and legal penalties are provided for by law.

Foreign credit databases may also receive the information contained in the central database, providing that their purposes, the information registered and the data protection that they provide are equivalent to those of the CCP and that they provide their information to the CCP in return.

3.2 Does the lender have a legal duty to provide advice to the candidate borrower? What is the extent of this obligation and its possible consequences?

In terms of mortgage credit, there is no legal obligation to provide advice to the candidate borrower. The LCH only provides for an obligation to disclose information.

3.3 Is there any kind of responsibility based on the “responsible lending” principle imposed on the lender?

Such an obligation and responsibility only exists for consumer credit. However, this is provided for by common liability law.

3.4 Assuming that the European Directive on unfair terms was implemented in national law, what is the definition of an “unfair term” in your legislation? Are there typical terms for mortgage credit, which are forbidden by law?

In the sense of the law of 14 July 1991 «on business practices and consumer information and protection», abusive clause is to be understood as any clause or condition which, on its own or combined with one or several other clauses or conditions, creates a manifest imbalance between the rights and obligations of the parties.

The abusive nature of a contractual clause is assessed by considering the nature of the products or services covered by the contract and in reference, when the contract is concluded, to all the circumstances that surround its conclusion and to all of the contract’s other clauses, or the clauses of other contracts on which it depends.

Any abusive clause in the sense of this law is prohibited and null and void. The contract continues to bind the parties if it is possible for the contract to remain viable without the abusive clauses.

The LCH provides that the following are null and void by law:

- a) The attaching or appending of a contract other than those referred to in the LCH;
- b) The obligation to acquire transferable securities in breach of article 18 LCH, which provides that it is prohibited to directly or indirectly subordinate mortgage credit to the obligation to buy, exchange or subscribe, in any form whatever, to transferable securities such as bonds, stocks, shares or shareholdings;
- c) The obligation to pay premiums or to save in breach of article 19 LCH, which provides that the granting of mortgage credit may not be directly or indirectly subordinated to the obligation to subscribe to an insurance policy or capital bond or to the creating of a savings fund, unless this is through an attached or an appended contract referred to in the LCH.

If insurance, investment or savings capital is allocated as additional surety other than on the basis of an attached contract, no obligation to pay premiums or perform savings transactions may result.

Furthermore, the mortgage deed cannot stipulate that the borrower’s rights and obligations may be modified unilaterally.

3.5 Is there a legal link between the goods/services contract and the credit contract? Is there a joint and several liability between the supplier of the goods/services and the lender funding the purchase? What is the extent of this responsibility? Does the borrower have a legal obligation to possibly take action against the supplier before taking action against the lender?

There is no legal link between the goods/services contract and the credit contract and there is no joint and several liability between the supplier of the goods/services and the lender funding the purchase.

3.6 Is the linking of services to the mortgage credit regulated? Is it forbidden or authorised under a number of conditions?

See answer to question 3.4.

As a *lex generalis*, the law on business practices prohibits joint offerings. However, the service offering shall not be considered to be a joint offering referred to by this law if it cannot be known by consumers in general, and if it depends on personal elements that the parties negotiate. Furthermore, the LCH governs, in a clear way, as a *lex specialis*, the joint offering of mortgage credit and insurance. The granting of conditional preferential rates in the context of mortgage credit is authorised by law. The granting and maintaining of preferential rates may be subject to conditions.

The parties may negotiate conditions and obligations covering, in a balanced way, several services of which they know the separate prices. The law does not therefore prohibit all combinations of services, but only those proposed to consumers in general and that do not result from individual negotiation. The parties may then validly negotiate that the waiving of insurance, which may be contracted with an insurance company within the group to which the mortgage company belongs, will result in the loss of the preferential rate.

3.7 Are there certain legal requirements, which oblige the borrower to take out specific insurance with regard to the mortgage credit (for example, life insurance)?

See answer to question 3.4.

The LCH provides that the attaching or appending of a contract other than those referred to by the LCH are null and void by law.

In the sense of the LCH, a contract is attached in the event of the «reinstatement of capital» if the borrower contracts the obligation to make payments during the credit period that although usually allocated for the repayment of capital would not cause the corresponding immediate paying up to the lender; the capital is only reduced at the times and under the conditions provided for by the contract or by law.

The reinstatement must be performed via a contract attached to the credit.

This attached contract may only be a life insurance policy, an investment bond or other form of saving scheme.

An «appended contract» in the sense of the LCH is considered such if the borrower subscribes to or keeps an insurance policy in force in order to execute a loan condition whose non-obeyance may result in the collectability of the debt. This attached contract may only be:

- Insurance for the outstanding balance covering the risk of death, usually intended to guarantee the repayment of the credit;
- Insurance covering the risk of the deterioration of the building offered as surety.
- Bond insurance.

4. OUTCOME OF THE CREDIT AGREEMENT

4.1 Must the borrower receive a copy of all the conditions of the future credit agreement in the form of a written offer or in any other form? What information must this offer contain? What are the consequences of not complying with this legal requirement?

The LCH (art. 14) provides that before the contract is signed, the lender must provide the candidate borrower with a written offer containing all the contract's conditions and the length of the offer's validity. If the lender does not comply with this obligation, the borrower may repay the credit at any time without having to pay any compensation.

4.2 Must the offer comply with the contractual conditions of a specific standard agreement? Who lays down this standard agreement? What are the consequences of not complying with this legal requirement?

There is no standard document. However, the following should be pointed out. A mortgage company may not practice or continue its activity without first being registered by the OCA («a priori» mortgage company inspectorate). Registration is granted to companies that fulfil the conditions set by the LCH and its executory decrees.

The rules concerning registration, the documents and information to be provided and any later changes and the rules relating to the relinquishment of registration and its cancellation are determined by the King.

The King sets the rules for the keeping and transmitting of the documents and information that the OCA considers necessary for the performance of its role.

Accordingly, the executory decree states that companies that request registration must transmit to the OCA, amongst others, the model of the «mortgage deeds» (all the authentic and private deeds and any document containing provisions governing the same credit).

4.3 What rights and commitments arise for the creditor and the borrower from handing over the offer?

The lender provides the candidate borrower with a written offer that remains valid for two or three months. Once the candidate borrower has accepted the offer, the credit contract is in principle concluded. However, as loans (specific credit type) are real contracts, they only come into being when the funds are transferred.

4.4 Is the borrower entitled legally or contractually to a right of reflection? What are the conditions linked to the exercising of this entitlement?

The LCH provides that the written offer must specify the validity period. In practice the period set is two or three months.

4.5 How does the acceptance of the offer by the borrower take place? Are there specific formal and procedural requirements to be observed?

Through the signing of the offer by the borrower (transmitting of the mortgage company's copy signed by the borrower).

There are no specific formal and procedural requirements to be observed.

4.6 What commitment deadlines apply to the offer?

See answer to question 4.3.

4.7 When does the credit agreement come into effect?

See answer to question 4.3.

4.8 In the event that the borrower applies for several credits for one and the same purchase, is there a link between the different credits, according to which, the failure of one credit to be granted would allow him to cancel the others? What are the conditions associated with this link?

4.9 Is the contract a «real» contract (directly linked to the property), a consensual contract (agreement by the parties is sufficient) or even a solemn agreement (complementary formalities are required)?

“Real Contract”: No, not in the sense of a direct link with the property. Under Belgian law, the real nature of the loan contract relates to the transferring of funds.

In the case of a loan, if there is a contract, for it to be considered real the funds must have been transferred. If a credit opening is granted, the contract exists as soon as the borrower accepts the offer.

The initiating of the credit contract does not depend on formalities carried out before the solicitor when the authentic deed is drawn up. These formalities merely serve to make the creation of the mortgage opposable (through the formality of registration in the registrar of mortgages' registers, which requires a notarial deed).

4.10 Can the lender unilaterally lay down the conditions, according to which he will transfer the funds to the borrower?

Yes, but the candidate borrower will be advised of them before the contract is signed (prospectus) and these conditions depend in fact on the type of credit granted and the project financed.

5. SURETY AGREEMENTS

5.1 Do the guarantors come under the same consumer protection law as the borrower? What are the principles for the protection?

No, the provisions relating to personal and real sureties are included in the Civil code.

5.2 Does legislation stipulate a limit to the surety i.e. a time limit or a limit as to its amount?

Once the mortgage has been registered its stays in the registers of the mortgage registration office for 30 years from the registration date. Its effect ceases if the registration is not renewed before this period expires. The sums insured are established by common agreement between the parties.

5.3 Does the lender have a legal obligation to take action against the borrower first before acting against the guarantor?

Article 2021 of the Civil code: the guarantor is only obliged to pay the creditor in the event of default by the debtor, whose property must first be sold, providing that the guarantor has not waived the right of execution, or that the guarantor is not jointly and severally liable with the debtor.

6. RIGHT OF WITHDRAWAL

6.1 After the conclusion of the mortgage credit contract, is the borrower entitled legally or contractually to cancel it, especially in the event that the contract for which the loan has been applied falls through?

No, the LCH does not provide for a right of withdrawal. If need be, early repayment may take place: if the borrower wishes to terminate the credit contract, it will be at the borrower's cost.

6.2 What is the deadline for exercising this right of withdrawal?

6.3 Is the exercising of the right of withdrawal subject to any formal or procedural requirements?

6.4 Is the lender entitled to register in any way the fact that the borrower has exercised the right of withdrawal?

6.5 Are the parties subject to specific requirements in the case of withdrawal when winding up the contract?

7. RIGHT OF EARLY REPAYMENT

7.1 Is the borrower legally entitled to repay early? If this is the case, what are the terms of the procedure?

Yes. The LCH does not provide for a procedure.

7.2 Is the lender allowed to charge the costs involved by the early repayment to the borrower? Under which conditions? What is the basis for the calculation of the indemnity?

Art. 12 LCH - The lender may stipulate compensation in the case of complete or partial early repayment. This compensation must be calculated, at the credit's interest rate, based on the remainder of the balance outstanding. As regards calculation, if there is an attached contract whose redemption value has not been allocated for repayment, this sum must be deducted from the redemption value. In the case of partial repayment, these rules must be applied proportionally. The compensation may not exceed three months of interest. No compensation is owed in the case of repayment following death, in execution of an appended or attached contract.

7.3 In addition to the legally established contractual indemnity/penalties, can the lender claim for further contractual penalties?

No

7.4 Is the right to early repayment subject to certain conditions and, if this is the case, which conditions?

Art. 26 LCH – The borrower has the right to repay all the capital at any time. Failing a contrary provision in the mortgage deed, the borrower has the right to partially repay the capital at any time. The contrary provision may not exclude partial repayment once per calendar year, or the repayment of an amount equal to a minimum of 10 % of the capital. In the case of the reinstatement of the capital through life insurance, the borrower has the following repayment options:

- In the case of total repayment, the borrower may or may not totally or partially allocate the reinstated capital;
- In the case of partial repayment, the borrower may or may not totally or partially allocate the same fraction of the reinstated capital.

The borrower also has the right to take into consideration the part of the contract that is no longer attached to reduce the contract premiums to the amount required to maintain the attached part.

7.5 Is the lender allowed to suppress the early repayment option under certain conditions and, if this is the case, under which conditions?

See 7.4

7.6 In the event of the transfer of the property, what happens to the loan? Can it be transferred or must it be repaid?

If the borrower wishes to sell the property financed but not mortgaged this has no effect on the credit. If he wishes to sell the property given as surety he must request authorisation from the lender, who may demand repayment of the credit.

The borrower may, however, ask the lender to transfer the mortgage to another property. The credit continues to exist and the mortgage maintains its rank in the mortgage registrar's registers.

This also applies if the third-party acting as the "mortgager creator" wishes to sell the mortgaged property that secures the credit.

7.7 Is the borrower allowed to remortgage (refinance his mortgage loan)?

See point 7.4: the borrower has the right to repay all the capital at any time, for example by replacing his first credit with another whose interest rate is lower.

Must it be with the same lender or can it be with another?

Both cases occur.

What are the conditions and costs involved?

The borrower must pay early repayment charges. See point 7.2.

8. REGULATIONS ON USURY

8.1 Is usury defined by law? What is the principle?

Not by civil law or supervisory regulation. Penal law punishes the abuse of trust (in terms of interest –art.494). The lender who charges a rate of interest or demands other advantages, which obviously exceed the normal interest rate and the of the credit risk is in fact committing a crime. He is abusing the needs and ignorance of borrowers.

8.2 Is this important with regard to the mortgage loan?

See point 8.1

8.3 What are the consequences of usury from the point of view of civil law and supervisory law?

See point 8.1

8.4 Are there any other restrictions applicable to interest rates?

Art. 9 LCH (variable stipulated interest rates) - Interest rate variations must be linked to the fluctuations in a reference index taken from a series of reference indexes according to the length of the interest rate variation periods. When there is a variation in the interest rate on the expiry of the periods determined in the mortgage deed, the interest rate relating to the new period is equal to the initial interest rate plus the difference between the value of the reference index published in the calendar month preceding the date of the variation and the initial value of this index.

The mortgage deed must stipulate that the variation in the interest rate is limited, both for increases and decreases, to a difference determined in relation to the initial interest rate. This difference in the event of an increase in the interest rate may not be greater than the difference in the case of a reduction.

If the length of the first period is less than three years, a variation involving an increase in the interest rate may not increase the interest rate applicable to the second year by more than the equivalent of one point per hundred per annum in relation to the initial interest rate, or increase the interest rate applicable to the third year by more than the equivalent of two points per hundred per annum in relation to this initial interest rate.

9. LEGAL CONSEQUENCES IN THE EVENT OF INFRINGEMENT OF THE LOAN CONTRACT BY THE BORROWER

9.1 What happens if the borrower does not meet the payment conditions?

The borrower is required to contact the lender as quickly as possible. By common agreement with the borrower, the lender may take steps to facilitate the repayment of the credit, for example by granting payment facilities or extending the credit period. If in spite of the steps taken by the lender, the borrower is unable to repay one or several credit instalments, the consequences may be the following. The lender is obliged to inform the Banque Nationale's CCP for retail credit of the non-payment (see point 3 above). Non-payment may result in a penalty consisting in an increase in interest legally limited to 0.50% per annum (art. 1907 Civil code).

If after receipt of a registered warning sent by the lending organisation, the borrower is still unable to pay the sums outstanding, the lender and the borrower must appear before the judge dealing with seizures to establish an amicable arrangement between the parties (art. 59 LCH). Failing an agreement, the real property seizure procedure (art. 1560 and following of the Judicial code) will go ahead.

The lender may also enforce all the other sureties available such as the assignment of wages, compensation for sums receivable with the assets deposited with the lender or the seizure of the mortgaged property or any other property belonging to the borrower.

9.2 In the event of default by the borrower, what possibilities does the law give the creditor to claim for the outstanding debt, the unpaid interest due, the interest not yet due, a lump sum or contractual penalties?

This issue is not governed by law.

9.3 Are interest supplements possible in the event of default?

Non-payment (see point 9.1) may result in a penalty consisting of an increase in interest which is legally limited to 0.50% par annum (art. 1907 Civil code).

9.4 What consequences are there in the event of neglect of duty to maintain the building?

The issue relates to mortgaged property. If the borrower causes a reduction in the value of the mortgaged property, the lender may enforce the clause, generally included in the credit contract that allows him to render the credit receivable.

10. IS THE UNILATERAL SETTING OF AND/OR CHANGING OF CONTRACTUAL CONDITIONS POSSIBLE DURING THE LOAN?

A distinction should be made between unilateral concessions by the lender aimed at streamlining certain contractual clauses, for example, which is allowed at any time, and the unilateral changing of the contractual conditions.

Article 15 LCH provides that the mortgage deed cannot stipulate that the rights and obligations of the borrower may be changed unilaterally.

11. REGULATIONS RELATING TO OVERINDEBTEDNESS

11.1 Is overindebtedness defined and regulated by law?

This issue is governed by the law of 5 July 1998 concerning the collective settlement of debts.

11.2 On which principles is it based?

The purpose of the collective settlement of debts is to re-establish the financial position of an over-indebted person (individual, farmer, member of the liberal professions).

An amicable payment plan is negotiated by the debt mediator with all the creditors. If all the parties agree, the plan is approved by the judge dealing with seizures. If an agreement is not reached, the judge may impose a legal payment plan of a maximum five year duration. The credit contract repayment period may be extended. In this case the new repayment period may not exceed the duration of the payment plan, set by the judge, plus half the time until the expiry of the credit contracts.

The judge's ruling declaring the over-indebted debtor's petition eligible gives rise to a concourse scenario. The respective position of the debtors is then set irreversibly and the principle of equality applies. No debtor may undertake any step that may contravene the rule of equality. Mortgage mandates can no longer be executed and mortgages can no longer be registered.

The interest rate is suspended with regard to the creditors and all the debtor's property in principle becomes unavailable.

The concourse and the collective settlement of debts concern all creditors whose debt existed at the time of the ruling. The debts subject to a condition or term are considered to be «existing» debts. This means that no distinction is made between unsecured, favoured, lienor and mortgage creditors.

In view of the collective aspect of the settlement, the individual creditors' rights of performance are

suspended. Once the ruling has been made, no seizure for security or seizure followed by execution by sale may take place. This applies to all executory measures relating to the debtor's patrimony aimed at the payment of monies, including not only seizures, but also, for example, the performance of an assignment of claim (assignment of salary, for example) or the liquidation of a pledge.

The effect of the real sureties is suspended for the duration of the legal payment plan, although this measure may not compromise its asset base. This reserve is intended to keep in tact the debtors' common pledge during the plan.

However, the causes of preference must be taken into account when it comes to distributing the proceeds of the sale of the debtor's property within the framework of the plan. The law demands such a sale as the condition for the remission of the debts in capital sum (principal).

The mortgage creditors' and lienor creditors' rights of performance are subject to the collective settlement. The seizures performed maintain, however, their protective character. They may not however be liquidated for as long as the settlement of debts is applicable.

What if a sale is on the point of coming to fruition at the time of the collective settlement petition? The suspensive effect only comes into force on the date eligibility ruling and not on the date when the petition was filed.

To prevent the slightest doubt on this subject, it has been considered preferable to provide that, following the example of bankruptcy law, «if, prior to the eligibility order, the date of the forced sale of the furniture or property seized has been set and advertised, this sale shall take place on behalf of the creditors».

In the event of the revoking of an eligibility ruling or amicable or legal settlement plan by the judge dealing with seizures the creditors recover their right to individually take action with regard to the debtor's property for the recovery of the non discharged part of their debts.

12. OTHER PROBLEMS RELATING TO CONSUMER PROTECTION

12.1 Are there any legal limits to a maximum loan-to-value ratio and what are they?

The LCH does not provide for limits to the loan-to-value quota.

12.2 Does the lender come under any restrictions when granting the credit, based on the consumer's repayment capacity?

The LCH does not provide for such restrictions. There is a risk of the lender's liability being brought into question under common law. Practice suggests that credits should not be granted above a repayment capacity equal to 33% of the borrower's (monthly) income.

12.3 Does the lender have an legal obligation to give further information after the conclusion of the contract?

The LCH only provides for the following provisions:

Art. 9 LCH

If there is a variation in the interest rate, the borrower must be informed at the latest at the date on which the new interest rate takes effect. Where appropriate, this notification must be accompanied, free of charge, by a new amortisation schedule including the information referred to in article 21 LCH for the time remaining until expiry.

Art. 21 LCH

(...) If the reduction in interest rate granted changes, a new amortisation schedule will be transmitted, which takes into account said changes.

12.4 Does the lender have any legal obligation to disclose the existence and amount of any commission he would have to pay on the occasion of the conclusion of the loan contract (to an intermediary, other)?

No. This is an aspect of the contractual relationship between the lender and the intermediary of which the borrower is not informed.

We should note in this regard that article 13 LCH provides that no compensation (other than early repayment charges and charges for the supplying of capital) or negotiation commission, whatever the denomination, form or beneficiary, may be charged to the credit applicant or borrower.

DENMARK

1. SCOPE

1.1 What significant legislation is there in your country regulating the protection of the mortgage borrower?

The Consumer Credit Act, The Mortgage Credit Act – particular the chapter on best practice and its derivatives in the upcoming new act.

1.2 Do the consumer protection measures only concern loans to private persons?

Yes, with very few exceptions, notably if the problem is parallel to anything that might occur in the consumer situation, and the professional in question is for example only an owner operated business.

1.3 Are the consumer protection measures limited by the purpose of the loan (e.g. for housing) or the existence of the surety?

There are no such limitations.

2. PRE-CONTRACTUAL INFORMATION TO BE DISCLOSED TO THE MORTGAGE BORROWER

2.1 Is any minimum and/or compulsory information on the lender and the transaction on offer (type, object, duration, costs, etc.) required at the advertising stage?

No. The advertising act has never been completed as far as the mortgage banks are concerned. The marketing act, however, constitutes the framework of the original "Guidelines for good conduct for mortgage banks", issued in 1996 by the Danish Forbrugerombudsman. This regulation is to be found in the chapter on best practice in the new financial act.

2.2 Are there any advertising restrictions imposed on credit institutions

See 2.1.

2.3 Assuming that your national credit institutions apply the Code of Conduct for Home Loans, please confirm disclosure of all information listed under the Code's general information list and European Standardised Information Sheet (see Annex I) and indicate any additional information given to consumers according to national legislation or practice. Please indicate if any listed information is not disclosed, and include the reason for that exception. Is there any legal or contractual obligation to disclose exact and full information as to his personal circumstances imposed on the borrower?

All required information is given, together with a few additional elements that are dictated by the Consumer Credit Act.

2.4 Is there a legal obligation to disclose an Annual Percentage Rate of Charge (APRC) to the mortgage borrower? What is the method of calculation applied? What are the components included in the APRC? Does the calculation of the APRC imply that the lender makes any specific assumptions as to the evolution of the rate (in case of a variable rate or an initial fixed rate)?

It is stated that the information is part of the loan offer and that the information is preliminary. The lender discloses the APRC to the consumer and the applicant is informed that, according to Danish law, standing loans are not granted for housing purposes.

2.5 Do these information requirements impact on the credit intermediaries? To what extent?

These requirements are binding for the intermediary, to the extent that he is legitimized to issue loan offers.

3. PRE-CONTRACTUAL AND CONTRACTUAL OBLIGATIONS IMPOSED ON THE LENDER

3.1 Are there negative and/or positive central databases or other sources of data on the candidate borrower, which are accessible to the lender? Is it compulsory for the lender to consult them and what is the consequence if he does not? Is it possible to access databases on a cross-border basis? Under what conditions?

A "negative" database exists. It is not compulsory to consult it, but to an extent, it is common practice.

3.2 Does the lender have a legal duty to provide advice to the candidate borrower? What is the extent of this obligation and its possible consequences?

It is assumed that such an obligation exists for the lender. The consequences depend on whether any loss was caused by the advice given or indeed the lack of it.

3.3 Is there any kind of responsibility based on the "responsible lending" principle imposed on the lender?

There is no formal responsibility towards the borrower, however, "irresponsible lending" is sanctioned by the supervisory authorities.

3.4 Assuming that the European Directive on unfair terms was implemented in national law, what is the definition of an "unfair term" in your legislation? Are there typical terms for mortgage credit, which are forbidden by law?

No

3.5 Is there a legal link between the goods/services contract and the credit contract? Is there a joint and several liability between the supplier of the goods/services and the lender funding the purchase? What is the extent of this responsibility? Does the borrower have a legal obligation to possibly take action against the supplier before taking action against the lender?

There is no such link.

3.6 Is the linking of services to the mortgage credit regulated? Is it forbidden or authorised under a number of conditions?

Any services are connected to the handling of the loan.

3.7 Are there certain legal requirements, which oblige the borrower to take out specific insurance with regard to the mortgage credit (for example, life insurance)?

Yes, the property must be covered by fire insurance in order to be mortgaged by the mortgage banks.

4. CONCLUSION OF THE CREDIT AGREEMENT

4.1 Must the borrower receive a copy of all the conditions of the future credit agreement in the form of a written offer or in any other form? What information must this offer contain? What are the consequences of not complying with this legal requirement?

Yes, a copy must be provided with all the conditions and terms of the loan, as well as general written material on the general Conditions for the bank etc. If the material is not provided the lender cannot lift the burden of proof regarding the terms of the loan if any default occurs.

4.2 Must the offer comply with the contractual conditions of a specific standard agreement? Who lays down this standard agreement? What are the consequences of not complying with this legal requirement?

There is no standard agreement, but as all the mortgage banks have to comply with the Consumer Credit Act, the information given in the contracts is more or less the same.

4.3 What rights and commitments arise for the creditor and the borrower from handing over the offer?

The loan offer is binding for the lender and optional for the applicant.

4.4 Is the borrower entitled legally or contractually to a right of reflection? What are the conditions linked to the exercising of this entitlement?

The loan offer is binding for the lender for 6 months. During this period the applicant can take advantage of a period of reflection as no extra charge. The conditions of the loan might change in this period, but this will be beyond the control of the lender, because it will be caused by changes in the bond rates, etc.

4.5 How does the acceptance of the offer by the borrower take place? Are there specific formal and procedural requirements to be observed?

The borrower asks for the loan to come into effect.

4.6 What commitment deadlines apply to the offer?

If the loan comes into effect, there is no chance of reversal. Until then, there are no deadlines.

4.7 When does the credit agreement come into effect?

When the loan irreversibly comes into effect - the loan offer is accepted, the bonds behind the loan are sold, the mortgage is registered and the amount is handed over to the borrower.

4.8 In the event that the borrower applies for several credits for one and the same purchase, is there a link between the different credits, according to which, the failure of one credit to be granted would allow him to cancel the others? What are the conditions associated with this link?

Not in general.

4.9 Is the contract a «real» contract (directly linked to the property), a consensual contract (agreement by the parties is sufficient) or even a solemn agreement (complementary formalities are required)?

The contract is a "real" contract, as it must be registered on the property.

4.10 Can the lender unilaterally lay down the conditions, according to which he will transfer the funds to the borrower?

No, there are some options for the borrower once the conditions for the payment of the loan are met, but these conditions are laid down unilaterally by the lender.

5. SURETY AGREEMENTS

5.1 Do the guarantors come under the same consumer protection law as the borrower? What are the principles for the protection?

No they do not have the same protection, although mortgage banks are required to limit the use of "private" guarantors and are committed to keep the guarantor informed on any default on the borrower's side.

5.2 Does legislation stipulate a limit to the surety i.e. a time limit or a limit as to its amount?

No.

5.3 Does the lender have a legal obligation to take action against the borrower first before acting against the guarantor?

This depends on the guarantee construction. As a rule, the lender is not obliged to take action against the borrower first before acting against the guarantor.

6. RIGHT OF WITHDRAWAL

6.1 After the conclusion of the mortgage credit contract, is the borrower entitled legally or contractually to cancel it, especially in the event that the contract for which the loan has been applied falls through?

As long as the loan has not come into effect, the borrower may withdraw for any reason. If the purchase contract for the property does not go through and the borrower does therefore not become the owner of the property, there is no basis for the loan.

6.2 What is the deadline for exercising this right of withdrawal?

There is no right of withdrawal.

6.3 Is the exercising of the right of withdrawal subject to any formal or procedural requirements?

See 6.2

6.4 Is the lender entitled to register in any way the fact that the borrower has exercised the right of withdrawal?

See 6.2

6.5 Are the parties subject to specific requirements in the case of withdrawal when winding up the contract?

See 6.2

7. RIGHT OF EARLY REPAYMENT

7.1 Is the borrower legally entitled to repay early? If this is the case, what are the terms of the procedure?

The borrower is usually entitled to withdraw, unless the loan is based on irredeemable bonds that have to be bought in the market at market rates. Notice must be given in accordance with the current conditions for the bonds funding the loan. Usually notice can be given in writing on a quarterly basis for "pari".

7.2 Is the lender allowed to charge the costs involved by the early repayment to the borrower? Under which conditions? What is the basis for the calculation of the indemnity?

Yes, the lender can charge the borrower for the costs arising from the early repayment – positive costs and rate difference.

7.3 In addition to the legally established contractual indemnity/penalties, can the lender claim for further contractual penalties?

No.

7.4 Is the right to early repayment subject to certain conditions and, if this is the case, which conditions?

The right to early repayment is subject to the conditions given in the loan concerning the bond that is funding the loan.

7.5 Is the lender allowed to suppress the early repayment option under certain conditions and, if this is the case, under which conditions?

No.

7.6 In the event of the transfer of the property, what happens to the loan? Can it be transferred or must it be repaid?

The loan must be repaid. The borrower can apply to transfer to a new owner, but the bank is not obliged to agree to the application.

7.7 Is the borrower allowed to remortgage (refinance his mortgage loan)? Must it be with the same lender or can it be with another? What are the conditions and costs involved?

Yes, the borrower is allowed to remortgage, and it doesn't have to be with the same lender. The same costs apply as with any other new application for a loan.

8. REGULATIONS ON USURY

8.1 Is usury defined by law? What is the principle?

No

8.2 Is this important with regard to the mortgage loan?

No

8.3 If usury can be constituted, it can be invalidated.

What are the consequences of usury from the point of view of civil law and supervisory law?

8.4 Are there any other restrictions applicable to interest rates?

The market rates.

9. LEGAL CONSEQUENCES IN THE EVENT OF INFRINGEMENT OF THE LOAN CONTRACT BY THE BORROWER

9.1 What happens if the borrower does not meet the payment conditions?

At first a reminder is sent with a warning that in case of continued failure to pay the loan is up for repayment.

9.2 In the event of default by the borrower, what possibilities does the law give the creditor to claim for the outstanding debt, the unpaid interest due, the interest not yet due, a lump sum or contractual penalties?

All outstanding amounts can be claimed for through the formal court system and the mortgaged property can be repossessed.

9.3 Are interest supplements possible in the event of default?

Yes, a so called "mora" interest.

9.4 What consequences are there in the event of neglect of duty to maintain the building?

Depending on the extent of the neglect, the loan can be up for repayment. This is a standard loan condition.

10. IS THE UNILATERAL SETTING OF AND/OR CHANGING OF CONTRACTUAL CONDITIONS POSSIBLE DURING THE LOAN?

11. REGULATIONS RELATING TO OVERINDEBTEDNESS

11.1 Is overindebtedness defined and regulated by law?

No, not yet.

11.2 On which principles is it based?

See 11.1.

12. OTHER PROBLEMS RELATING TO CONSUMER PROTECTION

12.1 Are there any legal limits to a maximum loan-to-value ratio and what are they?

Yes, it depends on the property being mortgaged. For example, the loan must not exceed 80% of the market value of a permanent residence.

12.2 Does the lender come under any restrictions when granting the loan, based on the consumer's repayment capacity?

Basically, the value of the property being mortgaged poses the restriction; for example, the loan must not exceed 80 % of the market value of a permanent residence. In practice, the lender monitors the income etc. so that the loan does not exceed the repayment capability of the borrower.

12.3 Does the lender have a legal obligation to give further information after the conclusion of the contract?

Yes, the lender must give the final information, once the loan has been concluded.

12.4 Does the lender have any legal obligation to disclose the existence and amount of any commission he would have to pay on the occasion of the conclusion of the loan contract (to an intermediary, other)?

The lender or the intermediary must disclose the existence of commission to be paid when the contract is concluded, but not the amount.

GERMANY

PRELIMINARY COMMENTS

The law governing the loan contract is laid down in the section on „Individual debt relationships“ (*Einzelne Schuldverhältnisse*) in Book 2 of the Civil Code (articles 488 to 507). Consumer credit is specifically regulated in articles 491 to 498 and 506, formerly regulated under the Consumer Credit Act. In addition, the rules of the „General Law of Contract“ (*Allgemeines Schuldrecht*) are applicable, as are the provisions of the „Law of Property“ (*Sachenrecht*) Book 3 of the Civil Code (paras. 1113 to 1190) for loans secured by a mortgage.

In German Contract Law, the principle of contractual freedom applies, i.e. many legal provisions may be replaced or supplemented by agreement between the parties (either individually or by using standardized forms). This happened in the same way for loan contracts as for all common contracts through the so-called “general business conditions” (*Allgemeine Geschäftsbedingungen*) of the supplier.

1. SCOPE

1.1 What significant legislation is there in your country regulating the protection of the mortgage borrower?

Articles 491 to 498 and 506 in Book 2 of the Civil Code (BGB), formerly regulated under the Consumer Credit Act, and certain provisions in the “General Law of Contract”, especially articles 355 to 359 of the Civil Code, apply to loan contracts with consumers. Articles 305 to 310 of the Civil Code (the former AGB Act), which regulate the “general business conditions” contain special provisions for contracts with consumers.

1.2 Do the consumer protection measures only concern loans to private persons?

The consumer protection measures laid down in articles 491 to 498 and 506 are especially designed for loans to consumers. According to article 13 of the Civil Code, which complies with the meaning of the Consumer Credit Directive, consumers are private persons who take out a loan for private purposes.

1.3 Are the consumer protection measures limited by the purpose of the loan (e.g. for housing) or the existence of the surety?

Consumer protection measures are generally neither limited to the purpose of the loan nor to the existence of a surety. The Civil Code does not distinguish between the different purposes, for which the mortgage credit is used, to define the scope of the consumer protection measures.

Only in one exceptional case are consumer protection measures limited to the purpose of the loan; this is where the founder of a new company takes out a loan to start his own business (article 507). Articles 491 to 498 and 506, formerly regulated in the Consumer Credit Act, are binding for contracts covered by the scope defined in article 491. Contrary to the Consumer Credit Directive, these provisions include credits secured by a mortgage when granted to consumers. However, for mortgage loans, there are several exceptions permitting special conditions relating to the mortgage credit.

2. PRE-CONTRACTUAL INFORMATION TO BE DISCLOSED TO THE MORTGAGE BORROWER

2.1 Is any minimum and/or compulsory information on the lender and the transaction on offer (type, object, duration, costs, etc.) required at the advertising stage?

Credit institutions are not in principle subject to any special provisions regarding their advertising. However, they are subject to the law against unfair competition of 1909 (UWG) according to which, inter alia misleading information is to be refrained from and advertising may not contravene the moral code (art. 2 and 3 UWG).

On the basis of the newly formulated regulation on the quotation of prices of November 2002 (*Preisangabenverordnung, PangV*), if conditions are stated in the advertisement for the credit, the effective annual rate of interest must be given). The same applies for actual offers of loans (art 6 PangV).

2.2. Are there any advertising restrictions imposed on credit institutions?

The regulation on the quotation of prices stipulates that prices stated in the advertising have to be legible and discernible in the advertisement or offer.

2.3 Assuming that your national credit institutions apply the Code of Conduct for Home Loans, please confirm disclosure of all information listed under the Code's general information list and European Standardised Information Sheet (see Annex I) and indicate any additional information given to consumers according to national legislation or practice. Please indicate if any listed information is not disclosed, and include the reason for that exception.

Almost all credit institutions in Germany have adhered the Code of Conduct and disclose the information listed under the Code's general information list and the European Standardised Information Sheet. There is no additional information, which is required by German legislation.

Is there any legal or contractual obligation to disclose exact and full information as to his personal circumstances imposed on the borrower?

There are no legal obligations to disclose such information. With the credit application, the lender will however regularly ask the borrower to disclose information relating to his personal and financial circumstances.

2.4 Is there a legal obligation to disclose an Annual Percentage Rate of Charge (APRC) to the mortgage borrower? What is the method of calculation applied? What are the components included in the APRC? Does the calculation of the APRC imply that the lender makes any specific assumptions as to the evolution of the rate (in case of a variable rate or an initial fixed rate)?

According to article 492 par. 1 No. 5 of the Civil Code, the Annual Percentage Rate of Charge (APRC) has to be disclosed in the copy of the contract given to the borrower.

The method of the calculation applied is laid down in the annexe of the regulation on the quotation of prices (mathematical formula).

Components included in the APRC are: all costs related to the credit contract, for example, the nominal interest rate, service fees and the disagio, with the exception of costs relating to third parties.

The calculation of the effective annual rate of interest, i.e. the "initial effective annual rate of interest", complies with art. 6 of the regulation on the quotation on prices of November 2002. In the case of loans with fixed conditions for the whole duration of a loan contract, the annual percentage rate has to be indicated in a percentage rate of the loan as an effective annual interest rate, Thereby the disagio, service charges or other surcharges or discounts are to be allocated over the period, while the interest rate is fixed. The premiums for life insurance, which is used to repay the loan at the end of the term and costs of third parties are not to be included in the calculation.

2.5 Do these information requirements impact on the credit intermediaries? To what extent?

Generally credit intermediaries have to fulfil the same information requirements as credit institutions, but there are no additional information requirements to be fulfilled by credit intermediaries.

3. PRE-CONTRACTUAL AND CONTRACTUAL OBLIGATIONS IMPOSED ON THE LENDER

3.1 Are there negative and/or positive central databases or other sources of data on the candidate borrower, which are accessible to the lender? Is it compulsory for the lender to consult them and what is the consequence if he does not? Is it possible to access databases on a cross-border basis? Under what conditions?

There are privately organised databases like the "Schufa" in Germany. The Schufa works together with its contractual parties such as credit institutions, insurance companies and other companies and grants information about potential borrowers on a mutual basis. According to the contract between the Schufa and the contractual party, the Schufa receives and provides positive and/or only negative data concerning natural persons. Contractual partners obtain information only when they satisfactorily show their legitimate interest according to the German Data Protection Act (*Bundesdatenschutzgesetz*). With the credit application, the candidate borrower first has to give his consent that information as to his personal circumstances is forwarded to as well as recovered from the "Schufa". Besides this information transferred by the contractual partners, the "Schufa" also disposes of data coming from public registries.

There is no legal obligation to consult this database. However, on the mutual basis of the contract with the Schufa, the lender is obliged to provide the Schufa with data concerning its clients.

The Schufa does not have databases in other member countries but it works together with partners in several member states (e.g. Austria, Italy). The conditions are the same as in Germany. Contractual partners obtain information only in the case of a legitimate interest according to the German Data Protection Act.

3.2 Does the lender have a legal duty to provide advice to the candidate borrower? What is the extent of this obligation and its possible consequences?

The Civil Code (BGB) does not stipulate any duty to advise the borrower, for example, as to which product best suits his needs. In exceptional cases, there might be an obligation for the lender to inform the borrower about important circumstances relating to the contract which he ignores. According to the Code of Conduct, the lender is only obliged to give the aforementioned pre-contractual information.

3.3 Is there any kind of responsibility based on the "responsible lending" principle imposed on the lender?

German Law does not foresee any form of legal duty, which can be compared to the principle of "responsible lending". Both contractual parties are entirely responsible for their decisions.

3.4 Assuming that the European Directive on unfair terms was implemented in national law, what is the definition of an "unfair term" in your legislation? Are there typical terms for mortgage credit, which are forbidden by law?

The basic rule, according to which debt relationships are to be fulfilled by good faith, is laid down in Article 242 of the Civil Code. Apart from this basic rule, for the majority of loan contracts, "general business conditions" of the supplier apply. For these general business conditions, special provisions are laid down in articles 305 to 310 of the Civil Code, the former AGB Act. According to article 307, clauses which are excessively detrimental or not transparent to the contractual partner of the supplier are null and void.

Article 308 lays down specific clauses in the general business conditions to be completely null and void, but there are no typical terms for mortgage credit, which are forbidden by law.

3.5 Is there a legal link between the goods/services contract and the credit contract? Is there a joint and several liability between the supplier of the goods/services and the lender funding the purchase? What is the extent of this responsibility? Does the borrower have a legal obligation to possibly take action against the supplier before taking action against the lender?

Article 358 par. 3 defines the prerequisites for a “combined contract” (*verbundener Vertrag*). According to the definition, a goods/services contract (without a mortgage) and a credit contract are combined if the loan serves fully or partly the financing of the other contract and the connection is so close, that both contracts complement one another as part of a commercial or legal unit (*wirtschaftliche Einheit*).

- A joint and several liability between the supplier of the goods/services i.e. the seller of the property and the lender is stipulated in article 359 of the Civil Code. According to this regulation the consumer can refuse the repayment of the loan, insofar as he can make objections against the linked contract.
- No, but before the court is able to take a decision on the right of the consumer to refuse the repayment of the loan, it has to ascertain whether the objections concerning the linked contract are legitimate.

3.6 Is the linking of services to the mortgage credit regulated? Is it forbidden or authorised under a number of conditions?

The regulations on combined contracts only apply to mortgage credit contracts since 01.08.2002 under very restrictive conditions. Due to the congruent financing for fixed term loans these regulations were not applicable on mortgage credits before.

The linking of services to the mortgage credit is now regulated in article 358 par. 3 sentence 3 of the Civil Code. This regulation stipulates very restrictive conditions: According to this article a commercial unit of a mortgage credit contract and a property purchase contract only exists if the requirements of the regulation are fulfilled, for instance, if the lender himself sells the property to the borrower or if he acts like a vendor concerning the planning, marketing or realisation of the project. Only if according to art. 358 par. 3 sentence 3 a commercial unit exists article 359 of the Civil Code applies, which means that the consumer can refuse the repayment insofar as he can make objections against the linked contract.

3.7 Are there certain legal requirements, which oblige the borrower to take out specific insurance with regard to the mortgage credit (for example, life insurance)?

There are no such legal requirements, the taking out of a specific insurance can be fixed in the contract. According to Art. 492 I No. 6 of the Civil Code the costs of a residual debt insurance (*Restschuldversicherung*) that is concluded in conjunction with a loan contract has to be indicated in the loan contract.

4. CONCLUSION OF THE CREDIT AGREEMENT

A loan contract comes into effect like any other contract by offer and acceptance. The offer may be made either by the bank or by the borrower. The advantage for the bank of an offer made by the borrower (loan request) is that at the time of acceptance the bank can still make further assessments (e.g. of the solvency of the borrower, the characteristics of the pledge) and during periods of rising interest rates, it can declare acceptance at the actual interest rates. This, however, requires renewed confirmation by the borrower.

4.1 Must the borrower receive a copy of all the conditions of the future credit agreement in the form of a written offer or in any other form? What information must this offer contain? What are the consequences of not complying with this legal requirement?

Article 492 of the German Civil Code (BGB) stipulates the written form for consumer credit contracts; an electronic form is not possible. Offer and acceptance must tally with one another and be declared individually in simultaneous presence or in absence. The requirement of the written form forces the parties to make identical declarations and is supposed to guarantee a high level of consumer protection.

The borrower is entitled to receive a copy of the contract (art. 492 par.3 BGB). The contract must contain various elements of information, such as the net loan sum, the repayment terms, the terms of redemption, the collateral, the interest rate and the annual percentage rate of charge.

The contract is null and void in the event of failure to observe the written form and in the case of infringements of the information requirements (art. 494 par. 1 BGB).

If the loan has been disbursed, the credit contract becomes effective albeit failures concerning form and information requirements with the following provision: If the nominal interest rate, the effective interest rate or the total amount is not indicated, the interest rate is reduced to the legal interest rate of 4% p.a. If the effective interest rate is indicated at too low a level, the nominal interest rate is reduced accordingly (art.494 par. 2, 3 BGB).

4.2 Must the offer comply with the contractual conditions of a specific standard agreement? Who lays down this standard agreement? What are the consequences of not complying with this legal requirement?

According to German Civil law the loan contract does not have to comply with any specific prototype. However, German credit institutions have, at least for certain areas of their sets of agreements, prepared specimen contracts which can be used (i.e. specimen loan agreement by the vdp). The individual institutions are however not obliged to use these specimens, although in practice they rarely depart from them.

4.3 What rights and commitments arise for the creditor and the borrower from handing over the offer?

If the bank or the borrower makes an offer, they are in principle tied to its content (art. 145 BGB). In the case of an offer made by the bank, the borrower is informed about the duration of the offer. Rights and commitments do not arise until the contract is concluded. The lender is then obliged to disburse the agreed loan sum to the borrower, if the other obligations of the contract are fulfilled. The borrower is obliged to pay the interest rate and the amortization rates according to the amortisation plan.

Provisional offers only serve for information purposes and do not give rise to rights or commitments. (invitatio ad offerendum).

4.4 Is the borrower entitled legally or contractually to a right of reflection? What are the conditions linked to the exercising of this entitlement?

According to art. 242 BGB the bank has to allow the borrower an adequate period of reflection. In case of an offer made by the bank, the borrower is informed about the duration of the offer (see above). If the borrower accepts this offer once the period has expired, this declaration is not regarded as an acceptance, but as a new offer (art. 150 par 1 BGB).

4.5 How does the acceptance of the offer by the borrower take place? Are there specific formal and procedural requirements to be observed?

If the bank makes the offer, the borrower accepts the offer by countersigning it. If the borrower makes the offer, the bank accepts it by separate written acceptance. The formal provisions (see point 4.1) apply to consumer credits, as well as to mortgage credits. Apart from the written form and the formal requirements concerning the conclusion of the contract, there are no further formal or procedural requirements.

4.6 What commitment deadlines apply to the offer?

If the bank makes the offer, there are no legal provisions for deadlines. In general, however, the bank will not commit itself for longer than 2 weeks in view of possible risks of interest changes. If the borrower makes the offer, the deadline may not be too long. According to case law, a 4 week or 1 month commitment is still permissible.

4.7 When does the credit agreement come into effect?

Every contract, regardless of its type, comes into existence through offer and acceptance. The date of the loan disbursement is irrelevant.

4.8 In the event that the borrower applies for several credits for one and the same purchase, is there a link between the different credits, according to which, the failure of one credit to be granted would allow him to cancel the others? What are the conditions associated with this link?

The German Civil Code does not provide such a link between different credits.

4.9 Is the contract a «real» contract (directly linked to the property), a consensual contract (agreement by the parties is sufficient) or even a solemn agreement (complementary formalities are required)?

According to the wording of art. 488 par. 1 BGB, a loan contract is a consensual agreement. After the conclusion of the contract, the lender is committed to disburse the agreed loan sum to the borrower. The borrower is obliged to pay the interest rate and the amortization rates at maturity.

The bank may therefore only refuse to pay out if, after the contract has been concluded, the borrowers' financial circumstances have deteriorated substantially (art. 490 par 1 BGB). In concluding the contract, however, the borrower too is obliged to fulfil the disbursement conditions and to take up the loan.

4.10 Can the lender unilaterally lay down the conditions, according to which he will transfer the funds to the borrower?

As already mentioned above, as a basic principle, offer and acceptance of a contract have to tally with one another. Deviation from the basic contract elements as stipulated in art. 492 BGB (see point 4.1) is not possible.

5. SURETY AGREEMENTS

5.1 Do the guarantors come under the same consumer protection law as the borrower? What are the principles for the protection?

The consumer protection laws are incorporated into the German Civil Code and apply solely to the borrower of a credit contract. The guarantor of a mortgage collateral is protected by special rules laid down in the collateral law. (art. 765 seqq.)

5.2 Does legislation stipulate a limit to the surety i.e. a time limit or a limit as to its amount?

As far as the mortgage loan is concerned, there are no such limits contrary to the debt guarantee («Bürgschaft»).

5.3 Does the lender have a legal obligation to take action against the borrower first before acting against the guarantor?

There is no special legal obligation in the case of a loan contract secured by a mortgage collateral. However, taking action against the borrower first would not be in line with the principle of «bona fide» (utmost good faith) as laid down in art. 242 BGB. In the case of a debt guarantee («Bürgschaft»), the guarantor is according to art. 771 BGB allowed to refuse payment as long as the creditor has not tried any enforcement procedures against the borrower (*Einrede der Vorausklage*).

6. RIGHT OF WITHDRAWAL

6.1 After the conclusion of the mortgage credit contract, is the borrower entitled legally or contractually to cancel it, especially in the event that the contract for which the loan has been applied falls through?

An amendment of consumer protection rules within the German Civil Code (BGB), which came into effect on 1 August 2002, allows a right of withdrawal for the borrower in the context of a mortgage loan within 2 weeks after binding himself (art. 495; 355 BGB). An exclusion of the right of withdrawal can only be individually contracted until 30 June 2005 as an interim regulation (art. 506 par 3 BGB).

6.2 What is the deadline for exercising this right of withdrawal?

The right of withdrawal must be exercised within a period of two weeks, art. 495, 355 par. 1 BGB. To observe the deadline, it is sufficient to have dispatched the cancellation. The deadline period only starts to run if the customer has been informed clearly by the bank of his right of withdrawal. If the information of the customer's right to cancellation takes place after the conclusion of the contract the right of withdrawal must be exercised within one month (art. 355 par. 2 BGB)

The right of withdrawal expires not later than 6 months after the conclusion of the contract. It does not expire at all if the customer has not been informed about his right to cancellation (art. 355 par.3 BGB).

6.3 Is the exercising of the right of withdrawal subject to any formal or procedural requirements?

According to art. 126 b BGB the customer has to exercise the right of withdrawal in textual (written form or fax).

6.4 Is the lender entitled to register in any way the fact that the borrower has exercised the right of withdrawal?

The fact that cancellation has taken place can be registered within the bank. Only the fact that the contract has been cancelled will be communicated to external data banks, i.e. the expiry of repayment of a loan previously registered.

6.5 Are the parties subject to specific requirements in the case of withdrawal when winding up the contract?

In the case of withdrawal, according to art. 495; 355; 346 BGB both parties must make restitutions concerning the benefits received from one another. On one hand, the customer has to repay the net loan amount, which he had received by the bank plus a yield customary in the market (art. 346 par. 2 BGB). On the other hand, the bank must return the paid interest and amortisation rates for the period of allocation of the capital plus an adequate yield.

7. RIGHT OF EARLY REPAYMENT

7.1 Is the borrower legally entitled to repay early? If this is the case, what are the terms of the procedure?

One has to differentiate between a fixed rate interest loan (1) and a variable interest loan (2) and the cases in which the borrower is allowed to cancel the loan and to repay the loan early without paying an indemnity (a) and the cases in which he may repay early but has to pay an indemnity (b).

1. Fixed interest rate loans

(a) According to art. 489 par. 1 BGB a mortgage borrower is only entitled to cancel the loan

- if the fixed interest rate period ends before the end of the loan contract (e.g. the credit contract runs for a period of 30 years, the fixed interest rate period runs for 5 years) at the end of the fixed rate period; the length of this period being determined by the contract;
- in any case after a period of ten years.

In these cases (a) the early repayment of the loan is not subject to an indemnity.

(b) During the length of a fixed rate period a mortgage borrower is only entitled to cancel the loan under the conditions of art. 490 par. 2 BGB, i.e. in case of a legitimate interest and subject to a cancellation period of 6 months. This legitimate interest mainly exists when the property is sold or if the borrower wants to increase the amount of the loan, which the lender refuses. Prepayment of the loan for speculative reasons is not possible.

In these cases (b) the early repayment is subject to an indemnity according to art. 490 par. 2 BGB.

2. Variable interest loan

In the case of a variable interest rate the borrower is allowed to cancel the loan at any time in compliance with a cancellation period of 3 months without paying an indemnity (art. 489 par. 2 BGB).

In addition, the parties are at any time free to change the loan contract by agreement.

7.2 Is the lender allowed to charge the costs involved by the early repayment to the borrower? Under which conditions? What is the basis for the calculation of the indemnity?

The right of early repayment can only be exercised if the borrower compensates the bank for the losses which have arisen from the repayment. (see 7.1.).

The borrower has to compensate the difference between loan interest rate of the borrower on the one hand and the reinvestment rate in the case of investment in «*Pfandbriefe*» with the same duration plus the margin on the other hand. Additionally, the bank can demand a service charge of up to 250 EUR. Expenditures and the credit risk the bank would have taken in case of continuity of the contract have to be discounted.

7.3 In addition to the legally established contractual indemnity/penalties, can the lender claim for further contractual penalties?

Outside of the consumer protection area such a claim is imaginable provided that a contractual penalty is stipulated by the parties in an effectual and permissible way.

7.4 Is the right to early repayment subject to certain conditions and, if this is the case, which conditions?

The right of early repayment can only be exercised under the conditions mentioned above (see 7.1.)

7.5 Is the lender allowed to suppress the early repayment option under certain conditions and, if this is the case, under which conditions?

During the length of a fixed rate period the early repayment option is subject to the conditions mentioned above. (see 7.1.)

7.6 In the event of the transfer of the property, what happens to the loan? Can it be transferred or must it be repaid?

If the borrower sells the property, he can keep up the existing loan contract on two conditions: First, he must need the loan to finance new real estate. Secondly, the new property must be adequate collateral providing that the mortgage is valuable and transferable to the new property.

7.7 Is the borrower allowed to remortgage (refinance his mortgage loan)? Must it be with the same lender or can it be with another? What are the conditions and costs involved?

In Germany, re-mortgaging is possible at any time, which offers a flexibility advantage. Even in the case of (early or agreed) repayment of the loan, the non-accessory land charge («*Grundschild*») remains and can be reused at any time by the same bank and the borrower/seller if a new loan contract is concluded.

If the borrower sells the property, he is free to choose whether or not to maintain the contract with his bank. Yet if the borrower/seller enters into a contract with a new bank, the land charge remains as such. The new lender must in this case only be registered as a new creditor. This alteration is less expensive than a cancellation of the collateral or the provision of new collateral.

8. REGULATIONS ON USURY

8.1 Is usury defined by law? What is the principle?

Case law on usury is very extensive relating to the so-called life purchase credit. This refers to the short-term financing of the purchase of goods by consumers and personal loans, which are not secured by a mortgage. Due to the high risk of default, interest rates were sometimes very high. Case law on this is derived from para. 138 of the Civil Code, according to which a legal transaction, which is contra bonos mores, is null and void. After many years of varying case law on this subject, German jurisprudence refers to a statistical table of the German Federal Bank (*Bundesbank*) for different types of credits in order to define usury. Usury exists if the interest rate exceeds the interest rate defined for this type of credit by 100 %.

8.2 Is this important with regard to the mortgage loan?

In the field of mortgage credit granted by institutions (credit institutions and insurance companies), the case law on usury has only little significance, as the interest margins are small and the conditions of the individual institutions only deviate slightly from one another.

8.3 What are the consequences of usury from the point of view of civil law and supervisory law?

In the case of usury, the borrower must pay back the capital and can claim back the interest he has paid, provided it does not date back more than 4 years. Intervention by the Federal supervisory authorities against usury in mortgage credit is unknown. In principle a primary task of the Federal supervisory authority of the credit sector is to monitor the structure of own funds and the liquidity of credit institutions and not their good conduct in civil law. In such cases, the Federal supervisory authority will only intervene in exceptional cases.

8.4 Are there any other restrictions applicable to interest rates?

The regulation of interest rates by the authorities does not exist in the Federal Republic. Interest rates are subject to free competition.

9. LEGAL CONSEQUENCES IN THE EVENT OF INFRINGEMENT OF THE LOAN CONTRACT BY THE BORROWER

9.1 What happens if the borrower does not meet the payment conditions?

If the borrower does not pay his instalments, interest and capital repayment promptly, the bank may declare the amount of the loan payable after setting a deadline. According to para 286 subpara 2 Civil Code the borrower is in default, if he does not meet his payment conditions (without further notice). He is obliged to pay default interest (para 288 subpara 1 Civil Code), according to para 497 para 1 point 2 Civil Code the interest rate exceeds the basic interest rate by 2.5 %. In case of other consumer loan contracts, the default interest rate exceeds the basic interest rate by 5%. The bank is allowed to cancel the contract and to demand a prepayment penalty after setting a deadline. (para 314 subpara 2; para 323 subpara 2 Civil Code).

9.2 In the event of default by the borrower, what possibilities does the law give the creditor to claim for the outstanding debt, the unpaid interest due, the interest not yet due, a lump sum or contractual penalties?

There are no legally established contractual penalties in Germany. The contractual agreement of penalties in the event of default (late payment) is unlawful (para 309 subpara 1 point 6 Civil Code). If the loan is due in the case of cancellation and paid back in advance, the bank may, claim compensation for early repayment. There are no legally defined parameters for the calculation of the prepayment penalty. German jurisdiction has defined precise criteria for the calculation of the of the prepayment penalty. The possibility to demand a higher or lower compensation is based on general legal principles (para 242 Civil Code). In case of default of the borrower it is regulated in para 497 subpara 1 point 3 Civil Code.

9.3 Are interest supplements possible in the event of default?

The calculation of default interest of consumer loan contracts is based on para 497 of the German Civil code. When it concerns consumer loan contracts which are secured by mortgage bonds, the interest rate exceeds the basic interest rate by 2.5 %. In case of other consumer loan contracts, the default interest rate exceeds the basic interest rate by 5 %. The basic interest rate is adapted every six months. The adjustment conforms to the interest rate of the European Central Bank for main financing business. Each contracting party is free, in particular cases, to prove a higher or lower disadvantage.

9.4 What consequences are there in the event of neglect of duty to maintain the building?

The borrower has to maintain the building in a good condition and to insure it against fire damage. Otherwise the bank may cancel the loan.

The neglect of his duties is regarded as an important infringement of the contract.

10. Is the unilateral setting of and/or changing of contractual conditions possible during the loan?

In long-term mortgage credit, there are two types of loan depending on the refinancing. If the refinancing takes place at a variable rate of interest (e.g. through savings deposits, the rate of interest on which is adjusted regularly, or which are redeemable in the short term), the bank will only grant the loan at a variable rate of interest. In such cases, the customer is entitled to repay at any time subject to compliance with a period of notice of 3 months (para 489 subpara 2 Civil Code). Such loans are granted by all credit institutions banks (by mortgage banks and insurance companies only to a little extent).

If the credit institution refinances at a fixed rate of interest, which is particularly the case with institutions issuing mortgage bonds (refinancing at present mostly at between 5 and 15 years), then fixed conditions for the borrower are also laid down for this period. If the bank refinances (see point 4 c) by way of a five-year mortgage bond, then it will also agree to fixed conditions for the loan for 5 years (interest rate, interest duration, amount of the instalment). After the 5 years have expired, the bank is entitled to revise the conditions in accordance with the refinancing possibilities available at the time. If the debtor does not agree to the conditions, he can refuse the amendment, but must then repay the loan. According to a new Federal Supreme Court ruling, the lender is to be given a period of approximately four weeks for to do so.

A right of termination by the borrower during this part of the loan is precluded. However if one of these parts lasts for more than 10 years, then he has a right of cancellation after 10 years (para 489 subpara 1 point 3 Civil Code). This provision has applied since 1.1.1987 for all loans which were offered at a fixed rate of interest, irrespective of the type of refinancing and the group of institutions. Previously, only institutions issuing mortgage bonds could preclude in the long term the borrower's right of termination.

The provision of para 490 subpara 2 of the German Civil Code standardises the borrower's right of cancellation before maturity (s. point 7)

With regard to Basel II the Association of German Mortgage Banks has stipulated that the lender should have the unilateral right to adapt the interest rates of a loan, if the rating of the borrower changes, without automatically changing the fixed term loan into a loan with variable interest rates.

11. REGULATIONS RELATING TO OVER-INDEBTEDNESS

11.1 Is overindebtedness defined and regulated by law?

Over-indebtedness is regulated in the insolvency act, *Insolvenzordnung* (InsO). Insolvency-proceedings for consumers are regulated in art. 304 ff *Insolvenzordnung* (InsO). According to art. 305 InsO insolvency proceedings only take place if extra-judicial settlements have failed.

The borrower has to present a list of assets and a table to adjust his liabilities (art. 304 par. 1 no. 3 and 4 InsO). The insolvency court has to decide about the borrower's plan to adjust his liabilities before the borrower can ask for the opening of the insolvency proceedings (art. 306 InsO). If the creditors accept the plan, the acceptance is regarded as a settlement, the creditors have a title for enforcement and the proceedings are finished (art. 308 par 1 s. 1, 2 InsO). If the creditors do not accept the plan, the insolvency proceedings start.

11.2 On which principles is it based?

The insolvency proceedings aim at promoting extra-judicial settlements before insolvency-proceedings can start.

12. OTHER PROBLEMS RELATING TO CONSUMER PROTECTION

12.1 Are there any legal limits to a maximum loan-to-value ratio and what are they?

There is no immediate prescription defining guidelines with regard to the admissible level of a loan and with regard to the assets of the borrower. The risk estimation and the final decision of whether to grant a credit is the sole responsibility of the bank granting the credit. According to supervision related norms, risks must be justifiable for the institute. The conventional basic commercial principles of proper management lead to a limitation in case of granting a credit. The supervision law stipulates in § 18 of the German Banking Act, that in the case of credits of more than EUR 250.000, the disclosure of economic relations is necessary. Credits below this threshold are also, without explicit obligation, not treated differently.

12.2 Does the lender come under any restrictions when granting the loan, based on the consumer's repayment capacity?

Inherent in the codified German civil law, is the decision that also in case of an exceeding capability of the borrower the loan contract is legally valid given that the conclusion of the contract is based on the borrower's free decision which is not influenced by the creditor.

In any case, strict mortgage protection provisions make sure that the creditor's access to the borrower's assets is limited. The bank that grants a credit has therefore special interest in closing contracts which are only suitable for borrowers which disclose an excessive demand of the borrower.

The Federal Supreme Court has furthermore, in particular cases, assumed immoral conduct. According to this, contracts of surety-ship or assumption of liabilities are not workable if they represent a structural inferiority of the guarantor and if they constitute financial burden which is not compatible with the relation between revenue and assets. The guarantee or joint-liability of the spouses can be immoral conduct inasmuch as between the guarantors and the main borrower exists an emotional bond and if the guarantor can not even pay the running interests of the main dept and if no personal advantage of the guarantor with regard to the taken credit is obvious.

In particular cases (e.g. in cases of economic oppression) the jurisdiction has approved immoral conduct of the loan contract. In doing so, the economic freedom of the borrower is so much limited, that he would lose his personal freedom to fulfil the contract fully or partially.

12.3 Does the lender have a legal obligation to give further information after the conclusion of the contract?

According to general rules the creditor is obliged to autonomously provide all the information which is necessary for the execution of the contract, so that the contracting party is able to fulfil its obligations. Additionally, the German credit sector has engaged itself in the context of a voluntarily code of conduct for mortgage loans to provide broad, pre-contractual information in a standardised and comparable way.

12.3 Does the lender have any legal obligation to disclose the existence and amount of any commission he would have to pay on the occasion of the conclusion of the loan contract (to an intermediary, other)?

No such regulations exist in Germany.

GREECE

1. SCOPE

1.1 What significant legislation is there in your country regulating the protection of the mortgage borrower?

In Greece there is no specific legislation regulating the protection of the mortgage borrower. The consumer, including the mortgage borrower, is however protected by strict banking supervision, a general law for consumer protection (Law 2251/1994), an Act of the Governor of the Bank of Greece for the information to be provided to the clients of banks regarding their transactions with banks (Act 2501/2002) and the general provisions of civil law, according to which the parties to a contract must fulfil it in good faith and in accordance with the purpose of the contract.

1.2 Do the consumer protection measures only concern loans to private persons?

The above consumer protection measures concern loans to both private and legal persons.

1.3 Are the consumer protection measures limited by the purpose of the loan (e.g. for housing) or the existence of the surety?

The consumer protection measures are not limited by the purpose of the loan or the existence of sureties.

2. PRE-CONTRACTUAL INFORMATION TO BE DISCLOSED TO THE MORTGAGE BORROWER

2.1 Is any minimum and/or compulsory information on the lender and the transaction on offer (type, object, duration, costs, etc.) required at the advertising stage?

According to the Act of the Governor of the Bank of Greece 2501/2002, the elements of advertising must respect the pre-contractual information, which according to the Act, should be provided by banks to their clients (type, object, duration, interest rate).

2.2 Are there any advertising restrictions imposed on credit institutions?

According to Greek legislation (art. 9 Law 2251/1994, art. 13 par. 5 Law 2076/1992 and the Act of the Governor of the Bank of Greece 2501/2002) the advertisement of financial services must be precise and comprehensive, true and not misleading.

2.3 Assuming that your national credit institutions apply the Code of Conduct for Home Loans, please confirm disclosure of all information listed under the Code's general information list and European Standardised Information Sheet (see Annex I) and indicate any additional information given to consumers according to national legislation or practice. Please indicate if any listed information is not disclosed, and include the reason for that exception.

Greek banks, which are members of the Hellenic Bank Association and provide home loans, apply the Code of Conduct for Home Loans and they disclose all information listed under the Code's general information list and European Standardized Information Sheet. Additional information given to consumers according to the Act 2501/2002 (separately – not integrated into the ESIS) are as follows: the start of the period and the period in which the rates of the loan fall, the base of calculation and rates (numbers of days in years and months), the default rate and the method of its calculation, the conditions and the charges if applicable in the event of overdraft by the borrower of the contractual terms of the loan and in the event of early repayment, the method of calculation of charges. If applicable, information is also disclosed regarding the foreign exchange risk in the case of loans denominated in a foreign currency or with a foreign currency clause, the possibility and the cost of using foreign exchange risk and interest rate risk mitigation techniques.

Is there any legal or contractual obligation to disclose exact and full information as to his personal circumstances imposed on the borrower?

According to the Act 2501/2002, there is a general obligation, in the framework of the establishment of interest rates by the bank, for the borrower to provide exact information as to his personal circumstances.

2.4 Is there a legal obligation to disclose an Annual Percentage Rate of Charge (APRC) to the mortgage borrower? What is the method of calculation applied? What are the components included in the APRC? Does the calculation of the APRC imply that the lender makes any specific assumptions as to the evolution of the rate (in case of a variable rate or an initial fixed rate)?

There is no legal obligation to disclose an Annual Percentage Rate of Charge (APRC) for home loans. Greek banks, which apply the Code of Conduct for Home Loans, disclose the effective interest rate of charge. On the contrary, there is a legal obligation to disclose the APRC for consumer credit.

2.5 Do these information requirements impact on the credit intermediaries? To what extent?

There is no legal obligation regarding these information requirements for credit intermediaries.

3. PRE-CONTRACTUAL AND CONTRACTUAL OBLIGATIONS IMPOSED ON THE LENDER

3.1 Are there negative and/or positive central databases or other sources of data on the candidate borrower, which are accessible to the lender? Is it compulsory for the lender to consult them and what is the consequence if he does not? Is it possible to access databases on a cross-border basis? Under what conditions?

There is a negative central database and recently, a positive central database has been set up. Both of them are kept by "Teiresias", a corporation established on the initiative of the Hellenic Bank Association. It is not compulsory for the lender to consult these databases. It is not possible to access databases on a cross-border basis.

3.2 Does the lender have a legal duty to provide advice to the candidate borrower? What is the extent of this obligation and its possible consequences?

The lender does not have a legal duty to provide advice to the candidate borrower.

3.3 Is there any kind of responsibility based on the "responsible lending" principle imposed on the lender?

There is no responsibility based on the "responsible lending" principle imposed on the lender.

3.4 Assuming that the European Directive on unfair terms was implemented in national law, what is the definition of an "unfair term" in your legislation? Are there typical terms for mortgage credit, which are forbidden by law?

The European Directive on unfair terms was implemented in national law (art. 2 Law 2251/1994). The general definition of "unfair terms" in our legislation is provided in the law 2251/1994 as follows: General terms of transactions, which cause an imbalance in the parties' rights and obligations to the detriment of the consumer are forbidden and they are null and void. According to a very recent decision of the Court of Appeal of Athens, some terms in mortgage credit are forbidden by law, because they are regarded as being abusive or illegal. However, this case is not closed before the Greek tribunals.

3.5 Is there a legal link between the goods/services contract and the credit contract? Is there a joint and several liability between the supplier of the goods/services and the lender funding the purchase? What is the extent of this responsibility? Does the borrower have a legal obligation to possibly take action against the supplier before taking action against the lender?

In mortgage credit, there is no legal link between the goods/services contract and the credit contract. There is no joint and several liability between the supplier of the goods/services and the lender funding the purchase.

3.6 Is the linking of services to the mortgage credit regulated? Is it forbidden or authorised under a number of conditions?

The linking of services to the mortgage credit is not regulated.

3.7 Are there certain legal requirements, which oblige the borrower to take out specific insurance with regard to the mortgage credit (for example, life insurance)?

There are legal requirements, which oblige the borrower to take out fire and earthquake insurance with regard to mortgage credit. Other kinds of insurance are voluntary.

4. CONCLUSION OF THE CREDIT AGREEMENT

4.1 Must the borrower receive a copy of all the conditions of the future credit agreement in the form of a written offer or in any other form? What information must this offer contain? What are the consequences of not complying with this legal requirement?

Apart from the obligations of the Code of Conduct on Home Loans, according to the Act 2501/2002, banks are obliged to notify their clients of all the conditions of the future agreement and to give them a copy of the contract after its conclusion. The Bank of Greece is able to impose sanctions on banks, which do not comply with the above legal requirement.

4.2 Must the offer comply with the contractual conditions of a specific standard agreement? Who lays down this standard agreement? What are the consequences of not complying with this legal requirement?

There is no such obligation.

4.3 What rights and commitments arise for the creditor and the borrower from handing over the offer?

Not applicable.

4.4 Is the borrower entitled legally or contractually to a right of reflection? What are the conditions linked to the exercising of this entitlement?

This depends on the contractual terms.

4.5 How does the acceptance of the offer by the borrower take place? Are there specific formal and procedural requirements to be observed?

Not applicable.

4.6 What commitment deadlines apply to the offer?

Not applicable

4.7 When does the credit agreement come into effect?

The credit agreement comes into effect when both parties sign the contract on the premises of the bank.

4.8 In the event that the borrower applies for several credits for one and the same purchase, is there a link between the different credits, according to which, the failure of one credit to be granted would allow him to cancel the others? What are the conditions associated with this link?

If the borrower wishes to take out a second loan for the same purpose, he signs a second contract, etc. A second or subsequent loan may be granted if the credit limit has not been reached.

4.9 Is the contract a «real» contract (directly linked to the property), a consensual contract (agreement by the parties is sufficient) or even a solemn agreement (complementary formalities are required)?

It is a consensual contract.

4.10 Can the lender unilaterally lay down the conditions, according to which he will transfer the funds to the borrower?

5. SURETY AGREEMENTS

5.1 Do the guarantors come under the same consumer protection law as the borrower? What are the principles for the protection?

There is a trend in recent jurisprudence to consider the guarantor as a consumer, so that he comes under the same consumer protection law as the borrower.

5.2 Does legislation stipulate a limit to the surety i.e. a time limit or a limit as to its amount?

There is no such legislative stipulation.

5.3 Does the lender have a legal obligation to take action against the borrower first before acting against the guarantor?

According to Art. 855 of Civil Code the guarantor is entitled to refuse payment of the debt until the creditor has attempted to take possession of the debtor's principal property without success. In fact, by virtue of a specific term in the contract, lenders usually force borrowers to resign from the above rights.

6. RIGHT OF WITHDRAWAL

6.1 After the conclusion of the mortgage credit contract, is the borrower entitled legally or contractually to cancel it, especially in the event that the contract for which the loan has been applied falls through?

The borrower can cancel the loan application or contract at any time up until the point when the mortgage is registered. The cancellation of the application results in the loss of all expenses defrayed by the lender in the intervening time, which the borrower has paid or still has to pay.

6.2 What is the deadline for exercising this right of withdrawal?

Any point up until the mortgage is registered in the mortgage register.

6.3 Is the exercising of the right of withdrawal subject to any formal or procedural requirements?

It must be submitted in writing.

6.4 Is the lender entitled to register in any way the fact that the borrower has exercised the right of withdrawal?

6.5 Are the parties subject to specific requirements in the case of withdrawal when winding up the contract?

See 6.1.

7. RIGHT OF EARLY REPAYMENT

7.1 Is the borrower legally entitled to repay early? If this is the case, what are the terms of the procedure?

According to the Act 2501/2002, the borrower is entitled to repay early. The terms of the procedure are fixed contractually.

7.2 Is the lender allowed to charge the costs involved by the early repayment to the borrower? Under which conditions? What is the basis for the calculation of the indemnity?

According to the Act 2501/2002 the lender is allowed to charge the costs involved by the early repayment to the borrower under the condition that he explains pre-contractually the conditions and the terms of the early repayment and the method of calculation of the charges. According to a recent decision of the Court of Appeal of Athens, the lender has to explain clearly and precisely in the contract the charges to be paid in case of early repayment, the criteria on which the charges are imposed and the method of their calculation.

7.3 In addition to the legally established contractual indemnity/penalties, can the lender claim for further contractual penalties?

Not applicable.

7.4 Is the right to early repayment subject to certain conditions and, if this is the case, which conditions?

It depends on the contract.

7.5 Is the lender allowed to suppress the early repayment option under certain conditions and, if this is the case, under which conditions?

Not applicable

7.6 In the event of the transfer of the property, what happens to the loan? Can it be transferred or must it be repaid?

Transfer of the (mortgaged) property does not affect the loan. It cannot be transferred nor must it be repaid; the new owner simply runs the risk of the forced sale of the property on creditor's initiative in the event of default by the borrower (seller).

7.7 Is the borrower allowed to remortgage (refinance his mortgage loan)? Must it be with the same lender or can it be with another? What are the conditions and costs involved?

The borrower is allowed to refinance his mortgage loan with the same or another lender. The conditions and costs involved are not fixed and they are closely linked with the bank's policy and with the way the refinancing takes place.

8. REGULATIONS ON USURY

8.1 Is usury defined by law? What is the principle?

According to Greek law, there is a distinction between bank interest rates and legal interest rates. Banks currently fix interest rates for bank credit. According to the provisions of the Act of the Governor of the Bank of Greece 2286/1994, this kind of interest rates is set by banks without prejudice with regard to the minimum respective rates in force at the time.

8.2 Is this important with regard to the mortgage loan?

For mortgage loans, interest rates are fixed by the banks.

8.3 What are the consequences of usury from the point of view of civil law and supervisory law?

The consequence of usury under civil law is that the contract becomes null and void. The consequences under supervisory law are penalties, usually in the forms of fines. There are also penal sanctions for usury.

8.4 Are there any other restrictions applicable to interest rates?

9. LEGAL CONSEQUENCES IN THE EVENT OF INFRINGEMENT OF THE LOAN CONTRACT BY THE BORROWER

9.1 What happens if the borrower does not meet the payment conditions?

If the borrower does not fulfill the payment conditions, he receives no further loan instalments. If the amount paid out until that point is more than 50% of the construction work carried out, the lender may call in the loan. Moreover, if two or three instalments are not paid, forced sale proceedings are initiated.

9.2 In the event of default by the borrower, what possibilities does the law give the creditor to claim for the outstanding debt, the unpaid interest due, the interest not yet due, a lump sum or contractual penalties?

See above (9.1).

9.3 Are interest supplements possible in the event of default?

The law defines the default interest rate.

9.4 What consequences are there in the event of neglect of duty to maintain the building?

According to Art. 1284 of Civil Code, if the mortgaged property is likely to fall in value, the creditor can ask the debtor to take all necessary measures to avoid that risk or else he is entitled to demand immediate settlement of the debt.

10. IS THE UNILATERAL SETTING OF AND/OR CHANGING OF CONTRACTUAL CONDITIONS POSSIBLE DURING THE LOAN?

The unilateral setting of and/or changes to the contractual conditions during the loan are not permitted. They are considered as abusive (article 2 law 2251/1994), except if they are imposed for a specific and important reason. The unilateral setting and changing of interest rates is permitted only if specific and reasonable criteria for change are defined in the contract.

11. REGULATIONS RELATING TO OVERINDEBTEDNESS

11.1 Is overindebtedness defined and regulated by law?

No

11.2 On which principles is it based?

Not applicable

12. OTHER PROBLEMS RELATING TO CONSUMER PROTECTION

12.1 Are there any legal limits to a maximum loan-to-value ratio and what are they?

No

12.2 Does the lender come under any restrictions when granting the loan, based on the consumer's repayment capacity?

There is no relevant legislation.

12.3 Does the lender have a legal obligation to give further information after the conclusion of the contract?

Yes in specific cases provided for in the Act 2501/2002.

12.4 Does the lender have any legal obligation to disclose the existence and amount of any commission he would have to pay on the occasion of the conclusion of the loan contract (to an intermediary, other)?

No.

SPAIN

1. SCOPE

1.1 What significant legislation is there in your country regulating the protection of the mortgage borrower?

- Order of May 5th 1994, about transparency of mortgage loans financial conditions
- Law 7/95 about Consumer Credit
- Order of December, 12th 1989, about commissions, fees, and information to consumers.
- Law 2/1994 of March 30th, concerning mortgage loans subrogation and modification.

1.2 Do the consumer protection measures only concern loans to private persons?

a) Concerning the Order of May 5th 1994 regarding the transparency of the financial conditions of mortgage loans, consumer protection only protects private persons, who are acting for purposes which can be regarded as outside his trade, business or profession.

b) Law 2/94 (about mortgage loans subrogation and modification) covers lenders, which are financial institutions referred to in article 2 of Law 2/1981 of March 25th about mortgage markets.

1.3 Are the consumer protection measures limited by the purpose of the loan (e.g. for housing) or the existence of the surety?

The Order of May 5th 1994 is applied when one aspect of the loan is that it is a mortgage loan with a house as a guarantee. The measures adopted in the law 2/94 are not limited by the purpose of the loan.

2. PRE-CONTRACTUAL INFORMATION TO BE DISCLOSED TO THE MORTGAGE BORROWER

2.1 Is any minimum and/or compulsory information on the lender and the transaction on offer (type, object, duration, costs, etc.) required at the advertising stage?

There is no minimum or compulsory information, except for the effective interest rate.

2.2 Are there any advertising restrictions imposed on credit institutions?

When advertising concerns the effective interest rate of a product, it must be authorized in advance by the Bank of Spain.

2.3 Assuming that your national credit institutions apply the Code of Conduct for Home Loans, please confirm disclosure of all information listed under the Code's general information list and European Standardised Information Sheet (see Annex I) and indicate any additional information given to consumers according to national legislation or practice. Please indicate if any listed information is not disclosed, and include the reason for that exception.

Is there any legal or contractual obligation to disclose exact and full information as to his personal circumstances imposed on the borrower?

To guarantee the correct information and protection of the people contracting mortgage loans, since 1994, Spanish regulations compel all credit institutions to inform any persons requesting mortgage loans by providing them with:

1. A brochure, whose minimum contents are similar to the information of the European Standardised Information Sheet
2. A Binding offer

Once the real estate appraisal has been effected and, if appropriate, the legal situation of the property as well as the financial capacity of the borrower have been checked, the credit institution shall have to make a binding loan offer to the borrower or, if the case arises, to inform him of the refusal to grant the loan.

The offer must be made in writing and it must specify the financial conditions relative to the financial clauses included in the loan deed. The offer must be signed by a representative of the institution and, unless extraordinary circumstances occur or these are not imputable to the institution, it will have a period of validity of not less than 10 working days from the date of delivery.

2.4 Is there a legal obligation to disclose an Annual Percentage Rate of Charge (APRC) to the mortgage borrower? What is the method of calculation applied? What are the components included in the APRC? Does the calculation of the APRC imply that the lender makes any specific assumptions as to the evolution of the rate (in case of a variable rate or an initial fixed rate)?

Yes. The binding offer must include the “effective transaction cost”, calculated in accordance with the Bank of Spain’s regulations.

The components included are:

- Handling charges and fixed charges
- Personal insurance by borrower (life, health...) when imposed by the lender.
- Insurance against unemployment: when imposed by the lender

The requirements for giving the effective interest rate are set out in a regulation of the Bank of Spain.

2.5 Do these information requirements impact on the credit intermediaries? To what extent?

No.

3. PRE-CONTRACTUAL AND CONTRACTUAL OBLIGATIONS IMPOSED ON THE LENDER

3.1 Are there negative and/or positive central databases or other sources of data on the candidate borrower, which are accessible to the lender? Is it compulsory for the lender to consult them and what is the consequence if he does not? Is it possible to access databases on a cross-border basis? Under what conditions?

Yes. The lender can consult positive and negative databases. The lender may consult (not compulsory) a negative database of bad-debtors. The lender must consult (compulsory) a positive database called the “Central de Información de Riesgos” (Information Risks Central) of the Bank of Spain.

3.2 Does the lender have a legal duty to provide advice to the candidate borrower? What is the extent of this obligation and its possible consequences?

No. The lender doesn’t have this legal duty. If the lender gives wrong advice to the borrower, the court could sanction him.

3.3 Is there any kind of responsibility based on the “responsible lending” principle imposed on the lender?

No.

3.4 Assuming that the European Directive on unfair terms was implemented in national law, what is the definition of an “unfair term” in your legislation? Are there typical terms for mortgage credit, which are forbidden by law?

No, there are no typical terms for mortgage credit. “Unfair terms” are those which are against good faith and result in an imbalance between the parties.

3.5 Is there a legal link between the goods/services contract and the credit contract? Is there a joint and several liability between the supplier of the goods/services and the lender funding the purchase? What is the extent of this responsibility? Does the borrower have a legal obligation to possibly take action against the supplier before taking action against the lender?

a) No, concerning mortgage loans.

b) Yes, in Law 7/95 on Consumer Credit, which is similar the Consumer Credit Directive.

3.6 Is the linking of services to the mortgage credit regulated? Is it forbidden or authorised under a number of conditions?

No.

3.7 Are there certain legal requirements, which oblige the borrower to take out specific insurance with regard to the mortgage credit (for example, life insurance)?

Yes, property damage insurance.

4. CONCLUSION OF THE CREDIT AGREEMENT

4.1 Must the borrower receive a copy of all the conditions of the future credit agreement in the form of a written offer or in any other form? What information must this offer contain? What are the consequences of not complying with this legal requirement?

Yes, a binding offer (see above, 2.2.)

4.2 Must the offer comply with the contractual conditions of a specific standard agreement? Who lays down this standard agreement? What are the consequences of not complying with this legal requirement?

The offer must be made in writing and it must specify the financial conditions relative to the financial clauses of the public deed to be signed.

The Notary must check if there are any differences between the financial conditions of the binding loan offer and the financial clauses of the contractual document, advising the borrower of the differences, if any, and of his right to refuse the transaction.

4.3 What rights and commitments arise for the creditor and the borrower from handing over the offer?

The borrower is free to accept or reject the offer. The creditor is bound by the offer.

4.4 Is the borrower entitled legally or contractually to a right of reflection? What are the conditions linked to the exercising of this entitlement?

Yes, because the offer must have a period of validity of not less than 10 working days.

4.5 How does the acceptance of the offer by the borrower take place? Are there specific formal and procedural requirements to be observed?

The borrower has to sign the offer and return it to the lender.

4.6 What commitment deadlines apply to the offer?

The offer must have a period of validity of not less than 10 working days.

4.7 When does the credit agreement come into effect?

The agreement comes into effect, when the loan deed is executed before a Public Notary.

4.8 In the event that the borrower applies for several credits for one and the same purchase, is there a link between the different credits, according to which, the failure of one credit to be granted would allow him to cancel the others? What are the conditions associated with this link?

No, not as a legal obligation, but a link between the different credits could be agreed in the contract.

4.9 In the event that the borrower applies for several credits for one and the same purchase, is there a link between the different credits, according to which, the failure of one credit to be granted would allow him to cancel the others? What are the conditions associated with this link?

It is a real contract. It is compulsory that debtor borrows the money from a financial institution through a public deed and inscribes it in the Land Registry.

4.10 Can the lender unilaterally lay down the conditions, according to which he will transfer the funds to the borrower?

No.

5. SURETY AGREEMENTS

5.1 Do the guarantors come under the same consumer protection law as the borrower? What are the principles for the protection?

Yes. The principles are similar to those in the Directive on Consumer Credit.

5.2 Does legislation stipulate a limit to the surety i.e. a time limit or a limit as to its amount?

There are no limits.

5.3 Does the lender have a legal obligation to take action against the borrower first before acting against the guarantor?

No, because normally it is agreed in the contract that the guarantor is jointly responsible. If not, there are rules about benefits of "division of debt", "order" and taking action against the debtor first, and afterwards, if there is an outstanding debt, taking action against the guarantor.

6. RIGHT OF WITHDRAWAL

6.1 After the conclusion of the mortgage credit contract, is the borrower entitled legally or contractually to cancel it, especially in the event that the contract for which the loan has been applied falls through?

No. There is no "cooling off" period.

6.2 What is the deadline for exercising this right of withdrawal?

There is no deadline.

6.3 Is the exercising of the right of withdrawal subject to any formal or procedural requirements?

The borrower must cancel in writing according to the notice required in the contract.

6.4 Is the lender entitled to register in any way the fact that the borrower has exercised the right of withdrawal?

No.

6.5 Are the parties subject to specific requirements in the case of withdrawal when winding up the contract?

There are no specific requirements.

7. RIGHT OF EARLY REPAYMENT

7.1 Is the borrower legally entitled to repay early? If this is the case, what are the terms of the procedure?

Yes. The borrower must apply for an early repayment in writing according to the notice required in the contract.

7.2 Is the lender allowed to charge the costs involved by the early repayment to the borrower? Under which conditions? What is the basis for the calculation of the indemnity?

No. The cost is according to the clause of the contract, and established by the law, in the mortgage loans at variable interest, that the creditor shall not receive, as a commission for early repayment of a loan, more than 1% of the paid off capital even though a larger commission could be agreed.

7.3 In addition to the legally established contractual indemnity/penalties, can the lender claim for further contractual penalties?

No.

7.4 Is the right to early repayment subject to certain conditions and, if this is the case, which conditions?

The conditions are fixed in the contract (see 7.1.). The borrower must request early repayment in writing one month before the date of payment. He is furthermore and is not permitted to repay less than 1.000 euros each time, according to the notice required in the contract.

7.5 Is the lender allowed to suppress the early repayment option under certain conditions and, if this is the case, under which conditions?

No, it depends on the conditions agreed in loan agreement (i.e.: once a year).

7.6 In the event of the transfer of the property, what happens to the loan? Can it be transferred or must it be repaid?

The loan can be transferred and the lender can choose to accept the new borrower or reject him.

7.7 Is the borrower allowed to remortgage (refinance his mortgage loan)? Must it be with the same lender or can it be with another? What are the conditions and costs involved?

Yes. The debtor is able to subrogate with another financial institution without the creditor's consent in order to pay the debt, which he had previously contracted with the said financial institution. The subrogation must be effected through a public deed, stating the intentions of the borrower, according to the provisions of article 1.211 of the Spanish Civil Code. There are tax benefits and reduced Notary and Registry fees.

It can be with the same lender or with a new one. The buyer of the house pays the price to the seller, minus the outstanding value of the mortgage loan, and becomes the new debtor, on the condition of the agreement of the creditor.

8. REGULATIONS ON USURY

8.1 Is usury defined by law? What is the principle?

The law of July, 23rd 1905 states:

The loan agreement will be null and void in the event that the interest rate reaches a level markedly higher than the market normal rate for money and is clearly disproportionate to the circumstances of the case or the interest rate itself becomes enormously higher than the market rate, and it can be surmised that the borrower has been forced to accept this rate increase due to his desperate financial situation, or inexperience or by virtue of his not being of full mental capacity.

The courts decide if the interest rate is against the law of July, 23rd 1905.

8.2 Is this important with regard to the mortgage loan?

No. Normally the competence between credits institutions avoids such cases of usury.

8.3 What are the consequences of usury from the point of view of civil law and supervisory law?

If the court decides there is usury, they would decide on the interest rate to be applied.

8.4 Are there any other restrictions applicable to interest rates?

There are no other restrictions.

9. LEGAL CONSEQUENCES IN THE EVENT OF INFRINGEMENT OF THE LOAN CONTRACT BY THE BORROWER

9.1 What happens if the borrower does not meet the payment conditions?

There is interest on the late payment and, if the situation continues, payment would eventually be sought through the courts.

9.2 In the event of default by the borrower, what possibilities does the law give the creditor to claim for the outstanding debt, the unpaid interest due, the interest not yet due, a lump sum or contractual penalties?

The right of the creditor to claim outstanding debt, the unpaid interest due, a lump sum, etc., is only granted by court order.

9.3 Are interest supplements possible in the event of default?

As it said in paragraph 9.1., there is interest on the late payment.

9.4 What consequences are there in the event of neglect of duty to maintain the building?

The creditor may terminate the agreement early and demand full payment of the outstanding debt. The borrower would eventually be taken to court, and the court will give its decision about this matter. The lender can also request that the borrower provides an additional mortgage guarantee.

10. IS THE UNILATERAL SETTING OF AND/OR CHANGING OF CONTRACTUAL CONDITIONS POSSIBLE DURING THE LOAN?

No.

11. REGULATIONS RELATING TO OVERINDEBTEDNESS

11.1 Is overindebtedness defined and regulated by law?

No.

11.2 On which principles is it based?

12. OTHER PROBLEMS RELATING TO CONSUMER PROTECTION

12.1 Are there any legal limits to a maximum loan-to-value ratio and what are they?

No, but if the mortgage loan is subject to the Law about Mortgage Markets, the maximum loan-to-value ratio is 80 %.

12.2 Does the lender come under any restrictions when granting the loan, based on the consumer's repayment capacity?

No.

12.3 Does the lender have a legal obligation to give further information after the conclusion of the contract?

No, the lender only has to inform the borrower of changes in variable interest rates.

12.4 Does the lender have any legal obligation to disclose the existence and amount of any commission he would have to pay on the occasion of the conclusion of the loan contract (to an intermediary, other)?

No. All commissions must be agreed in the contract.

FRANCE

1. SCOPE

1.1 What significant legislation is there in your country regulating the protection of the mortgage borrower?

Consumer protection in the area of loan originates from laws dated 10 January 1978 and 13 July 1979, which were codified in the Consumer Code by a law dated 26 July 1993.

Book III of the Consumer Code is devoted to indebtedness.

Title 1, «Loan», deals with:

- Consumer loan (Articles L.311-1 et seq Consumer Code – formerly the law dated 10 January 1978, known as «Scrivener law 1”),
- Mortgage loans (Articles L. 312-1 et seq of the Consumer Code – formerly the law dated 13 July 1979, the known as «Scrivener law 2”).

A third chapter contains provisions common to these two types of loan (Articles L. 313 et seq of the Consumer Code).

As a rule, mortgage loans come under Chapter 2 (Articles L. 312-1 et seq of the Consumer Code). In certain cases, they may come under Chapter 1, relating to consumer loans (Articles L. 311-1 et seq of the Consumer Code). This concerns loans financing work of less than 21,500 €, which are not concluded by a deed executed and authenticated by a notary (these loans are not covered by a mortgage).

The Consumer Code will be quoted under the item number reference, followed by Consumer Code. The letters L. and R. preceding the number of the items indicate the nature of the legislative or regulatory text; the first three digits of the number of items identify the « book », the « title » and the « chapter » to which the article pertains.

The Civil Code will be quoted under the item number, followed by the reference Civil Code.

1.2 Do the consumer protection measures only concern loans to private persons?

It is generally permitted that consumer-protection measures relate to loans to natural persons.

The law explicitly specifies this for measures relating to the treatment of over-indebtedness (cf.11), but not for loan operations themselves. However, as far as property loans are concerned, the following are expressly excluded from the purview of the law:

- artificial persons in public law,
- acquirers who accomplish their operations in the context of their occupation (promoters, estate agents, property developers, real-estate associations),
- artificial persons in private law, from the moment when, by virtue of their company’s object, they procure in any form whatever buildings or fractions of buildings... in ownership or usufruct.

Individuals, who make investments in rented properties by way of assets, are therefore protected, unless the size and number of the investments in rented properties puts them on a par with professionals.

1.3 Are the consumer protection measures limited by the purpose of the loan (e.g. for housing) or the existence of a surety?

Articles L. 312-1 et seq of the Consumer Code apply to all loans which, whatever their qualification or their mechanism, are intended to finance one or other of the following operations:

- the acquisition in ownership or usufruct of property for residential use or for business and residential use;
- the subscription or purchase of company shares (respectively, in SARLs or SAs) empowering the attribution in ownership or usufruct of such real property;
- Outlays relating to their construction, repair, improvement, upkeep, when the total amount of such outlays is greater than EUR 21,500;
- the purchase of plots intended for the construction of said properties.

The object of the loan (financing of an operation relating to a property for residential use or for mixed business and residential use) therefore conditions the application of the law.

This text refers to all acquisitions (in ownership, usufruct, bare-ownership), provided that they are made for valuable consideration, in the form of a loan, without distinguishing between main residences and mixed business-dwelling residences.

The existence or otherwise of a surety, as well as the nature of this surety, have no influence on the protection of the borrower.

When Articles L. 311-1 et seq of the Consumer Code are applicable (cf. 1.1 hereinabove), they apply not to the purpose of the loan, but rather to its amount.

2. PRE-CONTRACTUAL INFORMATION TO BE DISCLOSED TO THE MORTGAGE BORROWER

2.1 Is any minimum and/or compulsory information on the lender and the transaction on offering (type, purpose, term, costs, etc.) required at the advertising stage?

Art. L. 312-4 to L. 312-6 of the Consumer Code provide for dual advertising:

- an impersonal and general advertisement, increasing public awareness, supplemented by brand advertising, which may only specify the identity of the lender, and the nature and purpose of the loan;
- a personal advertisement on a targeted product. The latter must, if it includes one or more statistical elements, mention the duration of the loan, the total cost and the total effective rate of the loan.

Any indication, which is misleading, is sanctioned by the courts. Such an act constitutes « deceptive advertising ».

However, any advertisement or information document handed to the borrower must indicate:

- The existence of the "cooling-off" period of 10 days (cf. 4.3 and 4.4)
- The fact that the sale is subject to the obtaining of the loan, and that if it is not obtained, the vendor must reimburse the sums paid (cf. 3.5).

Finally, any advertisement treating monthly repayments in the same way as rents or making reference, for the calculation of the instalments, to welfare benefits that are not guaranteed throughout the whole term of the contract, is prohibited.

2.2 Are there any advertising restrictions imposed on credit institutions?

A decree dated 15 March 1968 governs representations by way of “propaganda or advertising”, with a view to offering, inter alia, money loans. This decree states notably that persons, who live or have their head office outside of the French Republic must, prior to making such advertisements, appoint an authorised agent, who lives or has his registered office in France. It states that such advertisements must disclose the identity of the person, from whom the offer emanates (corporate name, head office).

Subject to these reserves, credit institutions are not subject to specific advertising restrictions.

2.3 Assuming that your national credit institutions apply the Code of Conduct for Home Loans, please confirm the disclosure of all information listed under the Code’s general information list and the European Standardised Information Sheet (see Annex I) and indicate any additional information given to consumers according to national legislation or practice. Please indicate if any listed information is not disclosed, and include the reason for the omission.

Information which must be given by way of general information (general information list) is incorporated in the documents made available to the public by the institutions adhering to the Code.

The information on the European Standardised Information Sheet is obligatory within the framework of the previous offer.

Is there any legal or contractual obligation to disclose exact and full information as to his personal circumstances imposed on the borrower?

The borrower is not subject to particular legal obligations, which would oblige him to provide accurate and full information concerning his personal situation. Nevertheless, a range of information is required on the occasion of his application for a loan, and it is customary for documents to be produced as (wage slips, employer references, bank statements, tax notices...). The lender may decide not to process an application for a loan, if the borrower does not communicate the necessary data. These practices are reinforced by the provision relating to the prevention of money-laundering, which requires lenders to obtain certain data concerning the client. Moreover, when membership of an insurance group is provided for (cf. 3.7), the information given in order to obtain this membership must be true. Any false declarations are subject to the sanctions relating to false declarations by an insured person.

2.4 Is there a legal obligation to disclose an Annual Percentage Rate of Charge (APRC) to the mortgage borrower? What is the method of calculation applied? What are the components included in the APRC? Does the calculation of the APRC imply that the lender makes any specific assumptions as to the evolution of the rate (in case of a variable rate or an initial fixed rate)?

The definition of the APR was fixed by a law dated 28 December relating to usury. Various regulatory texts brought essential details to the concept and the calculation of this rate. Finally, the European rules for the displaying of the annualised percentage rate in relation to consumer loans were inserted into French regulation by decrees dated 10 June 2002.

The provisions relating to the APR are codified in Articles. L.313-1 and L.313-2, and R.313-1 et seq of the Consumer Code They apply to mortgage loans. The principle is that, in future, for any loan operation (even between persons in the profession), the APR must be calculated according to an equivalent method. However, two exceptions are provided for. They concern:

- Property-loan operations, extended to consumers coming under Articles L. 312-1 et seq of the Consumer Code,
- The financing operations of a business activity and loans to artificial persons in public law.

For property loans to consumers, the APR is an annual rate proportionate to the rate for the term of the loan and instalment arrears. The rate for the term of the loan is calculated actuarially from a unitary period corresponding to the periodicity of the payments made by the borrower, in accordance with the compound-interest method. In all cases, to determine the APR, charges, commissions or remunerations of any kind, direct or indirect, corresponding to actual disbursements (charges for preparation of the files relating to life-assurance/disablement contributions, and redundancy, etc) are added to the theoretical actuarial rate defined above. However, the charges associated with the securities to which the loans are subject, together with the notary's honoraria, are not included in the APR described above, when the amount thereof cannot be precisely stated, prior to the final conclusion of the contract.

2.5 Do these information requirements impact on the credit intermediaries? To what extent?

Intermediaries are not subject to any particular obligations. However, they must abide by the rules concerning advertising, when they present the loan conditions in their own advertising documents (see. 2-1 above) ; moreover, the advertisement must state the corporate name and address of the company on whose behalf they are intervening.

3. PRE-CONTRACTUAL AND CONTRACTUAL OBLIGATIONS IMPOSED ON THE LENDER

3.1 Are there negative and/or positive central databases or other sources of data on the candidate borrower, which are accessible to the lender? Is it compulsory for the lender to consult them and what is the consequence if he does not? Is it possible to access databases on a cross-border basis? Under what conditions?

The « Fichier national des interventions de remboursements des loans a particuliers » [record office of loan repayments by individuals] (FICP) is a negative file and records declarations relating to payment difficulties and information on measures for dealing with over-indebtedness. The FICP was set up within the framework of the law dated 31 December 1989, relating to the prevention and settlement of the problems of individuals and families, the provisions of which, amended on a number of occasions, were incorporated into the Consumer Code (Articles. L. 333-4 to L. 333-6 of the Consumer Code). Its main purpose is to offer assessment data to credit institutions on the difficulties encountered by individuals in meeting their repayment instalments. The contents of the file are specified in Art. L. 333-4 of the Consumer Code. It basically records:

- characterised payment (unpaid equal to three monthly instalments, or, if the loan does not operate on monthly instalments, unpaid for 90 days) and the payment defaults for which the lender institutes a judicial recovery procedure or declares the cancellation of the term,
- the decisions relating to over-indebtedness procedures: decision on the admissibility of over-indebtedness files, agreed or judicial measures for the treatment of over-indebtedness.

This data is deleted from the file, either as a result of the rectification of the situation of the borrower, or because the statutory period has come to an end.

The rules for the use of the file are laid down in regulation 90.05 dated 11 April 1990 promulgated by the « Comité de la réglementation bancaire and financière » [banking and finance regulatory board], as amended on various occasions. Consultation of the FICP is not obligatory; however, it is always exercised. The institution remains free to lend, even if the file indicates difficulties.

3.2 Does the lender have a legal duty to provide advice to the borrower applicant? What is the extent of this obligation and its possible consequences?

The lender does not have a legal obligation to advise. Disclosure requirements are largely provided for by law.

However, the courts often blame lenders for not having sufficiently warned the consumers about certain elements, e.g. the consequences of the life/incapacity to work insurance.

3.3 Is there any kind of responsibility based on the "responsible lending" principle imposed on the lender?

No specific principle of « responsible lending » is imposed on lenders by law.

The courts, however, have penalised lenders for having agreed loans which exceeded the indebtedness capacities of borrowers. Likewise, over-indebtedness commissions may, in certain cases, take into account the knowledge, which the lender could have had of the indebtedness of a borrower, or of the fact that the contracts would not have been concluded with the seriousness required by professional practices.

It is a matter of the application of the conventional norms of professional responsibility. Such cases remain exceptional, insofar as the lenders always initiate a risk analysis, and in particular, an analysis of the repayment capacity of the borrowers.

3.4 Assuming that the European Directive on unfair terms was implemented in national law, what is the definition of an "unfair term" in your legislation? Are there typical terms for mortgage credit, which are forbidden by law?

French legislation on unfair clauses provides for the possibility of declaring certain contractual clauses "unfair" in contracts concluded "between professionals and non-professionals or consumers". Art. L. 132-1 of the Consumer Code defines unfair clauses as «clauses, the purpose or effect of which is to create, to the detriment of the non-professional or consumer, a significant imbalance between the rights and obligations of the parties to the contract».

A list of clauses which can be considered as unfair – if they involve the imbalance referred to in Art. L. 132-1 of the Consumer Code - figures in annex to the Code; the list is not exhaustive, and the courts may consider that a clause is unfair if it meets the definition of the phrase (significant imbalance). Additionally, decrees may determine types of clauses, which are considered to be unfair.

An «unfair clauses » commission has been set up, which can issue recommendations. Such recommendations are not binding on the courts, but are often taken into consideration.

No decree has been published, nor any recommendation issued by the "unfair clauses" commission relating directly to mortgage loans. However, the "unfair clauses" commission has published recommendations «concerning loans in contracts relating to home ownership, concluded between professionals and consumers or non-professionals" and «concerning insurance policies complementary to a contract relating to consumer loan or a property loan....»

3.5 Is there a legal link between a goods/services contract and a loan agreement? Is there a joint and several liability between the supplier of the goods/services and the lender funding the purchase? What is the extent of this liability? Does the borrower have a legal obligation to take action against the supplier before taking action against the lender?

One of the key ideas of the law of 1979 was to organise interdependency between contracts. In this way, provisions of the Consumer Code render the taking of effect of the loan agreement subject to the performance of the main contract, and vice versa.

On this basis, Art. L. 312-12 of the Consumer Code provides that the loan should be accepted by the borrower, on the suspensive condition of the non-conclusion of the main contract within four months. Obviously, the main contract may be concluded in less than four months.

Reciprocally, Art. L. 312-16 of the Consumer Code provides that the main contract should be concluded on the suspensive condition of obtaining the loan or loans provided by the financing.

No liability of the lender ensues from this in relation to the main operation. The objective of the law is to prevent a loan from being put in place when the operation cannot be carried out, and to prevent a consumer, who has not been able to obtain the necessary financing from being faced with a property operation and paying compensation amounts to the vendor.

The borrower has no recourse against the lender because of the difficulties he would encounter in terms of the main operation.

Art. L. 312-19 of the Consumer Code however permits a judge to suspend the loan agreement in the event of a dispute concerning the enforcement of a company contract, until the dispute is settled. During the suspension term, no interest is payable.

For that, the following is necessary:

- it should be stated in the loan deed that the latter is intended for financing works, while specifying the type of contract enabling these works to be carried out.
- the lender should be summoned before the court or implicated by one of the parties.

3.6 Is the linking of services to mortgage loans regulated? Is it prohibited or authorised under a number of conditions?

A law dated 11 December 2001 (law laying down various, urgent measures of reform of a financial nature, called «Murcef») recently laid down a principle for the prohibition of « grouped » sales and premium sales, accompanied by criminal sanctions, in the sphere of loan operations. Nevertheless, there are different levels of prohibition.

“Grouped sales” are authorised when each service included in the package may be acquired individually. It appears that the price of an individually acquired service may be different from the price for the service « included » in the package, if, of course, it can be justified economically.

Moreover, the prohibition does not apply to « inseparable » services. In particular, it does not concern life assurance/work incapacity as security for a loan.

3.7 There are no legal provisions binding the borrower to take out specific insurances in relation to loans.

Life – work incapacity insurance:

Life – work incapacity insurance is routinely suggested, at least in the event of accession to home ownership. It is very widely admitted by consumers that such insurance is indispensable, and constitutes substantial security for the lenders.

As a general rule, lenders have taken out group insurance policies. The terms of these insurance policies are negotiated between the lenders and the insurance companies, and it is suggested to the borrowers that they accept the insurance. Group insurances enable homogeneous insurance terms to be defined for a large population, thereby ensuring a good distribution of the risk, which favours a better rating. To avoid adverse selection (cover of “good” risks with personal accident insurance, and more substantial risks by group insurance), which would unbalance the system and require increased contributions, lenders are generally obliged by insurance companies to suggest that life-work incapacity insurance be taken out. When the lender suggests that a borrower takes out a group insurance policy, a sheet listing the risks covered and the operative conditions for the insurance, must be attached to the loan offer. If the cover is subject to the approval of the insurer, and if such approval by the insurer is not given, the borrower may obtain the termination of the loan agreement within one month of notification of the approval refusal. The borrower may also offer personal accident insurance, rather than membership of an insurance group. The lender is free, in this case, to accept

or refuse the file, within the framework of its sales policy and the assessment of its risks.

Insurance of assets – Lenders customarily require proof of insurance of the asset against fire and various risks.

Insurance offering – Lenders have often developed a range of insurance products, which correspond with the appropriate needs of borrowers.

4. CONCLUSION OF THE LOAN AGREEMENT

4.1 Must the borrower receive a copy of all the conditions of the future loan agreement in the form of a written offering or in any other form? What information must this offering contain? What are the consequences of not complying with this legal requirement?

Art. L. 312-7 of the Consumer Code requires the lender to communicate in writing a preliminary offer, forwarded by post, free of charge, to the borrower-applicant, and to any guarantors, if, at least, they are natural persons.

The loan offer must include all the features of the loan, i.e.:

- the identity of the parties and guarantors,
- the nature, purpose, terms of the loan, in particular, the dates and the conditions for making the funds available, and the ;
- the total amount of the loan likely to be granted, its total cost, its APR interest rate, and, if necessary, the indexation conditions ;
- the listing, of the stipulations, insurances and valuable and personal guarantees with a valuation of their cost, which condition the conclusion of the loan.

“Stipulations” mean, in particular, bank arrangement fees, and study and expert fees.

The insurance policies also comprise life-work incapacity and fire risk insurance policies.

Collateral may consist of either a lien or a conventional mortgage.

Personal securities are commitments of guarantors given by natural persons or specialist bodies: friendly societies, insurance companies or credit institutions specialising in guarantees....

- indication of the necessary conditions for any assignment of the loan to a third party.

The preliminary offer must include an amortization repayment schedule, detailing for each instalment the ratio of capital to interest, unless it is a variable-rate loan offer. It must also separately include the total amount of the search costs which, in the event that the loan contract is not concluded within four months of acceptance (cf. 3.5), may be kept or required by the lender, as well as the terms on which they are collected (Art. L. 312-14 of the Consumer Code). These expenses are limited to 0.75% of the total amount of the loan and are not permitted to exceed 150 € (Art. R. 312-1 of the Consumer Code).

It must expressly indicate the provisions of Art. L. 312-10 of the Consumer Code, relating to the term during which the lender must maintain the terms of the offer and the “cooling-off” period (cf. 4.3).

If the loan is at a variable rate, a sheet setting out the terms and conditions of rate changes must be given to the borrower with the prior offer.

A lender who fails to abide by one of the obligations mentioned above is liable to a fine of 3,750 € to 30,000 €, according to the breach recorded (Art. L. 312-33 of the Consumer Code). He may, moreover, forfeit the right to interest, wholly or in the proportion fixed by the judge.

The offer is addressed in two copies (cf. 4.5). Since the law states that this despatch should be made by post, electronic mail is not valid.

4.2 Must the offer comply with the contractual conditions of a specific standard agreement? Who lays down this standard agreement? What are the consequences of not complying with this legal requirement?

Consumer loan operations must adhere to the standard versions. On the other hand, there is no standard version of a property-loan offer.

4.3 What rights and commitments arise for the creditor and the borrower from handing over the offer?

The presentation of the offer obliges the lender to maintain the terms that it states, and to be bound by them for a minimum term of 30 days, as from its receipt by the borrower. The offer therefore unilaterally commits whoever made it. For his part, the borrower-applicant may only indicate his acceptance after a « cooling-off » period of 10 days, as from the date of receipt of the offer. After this period of 10 days, the borrower therefore has a minimum period of 20 days in which to accept the offer. If, after this period of 30 days, the lending institution has not obtained a satisfactory answer, it is relieved of any obligation towards the borrower-applicant, who is himself completely free of any legal ties to the lender. In order to safeguard the freedom of decision of the borrower-applicant, Art. L. 312-11 of the Consumer Code stipulates that no remittance of funds may take place between the lender and the borrower from the presentation of the offer until its acceptance.

4.4 Is the borrower entitled legally or contractually to a right of reflection? What are the conditions linked to the exercising of this entitlement?

As stated in 4.3, the borrower has a « cooling-off » period of 10 days as from receipt of the offer. He may not waive this period and accept the offer prior to its expiry. This said period benefits natural-person guarantors.

4.5 How does the acceptance of the offer by the borrower take place? Are there specific formal and procedural requirements to be observed?

In the event of acceptance, the borrower and, where applicable, the surety return to the bank one of the two copies of the offer, duly signed. The acceptance of the borrower must be given in writing, and despatched by post.

4.6 What commitment deadlines apply to the offer?

See 4.3 above (term of validity of the offer: 30 days) and 3.5 (suspensive condition linked to the non-conclusion of the main contract: 4 months).

4.7 When does the credit agreement come into effect?

The loan takes effect as from the day of the acceptance of the offer. Payment of the funds may nevertheless be subject to other factors (deed executed and authenticated by a notary, acquisition of the financed asset ...).

4.8 In the event that the borrower applies for several credits for one and the same purchase, is there a link between the different credits, according to which, the failure of one credit to be granted would allow him to cancel the others? What are the conditions associated with this link?

Each loan is concluded on the suspensive condition of each of the other loans being granted. This conditions the successful completion of the operation.

There are two conditions however:

- 1°) The borrower must inform his lenders that he is resorting to a number of loans for the same operation.
- 2°) Only loans, the value of which is greater than 10% of the total credit, are taken into account.

Defaulting on one of the loans retroactively nullifies, by the intervention of the suspensive condition of Art. L. 312-13 of the Consumer Code, all other loan agreements which might have been concluded after acceptance of the offer. In such event, the borrower must only pay the compensation mentioned in point 4.1, as a maximum.

4.9 Is the contract a «real» contract (directly linked to the property), a consensual contract (agreement by the parties is sufficient) or even a solemn agreement (complementary formalities are required)?

The loan agreement was traditionally considered as a « real » contract, i.e. a contract which is only definitively made on the delivery of the funds to the borrower. This traditional analysis was rejected in 1998 by the Court of Appeal, which considers that the contract is made immediately upon acceptance of the offering by the borrower. When the loan is covered by a mortgage, an authentic deed is required. A deed is signed and authenticated by a notary, and a note of entry is published in the Mortgage Registry. When the loan is not guaranteed by collateral, the authentic deed is not necessary.

4.10 Can the lender unilaterally lay down the conditions, according to which he will transfer the funds to the borrower?

We have seen (point 4.1) that the loan offer must state the terms on which the funds are to be made available. In construction operations, the funds are made available in accordance with the pay scales defined in terms of the progress of the work.

5. SURETY AGREEMENTS

5.1 Do the guarantors come under the same consumer protection law as the borrower? What are the principles for the protection?

Generally, French law protects natural-person guarantors, while providing for handwritten reference relating to their commitment. Moreover, it provides for the notification of the guarantors over the course of the loan, in different circumstances according to each case.

Three points must be noted:

- 1 – Natural-person guarantors must receive and accept a loan offer on the same terms as the borrower.
- 2 – When a natural-person guarantor binds himself through a simple contract, the contract must include a handwritten reference in accordance with the text provided by Art. L. 313-7 of the Consumer Code, and moreover with the text provided by Art. L. 313-8 of the Consumer Code if he commits himself additionally in the capacity of a joint surety.
- 3 – Finally, the lender must ensure that the guarantor possesses the means to meet his commitments. In fact, he may not avail himself of the security if, at the time when the guarantor contracted, this commitment was manifestly disproportionate to his assets and income – unless the assets of the guarantor, at the time when it is called upon, enabled his liability to be met (Art. L. 313-10 of the Consumer Code). For information, in the event of interventions during the course of the loan, cf. 5.3 below.

5.2 Does legislation stipulate a limit to the surety i.e. a time limit or a limit as to its amount?

The law does not directly stipulate any limit, the commitment of the surety being, in any event, limited to the commitment of the principal debtor. Nevertheless, the handwritten indication appended by the surety (cf. 5.1, point 2) must indicate the limit of the surety.

5.3 Does the lender have a legal obligation to take action against the borrower first before acting against the guarantor?

When the guarantee is a joint one, the guarantor may require the lender to first take action against the debtor. The handwritten indication provided for by Art. L. 313-8 of the Consumer Code (cf. 5.1, point 2) points this out. However, the lender must inform the guarantor of the default of the principal debtor, i.e. of any payment liable to be entered on the FICP (cf. 3.1). Failing this, the guarantor may not be held liable for the payment of interest and penalties having fallen due between the default of the debtor and the moment when the guarantor is notified.

6. RIGHT OF WITHDRAWAL

6.1 After the conclusion of the mortgage credit contract, is the borrower entitled legally or contractually to cancel it, especially in the event that the contract for which the loan has been applied falls through?

Contrary to Articles L. 311-1 et seq of the Consumer Code, relating to consumer loan, which provides for a withdrawal option during a period of seven days, the provisions relating to property loans do not provide for the possibility of withdrawal. It firstly obliges the purchaser-borrower to observe a « cooling-off period » (cf. 4.3 and 4.4), then it envisages a system of suspensive conditions (cf. 3.5), which render the acceptance of the loan offer null and void, and the establishment of the loan agreement ineffective.

6.2 What is the deadline for exercising this right of withdrawal?

6.3 Is the exercise of the right of withdrawal subject to any formal or procedural requirements?

6.4 Is the lender entitled to register in any way the fact that the borrower has exercised the right of withdrawal?

6.5 Are the parties subject to specific requirements in the case of withdrawal when terminating the contract?

7. RIGHT OF EARLY REPAYMENT

7.1 Is the borrower legally entitled to repay early? If this is the case, what are the terms of the procedure?

The borrower may always, on his own initiative, repay the loan in advance, wholly or in part. The loan agreement may, nevertheless, prohibit repayments equal to or less than 10% of the original amount of the loan, unless it relates to his balance (Art. L. 312-21 of the Consumer Code).

7.2 Is the lender allowed to charge the costs involved by the early repayment to the borrower? Under which conditions? What is the basis for the calculation of the indemnity?

The loan agreement may contain a clause, according which the lender is entitled to require the compensation for the interest not yet accrued, in the event of early repayment. The maximum amount of compensation, which is fixed by decree (Art. R. 312-2 of the Consumer Code), is six months' interest on the capital repaid at the average rate of the loan, within a maximum margin of 3% of the outstanding capital, prior to such repayment. In the case of loans at progressive rates, the compensation may be increased in such a way as to ensure that the lender is compensated at the average rate provided for when the loan was granted, over the period that has elapsed since its inception. Nevertheless, no compensation is due when the grounds for the repayment ensue from various situations beyond the control of the borrower: sale of the asset in the event of a change of place of work, death, forced cessation of occupation (Art. L. 312-21 of the Consumer Code).

7.3 In addition to the legally established contractual indemnity/penalties, can the lender claim for further contractual penalties?

The legal rules determine the maximum that the contract may provide for.

7.4 Is the right to early repayment subject to certain conditions and, if this is the case, which conditions?

7.5 Is the lender allowed to suppress the early repayment option under certain conditions and, if this is the case, under which conditions?

The lender may not abolish the right to early repayment cf. 7.1.

7.6 In the event of the transfer of the property, what happens to the loan? Can it be transferred or must it be repaid?

In law, it is possible:

- to transfer the loan, so that the agreement continues with the new owner (the preliminary offer must state the necessary terms of such transfer),
- to maintain the loan on behalf of the original borrower, by transferring the mortgage.

In the past, the transfer of a loan on behalf of the new owner was carried out with state-assisted loans, when the terms of the provision of the assisted loans and the difference in the rate in relation to the loans of competitors justified it. The lender was still free to approve the new borrower. Mortgage transfers are infrequent. The loan is repaid in most cases, in practice.

7.7 Is the borrower allowed to remortgage (refinance his mortgage loan)? Must it be with the same lender or can it be with another? What are the conditions and costs involved?

The borrower, being able to make early repayment at any time, may do so by means of a new loan, granted by another institution. He must pay the compensation for early repayment, and may defray the charges for the release of the mortgage for the first loan, as well as the charges set for the new loan. He may also renegotiate the terms of his loan with the original lender. In the event of renegotiation, it is considered that there is no disturbance of ownership, and hence no new loan. The sureties are consequently maintained. Loan renegotiations do not give rise to a new preliminary offer, but they require the insertion of an additional clause, which, in accordance with Art. L. 312-14-1 of the Consumer Code, comprises:

- the new repayment schedule of the amortizations,
- the APR and the cost of the loan calculated on the basis of the future instalments and charges (these provisions are adjusted for variable-rate loans).

The borrower has a « cooling-off » period of 10 days, as from the receipt of this information.

8. REGULATIONS ON USURY

8.1 Is usury defined by law? What is the principle?

Usury is when, at the time the loan is granted, the APR exceeds by more than one third the average APR applied by credit institutions in the course of the previous quarter, for operations of the same nature, involving similar risks. These average APRs are recorded periodically and published in notices in the « Journal Officiel » [gazette].

8.2 Is this important with regard to the mortgage loan?

In practice, these provisions are actually only applicable to mortgage loans approved by individuals, as the usury rate is determined by reference to the terms applied by the credit institutions, plus a supplement, and therefore by definition, at a higher rate than those of the market. Particular difficulties may however be encountered, exceptionally, when the lender requires a life/work incapacity insurance from a person whose state of health or age entails a high premium.

8.3 What are the consequences of usury from the point of view of civil law and supervisory law?

In civil law, excessive collections are, ipso jure, charged on normal accrued interest and, in addition, on the capital. From a criminal-law viewpoint, the sanction for the offence of usury is a sentence of imprisonment of up to 2 years and a fine of up to 45.000 €.

8.4 Are there any other restrictions applicable to interest rates?

Article 1154 of the Code Civil regulates the capitalisation of interest. Pursuant to this text, it is possible to stipulate that interest accrued should bear interest, provided that it is due for a whole year. This article prohibits the capitalisation of interest during the current year, thereby preventing the latter from yielding interest in its turn. Accrued interest may only be capitalised after a term of one year. This means that the interest accrued in the 3rd quarter may not be capitalised at the end of the current calendar year, but only on expiry of the 3rd quarter of the following year.

9. LEGAL CONSEQUENCES IN THE EVENT OF A BREACH OF THE LOAN AGREEMENT BY THE BORROWER

9.1 What happens if the borrower does not meet the payment conditions?

What happens if the borrower does not meet the payment terms?

In the event of default by the borrower, the lender has a choice of two options (Consumer Code L. 312-22):

- The lender does not demand immediate payment of the capital still outstanding. Default interest is charged to the borrower, while the interest rate on the loan is increased. This increase may not exceed three interest points (Art. R. 312-3 of the Consumer Code). This is the solution most frequently applied.
- The lender declares that the capital is due for payment. It may then require immediate repayment of the capital still outstanding, as well as payment of the accrued interest. Until the date of effective payment, the sums still outstanding (i.e. the capital and annuity arrears) will bear default interest at a rate equal to that on the loan. Moreover, pursuant to a contractual stipulation, the lender may require compensation from the defaulting borrower fixed at a maximum of 7% of the total of the sums due (i.e. the capital and the annuity arrears) pursuant to Art. R. 312-3 of the Consumer Code. Even if the bank chooses the second of the alternatives (to initiate enforcement), it nevertheless has the possibility of reverting to the first.

9.2 In the event of default by the borrower, what possibilities does the law give the creditor to claim for the outstanding debt, the unpaid interest due, the interest not yet due, a lump sum or contractual penalties?

Cf. 9-1 (case 2) – The interest not yet accrued may not be claimed from the borrower. The law fixes the maximum amount of the compensation, which may be provided for under the terms of the agreement.

9.3 Are interest supplements possible in the event of default?

Cf. 9-1 (cases 1 and 2)

9.4 What consequences are there in the event of neglect of duty to maintain the building?

In the event of the neglect of duty to maintain the building (neglect of maintenance, deterioration), the mortgagee may either declare the event of default and immediately pursue his reimbursement by seizing the property, or obtain an additional security (Art. 1188 C.C. and 2131 C.C.). Moreover, in the event of the destruction of a mortgaged property, the mortgage will be maintained on what remains of the security, and will be transferred to the insurance indemnity or the reconstructed building.

10. IS THE UNILATERAL SETTING OF AND/OR CHANGING OF CONTRACTUAL CONDITIONS POSSIBLE DURING THE LOAN?

Amendment of the contractual terms may ensue from a renegotiation of the loan. As indicated in 7.7, loan renegotiations do not give rise to a new prior offering, but they do necessitate the insertion of a rider which, in pursuance of Art. L. 312-14-1 of the Consumer Code, comprises:

- the new amortization-repayment schedule,
- the APR and cost of the loan, calculated on the basis of the instalments and future charges (these provisions are adjusted for variable-rate loans).

The borrower has a "cooling-off" period of 10 days from receipt of this information.

In practice, this renegotiation occurs on the initiative of the borrower.

Moreover, the stipulation of variable interest rates is permitted and quite common. Various formulas permit a double indexation (the changes in the charges being determined in terms of a different index from that determining the changes in the rate), to adjust the term of the loan, offering the borrower options for passing from the variable rate to the fixed rate, or options for voluntarily changing the total amount of the financial commitment. It is not a matter of actual amendments of the contractual terms, in the sense that the terms of the variation must be stated in the offer and in the contract, so that changes in the rate ensue from the application of the contractual provisions. No clause may stipulate a unilateral adjustment of the interest rate by the lender, at its own discretion.

11. REGULATIONS RELATING TO OVER-INDEBTEDNESS

11.1 Is overindebtedness defined and regulated by law?

The law dated 31 December-1989, known as Neiertz law, as revised in 1995 and 1998 and incorporated in the Consumer Code, established a mechanism for preventing and dealing with the over-indebtedness of individuals.

This mechanism concerns debtors in good faith, who are manifestly unable to meet all their non-occupational debts.

The mechanism retains the oldest provisions, based on the concept of « days of grace » :

- Article L. 313-12 of the Consumer Code gives the judge sitting in chambers the option, after examination of the overall situation of the borrower, particularly in cases of dismissal (redundancy), of suspending by order the fulfilment of the obligations of the debtor for a term of up to 2 years. He may, moreover, decide that, during the term of such suspension, deferred instalments will bear no interest points. The judge sitting in chambers makes his assessment on a case by case basis, in terms of the overall situation of the borrower, and determines the terms of payment of the deferred sums.
- Article 1152, subparagraph. 2 C.C., relating to the loan contracts, permits the judge to moderate the criminal clauses included in a contract, when they are manifestly excessive. Nevertheless, there is little jurisprudence in the matter, in view of the existing limitations under the law.

11.2 On which principles is it based?

The procedure is open to debtors in good faith who are manifestly incapable of meeting their non-occupational debts. They may submit the matter to an administrative commission, the commission for over-indebtedness, the secretariat of which is provided by the branches of the Banque de France [Bank of France]. The commission for over-indebtedness, (there is at least one in each department), attempts to find amicable solutions to the problems encountered by individuals, who have faced with excessive indebtedness.

1. Agreed plan - The commission for over-indebtedness referred to by the debtor, investigates the file, establishes the situation of the debtor in terms of assets and liabilities, negotiates a plan based on an agreed plan for settlement of the liabilities, which might be accepted by the debtor and his main lenders.
2. Re-arrangement measures - In the event of failure of the negotiations, the commission, at the request of the debtor, draws up a re-arrangement plan. It may recommend various measures, enumerated by the law (Art. L.331-7 of the Consumer Code). These re-arrangement measures are of two kinds:

Either the situation of the debtor can be rectified. Measures may then include changes in the mechanism of the agreements, such as deferment or scaling of the payments, interest-rate reductions, indeed even (for debts remaining after sale of the property) partial discounts.

Or the debtor is insolvent (case of absence of resources or sizeable assets enabling all or part of the debts to be settled). The commission recommends a moratorium for a maximum term of three years. At the end of this term, the commission recommends either rescheduling measures, or else, if the debtor remains insolvent, deletion of the debts.

- 3 - Confirmation by the Judge - The measures recommended by the commission are only applicable if the enforcement judge invests executory power in them, after having checked the legal regularity. Moreover, the following factors should be noted:
 - Various obligations may also be imposed on the debtor, to prevent him from exacerbating his indebtedness.
 - The measures taken in the context of the over-indebtedness form the subject of a notice in the FICP (cf. 3.1).
 - The French government shortly envisages amending this mechanism, and the adoption of a "civil bankruptcy" procedure.

12. OTHER PROBLEMS RELATING TO CONSUMER PROTECTION

12.1 Are there any legal limits to a maximum loan-to-value ratio and what are they?

There is no mandatory limitation applicable to all property-loan operations. Certain loans of a social nature may be subject to constraints in terms of a minimum personal contribution. These loans are provided by institutions, which have signed an agreement with the State. Loans, which can be acquired by property-loan companies, are also subject to particular rules. These rules do not concern the dealings between the lender and the consumer; they define the conditions in which the lenders may be refinanced by property-loan companies.

12.2 Does the lender come under any restrictions when granting the loan, based on the consumer's repayment capacity?

There are no legal restrictions based on the capacity for repayment. Nevertheless, investigation of the capacity of the consumer to meet the charges for the loan is routine in the context of the risk policy of the lenders, and is considered to form part of the practices of the profession (cf. 3.3).

12.3 Does the lender have a legal obligation to give further information after the conclusion of the contract?

As a rule, the lender does not have an obligation to provide particular information to the borrower after the conclusion of the contract. However, lenders have a particular guarantee-disclosure obligation in the event of an incident during the term of the contract. (cf. 5.3).

12.4 Does the lender have any legal obligation to disclose the existence and amount of any commission he would have to pay on the occasion of the conclusion of the loan contract (to an intermediary, other)?

No.

HUNGARY

1. SCOPE

1.1 What significant legislation is there in your country regulating the protection of the mortgage borrower?

- Act CLV of 1997 on consumers protection
- Act XXX of 1997 on Mortgage Loan Companies and on Mortgage Bonds
- Act CXII of 1996 on Credit Institutions and Financial Enterprises
- Act IV of 1959 on the Civil Code of the Republic of Hungary

1.2 Do the consumer protection measures only concern loans to private persons?

The consumer protection measures concern not only the private persons in general. Some sections refer only to private persons (exp.: consumer loan agreement).

1.3 Are the consumer protection measures limited by the purpose of the loan (e.g. for housing) or the existence of the surety?

No

2. PRE-CONTRACTUAL INFORMATION TO BE DISCLOSED TO THE MORTGAGE BORROWER

2.1 Is any minimum and/or compulsory information on the lender and the transaction on offer (type, object, duration, costs, etc.) required at the advertising stage?

In terms of advertising, credit institutions are only permitted to invite juveniles to deposit money, take out loans or and make use of other financial services in a public manner, through at least two national daily newspapers.

The advertisement published by the credit institution must clearly state the annual rate of interest or the yield of the deposit or the debt securities issued by the credit institution.

The financial institution may not promote any drawings - except premium deposits - in its advertisements.

A financial institution is not permitted to send any publicity material to its clients by direct mail or e-mail, if it has been definitely ruled out by the client.

For the purposes of this section, advertisements shall be defined as: any drawing of attention to a financial institution, a representative of a bank, to financial or complementary financial services through commercial means, irrespective of whether the advertising is carried out via the press or by mail, by distribution of labels, cards, stickers, fliers, records, catalogues, price lists or other printed materials, through films, television or radio programs or in any other form, including advertisements which appear in articles or programs, the primary purpose of which is not the advertisement of the article or where the section of the program has been created upon initiation or under sponsorship of the financial institution.

Advertisements can be published only by credit institutions, which are registered in Hungary.

2.2 Are there any advertising restrictions imposed on credit institutions?

- See above (2.1). + the general advertising restrictions.

2.3 Assuming that your national credit institutions apply the Code of Conduct for Home Loans, please confirm disclosure of all information listed under the Code's general information list and European Standardised Information Sheet (see Annex I) and indicate any additional information given to consumers according to national legislation or practice. Please indicate if any listed information is not disclosed, and include the reason for that exception. Is there any legal or contractual obligation to disclose exact and full information as to his personal circumstances imposed on the borrower?

2.4 Is there a legal obligation to disclose an Annual Percentage Rate of Charge (APRC) to the mortgage borrower? What is the method of calculation applied? What are the components included in the APRC? Does the calculation of the APRC imply that the lender makes any specific assumptions as to the evolution of the rate (in case of a variable rate or an initial fixed rate)?

Credit institutions are obliged to disclose an APRC

The method of calculation applied, if the credit institution delivers the loan in one instalment is:

$$H = \sum_{k=1}^m \frac{A_k}{(1+i)^{t_k}}$$

H: the sum of the loan, reduced by the costs of credit institution by granting the credit,

A_k: the sum of k- repayment installment,

m: number of repayment installments,

t_k: the date of the k- repayment installment in year,

i: 1 percent of APRC.

The method of calculation applied, if the credit institution delivers the loan in several instalments is:

$$\sum_{k=1}^m \frac{A_k}{(1+i)^{t_k}} = \sum_{k'=1}^{m'} \frac{A'_{k'}}{(1+i)^{t_{k'}}$$

A_k: the sum of k- repayment installment, reduced by the costs of credit institution by granting the credit,

A'_{k'}: the sum of k- repayment installment,

m: number of repayment installments,

m': number of repayment installments,

t_k: the date of the k- repayment installment in year,

t'_{k'}: the date of the k- repayment installment in year,

i: 1% of APRC.

2.5 Do these information requirements impact on the credit intermediaries? To what extent?

3. PRE-CONTRACTUAL AND CONTRACTUAL OBLIGATIONS IMPOSED ON THE LENDER

3.1 Are there negative and/or positive central databases or other sources of data on the candidate borrower, which are accessible to the lender? Is it compulsory for the lender to consult them and what is the consequence if he does not? Is it possible to access databases on a cross-border basis? Under what conditions?

There is a negative database. It is not forbidden for lender to grant a loan to a borrower who appears in the database.

3.2 Does the lender have a legal duty to provide advice to the candidate borrower? What is the extent of this obligation and its possible consequences?

A financial institution is obliged to unambiguously and clearly inform its clients and future clients of the conditions of utilization of services provided by the financial institution as well as of any amendments to these conditions.

The financial institution must publish in an announcement on its premises available for clients:

- a) Its business regulations (containing the general contract terms and conditions),
- b) The contract terms and conditions for financial and complementary financial services (transactions) offered for clients,
- c) Rates of interest, service fees, and other costs to be borne by clients, default interests and the method of computation of interests

The financial institution shall make available free of charge upon a client's request

- a) its business regulations, and
- b) the data to be published under the provisions law.

3.3 Is there any kind of responsibility based on the "responsible lending" principle imposed on the lender?

The "responsible lending" principle is not to be found in the Hungarian legal system.

3.4 Assuming that the European Directive on unfair terms was implemented in national law, what is the definition of an "unfair term" in your legislation? Are there typical terms for mortgage credit, which are forbidden by law?

A general contract condition, or the term of a contract between an economic organization and a consumer, shall be regarded unfair if the clause or term, in violation of the obligation to act in good faith, unilaterally and unjustifiably establishes the contractual rights and obligations of parties to the detriment of one of the parties.

The definition of rights and obligations is unilaterally and unjustifiably detrimental, in particular if

- a) it substantially deviates from major provisions of the contract; or
- b) it is incompatible with the subject matter or purpose of the contract.

When establishing the unfair nature of a contract condition, it is necessary to examine all of the circumstances leading to the conclusion of the contract, as well as the nature of the stipulated service and the relationship of the condition in question with other contract conditions and other contracts. Other legal regulations may define the conditions that are regarded to be unfair in respect of contracts concluded with consumers or that shall be regarded as unfair until proven otherwise. The provisions on unfair contract conditions shall

not be applied to a contract clause stipulating the service and the consideration for such, if the phrasing of such clause is clear and understandable for both parties. The contract conditions defined by legal regulation, or established in accordance with the provisions of legal regulations, shall not be deemed unfair.

3.5 Is there a legal link between the goods/services contract and the credit contract? Is there a joint and several liability between the supplier of the goods/services and the lender funding the purchase? What is the extent of this responsibility? Does the borrower have a legal obligation to possibly take action against the supplier before taking action against the lender?

Hungarian law does not contain this type of regulation.

3.6 Is the linking of services to the mortgage credit regulated? Is it forbidden or authorised under a number of conditions?

3.7 Are there certain legal requirements, which oblige the borrower to take out specific insurance with regard to the mortgage credit (for example, life insurance)?

Specific insurance is required by the credit institutions only and not by the law.

4. CONCLUSION OF THE CREDIT AGREEMENT

4.1 Must the borrower receive a copy of all the conditions of the future credit agreement in the form of a written offer or in any other form? What information must this offer contain? What are the consequences of not complying with this legal requirement?

This is not regulated in Hungarian law. In general: see 2.4

4.2 Must the offer comply with the contractual conditions of a specific standard agreement? Who lays down this standard agreement? What are the consequences of not complying with this legal requirement?

The mortgage credit institution lays down the standard agreement, which has to be recorded in a deed by a notary public. This is required by the Act XXX of 1997 on Mortgage Loan Companies and on Mortgage Bonds.

4.3 What rights and commitments arise for the creditor and the borrower from handing over the offer?

A person who offers to conclude a contract shall be bound by his offer, unless he excluded his restrictions at the time he made the offer. The creditor may specify the period of validity. In the absence thereof, an offer made personally or by telephone shall cease to be binding unless the other party accepts the offer immediately. An offer made to an absent person shall cease to be binding upon the expiration of the period of time within which the person who made the offer can expect (in light of the nature of the services specified in the offer and the manner in which the offer was delivered) to receive a response under normal conditions. The period in which an offer is valid can be otherwise regulated by legal regulation. By disclosing the necessary details and sending the necessary documents, the borrower may request the creditor to make an offer. The creditor shall present his offer within thirty days of receipt of the request. If the request for an offer does not contain the necessary details or documents, the creditor shall request these details and/or documents to be furnished within fifteen days of receipt of the request. In this case, the deadline for presenting the offer shall commence with the provision of the missing details and/or documents. The deadlines may be determined differently by legal regulation or, if allowed by legal regulation, the mutual consent of the parties.

A contract comes into existence for the persons who are present at the moment the contract is concluded, while, for those who are not present, it comes into existence when the creditor receives the statement of acceptance. An acceptance with contents that deviate from the offer shall be deemed a new offer. If a contract is concluded by persons who are not present, the place where the contract is concluded shall be the creditor's premises.

A contract statement, if made orally or by verbal message, shall become operative when it becomes known by the other party. A written statement or one sent by telegraph must be delivered to and received by the other party in order to be valid. An as yet inoperative statement can be withdrawn. The statement of withdrawal must reach the other party or be made known to him no later than the arrival of the withdrawn statement. If both parties are economic organisations, the party assuming to pay consideration (purchase price, fee) may withdraw its statement before the conclusion of the contract; however, that party shall reimburse the expenses of the other party. If the statement of a borrower made in due time is belatedly received by the creditor, the creditor shall immediately notify the other party that the contract has not been concluded. Failure to do so shall validate the contract.

If the consent of a third party or official approval is required for the validity of a contract, the contract shall not be concluded until this has been given. However, the parties shall be bound by their statements. Either party shall be relieved from an obligation if the third party fails to give its consent or the authority fails to grant its approval before the applicable deadline as communicated by one party to the other. Once consent and/or approval has been received, the contract shall become effective as of the date on which it is signed, unless otherwise prescribed in legal regulation. In the absence of consent and/or approval, the legal consequences of invalidity shall apply to the contract.

4.4 Is the borrower entitled legally or contractually to a right of reflection? What are the conditions linked to the exercising of this entitlement?

There is no formal obligation. Debtors shall not be obliged to accept loans. In such cases, however, a debtor shall indemnify the creditor for damages sustained from the conclusion of the contract. The creditor, if a financial institution, shall not be entitled to indemnification. However, the debtor shall be obliged to pay a commission for the period during which the creditor, either by virtue of a credit contract or without one, keeps the loan amount available in the debtor's favor.

4.5 How does the acceptance of the offer by the borrower take place? Are there specific formal and procedural requirements to be observed?

There is no formal obligation for the acceptance. It can be implicit conduct.

4.6 What commitment deadlines apply to the offer?

This is described in the business regulation + see 4.3

4.7 When does the credit agreement come into effect?

At the moment of signing, or when the contract is put down in a deed by a notary public.

4.8 In the event that the borrower applies for several credits for one and the same purchase, is there a link between the different credits, according to which, the failure of one credit to be granted would allow him to cancel the others? What are the conditions associated with this link?

See 4.4

4.9 Is the contract a «real» contract (directly linked to the property), a consensual contract (agreement by the parties is sufficient) or even a solemn agreement (complementary formalities are required)?

Bank credit contracts shall be concluded so that a financial institution will assume an obligation to maintain a specific line of credit, for a commission, in favor of the other contracting party and, if the conditions stipulated in the contract are satisfied, to conclude loan contracts or effect other credit transactions charged to the line of credit. Bank credit contracts shall only be valid if concluded in writing.

4.10 Can the lender unilaterally lay down the conditions, according to which he will transfer the funds to the borrower?

Yes.

5. SURETY AGREEMENTS

5.1 Do the guarantors come under the same consumer protection law as the borrower? What are the principles for the protection?

Yes. The principles are the same as in point 1.1.

5.2 Does legislation stipulate a limit to the surety i.e. a time limit or a limit as to its amount?

There is no limit to the surety.

5.3 Does the lender have a legal obligation to take action against the borrower first before acting against the guarantor?

By the Act IV of 1959 on the Civil Code

A guarantor is entitled to refuse involvement as long as the claim can be recovered from the debtor and/or from other guarantors, who assumed the surety before him and without regard to him. This provision shall not prevent joint litigation to be filed against the debtor and the guarantors.

A guarantor shall not be entitled to demand that the creditor recover his claim from the debtor first (absolute surety) if:

- a) the parties have so agreed,
- b) the surety has been assumed for indemnification,
- c) the surety has been assumed by a bank.

6. RIGHT OF WITHDRAWAL

6.1 After the conclusion of the mortgage credit contract, is the borrower entitled legally or contractually to cancel it, especially in the event that the contract for which the loan has been applied falls through?

If the borrower cancels the contract he has to pay a cancellation fee.

6.2 What is the deadline for exercising this right of withdrawal?

The borrower can exercise the right of withdrawal before the loan transfer.

6.3 Is the exercising of the right of withdrawal subject to any formal or procedural requirements?

The requirements are the same as in the conclusion of the mortgage credit contract.

6.4 Is the lender entitled to register in any way the fact that the borrower has exercised the right of withdrawal?

No.

6.5 Are the parties subject to specific requirements in the case of withdrawal when winding up the contract?

There are no special requirements.

7. RIGHT OF EARLY REPAYMENT

7.1 Is the borrower legally entitled to repay early? If this is the case, what are the terms of the procedure?

Mortgage loan companies may stipulate in the mortgage loan contract that the mortgage loan may not be repaid prior to its expiration.

7.2 Is the lender allowed to charge the costs involved by the early repayment to the borrower? Under which conditions? What is the basis for the calculation of the indemnity?

The lender is allowed to charge the unrealised profit to the borrower.

7.3 In addition to the legally established contractual indemnity/penalties, can the lender claim for further contractual penalties?

7.4 Is the right to early repayment subject to certain conditions and, if this is the case, which conditions?

It depends on the credit institutions themselves. They regulate this question in the contract.

7.5 Is the lender allowed to suppress the early repayment option under certain conditions and, if this is the case, under which conditions?

It depends on the credit institutions themselves. They regulate this question in the contract.

7.6 In the event of the transfer of the property, what happens to the loan? Can it be transferred or must it be repaid?

The loan can be transferred to the other property, but it depends on the credit institution if it allows this possibility to the borrower.

7.7 Is the borrower allowed to remortgage (refinance his mortgage loan)? Must it be with the same lender or can it be with another? What are the conditions and costs involved?

The borrower is allowed to remortgage. It can be with other lender also. The conditions are regulated in the contract.

8. REGULATIONS ON USURY

8.1 Is usury defined by law? What is the principle?

If a contracting party has stipulated an unreasonably disproportionate advantage at the conclusion of the contract by exploiting the other party's situation, the contract shall be null and void (Civil Code: usurious contract).

8.2 Is this important with regard to the mortgage loan?

The general provisions of Civil Code regulate also the contracts on mortgage loan.

8.3 What are the consequences of usury from the point of view of civil law and supervisory law?

The contract shall be null and void.

8.4 Are there any other restrictions applicable to interest rates?

9. LEGAL CONSEQUENCES IN THE EVENT OF INFRINGEMENT OF THE LOAN CONTRACT BY THE BORROWER

9.1 What happens if the borrower does not meet the payment conditions?

Withdrawal, assertion of lender's claim or the lender may grant a respite for payment.

9.2 In the event of default by the borrower, what possibilities does the law give the creditor to claim for the outstanding debt, the unpaid interest due, the interest not yet due, a lump sum or contractual penalties?

The lender may resort to enforcement.

9.3 Are interest supplements possible in the event of default?

No. Supplements are not possible in the event of default.

9.4 What consequences are there in the event of neglect of duty to maintain the building?

In the event that the condition or loan security value of the mortgaged property permanently deteriorates, but such deterioration is not due to the actions of the owner, the mortgage loan company may enforce its right to withdraw the mortgage loan with immediate effect. This withdrawal is however limited to the amount for which the decreased value of the mortgaged property no longer provides the security as per the contract, if the debtor fails to restore the condition within the time limit set by the mortgage loan company or fails to provide further security.

10. IS THE UNILATERAL SETTING OF AND/OR CHANGING OF CONTRACTUAL CONDITIONS POSSIBLE DURING THE LOAN?

In general it is not possible but the contract can allow it for in case of changes of the interest rate.

11. REGULATIONS RELATING TO OVERINDEBTEDNESS

11.1 Is overindebtedness defined and regulated by law?

Overindebtedness is not defined by Hungarian law

11.2 On which principles is it based?

12. OTHER PROBLEMS RELATING TO CONSUMER PROTECTION

12.1 Are there any legal limits to a maximum loan-to-value ratio and what are they?

The share of mortgage loans with a maturity of not less than five years may not amount to less than eighty per cent of the total loan portfolio. Mortgage loan companies shall stipulate a prohibition on alienation and encumbrance in order to secure their mortgage in respect of the real estate serving as a security. The value of the principle claims portfolio arising from mortgage loans may not exceed seventy per cent of the total value of the real estate serving as a security on which the loan was granted (hereafter: loan security value). Methodological principles of determining the loan security value are defined in a legal regulation. Based on this, the mortgage loan company shall prepare regulations for determining loan security value which shall be approved by the State Financial and Capital Market Supervisory Commission (hereinafter referred to as «Supervisory Commission»).

12.2 Does the lender come under any restrictions when granting the loan, based on the consumer's repayment capacity?

There are no restrictions by law relating to the consumer's repayment capacity. The credit institutions apply their own regulations.

12.3 Does the lender have a legal obligation to give further information after the conclusion of the contract?

See point 3.2

12.4 Does the lender have any legal obligation to disclose the existence and amount of any commission he would have to pay on the occasion of the conclusion of the loan contract (to an intermediary, other)?

See point 3.2

IRELAND

1. SCOPE

1.1 What significant legislation is there in your country regulating the protection of the mortgage borrower?

The Consumer Credit Act, 1995 (hereafter referred to as CCA 95) (Which transposed Directive 87/102/EEC and introduced supplementary measures – Part IX relating specifically to mortgage lending).

Statutory Consumer Protection Code (hereafter referred to as CPC) introduced by the Financial Regulator in 2006 which is currently in the course of being implemented.

In addition the Family Home Protection Act, 1976, requires that the informed consent of the spouse be obtained before a loan secured on the family home is granted.

1.2 Do the consumer protection measures only concern loans to private persons?

The focus of CCA 95 is 'consumers' defined as "a natural person acting outside his trade, business or profession" however a number of the provisions contained therein have more general applicability, including the provision whereby an institution must notify the Consumer Director of any charges which it proposes to apply or any increase in those charges.

CPC defines a consumer as "any of the following:

- a) a natural person acting outside their business, trade or profession
- b) a person or group of persons, but not an incorporated body with an annual turnover in excess of €3m euro (for the avoidance of doubt a group of persons includes partnerships and other unincorporated bodies such as clubs, charities and trusts, non consisting entirely of bodies corporate);
- c) incorporated bodies having an annual turnover of €3m or less in the previous financial year (provided that such body shall not be a member of group of companies having a combined turnover greater than the said €3m euro; or
- d) a member of a credit union

The definition under CPC is thus not limited to loans to private persons.»

1.3 Are the consumer protection measures limited by the purpose of the loan (e.g. for housing) or the existence of the surety?

The existence of surety – a housing loan under CCA 95 is defined as "an agreement for credit on the security of a mortgage of a freehold or leasehold estate or interest in a house where: a) the loan is made for the purpose of enabling the borrower to provide or improve the house or to purchase the said estate or interest, or b) the loan is made for the purpose of refinancing a loan within the meaning of paragraph a), or c) the house is to be used or to continue to be used as the principal residence of the borrower or his dependents.

Therefore, the security is a pre-requisite and a range of purposes or use of the secured properties are allowed.

CPC does not, in the main, specify, in which case, the CCA 95 interpretation would be followed.

2. PRE-CONTRACTUAL INFORMATION TO BE DISCLOSED TO THE MORTGAGE BORROWER

2.1 Is any minimum and/or compulsory information on the lender and the transaction on offer (type, object, duration, costs, etc.) required at the advertising stage?

2.2 Are there any advertising restrictions imposed on credit institutions?

(Requirements and restrictions, i.e. the answers to 2.1 & 2.2 can be summarised as follows:)

CCA 95 requires that:

- An advertisement which mentions a rate of interest or makes a claim in relation to the cost of credit must state clearly the APR offered and no other rate shall be included. The manner in which APR must be displayed is defined. If security is required in respect of the loan advertised, this must be stated. Credit may be offered at a lower rate than specified and any restrictions on the availability of credit must be stated.
- Where an advertisement purports to compare the level of repayments or cost under one or more forms of financial accommodation, the advertisement shall contain the relevant terms of each of the forms of financial accommodation referred to in the advertisement.
- Advertisements shall not describe credit as being without interest or any other charge unless that is absolutely the case and there are no restrictions thereto.
- The Consumer Director can issue directions as to the form or content of advertisements for housing loans and the following direction, issued in 1997 is still in force. In relation to printed advertisements for residential mortgage credit in newspapers, magazines or other direct printed advertisements and on the internet, the following must be included:
 - a) The maximum percentage of the value of the property which will normally be advanced to the borrower(s) and an indication of whether other criteria apply;
 - b) The maximum proportion of loan to income of the borrower(s) which will normally be provided and an indication of whether other criteria apply;
 - c) The cost per month of a typical €100,000, 20 year variable rate mortgage and the additional cost per month of a 1% rise in the rate of interest of such a mortgage;
 - d) A health warning stating "the cost of your monthly repayments may increase – if you not keep up your repayments you may lose your home".
 - e) A statement must be made in all radio, television and Billboard advertisements for residential mortgage credit that "Lending terms and conditions will apply".

CPC sets out high level principles in respect of advertising as well as setting out some additional specific requirements in respect of advertising mortgage loans:

Where an ad includes APR, it must state if underlying interest rate is fixed or variable

Where an ad includes APR, it must display the total cost of credit

Ads for a fixed rate loan must, where applicable state:

Warning: You may have to pay charges if you pay off a fixed rate loan early

Ads for the consolidation of two or more debts must, where sample figures are offered in the advertisement, indicate the difference between the total cost of credit of the consolidated mortgage and the total cost of credit of the individual debts that are the subject of the consolidation.

An ad for a debt consolidation mortgage must carry the following warnig:

Warning: This new loan may take longer to pay off than your previous loans. This means you pay more than if you paid over a shorter term.

An ad for a variable rate residential mortgage must contain the following warning:

Warning: The cost of your monthly repayments may increase – if you do not keep up your repayments you may lose your home.

An ad for an interest only mortgage must contain the following warning:

- Warning: The entire amount that you have borrowed will still be outstanding at the end of the interest only period.

a)-A regulatory disclosure statement must be included in all advertisements. Such reference must take the following form: [name of institution & trading name if applicable] is licensed by the Financial Regulator.

A credit institution operating in Ireland under the provisions of the Second Banking Co-Ordination Directive, must also refer to its regulatory status in any advertisement in Ireland

2.3 Assuming that your national credit institutions apply the Code of Conduct for Home Loans, please confirm disclosure of all information listed under the Code's general information list and European Standardised Information Sheet (see Annex I) and indicate any additional information given to consumers according to national legislation or practice. Please indicate if any listed information is not disclosed, and include the reason for that exception.

Irish mortgage lenders are applying the full terms of the Code of Conduct for Home Loans and are disclosing the information referred to therein.

In addition, both CCA 95 and CPC have requirements in respect of pre-contractual information to be provided to consumers.

CCA 95 requires that the following pre-contractual information also be provided to consumers:

- Where a redemption fee is payable (in respect of a fixed rate loan – prohibited in respect of variable rate loans), a statement to that effect specifying how the fee is to be calculated shall be included in or attached to any marketing information, application form or approval documentation relating to the loan.

- Any marketing information, application form or approval documentation relating to a mortgage must contain the following warning:

“WARNING YOUR HOME IS AT RISK IF YOU DO NOT KEEP UP PAYMENTS ON A MORTGAGE OR ANY OTHER LOAN SECURED ON IT.”

And, where the interest rate for a loan is variable:

“THE PAYMENT RATES ON THIS HOUSING LOAN MAY BE ADJUSTED BY THE LENDER FROM TIME TO TIME.”

- Where a fee is payable by an applicant for a housing loan in respect of any of the following matters:

- a) the making, accepting or administering of an application for a loan,
- b) the valuation of a security for the loan,
- c) legal services in connection with the loan,
- d) services provided by a mortgage agent in relation to the loan or,
- e) non-acceptance of an offer or approval of a loan,

the mortgage agent shall ensure that a statement of reasonable prominence that such a fee is payable and specifying the amount of the fee or how such amount is determined and the circumstances in which it may be refunded, if such is the case shall be included or attached to any marketing information, application form or approval documentation relating to a mortgage.

- Any marketing information, application form or approval documentation relating to an endowment loan must include the following warning:

WARNING THERE IS NO GUARANTEE THAT THE PROCEEDS OF THE INSURANCE POLICY WILL BE SUFFICIENT TO REPAY THE LOAN IN FULL WHEN IT BECOMES DUE FOR REPAYMENT.”.

except where the insurer guarantees that the proceeds of the policy at the initial premium will be sufficient to repay the loan in full which due for repayment or where the lender undertakes to accept the proceeds in full and final settlement of the loan debt.

Where there is a possibility that the borrower will be required or advised to increase the amount of the premium payments relating to the loan, the document sent to the applicant indicating approval shall contain a statement of this possibility in a prominent position.

Where there is a possibility that the early surrender of the policy may result in a return to the consumer which would be less than he has paid in premia and other charges information documents must contain a statement of this possibility.

- Where it is the policy of a mortgage lender to charge interest in respect of arrears on any housing loans the mortgage lender shall ensure that information documents and any communication in relation to arrears payments due on such a loan shall state the amount of the increase in interest and other charges which a borrower may become liable to pay in respect of such arrears.

Furthermore, any communication issued by or on behalf of a mortgage lender to a borrower which refers to the possibility of possession proceedings being taken under the mortgage, shall contain an estimate of the cost to the borrower of such proceedings.

The following information must form the part of the cover of a loan offer agreement (under CCA 95) and is, therefore, received by the borrower before he/she signs the agreement.

“Important Information as at dd mm yy

- 1) Amount of credit advanced
- 2) Period of Agreement
- 3) Number of Repayment Installments
- 4) Amount of each installment
- 5) Total Amount Repayable
- 6) Cost of this credit (5 minus 1)
- 7) APR
- 8) Amount of endowment premium (if applicable)
- 9) Amount of mortgage protection premium (if applicable)
- 10) Effect on amount of installment of 1% increase in first year in interest rate.

CPC requires the following in respect of pre-contractual information:

Provision of the Terms of Business at the outset of the business relationship.

For mortgages with the purpose of consolidating other credit facilities – a written indicative

comparison of the total cost of continuing with the existing facilities and the total cost of the consolidated facility on offer.

Specific provisions apply in respect of lifetime mortgages.

- > A regulated entity must advise the consumer of the consequences of lifetime mortgages including details of the total costs involved, including all interest charges and the effect on the existing mortgage, if any.
- > A regulated entity must ensure that consumers are made aware of the importance of seeking independent legal advice.
- > A regulated entity must include the following warning on any information document, application form or any other document given to the consumer in connection with a lifetime mortgage.

Warning: Purchasing this product may negatively impact on your ability to fund future needs.»

Is there any legal or contractual obligation to disclose exact and full information as to his personal circumstances imposed on the borrower?

There is no specific legal obligation on the borrower in this regard. However, the borrower will be generally asked to sign his application form confirming that the information provided is true and complete.

2.4 Is there a legal obligation to disclose an Annual Percentage Rate of Charge (APRC) to the mortgage borrower? What is the method of calculation applied? What are the components included in the APRC? Does the calculation of the APRC imply that the lender makes any specific assumptions as to the evolution of the rate (in case of a variable rate or an initial fixed rate)?

CCA 95 along with associated regulations and directions require that:

- Advertisements for mortgages must include APR; the only exception to this is radio advertising as this provision (which represents a combination of CCA requirements and CBI requirements) is still under discussion in this regard. (2002/3)
- The loan agreement must include the APR

APR is calculated in accordance with Directives 87/102/EEC, 90/88/EEC & 98/7/EC which is given domestic effect under CCA 95 and by statutory instrument 294 of 2000.

The following elements are included in APR:

- interest
- application/administration/arrangement/security fee(s)
- release fee/sealing fee re. vacate/release
- any other charges which the borrower is obliged to pay the lender as a condition of the transaction

The following elements are specifically excluded:

- charges for life insurance or property insurance
- charges for non-compliance by the borrower
- government stamp duties
- charges which would arise in any event in the absence of the existence of mortgage funding, such as, fees payable to the agent of the borrower for carrying out legal and other procedures associated with the acquisition of the property.

Assumptions:

- In the case of an initial fixed rate loan, the APR is calculated on the basis of a) for the fixed rate period, the applicable fixed rate and b) for the term of the loan that remains after the expiration of the initial fixed period, the standard variable rate at the time of calculation.
- In the case of advertising, the calculation is based on a typical example.

2.5 Do these information requirements impact on the credit intermediaries? To what extent?

CCA 95 applies regardless of where a mortgage originates and requirements are generally imposed on 'mortgage agents' which includes both lenders and intermediaries. In practice, however, most of the information requirements will usually be met by the lender even when its loan is originated via an intermediary.

CCA 95 requires the authorisation of at mortgage intermediaries along with transparency in terms of their status and agencies.

A differentiation is made between 'tied intermediaries' and other mortgage intermediaries. Tied intermediaries have a relationship with a single lender (this must be clearly and explicitly evidenced at the premises of the intermediary) and that lender is directly responsible in terms of the intermediary's compliance.

3. PRE-CONTRACTUAL AND CONTRACTUAL OBLIGATIONS IMPOSED ON THE LENDER

3.1 Are there negative and/or positive central databases or other sources of data on the candidate borrower, which are accessible to the lender? Is it compulsory for the lender to consult them and what is the consequence if he does not? Is it possible to access databases on a cross-border basis? Under what conditions?

The Irish Credit Bureau (ICB) is a privately run positive credit reference agency. Not all lending institutions are members of ICB and lenders are not required to check borrowers details.

It is our understanding that in order to access non-domestic registers, Irish institutions would need to be parties to such databases and we do not believe this to be commonplace. Equally access to ICB information is only permitted by Member Financial Institutions that register the required transactional data.

3.2 Does the lender have a legal duty to provide advice to the candidate borrower? What is the extent of this obligation and its possible consequences?

Currently there is no legal duty to provide advice to a candidate borrower.

3.3 Is there any kind of responsibility based on the "responsible lending" principle imposed on the lender?

CPC introduced know the customer and suitability requirements in respect of all financial services. The suitability requirements are set out as follows:

A regulated entity must ensure that, having regard to the facts disclosed by the consumer and other relevant facts about that consumer of which the regulated entity is aware:

- a) any product or service offered to a consumer is suitable to that consumer;
- b) where it offers a selection of product options to the consumer, the product options contained in the selection represent the most suitable from the range available to the regulated entity; or
- c) where it recommends a product to a consumer, the recommended product is the most suitable product for that consumer.

This requirement does not apply where:

- i) the consumer has specified both the product and the provider and has not received any advice;
- ii) the consumer is purchasing or selling foreign currency; or
- iii) where, in the context of the provision of a basic banking product or service, the regulated entity has alerted the consumer to any restrictions on the account and/or the availability of a lower cost alternative.

Before providing a product or service to a consumer, a regulated entity must prepare a written statement setting out:

- a) the reasons why a product or service offered to a consumer is considered to be suitable to that consumer;
- b) the reasons why each of a selection of product options offered to a consumer are considered to be suitable to that consumer; or
- c) the reasons why a recommended product is considered to be the most suitable product for that consumer.

The regulated entity must give a copy of this written statement to the consumer and retain a copy.

This requirement does not apply where:

- i) the consumer has specified both the product and the provider and has not received any advice;
- ii) the consumer is purchasing or selling foreign currency, or
- iii) the consumer is seeking a basic banking product or service.

3.4 Assuming that the European Directive on unfair terms was implemented in national law, what is the definition of an “unfair term” in your legislation? Are there typical terms for mortgage credit, which are forbidden by law?

The European Communities (Unfair Terms in Consumer Contracts) Regulations, 1995 currently apply - The regulations restrict institutions from entering into contracts which are unfair to the consumer. An unfair term in a contract concluded with a consumer by a seller or supplier shall not be binding on the consumer. An unfair term is defined as one which causes a significant imbalance in the parties’ rights and obligations under the contract to the detriment of the consumer.

3.5 Is there a legal link between the goods/services contract and the credit contract? Is there a joint and several liability between the supplier of the goods/services and the lender funding the purchase? What is the extent of this responsibility? Does the borrower have a legal obligation to possibly take action against the supplier before taking action against the lender?

There is currently no joint and several liability for the provider of mortgages although there are provisions in relation to joint and several liability in the context of consumer credit.

3.6 Is the linking of services to the mortgage credit regulated? Is it forbidden or authorised under a number of conditions?

The offering of a loan predicated on a condition that any financial services (conveyancing services, auctioneering services or other services relating to land which the borrower may require whether or not in connection with the loan,) be provided by the lender, its agent, subsidiary or an associated body is prohibited under CCA 95. Loans made to individuals acquiring such services from the lender, its agent, etc, may not be on a more favourable basis.

In addition, CPC introduces a new provision whereby a lender must not make the sale of a product or service contingent on the consumer purchasing another product or service from the lender.

3.7 Are there certain legal requirements, which oblige the borrower to take out specific insurance with regard to the mortgage credit (for example, life insurance)?

The mortgage lender is obliged to arrange for mortgage protection insurance to be in place at the time of the issuance of the mortgages unless:

- the borrower already has an equivalent policy in place
- the property will not be the principle residence of the borrower or his dependents
- the borrower falls into a 'high risk'/'high cost' insurance category
- the borrower is over 50 years of age.

The lender may require that further types of insurance be put in place with respect to a mortgaged property but it may not require that said insurance is acquired from it or from an insurer for which it is an agent.

4. CONCLUSION OF THE CREDIT AGREEMENT

4.1 Must the borrower receive a copy of all the conditions of the future credit agreement in the form of a written offer or in any other form? What information must this offer contain? What are the consequences of not complying with this legal requirement?

The offer must be in writing and the credit agreement must contain a schedule of information as set out under 2.3 above.

4.2 Must the offer comply with the contractual conditions of a specific standard agreement? Who lays down this standard agreement? What are the consequences of not complying with this legal requirement?

The only standard clauses that are required in the offer are those set out in clause 2.3 above and these requirements are set out in the Consumer Credit Act 1995. Failure to comply with the provisions as set out in 2.3 above, will result in a fine or term of imprisonment as detailed in the Consumer Credit Act 1995.

4.2 What rights and commitments arise for the creditor and the borrower from handing over the offer?

4.3 Is the borrower entitled legally or contractually to a right of reflection? What are the conditions linked to the exercising of this entitlement?

The 'cooling off period' under CCA 95 does not apply in respect of mortgage loans (i.e. loans secured on the home for whatever purpose).

4.4 How does the acceptance of the offer by the borrower take place? Are there specific formal and procedural requirements to be observed?

The borrower signs the letter of offer and returns it to the lender.

4.6 What commitment deadlines apply to the offer?

There is no legal deadline for responding to the offer. Typically most offer letters contain a requirement to return the acceptance of the offer within 21 days.

4.7 When does the credit agreement come into effect?

The credit agreement comes into effect on draw down of the funds.

4.8 In the event that the borrower applies for several credits for one and the same purchase, is there a link between the different credits, according to which, the failure of one credit to be granted would allow him to cancel the others? What are the conditions associated with this link?

Each credit agreement is treated as a separate contract and while it is rare, failure to pay on one loan will not lead to cancellation of the other credits if the other credits continue to be repaid by the borrower.

4.9 Is the contract a «real» contract (directly linked to the property), a consensual contract (agreement by the parties is sufficient) or even a solemn agreement (complementary formalities are required)?

The agreement for credit is accompanied by a legal mortgage whereby the borrowers interest in the real property of the borrower is transferred or conveyed to the lender subject to the right of the borrower to redeem the loan and to have the interest of the lender re-conveyed or re-transferred.

4.10 Can the lender unilaterally lay down the conditions, according to which he will transfer the funds to the borrower?

Yes but these conditions are only unilateral in that they are set by the lender and the borrower can either agree them or if he cannot agree them, he cannot proceed with the loan. These conditions are usually conditions required for the purposes of satisfying underwriting criteria.

5. SURETY AGREEMENTS

5.1 Do the guarantors come under the same consumer protection law as the borrower? What are the principles for the protection?

Guarantors do not come under the same consumer protection law as the borrower. However a credit agreement cannot be enforced against a guarantor in respect of credit agreements other than housing loans under the provisions of the Consumer Credit Act 1995 where the requirements of the Act regarding the contents of the credit agreement are not complied with.

CPC introduces some provisions of guarantor protection. Where a loan is being advanced subject to a guarantee, the guarantee must outline the obligations of the guarantor and must contain the following warning:

Warning: As a guarantor of this loan, you will have to pay off the loan, the interest and all associated charges if the borrower does not. Before you sign this guarantee you should get independent legal advice.

If the terms of the loan agreement change, the lender must notify the guarantor in writing.

5.2 Does legislation stipulate a limit to the surety i.e. a time limit or a limit as to its amount?

There is neither a time limit nor a limit as to amount specified in legislation.

5.3 Does the lender have a legal obligation to take action against the borrower first before acting against the guarantor?

The lender usually has to make a demand against the borrower first and in the event of default is then entitled to require the guarantor to pay under the guarantee.

6. RIGHT OF WITHDRAWAL

6.1 After the conclusion of the mortgage credit contract, is the borrower entitled legally or contractually to cancel it, especially in the event that the contract for which the loan has been applied falls through?

If "conclusion" means after the funds have been drawn down, The borrower is not legally or contractually entitled to cancel the mortgage credit contract after its conclusion and the funds must be repaid in full by the customer together with any interest. If "conclusion" means after the signed letter of offer or acceptance has been received by the lender, the practice is that the lender simply cancels the loan application.

6.2 What is the deadline for exercising this right of withdrawal?

There is no legal deadline for exercising this right of withdrawal. However offer letters generally contain a time limit within which draw down must take place (e.g. 40 days from date of acceptance of the offer).

6.3 Is the exercising of the right of withdrawal subject to any formal or procedural requirements?

No

6.4 Is the lender entitled to register in any way the fact that the borrower has exercised the right of withdrawal?

No

6.5 Are the parties subject to specific requirements in the case of withdrawal when winding up the contract?

No

7. RIGHT OF EARLY REPAYMENT

7.1 Is the borrower legally entitled to repay early? If this is the case, what are the terms of the procedure?

Yes – CCA 95 stipulates that a borrower may, at any time before the time agreed, repay to the mortgage lender the whole or any part of a housing loan.

7.2 Is the lender allowed to charge the costs involved by the early repayment to the borrower? Under which conditions? What is the basis for the calculation of the indemnity?

The lender may not apply a redemption fee in the case of a variable rate loan, i.e. a loan where the interest rate will not vary for a period of at least 12 months. A redemption fee may be applied in the event of the redemption of a fixed rate loan during the period in which the rate is fixed and in the case of certain 'capped' interest rate loans.

Where a redemption fee may be applied, a statement to that effect along with details of the method of its calculation must be included in all information documents relating to the loan (including marketing material, the loan application form and the letter of offer). The method for the calculation of the redemption fee is not standardised in law and is a matter for each individual lender to determine in line with the contract.

7.3 In addition to the legally established contractual indemnity/penalties, can the lender claim for further contractual penalties?

No

7.4 Is the right to early repayment subject to certain conditions and, if this is the case, which conditions?

No

7.5 Is the lender allowed to suppress the early repayment option under certain conditions and, if this is the case, under which conditions?

No

7.6 In the event of the transfer of the property, what happens to the loan? Can it be transferred or must it be repaid?

It must be repaid.

7.7 Is the borrower allowed to remortgage (refinance his mortgage loan)? Must it be with the same lender or can it be with another? What are the conditions and costs involved?

The borrowers ability to remortgage is intrinsically linked to his or her ability to redeem the loan. In that the absolute right to redemption exists, so does the right to remortgage. Such a remortgage does not have to be effected with the same lender. Remortgaging will give rise to most (if not all) of the same costs for the borrower as the initial mortgage, i.e. legal fees, registration costs, etc.

8. REGULATIONS ON USURY

8.1 Is usury defined by law? What is the principle?

Usury is not of itself defined by law but would mean excessive interest or illegal interest.

8.2 Is this important with regard to the mortgage loan?

No

8.3 What are the consequences of usury from the point of view of civil law and supervisory law?

Money lenders under licence from the Director of Consumer Affairs would be entitled to charge high interest rates. However if they charged excessive interest rates, a consumer could apply to Court to have the rate declared excessive. However this remedy is not open to loans under a credit agreement relating to credit advanced by a credit institution. From a civil law point of view, an excessive rate of interest could be struck down by the Court as being unconscionable and therefore unenforceable.

8.4 Are there any other restrictions applicable to interest rates?

Since May 2003, any surcharge or penalty interest is notifiable to the Consumer Director. A fee must be paid in respect of new notifications or increases. The Consumer Director has the power to direct an institution not to impose the proposed surcharge or penalty interest. This provision is an extension of the provision which previously applied to any bank charges.

9. LEGAL CONSEQUENCES IN THE EVENT OF INFRINGEMENT OF THE LOAN CONTRACT BY THE BORROWER

9.1 What happens if the borrower does not meet the payment conditions?

The lender will first attempt to contact the borrower with a view to their resuming full or partial repayments. This may result in the lender putting in place a further agreement with the borrower to service the debt. If these attempts prove unsuccessful the lender may choose to enforce the mortgage. If this is the case the borrower will be issued with a demand for payment of the full amount due and, failing payment, the institutions will instigate court action seeking a possession order in respect of the property.

9.2 In the event of default by the borrower, what possibilities does the law give the creditor to claim for the outstanding debt, the unpaid interest due, the interest not yet due, a lump sum or contractual penalties?

The creditor has the right to claim all sums owed under the mortgage agreement including interest due. In the event of the repossession and resale of the property, any excess funds accruing from the resale after any amounts legally due to the lender are deducted are returned to the borrower. However if the proceeds of the sale are not sufficient to cover the debt outstanding the lender may continue to pursue the borrower in respect of these amounts.

9.3 Are interest supplements possible in the event of default?

Yes, but the manner in which they may be calculated must be specified in marketing material relating to the loan, the application form, the letter of offer and the loan agreement. They are also notifiable (as set out under 8.4).

9.4 What consequences are there in the event of neglect of duty to maintain the building?

10. IS THE UNILATERAL SETTING OF AND/OR CHANGING OF CONTRACTUAL CONDITIONS POSSIBLE DURING THE LOAN?

Terms and conditions may only be varied to the extent specified in the contract signed by the borrower. Most interest rates are variable, and are subject to unilateral variations over the course of the contract. The automatic right of repayment without redemption fees combined with competitive forces ensure that borrowers do not suffer from the lender's unilateral right of variation.

11. REGULATIONS RELATING TO OVERINDEBTEDNESS

11.1 Is overindebtedness defined and regulated by law?

No

11.2 On which principles is it based?

N/A

12. OTHER PROBLEMS RELATING TO CONSUMER PROTECTION

12.1 Are there any legal limits to a maximum loan-to-value ratio and what are they?

No. The regulator does however apply and monitor prudential supervision conditions and LTV's in excess of 95% are rare. For high LTV loans, lenders may require that an indemnity bond protecting the lender against losses in respect of a given segment of the LTV (typically 75-90%) is put in place. This may be paid for by the lender or the borrower.

12.2 Does the lender come under any restrictions when granting the loan, based on the consumer's repayment capacity?

Not in terms of legal restrictions however, along with the application of standard underwriting criteria by the institution, the regulator may require from the perspective of prudential supervision, that a lender demonstrate that it is not lending to consumers beyond their repayment capacity. One means of demonstrating this is by stress testing both new and existing loans against hypothetical interest rate increases.

12.3 Does the lender have a legal obligation to give further information after the conclusion of the contract?

CCA 95 requires that:

- A mortgage lender shall in respect of a housing loan, issue to the borrower:
 - a) at the time the loan is made, or as soon as may be practicable thereafter a copy of the mortgage deed (including any contract relating thereto) which copy shall be additional to any copy of such mortgage deed issued to his legal representative, and
 - b) a statement of the total amount outstanding on the loan on a specified date occurring not more than one year after the making of the loan and at intervals of not more than one year thereafter until the loan is fully repaid, such statement being issued as soon as practicable after the date specified.

CPC requires that:

Where the mortgage account is in arrears, the regulated entity must inform the consumer in writing of the status of the account as soon as possible after it becomes aware of the arrears. This information must include:

- a) the date the mortgage fell into arrears;
- b) the number and total of payments missed
- c) the amount of the arrears interest charged to date
- d) the interest rate applicable to the arrears, and the details of other fees and charges used to calculate the arrears interest amount.

12.4 Does the lender have any legal obligation to disclose the existence and amount of any commission he would have to pay on the occasion of the conclusion of the loan contract (to an intermediary, other)?

No. Although the disclosure of commission (by the recipient) is envisaged in the CCA, it requires a Statutory Instrument to give it practical effect and this has not been put in place.

ITALY

1. SCOPE

1.1 What significant legislation is there in your country regulating the protection of the mortgage borrower?

Italy has no specific legislation regulating the protection of mortgage borrowers. The latter's protection is thus regulated by general contract law and the specific provisions of the mortgage itself.

1.2 Do the consumer protection measures only concern loans to private persons?

The consumer protection measures of the Banking Law (Article 121 et seqq of Legislative Decree 385/19993, only concern a "natural person acting for purposes outside his business, trade or profession (a consumer)" (Article 121. 1).

1.3 Are the consumer protection measures limited by the purpose of the loan (e.g. for housing) or the existence of the surety?

No.

2. PRE-CONTRACTUAL INFORMATION TO BE DISCLOSED TO THE MORTGAGE BORROWER

2.1 Is any minimum and/or compulsory information to the lender and the transaction on offer (type, object, duration, costs, etc.) required at the advertising stage?

Yes.

2.2 Are there any advertising restrictions imposed on credit institution?

According to legislative decree n° 196/2003 (the law on privacy), banks must give the customer requesting a loan all the information concerning the processing of the data involved in the granting of the loan.

2.3 Assuming that your national credit institutions apply the Code of Conduct for Home Loans, please confirm disclosure of all information listed under Code's general information list and European Standardised Information Sheet (see Annex I) and indicate any information given to consumers according to national legislation or practice. Please indicate if any listed information is not disclosed, and include the reason for that exception.

Is there any legal or contractual obligation to disclose exact and full information as to his personal circumstances imposed on the borrower?

Italian banks supply all the information envisaged by the ESIS. Specifically, they have elected to inform customers also of the APRC (as well as the effective interest rate), despite the fact that there is no such obligation under Italian law and that under the Code of Conduct they could, if they wished, inform customers only of the effective interest rate.

As to general information, this is supplied by Italian banks as part of their detailed information sheets under the transparency law. The sheets also provide additional information on the economic content of the contract.

2.4 Is there a legal obligation to disclose an Annual Percentage Rate of Charge (APRC) to the mortgage borrower? What is the method of calculation applied? What components included in the APRC? Does the calculation of the APRC imply that the lender makes any specific assumptions as to evolution of the rate (in case of variable rate or an initial fixed rate)?

The obligation to disclose the APRC, under Italian law, applies only to consumer credit, i.e. "the granting of credit in the course of a trade, business or profession in the form of deferred payment, a loan or other similar financial accommodation to a natural person acting for purposes outside his business, trade or profession (a consumer)" (Article 121.1 of the Banking Law).

2.5 Do these information requirements impact on the intermediaries? To what extent?

These obligations are placed on all Italian intermediaries.

3. PRE-CONTRACTUAL AND CONTRACTUAL OBLIGATION IMPOSED ON THE LENDER

3.1 Are there negative and/or positive central databases or other sources of data on the candidate borrower, which are accessible to the lender? Is it compulsory for the lender to consult them and what is the consequence if he does not? Is it possible to access databases on a cross-border basis? Under what conditions?

Italy has both public and private databases. The Bank of Italy operates a Central Credit Register (CR), membership of which is compulsory for banks and financial intermediaries meeting the requirements of the law. The system collects data on borrowers for amounts of €75,000 or more and bad debts with no threshold level. The interbank company for automation (SIA) operates a central database of small credit exposures (CRIC) that are not covered by the Bank of Italy register but that are equal at least to €30,987. All members of the CR must participate in the SIA database.

There are other, private and voluntary databases on consumer credit, such as CRIF and Experian Ltd. With the depenalisation of the crime of writing bad or unauthorized cheques, a computerized database on irregular bank and postal cheques and payment cards is operated by SIA. Consultation of the databases is not compulsory, and cross-border access is not provided for.

3.2 Does the lender have a legal duty to provide advice to the candidate borrower? What is the extent of this obligation and its possible consequences?

Yes, there is an information obligation.

3.3 Is there any kind of responsibility based on the "responsible lending" principle imposed on the lender?

Italian law recognizes no responsibility of the lender for "ill-considered lending".

3.4 Assuming that the European Directive on unfair terms was implemented in national law, what is the definition of an "unfair term" in your legislation? Are there typical terms for mortgage credit, which are forbidden by law?

Italian law considers unfair terms in Article 1469 ff. of the Civil Code. Article 1469-bis lays down that "in a contract between a consumer and a professional, clauses shall be considered unfair if, notwithstanding good faith, they produce a substantial imbalance to the consumer's disadvantage in the rights and obligations deriving from the contract".

3.5 Is there a legal link between the goods/services contract and the credit contract? Is there a joint and several liability between the supplier of the goods/services and the lender funding the purchase? What is the extent of this responsibility? Does the borrower have a legal obligation to possibly take action against the supplier before taking action against the lender?

No, as a rule there is no link between the goods/services contract and the credit contract. The sole exception is consumer credit (including mortgage credit), presuming that there is an exclusive relationship between the creditor and the supplier. Where the consumer has acted against the supplier but has not obtained satisfaction, he may have the right to take action against the creditor as well (Banking Law, Article 125.4).

3.6 Is the linking of services to the mortgage credit regulated? Is it forbidden or authorised under a number of conditions?

As noted under 3.5, the special rules on consumer credit also apply to mortgage credit.

3.7 Are there certain legal requirements, which oblige the borrower to take out specific insurance with regard to the mortgage credit?

The practice is for the mortgage lender to require the borrower to take out insurance, but there is no legal obligation.

4. CONCLUSION OF THE CREDIT AGREEMENT

4.1 Must the borrower receive a copy of all conditions of the future credit agreement in the form of written offer or in any other form? What information must this offer contain? What are the consequences of not complying with this legal requirement?

At present there is no such obligation, but the introduction of new transparency rules as of 1 October 2003 will make it compulsory to give the borrower a full copy of the contract so that he can make "a considered assessment of its contents" (Resolution of the Interministerial Committee for Credit and Saving, 4 March 2003, Article 8).

4.2 Must the offer comply with contractual conditions of a specific standard agreement? Who lays down this standard agreement? What are the consequences of not complying with this legal requirement?

There is no standard agreement. Contracts are negotiated by banks with customers.

4.3. What rights and commitments arise for the creditor and the borrower from handing over the offer?

Those provided for by the contract.

4.4 Is the borrower entitled legally or contractually to a right of reflection? What are the conditions linked to the exercising of this entitlement?

The law does not entitle borrowers to a period of reflection.

4.5 How does the acceptance of the borrower take place? Are there specific formal and procedural requirements to be observed?

Mortgage acts in Italy are formalized before a notary.

4.6 What commitment deadlines apply to the offer?

There is no provision for a mortgage offer.

4.7 When does the credit agreement come into effect?

The contract comes into effect when the amount agreed is made available to the borrower.

4.8 In the event that the borrower applies for several credits for one and the same purchase, is there a link between the different credits, according to which, the failure of one credit to be granted would allow him to cancel the others? What are the conditions associated with this link?

There is no provision in Italy for cross-default.

4.9 Is the contract a “real contract” (directly linked to the property), a consensual contract (agreement between the parties is sufficient) or even a solemn agreement (complementary formalities are required)?

Mortgage contracts are real contracts, formalised by the delivery of a sum of money. To constitute a mortgage, the contract must be a public act. The mortgage is instituted with its entry in the public mortgage register.

4.10 Can the lender unilaterally lay down the conditions according to which he will transfer the funds to the borrower?

No.

5. SURETY AGREEMENTS

5.1. Do the guarantors come under the same consumer protection law as the borrower? What are the principles for the protection?

No.

5.2 Does the legislation stipulate a limit to the surety, i.e. a time limit or a limit as to its amount?

No.

5.3 Does the lender have a legal obligation to take action against the borrower first before acting against the guarantor?

In a surety agreement, Article 1944 of the Civil Code provides that the parties may agree that the surety shall not be bound to pay before remedies against the primary debtor are exhausted. In this case, if the surety is sued by the creditor and intends to avail himself of the exhaustion of remedies, he must indicate the primary debtor’s assets upon which execution is to be levied.

6. RIGHT OF WITHDRAWAL

6.1 After the conclusion of the mortgage credit contract, is the borrower entitled legally or contractually to cancel it, especially in the event that the contract for which the loan has been applied for falls through?

No, there is no such specific legal entitlement.

6.2 What is the deadline for exercising the right of withdrawal?

The deadline is established in the mortgage contract itself.

6.3. Is the exercising of the right of withdrawal subject to any formal or procedural requirement?

The procedure for exercising the right of withdrawal is specified in the contract.

6.4. Is the lender entitled to register in any way the fact that the borrower has exercised the right of withdrawal?

6.5. Are the parties subject to specific requirements in the case of withdrawal when winding up the contract?

The specific requirements on the parties in the event of withdrawal are specified in the contract.

7. RIGHT OF EARLY REPAYMENT.

7.1 Is the borrower legally entitled to repay early? If it is the case, what are the terms of the procedure?

Under Article 40 of the 1993 Banking Law, debtors may repay all or part of their debt early by paying the bank a contractually determined all-inclusive early repayment fee.

7.2 Is the lender allowed to charge the costs involved by early repayment to the borrower? Under which conditions? What is the basis for the calculation of the indemnity?

As noted under 7.1, the lender is entitled to a fee for early repayment. For consumer credit, this fee cannot exceed 1% of the outstanding capital. For mortgages, the amount of the fee for early repayment and the method of its calculation are established in the loan contract. The bank's periodic statements to the borrower must specify the current "cost" of early repayment.

7.3 In addition to the legally established contractual indemnity/penalties, can be the lender claim for further contractual penalties?

Yes.

7.4. Is the right to early repayment subject to certain conditions and if so, what conditions?

No. See 7.2

7.5. Is the lender allowed to suppress the early repayment option under certain conditions and, if it is the case, under which conditions?

No.

7.6. In the event of the transfer of the property, what happens to the loan? Can it be transferred or must it be repaid?

When the property for which the loan has been requested is transferred, either an agreement is made with the bank to transfer the mortgage as well, or else the loan is extinguished.

7.7. Is it the borrower allowed to remortgage (refinance his mortgage loan)? Must it be with the same lender or it can be with another? What are the conditions or the costs involved?

Refinancing the mortgage is permitted, either with the same bank or with another. The costs vary from bank to bank.

8. USURY.

8.1. Is usury defined by law? What are the principles?

Article 644 of the Penal Code punishes "any person who acts so as to be given or promised, in whatever form, for himself or for others, in return for the loan of money or other valuables, interest or other benefits that are usurious." The law determines a threshold above which interest is always usurious. In addition, even interest rates and other benefits below that threshold may be usurious when, considering the concrete mode of the loan and the average rate on comparable loans, they are disproportionate to the amount of money or other benefits provided to the mediation service performed, when the person who pays or promises such interest is in a state of economic or financial need.

Law 108 of 7 March 1996 provides that the rate above which the interest charged on a loan is always usurious is the average rate for each type of loan surveyed taken from the most recent observation published in the Gazzetta Ufficiale augmented by one half.

8.2 Is this important with regard to the mortgage loan?

It is relevant to mortgage loans, as to all types of loan.

8.3. What are the consequences of usury from the point of view of the civil law and supervisory law?

In Civil Law, Article 1815.2, provides that "if usurious interest is stipulated, the clause is void and no interest is due." As for the supervisory regulations, in the case of usurious interest, the Bank of Italy may levy a fine.

8.4. Are there any other restrictions applicable to interest rates?

No.

9. LEGAL CONSEQUENCES IN THE EVENT OF INFRINGEMENT OF THE LOAN CONTRACT.

9.1 What happens if the borrower does not meet the payment conditions?

Action for credit recovery is initiated.

9.2. In the event of default by the borrower, what possibilities does the law give the creditor to claim for the outstanding debt, the unpaid interest due, the interest not yet due, a lump sum or contractual penalties?

In the event of default on a home mortgage loan, the mortgaged property may be sold at auction. In all other cases, the procedures envisaged by the Code of Civil Procedure for forced collection of the credit claim are initiated.

9.3 Are interest supplements possible in the event of default?

Yes, if so provided for in the loan contract.

9.4 What consequences are there in the event of neglect of duty to maintain the building?

10. IS THE UNILATERAL SETTING OF AND /OR CHANGING OF CONTRACTUAL CONDITIONS POSSIBLE DURING THE LOAN?

Yes.

11. REGULATIONS RELATING TO OVERINDEBTEDNESS.

11.1 Is overindebtedness defined and regulated by law?

11.2 On what principles is it based?

At present, Italian law does not define or regulate overindebtedness. A bill currently before Parliament would govern proposals for a settlement by an overindebted person, providing for the payment to all creditors of a percentage of the claims of each.

12. OTHER PROBLEMS RELATING TO CONSUMER PROTECTION.

12.1 Are there any legal limits to a maximum loan-to-value ratio and what are they?

For consumer credit, there is a legal ceiling of €31,000.

12.2 Does the lender come under any restrictions when granting the loan, based on consumer's repayment capacity?

Granting a loan forms part of business risk. It is up to the lender to make an accurate assessment of the borrower's creditworthiness and ability to repay.

12.3. Does the lender have a legal obligation to give further information after the conclusion of the contract?

No.

12.4. Does the lender have any legal obligation to disclose the existence and amount of any commission he would have to pay on the occasion of the conclusion of the loan contract (to any intermediary, other?).

THE NETHERLANDS

1. SCOPE

1.1. What significant legislation is there in your country regulating the protection of the mortgage borrower?

A Financial Services Act has been in force since 2006. This act is also applicable to private mortgage loans.

Since 1st July 1990 a so-called "code of conduct on mortgage lending" (hereafter: code of conduct) has been in effect. The code of conduct applies to mortgage credit on houses and apartments for private persons and meant for their own use and offered as a more or less standard product by the lender. If the credit is meant as a means of financing the purchase of a practice by e.g. a doctor, a dentist, a chartered accountant etc., the regulation does not apply. Since 1st January 2003 the European Code for home loans has been integrated in the code of conduct.

A special commission has been set up to ensure proper application of the code of conduct. Consumers may consult the commission if they have a dispute with their mortgage lender.

Since 1st July 2002, it has been compulsory to provide the consumer with a financial instruction leaflet (financiële bijsluiter) for mortgages, which are part of a so-called "complex product" (for example: an endowment mortgage). The Authority has prescribed the content of that leaflet for the Financial Markets (Autoriteit Financiële Markten).

1.2. Do the consumer protection measures only concern loans to private persons?

The above mentioned consumer protection measures only concern loans to consumers.

1.3. Are the consumer protection measures limited by the purpose of the loan (e.g. for housing) or the existence of the surety?

The surety (a mortgage on the house of the consumer) determines the consumer protection measures indicated under 1.1. The consumer protection measures indicated under 1.1 are not limited by the purpose of the loan.

2. PRE-CONTRACTUAL INFORMATION TO BE DISCLOSED TO THE MORTGAGE BORROWER

2.1. Is any minimum and/or compulsory information on the lender and the transaction on offer (type, object, duration, costs, etc.) required at the advertising stage?

According to the code of conduct on mortgage lending, it is compulsory to provide the consumer with the European Standardised Information Sheet (see also 1.1.b and 1.1.c).

2.2. Are there any advertising restrictions imposed on credit institutions?

There is a (ministerial) order for credit offers with rules about advertising etc. for mortgage credit.

2.3. Assuming that your national credit institutions apply the Code of Conduct for Home Loans, please confirm disclosure of all information listed under the Code's general information list and European Standardised Information Sheet (see Annex I) and indicate any additional information given to consumers according to national legislation or practice. Please indicate if any listed information is not disclosed, and include the reason for that exception.

Dutch professional lenders disclose all the information listed under the Code General Information List and the European Standard Used Information Sheet. On top of that, it is compulsory to provide the consumer with a financial instruction leaflet (see 1.1).

2.4. Is there a legal obligation to disclose an Annual Percentage Rate of Charge (APRC) to the mortgage borrower? What is the method of calculation applied? What are the components included in the APRC? Does the calculation of the APRC imply that the lender makes any specific assumptions as to the evolution of the rate (in case of a variable rate or an initial fixed rate)?

There is no legal obligation to disclose an Annual Percentage Rate of Charge to mortgage borrowers. However, according to the code of conduct the professional lender has to disclose the APRC.

The effective rate of interest has to be stated just as the nominal rate of interest.

The formula for the effective rate of interest is as follows:

- the effective rate for interest per term of payment is calculated by way of the following equation:

$$K - A = \sum_{m=1}^n \frac{T(m)}{(1+i)^m} + \frac{R(n)}{(1+i)^n}$$

K = amount borrowed

A = cost charged by the lender at the time of concluding the loan contract

T (m) = amount per term of payment in the event of term of payment m

N = number of terms to be paid during the economic currency of the mortgage credit, to be calculated over a period of 30 years at most

I = the one/ hundredth part of the effective interest per term of payment

R (n) = (possible) remnant debt/claim at the end of the economic currency of the mortgage credit in a given case after 30 years

After this, the effective rate of interest on a yearly basis is calculated as follows:

$$P = (1 + i)^t - 1 \times 100$$

P = effective rate of interest per year

I = see above

t = number of terms of payment per year

2.5. Do these information requirements impact on the credit intermediaries? To what extent?

A professional lender must conclude a written contract with an intermediary who works for him. In that contract, it must be stated that the intermediary has to comply with the code of conduct.

3. PRE-CONTRACTUAL AND CONTRACTUAL OBLIGATIONS IMPOSED ON THE LENDER

3.1. Are there negative and/or positive central databases or other sources of data on the candidate borrower, which are accessible to the lender? Is it compulsory for the lender to consult them and what is the consequence if he does not? Is it possible to access databases on a cross-border basis? Under what conditions?

The professional lender has access to a central database. There is a positive and negative registration of (unsecured) credit for consumers and a negative registration of mortgage credit. If a lender considers granting a credit to a consumer it is compulsory to consult the central database.

3.2. Does the lender have a legal duty to provide advice to the candidate borrower? What is the extent of this obligation and its possible consequences?

The Financial Services Act implies that the lender gives advice unless he mentions that he does not give advice.

3.3. Is there any kind of responsibility based on the “responsible lending” principle imposed on the lender?

The principal of “responsible lending” is not yet incorporated in the legal system except in the case of unsecured credit to consumers.

3.4. Assuming that the European Directive on unfair terms was implemented in national law, what is the definition of an “unfair term” in your legislation? Are there typical terms for mortgage credit, which are forbidden by law?

The definition of “unfair terms” in our legislation is: “a stipulation in a contract between a consumer and a professional that is unreasonable for the consumer”. There is no typical unreasonable onerous stipulation mentioned in the law for mortgage credit.

3.5. Is there a legal link between the goods/services contract and the credit contract? Is there a joint and several liability between the supplier of the goods/services and the lender funding the purchase? What is the extent of this responsibility? Does the borrower have a legal obligation to possibly take action against the supplier before taking action against the lender?

The borrower has the right to suspend further payments if the supplier of a movable good or services, bought with the credit, fails to comply with his obligations, if:

- a) there is an exclusive contract for supplying credit between the lender and the supplier, and;
- b) the supplier fails to comply with his obligation following a written warning granting him a reasonable time for performance.

3.6. Is the linking of services to the mortgage credit regulated? Is it forbidden or authorised under a number of conditions?

There is no regulation about the linking of services to mortgage credit.

3.7. Are there certain legal requirements, which oblige the borrower to take out specific insurance with regard to the mortgage credit (for example, life insurance)?

The lender can oblige the borrower to take out specific insurance in relation to the mortgage (for example: house insurance, life insurance).

4. CONCLUSION OF THE CREDIT AGREEMENT

4.1 Must the borrower receive a copy of all the conditions of the future credit agreement in the form of a written offer or in any other form? What information must this offer contain? What are the consequences of not complying with this legal requirement?

The borrower must receive a copy of all conditions of the future agreement in a written form (code of conduct). If the lender fails to comply with this obligation, the borrower can complain to the (extra-legal) Conciliation Board for Mortgage Lending.

4.2 Must the offer comply with the contractual conditions of a specific standard agreement? Who lays down this standard agreement? What are the consequences of not complying with this legal requirement?

The offer must comply with the provisions in the code of conduct. In the event of non-compliance, the (candidate) lender can complain to the Conciliation Board for Mortgage Lending.

4.3. What rights and commitments arise for the creditor and the borrower from handing over the offer?

Handing over an offer to a candidate borrower is binding for the lender except if the lender has reserved rights.

4.4. Is the borrower entitled legally or contractually to a right of reflection? What are the conditions linked to the exercising of this entitlement?

The borrower has no legal or contractual right of reflection.

4.5. How does the acceptance of the offer by the borrower take place? Are there specific formal and procedural requirements to be observed?

The acceptance of an offer generally takes place if the consumer signs the offer in writing.

4.6. What commitment deadlines apply to the offer?

1. Generally the offer must be accepted within a certain period.
2. The mortgage has to be taken out within a certain period of time after accepting the offer.

4.7. When does the credit agreement come into effect?

A credit contract comes into effect by signing a proper set of documents by both parties. The creation of a mortgage as a security for the loan is basically a separate contract (in rem) and requires a notarial deed, as well as the registration at the register of real property. It is possible to combine the two contracts in one notarial deed.

4.8. In the event that the borrower applies for several credits for one and the same purchase, is there a link between the different credits, according to which, the failure of one credit to be granted would allow him to cancel the others? What are the conditions associated with this link?

If a borrower needs several credit facilities from different lenders, it is common practice that the coming into effect of one of the agreements is made conditional on the coming into effect of the other. This is, however, on a contractual basis. There are no legal links between the separate agreements.

4.9. Is the contract a «real» contract (directly linked to the property), a consensual contract (agreement by the parties is sufficient) or even a solemn agreement (complementary formalities are required)?

The credit agreement as such is a consensual agreement. However, when executed by way of a notarial deed, with disbursement of funds at the same time, it has elements of a "real" contract. The difference is of minor importance and is more of an academic nature.

4.10 Can the lender unilaterally lay down the conditions, according to which he will transfer the funds to the borrower?

5. SURETY AGREEMENTS

5.1 Do the guarantors come under the same consumer protection law as the borrower? What are the principles for the protection?

There is a special legal protection for sureties entered into a person not acting in the course of his profession on business (consumer protection).

The principles are:

- the surety must be concluded in writing
- the surety must be bound to a certain amount
- there are restrictions for a surety for future obligations

5.2. Does legislation stipulate a limit to the surety i.e. a time limit or a limit as to its amount?

The law does not limit the amount of the surety. However a suretyship for future obligations may be cancelled at all times if it is not for a certain and determinate period, and after five years if it is for a certain and determinate period. After cancellation, the suretyship continues for obligations, which have already arisen.

5.3. Does the lender have a legal obligation to take action against the borrower first before acting against the guarantor?

The guarantor is not obliged to perform until such time as the principal debtor has failed in the performance of his obligation. The creditor who puts the principal debtor into default must at the same time notify the guarantor. It is not necessary for the creditor to take legal action against the principal debtor before he addresses the guarantor.

6. RIGHT OF WITHDRAWAL

6.1 After the conclusion of the mortgage credit contract, is the borrower entitled legally or contractually to cancel it, especially in the event that the contract for which the loan has been applied falls through?

After accepting the offer, the borrower has no legal right to cancel. There is no right of cancellation, apart from in the case of doorstep selling. Mortgage credit is only covered by the provisions applicable to doorstep selling in exceptional cases, since the negotiations are usually carried out at the bank.

6.2 What is the deadline for exercising this right of withdrawal?

6.3 Is the exercising of the right of withdrawal subject to any formal or procedural requirements?

6.4 Is the lender entitled to register in any way the fact that the borrower has exercised the right of withdrawal?

6.5 Are the parties subject to specific requirements in the case of withdrawal when winding up the contract?

7. RIGHT OF EARLY REPAYMENT

7.1 Is the borrower legally entitled to repay early? If this is the case, what are the terms of the procedure?

There is no legal right for early repayment. However, according to the code of conduct, the borrower can always repay early.

7.2. Is the lender allowed to charge the costs involved by the early repayment to the borrower? Under which conditions? What is the basis for the calculation of the indemnity?

In the case of variable interest loans, repayment is usually possible in the short term. Often, overall compensation is provided for in the event of early repayment. In the case of fixed interest loans, the bank may make repayment conditional on the restitution of the loss of interest which it incurs over the remaining duration in the case of increased interest rates.

7.3. In addition to the legally established contractual indemnity/penalties, can the lender claim for further contractual penalties?

In principle, lenders can claim further penalties, but in practice, the only "penalty" is the restitution of the loss of interests.

7.4. Is the right to early repayment subject to certain conditions and, if this is the case, which conditions?

According to the code of conduct, the borrower always has the right of early repayment or termination of the contract/loan.

7.5. Is the lender allowed to suppress the early repayment option under certain conditions and, if this is the case, under which conditions?

No

7.6. In the event of the transfer of the property, what happens to the loan? Can it be transferred or must it be repaid?

In case of the transfer of the property, the loan must be repaid. However, it is sometimes possible to transfer the loan to a new property.

7.7. Is the borrower allowed to remortgage (refinance his mortgage loan)? Must it be with the same lender or can it be with another? What are the conditions and costs involved?

The borrower can refinance the mortgage with the same lender or another lender. The costs can vary. If a new lender grants a new loan, the mortgage has to be renewed.

8. REGULATIONS ON USURY

8.1. Is usury defined by law? What is the principle?

Under Dutch law, there are no specific regulations on usury, apart from the general application of the principle of good faith. In the event of uncommonly high interest rates, limits could however be drawn from case law.

8.2 Is this important with regard to the mortgage loan?

8.3 What are the consequences of usury from the point of view of civil law and supervisory law?

8.4 Are there any other restrictions applicable to interest rates?

9. LEGAL CONSEQUENCES IN THE EVENT OF INFRINGEMENT OF THE LOAN CONTRACT BY THE BORROWER

9.1 What happens if the borrower does not meet the payment conditions?

If the borrower fails to meet his obligations, the lender is of course allowed to claim the amounts due and payable.

9.2. In the event of default by the borrower, what possibilities does the law give the creditor to claim for the outstanding debt, the unpaid interest due, the interest not yet due, a lump sum or contractual penalties?

The borrower can claim the outstanding debt, the unpaid interest due, the contractual penalties and costs.

9.3. Are interest supplements possible in the event of default?

With regard to default interest, there are usually two systems according to what is agreed in the contract. Either an interest supplement of 1% p.a. is calculated on the outstanding loan, or the loan interest plus a supplement of 1% is charged on the instalments in arrears. It is common practice that in such cases, the borrower has to pay default interest over the amounts due, at an average of 1-2%. Moreover, in case of default, the lender normally has the right to declare the entire loan due and payable. In that case the borrower has to pay the default interest on the whole amount outstanding.

Except for costs, it is not unusual for the borrower to also have to pay a penalty if early repayment

is due to default. There is no uniform practice regarding the amount of such penalty. It can be considerable. However, if this penalty is excessive, the courts have the right to moderate it. The code of conduct streamlines the policies of the different lenders.

9.4. What consequences are there in the event of neglect of duty to maintain the building?

The general conditions applicable to mortgage credit agreements in general contain a provision according to which the borrower is obliged to carry out "appropriate maintenance" to the mortgaged building. In the event of payment arrears, or if the borrower has failed to meet any of the obligations under the contract, such as the obligation to maintain the building, the lender can call in the loan. Theoretically, a breach of contract in the way described results in the termination of the loan. In practice, however, the bank hardly ever uses its power to terminate the loan in such cases.

10. IS THE UNILATERAL SETTING OF AND/OR CHANGING OF CONTRACTUAL CONDITIONS POSSIBLE DURING THE LOAN?

If the interest rate is fixed for a certain period it is not possible to change it unilaterally. However, some lenders provide variable interest loans, where interest rates may change on a certain date or even on a daily basis. If, in such a case, a borrower does not agree with the newly set rate, he has the right to redeem the loan in whole. In practice this does not happen very often because of the costs involved in acquiring new mortgage financing.

11. REGULATIONS RELATING TO OVERINDEBTEDNESS

11.1 Is overindebtedness defined and regulated by law?

There is no legislation on over-indebtedness

11.2 On which principles is it based?

12. OTHER PROBLEMS RELATING TO CONSUMER PROTECTION

12.1 Are there any legal limits to a maximum loan-to-value ratio and what are they?

There are no legal limits to a maximum loan-to-value.

12.2 Does the lender come under any restrictions when granting the loan, based on the consumer's repayment capacity?

No

12.3 Does the lender have a legal obligation to give further information after the conclusion of the contract?

No

12.4 Does the lender have any legal obligation to disclose the existence and amount of any commission he would have to pay on the occasion of the conclusion of the loan contract (to an intermediary, other)?

No

AUSTRIA¹

1. SCOPE

1.1 What significant legislation is there in your country regulating the protection of the mortgage borrower?

There are several regulations in the "Bankwesengesetz" (Austrian Banking Act) and in the "Konsumentenschutzgesetz" (Consumer Protection Act), but none specifically concerning mortgages.

1.2 Do the consumer protection measures only concern loans to private persons?

Yes

1.3 Are the consumer protection measures limited by the purpose of the loan (e.g. for housing) or the existence of the surety?

No

2. PRE-CONTRACTUAL INFORMATION TO BE DISCLOSED TO THE MORTGAGE BORROWER

2.1 Is any minimum and/or compulsory information on the lender and the transaction on offer (type, object, duration, costs, etc.) required at the advertising stage?

Before adhesion to the code of conduct, it was banking practice to provide, at the advertising stage, information on the type of loan, the duration and the costs. There was however no legal requirement. Since the introduction of the code of conduct, all information agreed upon in the code of conduct is given; this is more information than practice included before.

2.2 Are there any advertising restrictions imposed on credit institutions?

The BWG stipulates that lenders must inform potential borrowers of the A.P.R.C. and a fictitious A.P.R.C., which is defined in the Act, if they advertise with their intention of granting loans to consumers. Credit institutions should also give representative examples of the calculation of a loan. Moreover there is also a general clause in the Austrian "UWG" (= Bundesgesetz gegen den unlauteren Wettbewerb), which states that advertising measures infringing public morality are forbidden. Austrian jurisdiction defines whether or not advertising measures infringe public morality.

2.3 Assuming that your national credit institutions apply the Code of Conduct for Home Loans, please confirm disclosure of all information listed under the Code's general information list and European Standardised Information Sheet (see Annex I) and indicate any additional information given to consumers according to national legislation or practice. Please indicate if any listed information is not disclosed, and include the reason for that exception.

Is there any legal or contractual obligation to disclose exact and full information as to his personal circumstances imposed on the borrower?

All information listed under the Code and ESIS are given. The code of conduct has been fully implemented. There are no exceptions.

2.4 Is there a legal obligation to disclose an Annual Percentage Rate of Charge (APRC) to the mortgage borrower? What is the method of calculation applied? What are the components included in the APRC? Does the calculation of the APRC imply that the lender makes any specific assumptions as to the evolution of the rate (in case of a variable rate or an initial fixed rate)?

Yes.

¹ Last updated in 2003.

2.5 Do these information requirements impact on the credit intermediaries? To what extent?

No.

3. PRE-CONTRACTUAL AND CONTRACTUAL OBLIGATIONS IMPOSED ON THE LENDER

3.1 Are there negative and/or positive central databases or other sources of data on the candidate borrower, which are accessible to the lender? Is it compulsory for the lender to consult them and what is the consequence if he does not? Is it possible to access databases on a cross-border basis? Under what conditions?

It is usual to consult the "Kreditschutzverband" data base to collect data about the current loans of a potential borrower and to provide them with data. It is not compulsory, except as a general precautionary measure. It is theoretically possible to access databases on a cross-border basis, but it is not very common because cross-border mortgage finance is not widely-practiced.

3.2 Does the lender have a legal duty to provide advice to the candidate borrower? What is the extent of this obligation and its possible consequences?

No, but lenders usually provide advice about the construction of a mortgage and the consequences for the household-budget. The "Austrian Housing Developer Contract Act" (= Bauträgenervertragsgesetz) regulates the payment by consumers to housing developers for houses/flats under construction, with several possibilities of securing the consumer's payments. As a consequence of these legally defined payment settlements, the consumer receives advice from the lender concerning the consequences of payment to the purchaser.

3.3 Is there any kind of responsibility based on the "responsible lending" principle imposed on the lender?

No

3.4 Assuming that the European Directive on unfair terms was implemented in national law, what is the definition of an "unfair term" in your legislation? Are there typical terms for mortgage credit, which are forbidden by law?

The definition of "unfair terms" was implemented in the Austrian Consumer Protection Act, § 6 KSchG. This definition of unfair terms concretises the general definition in § 879 ABGB (which states that transactions, which are against the law or against public policy are null and void) especially with regard to transactions with consumers.

3.5 Is there a legal link between the goods/services contract and the credit contract? Is there a joint and several liability between the supplier of the goods/services and the lender funding the purchase? What is the extent of this responsibility?

The "Bauträgenervertragsgesetz" allows the housing developer to take only that part of the purchase price that is equivalent to the parts of the building, which are finished. The mortgage lender has various options at their disposal to guarantee the timeliness of these payments.

Does the borrower have a legal obligation to possibly take action against the supplier before taking action against the lender?

No

3.6 Is the linking of services to the mortgage credit regulated? Is it forbidden or authorised under a number of conditions?

No

3.7 Are there certain legal requirements, which oblige the borrower to take out specific insurance with regard to the mortgage credit (for example, life insurance)?

No

4. CONCLUSION OF THE CREDIT AGREEMENT

4.1. Must the borrower receive a copy of all the conditions of the future credit agreement in the form of a written offer or in any other form? What information must this offer contain? What are the consequences of not complying with this legal requirement?

At the request of the borrower, in accordance with the consumer measures in the Banking Act, the lender must provide the borrower with a copy of all the conditions of the future credit agreement in a written form. Due to the principle of self-commitment in the "code of conduct on pre-contractual information for loans", the future-borrower is in any case informed about the most important conditions.

4.2 Must the offer comply with the contractual conditions of a specific standard agreement? Who lays down this standard agreement? What are the consequences of not complying with this legal requirement?

There is no standard agreement, but there are standards for conditions of consumer loan contracts in the banking practice. Also see above to 4.1.

4.3 What rights and commitments arise for the creditor and the borrower from handing over the offer?

The consequences depend on the type of construction chosen (for details see 4.7). In practice, the offer is usually limited in time, especially as far as the interest rate, which is offered by the lender, is concerned.

4.4 Is the borrower entitled legally or contractually to a right of reflection? What are the conditions linked to the exercising of this entitlement?

Once the contract is signed, the borrower is not entitled to a right of reflection. Before signing, there is no temporal restriction, unless one has been negotiated in the contract.

4.5 How does the acceptance of the offer by the borrower take place? Are there specific formal and procedural requirements to be observed?

With a mortgage-loan, the signatures of the borrower and the lender have to be notarized by a public notary. (complementary formalities)

4.6 What commitment deadlines apply to the offer?

No commitment deadlines apply unless in relation with a specific fixed interest-rate. Usually lenders reprieve offers (from one to twelve months).

4.7 When does the credit agreement come into effect?

The coming into effect of the agreement depends on the nature of the agreement:

- *) "Kredit" – after signing the agreement (consensual contract)
- *) or a "Darlehen" – after the funds are transferred (real contract)

4.8 In the event that the borrower applies for several credits for one and the same purchase, is there a link between the different credits, according to which, the failure of one credit to be granted would allow him to cancel the others? What are the conditions associated with this link?

Usually there is a condition like this in "the general terms and conditions" of the lender.

4.9 Is the contract a «real» contract (directly linked to the property), a consensual contract (agreement by the parties is sufficient) or even a solemn agreement (complementary formalities are required)?

See 4.7. and 4.5. The contract is not directly linked to the property.

4.10 Can the lender unilaterally lay down the conditions, according to which he will transfer the funds to the borrower?

No, only in the contract.

5. SURETY AGREEMENTS

5.1 Do the guarantors come under the same consumer protection law as the borrower? What are the principles for the protection?

Yes, the guarantor must be provided with the same information as the borrower. The Consumer Protection Act and certain articles of the General Banking Act do not distinguish between borrower or guarantor, but whether they are "consumers" as defined by the Consumer Protection Act.

5.2 Does legislation stipulate a limit to the surety i.e. a time limit or a limit as to its amount?

There are no limits concerning an excess-surety, but there is an indirect limit, which results from the tax regulation: surety contracts are free of charges only as long as do not cover more than 130 % of the value of the loan. Mortgages can only be admitted for the asset pool if the registered mortgage does not exceed 60 % of the fair market value. The guarantor only guarantees for the outstanding amount; guarantee is accessory.

5.3 Does the lender have a legal obligation to take action against the borrower first before acting against the guarantor?

That depends on the contract – both alternatives are legally possible.

6. RIGHT OF WITHDRAWAL

6.1 After the conclusion of the mortgage credit contract, is the borrower entitled legally or contractually to cancel it, especially in the event that the contract for which the loan has been applied falls through?

Legally the borrower is not entitled to cancel the loan; contractually it is unusual he is entitled to do so.

6.2 What is the deadline for exercising this right of withdrawal?

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6.3 Is the exercising of the right of withdrawal subject to any formal or procedural requirements?

No.

6.4 Is the lender entitled to register in any way the fact that the borrower has exercised the right of withdrawal?

No

6.5 Are the parties subject to specific requirements in the case of withdrawal when winding up the contract?

No

7. RIGHT OF EARLY REPAYMENT

7.1 Is the borrower legally entitled to repay early? If this is the case, what are the terms of the procedure?

Yes, at any time if a floating interest rate is agreed upon. If a fixed interest rate was agreed upon, the borrower can only repay at the end of this period. Otherwise, he is obliged to compensate the bank for eventual losses of the bank.

7.2 Is the lender allowed to charge the costs involved by the early repayment to the borrower? Under which conditions? What is the basis for the calculation of the indemnity?

In case of fixed interest rates, an indemnity can be charged. It is either a fixed percentage of the mortgage (which must not exceed the actual loss) or is calculated according to the real loss of the bank.

7.3 In addition to the legally established contractual indemnity/penalties, can the lender claim for further contractual penalties?

If agreed upon.

7.4 Is the right to early repayment subject to certain conditions and, if this is the case, which conditions?

No

7.5 Is the lender allowed to suppress the early repayment option under certain conditions and, if this is the case, under which conditions?

Yes, if a fixed interest rate is paid.

7.6 In the event of the transfer of the property, what happens to the loan? Can it be transferred or must it be repaid?

The loan can be transferred or repaid as long as all parties to the contract are in agreement.

7.7 Is the borrower allowed to remortgage (refinance his mortgage loan)? Must it be with the same lender or can it be with another? What are the conditions and costs involved?

Remortgaging means in practice cancelling the loan and remortgaging with another lender. For conditions, under which it is possible, see 7.1. to 7.6.

8. REGULATIONS ON USURY

8.1 Is usury defined by law? What is the principle?

There is a Usury-Act. The principle is that the lender must not profit from the needs of the borrower and that the interest rate must not exceed an average level.

8.2 Is this important with regard to the mortgage loan?

Not specifically.

8.3 What are the consequences of usury from the point of view of civil law and supervisory law?

There is a criminal liability, the contract is invalid, and, if a bank is guilty of usury, the supervisory authority may withdraw the concession.

8.4 Are there any other restrictions applicable to interest rates?

The adjustment of the interest rates must follow objective indexes.

9. LEGAL CONSEQUENCES IN THE EVENT OF INFRINGEMENT OF THE LOAN CONTRACT BY THE BORROWER

9.1 What happens if the borrower does not meet the payment conditions?

If several reminders prove ineffective, the mortgage will be subject to early maturity.

9.2 In the event of default by the borrower, what possibilities does the law give the creditor to claim for the outstanding debt, the unpaid interest due, the interest not yet due, a lump sum or contractual penalties?

There is a legal procedure that ends with the legal auction of the real estate, financed by the mortgage.

9.2 Are interest supplements possible in the event of default?

As far as agreed upon in the mortgage contract.

9.3 What consequences are there in the event of neglect of duty to maintain the building?

If there is a risk that the value of the mortgage will fall below the value of the property, the lender may be entitled to call in the loan early (general terms and conditions).

10. IS THE UNILATERAL SETTING OF AND/OR CHANGING OF CONTRACTUAL CONDITIONS POSSIBLE DURING THE LOAN?

No

11. REGULATIONS RELATING TO OVERINDEBTEDNESS

11.1 Is overindebtedness defined and regulated by law?

Yes, the insolvency of private persons is regulated in the Austrian Bankruptcy Act (= Konkursordnung).

11.2 On which principles is it based?

The regulations for debt settlement for consumers are based on the principle that private people should have the same legal opportunities as enterprises to pay off their debts within a manageable period of time (between 2 and 7 years depending on the chosen proceedings). The numerous methods of debt settlement aim to give the honest debtor a chance for a new start.

There are three possibilities:

1. the compulsory settlement of debts (Zwangsausgleich)
2. an installment plan
3. a procedure to skim off income (Abschöpfungsverfahren)

12. OTHER PROBLEMS RELATING TO CONSUMER PROTECTION

12.1 Are there any legal limits to a maximum loan-to-value ratio and what are they?

No

12.2 Does the lender come under any restrictions when granting the loan, based on the consumer's repayment capacity?

No

12.3 Does the lender have a legal obligation to give further information after the conclusion of the contract?

He must provide information about every change of the interest rate, as well as information annually on both the outstanding amount and the annual payments and charges.

12.4 Does the lender have any legal obligation to disclose the existence and amount of any commission he would have to pay on the occasion of the conclusion of the loan contract (to an intermediary, other)?

No, unless the borrower is charged for the commission in addition to the costs mentioned in the credit-contract.

POLAND

1. SCOPE

1.1 What significant legislation is there in your country regulating the protection of the mortgage borrower?

1. The Act of 2 March 2000 on the protection of certain consumer rights and on the liability for the damage caused by a dangerous product (Official Journal of Laws No. 22 of 31 March 2000, item 271 as amended thereafter)

This Act implements into Polish legal order provisions of following Directives:

- > 85/374/EEC: Council Directive of 25 July 1985 on the approximation of the laws, regulations and administrative provisions of the Member States concerning liability for defective products (amended by the Directive 1999/34/EC of the European Parliament and of the Council of 10 May 1999)
- > Council Directive 85/577/EEC of 20 December 1985 to protect the consumer in respect of contracts negotiated away from business premises
- > Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts
- > Directive 97/7/EC of the European Parliament and of the Council of 20 May 1997 on the protection of consumers in respect of distance contracts
- > Directive 2002/65/EC of the European Parliament and of the Council of 23 September 2002 concerning the distance marketing of consumer financial services and amending Council Directive 90/619/EEC and Directives 97/7/EC and 98/27/EC

According to this Act, the right of withdrawal applies to:

- (a) any credit intended primarily for the purpose of acquiring or retaining property rights in land or in an existing or projected building, or for the purpose of renovating or improving a building, or
- (b) any credit secured either by mortgage on immovable property or by a right related to immovable property, as well.

2. The Act of 20 July 2001 on the consumer credit (Official Journal of Laws, No. 100 of 2001, item 1081 as amended thereafter)

This Act implements into the Polish legal system the provisions of the (87/102/EEC) Council Directive of 22 December 1986 for the approximation of the laws, regulations and administrative provisions of the Member States concerning consumer credit.

The scope of this act are all credit contracts with the exception of such contracts as with the value above 80.000 PLN or equivalent in foreign currencies.

Another words: This Act applies to the mortgage credit only in case if it is not excluded from its scope, i.e. when the value of mortgage credit is lower than 80.000 PLN (or equivalent in foreign currencies).

3. The Act of 23 April 1964 on the Civil Code [Volume III, Title XIX. – Loan; Title XX. – Bank account agreement; Title XXXVII. – Transfer and securities (Official Journal of Laws No. 16 of 1964, item 93 as amended thereafter)

The Polish Civil Code includes two relevant chapters concerning consumer credit. One of them (Articles 720-724) is about loans, while the other (Articles 583-588) applies to instalment sale contracts, including rules on instalment loans granted by banks for financing the acquisition of goods. Instalment sales, in which the buyer uses the bill of exchange for payment, are also under the scope of these provisions. According to this chapter, the buyer has the right to pay his liability before its maturity and he is entitled to a reduction of the interest rate, but not the credit cost. The rescission of the contract by the seller is allowed only if the delay in payment from the buyer is of a certain financial importance. Furthermore Article 592 (1) gives to the seller selling the good under retention of title the right to claim for adequate compensation for the use of the good in case of repossession.

Article 353 states the principle of freedom of contracts, according to which, only some exceptional specific provisions (Article 584 (2), Article 586 (2), and Article 588 (1)) have a mandatory character.

The Civil Code includes also the list of unfair contractual terms in agreements signed with consumers.

According to the Article 385-1. § 1 the Civil Code, the provisions of the contract concluded with the consumer which have not been individually agreed upon shall not be binding if contrary to good practices they set up consumer's rights and obligations in a way flagrantly infringing his interest (unfair contract terms). It does not apply to the provisions defining main obligations of the parties, including price or remuneration, if they were formulated in an unequivocal way. Where the provision of a contract pursuant to § 1 is not binding on the consumer, the parties are bound in the remaining scope of the contract. The provisions of the contract on which the consumer has no real impact are considered as not agreed upon individually. In particular it regards provisions resulting from the standard contract form proposed to the consumer by the contracting party. The burden of proof that the provision have been agreed individually lies with the party invoking it.

Cases concerning the illegality of pro-formulated standard contracts are subject to the jurisdiction of the antimonopoly court.

4. The Banking Law Act of 29 August 1997 (Official Journal of Laws No. 140 of 1997, item 939 as amended thereafter)

The Act on Banking Law, which was modified in August 1997, contained some rules in relation to licensing of creditors, written form for credit contracts (required by the modified text), required indications in the contract and disclosure requirements of interest and commissions.

1.2 Do the consumer protection measures only concern loans to private persons?

Yes – the private person shall be understood to mean “a consumer” as defined by the provisions of the Act, dated 23 April 1964, titled the Polish Civil Code (Journal of Laws No. 16, item 93, as amended thereafter) – “natural person”.

1.3 Are the consumer protection measures limited by the purpose of the loan (e.g. for housing) or the existence of the surety?

It depends from the legal act.

For example: in case of the Act on the protection of certain consumer rights and on the liability for the damage caused by a dangerous product, the provisions refers to the purpose of the loan.

In case of the Act on the consumer credit – the amount of the loan determinates the scope of the act.

Besides there is no especially legal act in Poland which refers only to the mortgage loans.

2. PRE-CONTRACTUAL INFORMATION TO BE DISCLOSED TO THE MORTGAGE BORROWER

2.1 Is any minimum and/or compulsory information on the lender and the transaction on offer (type, object, duration, costs, etc.) required at the advertising stage?

Yes – but only in case the loans which are subject to the consumer credit act (i.e. when the value of mortgage credit is lower than 80.000 PLN). According to the article 16 the lender should provide in every offer and advertisement of consumer credit the Annual Percentage Rate of Charge (APRC) calculated on the basis of Total Cost of the Credit.

Abovementioned article implements the article 3 of the Directive of 22 December 1986 for the approximation of the laws, regulations and administrative provisions of the Member States concerning consumer credit (87/102/EEC): "Without prejudice to Council Directive 84/450/EEC of 10 September 1984 relating to the approximation of the laws, regulations and administrative provisions of the Member States concerning misleading advertising, and to the rules and principles applicable to unfair advertising, any advertisement, or any offer which is displayed at business premises, in which a person offers credit or offers to arrange a credit agreement and in which a rate of interest or any figures relating to the cost of the credit are indicated, shall also include a statement of the annual percentage rate of charge, by means of a representative example if no other means is practicable."

2.2 Are there any advertising restrictions imposed on credit institutions?

There are general regulations concerning misleading advertising. The act of 16th April 1993 on suppressing unfair competition (Official Journal of Laws No. 153 of 2003, item 1503 as amended thereafter).

This Act implements into Polish legal order provisions of following Directives:

- > Council Directive of 10 September 1984 relating to the approximation of the laws, regulations and administrative provisions of the Member States concerning misleading and comparative advertising (84/450/EEC)
- > Council Directive of 6 October 1997 amending the Directive 84/450/EEC concerning misleading advertising so as to include comparative advertising (97/55/EC)

Counselling involving unfair competition, false advertising and trade disparagement in Poland:

Pursuant to Article 3 of the Polish Law of 16 April 1993 on Suppressing Unfair Competition, an act of unfair competition is understood as an act inconsistent with law or good customs if it jeopardises or infringes upon the interests of another entrepreneur or customer.

Acts of unfair competition include, in particular, misleading marking of an enterprise, false or fraudulent marking of geographic origin of goods or services, misleading marking of goods or services, violation of trade secrets, persuading entrepreneurs to terminate a contract or to refrain from performance of a contract, product imitations, imputation or dishonest praising, making access market difficult, bribing of a person performing public function, unfair and prohibited advertising, organising of an avalanche sale system and conducting or organising business in a consortium system.

In case of an act of unfair competition, the entrepreneur whose interest was jeopardised or infringed may request:

- 1) ceasing of prohibited acts;
- 2) removal of consequences of prohibited acts;
- 3) making of one- or several-time statement of certain content and form;
- 4) redressing of damage caused, on general terms;
- 5) return of ungrounded benefits, on general terms; and
- 6) adjudicating of a certain amount for a specified social purpose connected with the support of Polish culture or protection of national heritage - if an act of unfair competition was committed at the party's fault.

Foreign natural and corporate persons enjoy rights following from the Law on Suppressing Unfair Competition on the basis of international treaties binding upon the Republic of Poland or on reciprocal terms.

2.3 Assuming that your national credit institutions apply the Code of Conduct for Home Loans, please confirm disclosure of all information listed under the Code's general information list and European Standardised Information Sheet (see Annex I) and indicate any additional information given to consumers according to national legislation or practice. Please indicate if any listed information is not disclosed, and include the reason for that exception.

None of the Polish credit institutions has implemented the code of conduct or even started the procedure of adhering to the Code of Conduct on home loans.

From July 2006 the Polish credit institutions have to provide to consumers a pre contractual information about the risks connected with the variable interest rate and the credits denominated in foreign currencies. The form and type of this information is not finalised yet.

Is there any legal or contractual obligation to disclose exact and full information as to his personal circumstances imposed on the borrower?

In case of pre contractual information - there is no such an obligation in Poland.

2.4 Is there a legal obligation to disclose an Annual Percentage Rate of Charge (APRC) to the mortgage borrower? What is the method of calculation applied? What are the components included in the APRC? Does the calculation of the APRC imply that the lender makes any specific assumptions as to the evolution of the rate (in case of a variable rate or an initial fixed rate)?

Only in case the mortgage loan under the consumer credit act (with the value lower than 80.000 PLN) – but this information should be disclosed only in credit contract (not at the pre contractual stage).

The lender has to disclose the APRC. The definition, method of calculation and the components are enumerate in the appendix to the consumer credit act:

In order to calculate the APRC into account should be taken following charges:

- fees, commissions and costs connected with the provided credit, enumerated in article 4.2 p.5 and 7;
- costs paid by the borrower on the basis another legal acts, connected with the securities, especially the cost of establishing (creation) of a mortgage, statutory lien (pledge), credit insurance, fees for the power of attorney (banking account);
- and the cost enumerated in article 7.1 p.3.

2.5 Do these information requirements impact on the credit intermediaries? To what extent?

The same requirements concern the credit intermediaries.

3. PRE-CONTRACTUAL AND CONTRACTUAL OBLIGATIONS IMPOSED ON THE LENDER

3.1 Are there negative and/or positive central databases or other sources of data on the candidate borrower, which are accessible to the lender? Is it compulsory for the lender to consult them and what is the consequence if he does not? Is it possible to access databases on a cross-border basis? Under what conditions?

Yes, there are negative central databases or other sources of data on the candidate borrower run by a private company. It is not compulsory for the lender to consult them – it depends on the internal procedures. It is not possible to access databases on a cross-border basis.

3.2 Does the lender have a legal duty to provide advice to the candidate borrower? What is the extent of this obligation and its possible consequences?

No, there is no such a duty on the lender side.

3.3 Is there any kind of responsibility based on the “responsible lending” principle imposed on the lender?

There is no “responsible lending” principle regulated in the Polish legal system.

3.4 Assuming that the European Directive on unfair terms was implemented in national law, what is the definition of an “unfair term” in your legislation? Are there typical terms for mortgage credit, which are forbidden by law?

According to the Act of 23 April 1964 on the Civil Code, Art. 385¹ § 1 The provisions of the contract concluded with the consumer which have not been individually agreed upon shall not be binding if contrary to good practices they set up consumer’s rights and obligations in a way flagrantly infringing his interest (unfair contract terms). It does not apply to the provisions defining main obligations of the parties, including price or remuneration, if they were formulated in an unequivocal way.

§ 2. Where the provision of a contract pursuant to § 1 is not binding on the consumer, the parties are bound in the remaining scope of the contract.

§ 3. The provisions of the contract on which the consumer has no real impact are considered as not agreed upon individually. In particular it regards provisions resulting from the standard contract form proposed to the consumer by the contracting party.

§ 4. The burden of proof that the provision have been agreed individually lies with the party invoking it.

According to the Act of 23 April 1964 on the Civil Code, Art. 385³ in the case of doubt, the following provisions shall be deemed unfair contract terms which are, in particular:

- 1) excluding or limiting the liability to consumer for personal damage,
- 2) excluding or significantly limiting the liability with regard to the consumer for nonperformance or inadequate performances of the obligation,
- 3) excluding or significantly limiting the deduction of consumer’s liability from the liability of another party,
- 4) stipulating provisions with which the consumer have not been not able to get acquainted before the conclusion of the contract,

- 5) enabling the contracting party of consumer to transfer rights and obligations under the contract without the customer's consent,
- 6) making the conclusion of the contract conditional upon the consumer's commitment to conclude in the future further contracts of a similar kind,
- 7) making the conclusion, content or performance of the contract conditional on conclusion of another contract, not having a direct relation to the contract containing provisions subject to assessment,
- 8) making the performance of the obligation conditional upon circumstances dependent solely on the will of the contracting party of the consumer,
- 9) vesting the consumer's contracting party with the rights to make a binding interpretation of the contract,
- 10) authorising the consumer's contracting party to alter unilaterally the contract without valid reason specified in this contract,
- 11) granting only the customer's contracting party the right to assess the conformity of the fulfilled obligation with the contract,
- 12) exempting the obligation to refund to the customer the payment effected for the performance not or only partial delivered where the customer withdraws from the conclusion of the contract or from its performance,
- 13) providing for forfeiture of the right to request the return of consumer's performance effected prior to the contracting party's performance, where both parties terminate, dissolve or withdraw from the contract,
- 14) depriving solely the consumer of the right to dissolve the contract, withdraw from it or terminate it,
- 15) reserving for the consumer's contracting party the right to terminate the contract concluded for indeterminate period of time, without indicating important reasons and without adequate notice,
- 16) imposing upon the consumer alone the obligation to pay the agreed amount in the case of withdrawing from the conclusion or performance of the contract,
- 17) imposing upon the consumer who fails to fulfil his obligation or withdraws from the contract a flagrantly exorbitant fine or compensation,
- 18) providing for the contract of fixed duration to be extended unless the consumer indicates otherwise, where the deadline for consumer statement is fixed for unreasonably short period,
- 19) giving only to the consumer's contracting party the unilateral right to alter important characteristics of the performance, without valid reasons,
- 20) stipulating for the consumer's contracting party the right to determine or increase the price or remuneration after the contract was concluded, without giving the consumer the right of withdrawal from the contract,
- 21) making the responsibility of the consumer's contracting party conditional upon fulfilment of the obligations by persons, with the intermediary of which the consumer's contracting party concludes the contract or which assist him in fulfilling his obligation, or making this responsibility conditional to excessively burdensome for the consumer formalities,

- 22) providing for the consumer obligation to perform his obligation despite non-performance or inadequate performance of his contracting party,
- 23) excluding jurisdiction of the Polish courts or subjecting the case to arbitration of the Polish or foreign court of conciliation or another body, or imposing the court which by the law is not competent locally.

The register of such unfair terms is maintained by the President of the Office for Competition and Consumer Protection.

3.5 Is there a legal link between the goods/services contract and the credit contract? Is there a joint and several liability between the supplier of the goods/services and the lender funding the purchase? What is the extent of this responsibility? Does the borrower have a legal obligation to possibly take action against the supplier before taking action against the lender?

3.6 Is the linking of services to the mortgage credit regulated? Is it forbidden or authorised under a number of conditions?

3.7 Are there certain legal requirements, which oblige the borrower to take out specific insurance with regard to the mortgage credit (for example, life insurance)?

There is no a legal obligation, but there is such practice – it can be fixed in the contract.

4. CONCLUSION OF THE CREDIT AGREEMENT

4.1 Must the borrower receive a copy of all the conditions of the future credit agreement in the form of a written offer or in any other form? What information must this offer contain? What are the consequences of not complying with this legal requirement?

NOTE: I treat (understand) the term “credit offer” as a binding agreement (on the basis of the of Polish Civil Code provisions) – not as an information or advertisement.

Yes, the borrower should receive a copy of all conditions of the credit agreement in the form of written offer (standardized contracts, general conditions of contract, service regulations, the chart of fees and provisions etc.).

With the amendment (which came into force on 20th February 2006) of civil code in 2005 - The Act on changes on Civil Code and changes of some other Acts dated 7th July 2005 (Official Journal of Laws No. 157 of 2005, item 1316) the informative obligation of the entities offering consumer credit increase. A consumer who will decide to conclude a credit contract (for example the mortgage loan in the value lower than 80.000 PLN) should be informed of annual interest rate of overdue payment, i.e. penalty interest, which it will be obliged to pay in case it fails to pay credit rate on time, as well as of the conditions of changing this interest. The Consumer should also be informed of other costs imposed on him in relation to the failure of the contractual obligations, including costs of warning or call for payment, court and enforcement proceeding costs.

Maximum (total) limit of fees, commissions or other costs connected with conclusion of the consumer credit can not exceed 5% of the amount of consumer credit. Limit does not encumber costs which are documented or result from legal provisions concerning establishing, changes or expiration of securities and insurances (including the costs of credit insurance).

The article 15 of Consumer Credit Act deals with penalties in case of violation of the provisions of the present Act. Penalties depend on which rules were not met. If the credit contract was not delivered to the consumer or if advertisements relating to consumer credit do not contain full information on annual interest rate – the borrower can repay the credit without the interests or any other costs.

Also according to the Polish Civil Code fines are foreseen if a consumer credit agreement is concluded whose texts contain considerable infringement of requirements.

4.2 Must the offer comply with the contractual conditions of a specific standard agreement? Who lays down this standard agreement? What are the consequences of not complying with this legal requirement?

NOTE: I treat the term "credit offer" as a binding agreement (on the basis of the of Polish Civil Code provisions) – not as an information or advertisement.

Yes, the offer must comply with the contractual conditions of a specific standard agreement.

There is a general regulation concerning the credit agreement – The Banking Law Act of 29 August 1997 (Official Journal of Laws No. 140 of 1997, item 939 as amended thereafter).

According to the Banking Law the credit agreement should be concluded in a written form and in particular define:

- 1) parties of the agreement
- 2) amount and currency of the credit
- 3) purpose of the credit
- 4) principles and time-frame of a repayment
- 5) interest rate and conditions of its changing
- 6) way of the credit security
- 7) extent of bank' rights connected with a control of the credit's use and repayment
- 8) time-frame and way of giving the finance resources at a borrower's disposal
- 9) rate of commission if the credit agreement anticipate it
- 10) conditions of changing and dissolving the credit agreement

Also according to Article 4 of the Consumer Credit Act, credit agreements shall be prepared in writing, unless separate rules provide for another form. A credit agreement has to include, among others, the annual percentage rate of charge and the conditions under which it may be amended. Article 5 states that credit may be granted for the acquisition of goods or services and an agreement applying to this type of credit has to include additional information such as: description of the goods or services, prices in case of cash payment and when a credit is used (in order to enable consumers to compare the prices), the amount that has to be paid in cash and the conditions under which the right of possession is obtained by the consumer.

The article 15 of Consumer Credit Act deals with penalties in case of violation of the provisions of the present Act. Penalties depend on which rules were not met. If the credit contract was not delivered to the consumer or if advertisements relating to consumer credit do not contain full information on annual interest rate – the borrower can repay the credit without the interests or any other costs.

Also according to the Polish Civil Code fines are foreseen if a consumer credit agreement is concluded whose texts contain considerable infringement of requirements.

4.3 What rights and commitments arise for the creditor and the borrower from handing over the offer?

A person who offers to conclude an agreement shall be bound by his offer. The creditor may specify the period of validity.

4.4 Is the borrower entitled legally or contractually to a right of reflection? What are the conditions linked to the exercising of this entitlement?

There is no formal obligation. The borrower is not obliged to accept the offer.

4.5 How does the acceptance of the offer by the borrower take place? Are there specific formal and procedural requirements to be observed?

There are not specific requirements to be observed.

4.6 What commitment deadlines apply to the offer?

This defines the "business regulation".

4.7 When does the credit agreement come into effect?

Generally at the moment of signing.

4.8 In the event that the borrower applies for several credits for one and the same purchase, is there a link between the different credits, according to which, the failure of one credit to be granted would allow him to cancel the others? What are the conditions associated with this link?

4.9 Is the contract a «real» contract (directly linked to the property), a consensual contract (agreement by the parties is sufficient) or even a solemn agreement (complementary formalities are required)?

In case of credits granted by banks, to create a mortgage collateral exists a simplified procedure. According to the Banking Law Act, Banking accounting books, abstracts these documents are, under specific conditions, grounds for inserting an entry to the mortgage registers and public registers.

See 4.2

4.10 Can the lender unilaterally lay down the conditions, according to which he will transfer the funds to the borrower?

Yes of course.

5. SURETY AGREEMENTS

5.1 Do the guarantors come under the same consumer protection law as the borrower? What are the principles for the protection?

Yes, the principles are the same as in point 1.1.

5.2 Does legislation stipulate a limit to the surety i.e. a time limit or a limit as to its amount?

No, it doesn't.

5.3 Does the lender have a legal obligation to take action against the borrower first before acting against the guarantor?

According to the Banking Law Act, the bank is obliged to notify immediately guarantors, in the way specified in the contract, if the borrower is behind schedule with the credit repayment. According to the Civil Code, unless otherwise stated, the guarantors is responsible as a joint and several debtor.

6. RIGHT OF WITHDRAWAL

6.1 After the conclusion of the mortgage credit contract, is the borrower entitled legally or contractually to cancel it, especially in the event that the contract for which the loan has been applied falls through?

In case of a distance marketing.

The Act on the amendments to the Act of 2 March 2000 on the protection of certain consumer rights and liability for the damage caused by hazardous products (Official Journal of Laws No. 116 of 2000, item 1204 as amended thereafter) – into force on 25.08.2004 (the implementation of the Directive on the distance marketing of consumer financial services).

In case of a Consumer Credit Act:

According to the article 11 of Consumer Credit Act the borrower has the right, without giving the reasons for it, to withdraw the agreement in 10 days since its signing.

6.2 What is the deadline for exercising this right of withdrawal?

14 days – since the conclusion of the contract or conclusion of information (in case of distance marketing).

10 days – in case of mortgage loans under the Consumer Credit Act.

6.3 Is the exercising of the right of withdrawal subject to any formal or procedural requirements?

A written announcement – according to the Consumer Credit Act, the lender has to provide the borrower such a pattern announcement by signing the agreement.

6.4 Is the lender entitled to register in any way the fact that the borrower has exercised the right of withdrawal?

6.5 Are the parties subject to specific requirements in the case of withdrawal when winding up the contract?

There are no special requirements.

7. RIGHT OF EARLY REPAYMENT

7.1 Is the borrower legally entitled to repay early? If this is the case, what are the terms of the procedure?

In case of consumer credits - Yes.

Article 8 of the Consumer Credit Act empowers consumers to discharge their obligations before the time fixed by the relevant credit agreement. In case of early repayment the consumer is not obliged to pay interest rates after discharging the money, and if the credit was granted without interest rates, he can reduce commissions and charges proportionally to the time the repayment period was shortened.

Also the borrower has to inform the lender about the intention of early repayment in 3 days before accomplishing.

The Act says also that the creditor must settle financial issues with the consumer within 14 days from the day of the repayment.

7.2 Is the lender allowed to charge the costs involved by the early repayment to the borrower? Under which conditions? What is the basis for the calculation of the indemnity?

Yes. Business regulation, but see point above and point 3.4.

7.3 In addition to the legally established contractual indemnity/penalties, can the lender claim for further contractual penalties?

See point 3.4.

7.4 Is the right to early repayment subject to certain conditions and, if this is the case, which conditions?

Banks regulate this question in the contract.

7.5 Is the lender allowed to suppress the early repayment option under certain conditions and, if this is the case, under which conditions?

No

7.6 In the event of the transfer of the property, what happens to the loan? Can it be transferred or must it be repaid?

The loan can be transferred to the other property, but it depends on the bank if it accepts and allows that possibility to the borrower.

7.7 Is the borrower allowed to remortgage (refinance his mortgage loan)? Must it be with the same lender or can it be with another? What are the conditions and costs involved?

The borrower is allowed to refinance his mortgage loan. It can be an other lender as well.

8. REGULATIONS ON USURY

8.1 Is usury defined by law? What is the principle?

According to the Civil Code if one of a contracting parties stipulated an unreasonably disproportionate advantage at the conclusion of the contract by exploiting the other party's situation, the second party is entitled to demand to decrease own's performance and if it is excessively difficult to null and void the contract.

Also there is an Act (so called The new Anti-Usury Act) concerning usury it was implemented by the amendment of civil code in 2005 (Act on changes on Civil Code and changes of some other Acts dated 7th July 2005 (Official Journal of Laws No. 157 of 2005, item 1316). A statutory instrument has been introduced limiting the interest on loans and bonds per annum to four times the lombard rate of the National Bank of Poland, regardless even of choice of law. Since 1st of February 2006 NBP lombard rate amounts 5,75%. It means that the maximum interest can not be higher than 23% annually. Parties of the legal act can not agree to pay higher interest. Even if they agree on higher interest, those contractual provisions will be ineffective and maximum interest shall apply.

The Act came into force on the 20th of February 2006 and applies to contracts coming into force after that.

8.2 Is this important with regard to the mortgage loan?

The general provisions of the Civil Code regulate also the mortgage credit contracts.

8.3 What are the consequences of usury from the point of view of civil law and supervisory law?

See point 8.1.

8.4 Are there any other restrictions applicable to interest rates?

The above mentioned (in point 8.1) so called anti-usury act.

9. LEGAL CONSEQUENCES IN THE EVENT OF INFRINGEMENT OF THE LOAN CONTRACT BY THE BORROWER

9.1 What happens if the borrower does not meet the payment conditions?

Withdrawal; the creditor/lender may grant a "respite" for payment.

According to the Civil Code the borrower is in default, if he does not meet his payment conditions. Creditor is entitled to demand default interest for that period.

9.2 In the event of default by the borrower, what possibilities does the law give the creditor to claim for the outstanding debt, the unpaid interest due, the interest not yet due, a lump sum or contractual penalties?

9.3 Are interest supplements possible in the event of default?

9.4 What consequences are there in the event of neglect of duty to maintain the building?

10. IS THE UNILATERAL SETTING OF AND/OR CHANGING OF CONTRACTUAL CONDITIONS POSSIBLE DURING THE LOAN?

See point 4.2. Generally it is not possible.

11. REGULATIONS RELATING TO OVERINDEBTEDNESS

11.1 Is overindebtedness defined and regulated by law?

Overindebtedness of natural persons is not defined by Polish law. There is a draft on consumer insolvency.

11.2 On which principles is it based?

12. OTHER PROBLEMS RELATING TO CONSUMER PROTECTION

12.1 Are there any legal limits to a maximum loan-to-value ratio and what are they?

No.

Only mortgage banks have a limit of 100% of mortgage landing value for a single loan.

12.2 Does the lender come under any restrictions when granting the loan, based on the consumer's repayment capacity?

Credit institution apply their own regulations.

12.3 Does the lender have a legal obligation to give further information after the conclusion of the contract?

According to general rules the lender is obliged to give further information which is necessary for the execution of the contract in order to enable the contracting party (borrower) to fulfill its obligations.

12.4 Does the lender have any legal obligation to disclose the existence and amount of any commission he would have to pay on the occasion of the conclusion of the loan contract (to an intermediary, other)?

PORTUGAL

1. THE SCOPE

1.1. What significant legislation is there in your country regulating the protection of the mortgage borrower?

The Civil Code.

1.2 What significant legislation is there in your country regulating the protection of the mortgage borrower? Do the consumer protection measures only concern loans to private persons?

Yes. The legal definition itself contains this qualification.

1.3. Are the consumer protection measures limited by the purpose of the loan (e.g. for housing) or the existence of the surety?

As far as consumer protection is concerned, the consumer protection measures are not limited by the purpose of the loan or the existence of the surety.

2. PRE-CONTRACTUAL INFORMATION TO BE DISCLOSED TO THE MORTGAGE BORROWER

2.1. Is any minimum and/or compulsory information on the lender and the transaction on offer (type, object, duration, costs, etc.) required at the advertising stage?

Yes. Lenders have the legal duty to inform customers about the price of their services and any other charges (Decree Law n° 298/92, art. 75°). On the other hand, Decree Law n° 220/94 states that in credit advertisements the lenders must indicate the interest rate and the annual effective rate, which includes in this case the interest rate, fees, insurance costs and, in general, all costs relating to the advertised credit operation. There are no obligations in this case to disclose taxes, notary and register costs.

2.2 Are there any advertising restrictions imposed on credit institutions?

No. As far as this point is concerned, credit institutions have no special restrictions.

2.3. Assuming that your national credit institutions apply the Code of Conduct for Home Loans, please confirm disclosure of all information listed under the Code's general information list and European Standardised Information Sheet (see Annex I) and indicate any additional information given to consumers according to national legislation or practice. Please indicate if any listed information is not disclosed, and include the reason for that exception.

Is there any legal or contractual obligation to disclose exact and full information as to his personal circumstances imposed on the borrower?

CGD applies the Code of Conduct for Home Loans without any restrictions. Concerning additional information, see the other answers to this Questionnaire.

2.4. Is there a legal obligation to disclose an Annual Percentage Rate of Charge (APRC) to the mortgage borrower? What is the method of calculation applied? What are the components included in the APRC? Does the calculation of the APRC imply that the lender makes any specific assumptions as to the evolution of the rate (in case of a variable rate or an initial fixed rate)?

There is a legal obligation to disclose the annual effective rate (see 2.1.) and all the other costs and charges not included in the annual effective rate. The lender doesn't make any assumptions as to the evolution of the rate.

2.5. Do these information requirements impact on the credit intermediaries? To what extent?

No, these information requirements do not impact on credit intermediaries.

3. PRE-CONTRACTUAL AND CONTRACTUAL OBLIGATIONS IMPOSED ON THE LENDER

3.1. Are there negative and/or positive central databases or other sources of data on the candidate borrower, which are accessible to the lender? Is it compulsory for the lender to consult them and what is the consequence if he does not? Is it possible to access databases on a cross-border basis? Under what conditions?

Yes, the Central Bank has a central database (Banco de Portugal), which is accessible to credit institutions if the candidate borrower authorises consultation of the database in writing. Consultation is not compulsory.

3.2. Does the lender have a legal duty to provide advice to the candidate borrower? What is the extent of this obligation and its possible consequences?

No, the lender has no legal duty to provide advice to the candidate borrower.

3.3. Is there any kind of responsibility based on the “responsible lending” principle imposed on the lender?

No, when linked with the former question.

3.4. Assuming that the European Directive on unfair terms was implemented in national law, what is the definition of an “unfair term” in your legislation? Are there typical terms for mortgage credit, which are forbidden by law?

The law on general contractual conditions (Decree Law n^o 446/85) does not contain a definition of an “unfair term”. However, “unfair terms” are basically the terms against the bona fides principle and those which do not respect the level playing field.

Portuguese practice regarding the conclusion of mortgage contracts shows that the contractual clauses are typical or standard. Nevertheless, there are no specific clauses forbidden by law relating to mortgage contracts.

There are general contractual conditions, terms or clauses that are forbidden for all contracts, but not especially for mortgage contracts.

3.5. Is there a legal link between the goods/services contract and the credit contract? Is there a joint and several liability between the supplier of the goods/services and the lender funding the purchase? What is the extent of this responsibility? Does the borrower have a legal obligation to possibly take action against the supplier before taking action against the lender?

There is no legal link between the goods/services contract and the credit contract.

3.6. Is the linking of services to the mortgage credit regulated? Is it forbidden or authorised under a number of conditions?

It is not regulated, but it is authorised by way of the general principle of private autonomy.

3.7. Are there certain legal requirements, which oblige the borrower to take out specific insurance with regard to the mortgage credit (for example, life insurance)?

There is no legal obligation, but it is commonplace.

4. CONCLUSION OF THE CREDIT AGREEMENT

4.1. Must the borrower receive a copy of all the conditions of the future credit agreement in the form of a written offer or in any other form? What information must this offer contain? What are the consequences of not complying with this legal requirement?

Credit institutions are legally obliged to provide the person concerned with the conditions of the loan contract, especially the annual effective interest rate.

4.2. Must the offer comply with the contractual conditions of a specific standard agreement? Who lays down this standard agreement? What are the consequences of not complying with this legal requirement?

No, there are no specific standard agreements, only general contractual conditions (Decree Law nº 446/85). Every credit institution has its credit agreements.

4.3. What rights and commitments arise for the creditor and the borrower from handing over the offer?

4.4. Is the borrower entitled legally or contractually to a right of reflection? What are the conditions linked to the exercising of this entitlement?

There is no right of reflection for mortgage loans.

4.5. How does the acceptance of the offer by the borrower take place? Are there specific formal and procedural requirements to be observed?

The acceptance of the offer by the borrower takes place at the moment of the signature of the loan contract. Although only the mortgage requires a notarial act, usually the final loan contract is concluded at the same time as the mortgage deed before a notary between the bank and the borrower.

4.6. What commitment deadlines apply to the offer?

Under article 228º of the Civil Code, the proposed contract is binding on the applicant for the time he has fixed or which has been agreed to between the contracting parties; this proposal is irrevocable during this period (art. 230 of the Civil Code). If a deadline has not been fixed and if the proposal is made in writing, it continues to exist for five days after the time necessary for the proposal and the acceptance to have arrived, under normal conditions, at their destination (article 228º, 1, of the Civil Code).

In Portuguese practice, after acceptance of the customer's proposal by the bank, the latter gives him a reasonable time (in general 120 days) to carry out the provisional registration of the mortgage.

4.7. When does the credit agreement come into effect?

The credit agreement comes into effect at the moment of the signing of the loan contract.

4.8. In the event that the borrower applies for several credits for one and the same purchase, is there a link between the different credits, according to which, the failure of one credit to be granted would allow him to cancel the others? What are the conditions associated with this link?

There is no link between the contracts.

4.9. Is the contract a «real» contract (directly linked to the property), a consensual contract (agreement by the parties is sufficient) or even a solemn agreement (complementary formalities are required)?

The contract is always a "real" contract (directly linked to the property) and sometimes, according to the wish of the parties, a solemn agreement.

4.10. Can the lender unilaterally lay down the conditions, according to which he will transfer the funds to the borrower?

Not unilaterally, only with agreement.

5. SURETY AGREEMENTS

5.1. Do the guarantors come under the same consumer protection law as the borrower? What are the principles for the protection?

No.

5.2. Does legislation stipulate a limit to the surety i.e. a time limit or a limit as to its amount?

The legislation neither stipulates a time limit to the surety nor to its amount. Nevertheless, the latter must be determinate or determinable.

5.3. Does the lender have a legal obligation to take action against the borrower first before acting against the guarantor?

No. The borrower's and the guarantor's liability is a joint and several, that is, each is liable for the entire amount (article 101^o of the Commercial Code and article 640^o of the Civil Code).

6. RIGHT OF WITHDRAWAL

6.1. After the conclusion of the mortgage credit contract, is the borrower entitled legally or contractually to cancel it, especially in the event that the contract for which the loan has been applied falls through?

Under certain conditions, the law does allow the contract to be revoked, especially when there is a substantial change in the contract circumstances (article 437^o of the Civil Code). In this situation, the borrower must refund the entire amount of the loan.

6.2. What is the deadline for exercising this right of withdrawal?

If there is no contractual deadline, the other party can stipulate a reasonable term.

6.3. Is the exercising of the right of withdrawal subject to any formal or procedural requirements?

It must be with communication to the other party.

6.4. Is the lender entitled to register in any way the fact that the borrower has exercised the right of withdrawal?

No.

6.5. Are the parties subject to specific requirements in the case of withdrawal when winding up the contract?

See the previous answers.

7. RIGHT OF EARLY REPAYMENT

7.1. Is the borrower legally entitled to repay early? If this is the case, what are the terms of the procedure?

The Civil Code (article 1.147) states that the borrower can repay early, but if he does, he has to pay all of the interest. However, the credit contract can stipulate the early repayment and its conditions (Decree Law n^o 220/94, article 5^o, 1 d).

7.2. Is the lender allowed to charge the costs involved by the early repayment to the borrower? Under which conditions? What is the basis for the calculation of the indemnity?

Yes.

7.3. In addition to the legally established contractual indemnity/penalties, can the lender claim for further contractual penalties?

No.

7.4. Is the right to early repayment subject to certain conditions and, if this is the case, which conditions?

See the previous answers.

7.5. Is the lender allowed to suppress the early repayment option under certain conditions and, if this is the case, under which conditions?

No.

7.6. In the event of the transfer of the property, what happens to the loan? Can it be transferred or must it be repaid?

Normally, the credit contract stipulates that in this situation the loan terminates, and must be repaid.

7.7. Is the borrower allowed to remortgage (refinance his mortgage loan)? Must it be with the same lender or can it be with another? What are the conditions and costs involved?

The Civil Code (articles 695^o and 713^o) stipulates that the owner can remortgage, but the credit contract can state that in this situation the loan terminates.

8. REGULATIONS ON USURY

8.1. Is usury defined by law? What is the principle?

Yes. Under article 1.146 of the Civil Code, "a loan contract stipulating an annual interest rate, which exceeds the legal interest rates plus 3% or 5% depending on whether or not an in rem security exists, is considered usurious". A penalty clause fixing compensation due for failure to repay the loan on the due date at a rate corresponding to 7% or 9% in excess of the legal rate, depending on whether or not an in rem security exists, is also considered to be usurious. Usury is also a crime (Penal Code, article 226^o). In banking contracts, the interest rates are agreed and negotiated under market rules. Nevertheless, the principle against usury (Civil Code, article 282^o) is applicable and can result in contract annulment or an amendment of the usurious legal acts by court decision.

8.2. Is this important with regard to the mortgage loan?

See 8.1.

8.3. What are the consequences of usury from the point of view of civil law and supervisory law?

See 8.1.

8.4. Are there any other restrictions applicable to interest rates?

There are no other legal restrictions applicable to interest.

9. LEGAL CONSEQUENCES IN THE EVENT OF INFRINGEMENT OF THE LOAN CONTRACT BY THE BORROWER

9.1. What happens if the borrower does not meet the payment conditions?

If the borrower doesn't meet the payment conditions, the lender has the option of terminating the contract and demanding all of the capital, the interest in arrears and the interest to be paid until actual repayment is made, at the contractual rate of interest plus the increased rate or surcharge. The credit contract can however stipulate that the loan does not terminate, and that the borrower must pay a higher rate of interest on the arrears.

9.2. In the event of default by the borrower, what possibilities does the law give the creditor to claim for the outstanding debt, the unpaid interest due, the interest not yet due, a lump sum or contractual penalties?

See 9.1.

9.3. Are interest supplements possible in the event of default?

See 9.1.

9.4. What consequences are there in the event of neglect of duty to maintain the building?

If the surety value falls, the lender can demand additional surety.

10. IS THE UNILATERAL SETTING OF AND/OR CHANGING OF CONTRACTUAL CONDITIONS POSSIBLE DURING THE LOAN?

The law on general contractual conditions states that the lender can unilaterally change the interest rate and other costs when justified by market variations. In this situation, the lender must immediately inform the borrower, who can then revoke the contract.

11. REGULATIONS RELATING TO OVERINDEBTEDNESS

11.1. Is overindebtedness defined and regulated by law?

No.

11.2. On which principles is it based?

See 11.1.

12. OTHER PROBLEMS RELATING TO CONSUMER PROTECTION

12.1 Are there any legal limits to a maximum loan-to-value ratio and what are they?

No.

12.2 Does the lender come under any restrictions when granting the loan, based on the consumer's repayment capacity?

No.

12.3 Does the lender have a legal obligation to give further information after the conclusion of the contract?

Yes.

12.4 Does the lender have any legal obligation to disclose the existence and amount of any commission he would have to pay on the occasion of the conclusion of the loan contract (to an intermediary, other)?

No.

SWEDEN

1. SCOPE

1.1 What significant legislation is there in your country regulating the protection of the mortgage borrower?

Consumer Credit Act (1992:830). This act regulates both mortgage credits and other kinds of consumer credits. Furthermore, the Swedish Financial Supervisory Authority (Finansinspektionen) and the Swedish Consumer Agency have issued recommendations regarding consumer credits, which are generally followed by the mortgage institutions.

1.2 Do the consumer protection measures only concern loans to private persons?

Yes.

1.3 Are the consumer protection measures limited by the purpose of the loan (e.g. for housing) or the existence of the surety?

No. The protection covers all kind of credits to consumers, but there are a few clauses, which only concern housing loans.

2. PRE-CONTRACTUAL INFORMATION TO BE DISCLOSED TO THE MORTGAGE BORROWER

2.1 Is any minimum and/or compulsory information on the lender and the transaction on offer (type, object, duration, costs, etc.) required at the advertising stage?

The lender has an obligation to give information about the annual percentage rate of charge.

2.2 Are there any advertising restrictions imposed on credit institutions?

The Marketing Practices Act (1995:450) is applicable to all kinds of companies and not only credit institutions. The Act contains general rules on advertising. Furthermore, a recommendation by the Financial Supervisory Authority requires that the name of the lender be clearly shown at the advertising stage and that the marketing should not be misleading or intrusive; that would not conform with sound lending practices.

2.3 Assuming that your national credit institutions apply the Code of Conduct for Home Loans, please confirm disclosure of all information listed under the Code's general information list and European Standardised Information Sheet (see Annex I) and indicate any additional information given to consumers according to national legislation or practice. Please indicate if any listed information is not disclosed, and include the reason for that exception.

Swedish credit institutions disclose all information under the Code; no additional information is given to the consumers.

Is there any legal or contractual obligation to disclose exact and full information as to his personal circumstances imposed on the borrower?

No, but there is a recommendation from the Financial Supervisory Authority stating that the credit institute should request such information from a credit register.

2.4 a) Is there a legal obligation to disclose an Annual Percentage Rate of Charge (APRC) to the mortgage borrower?

Yes.

b) What is the method of calculation applied?

The equivalent method. ^{x)}

c) What are the components included in the APRC?

A recommendation by the Financial Supervisory Authority contains provisions on this issue. Only compulsory items are included (narrow APRC). Credit cost = the aggregate amount of interest, supplementary and other charges, which the customer is obliged to pay for the credit. APRC = the credit cost indicated as a annual rate of interest calculated on the basis of the credit amount including, when applicable, installments, which are to be made during the course of the credit term.

d) Does the calculation of the APRC imply that the lender makes any specific assumptions as to the evolution of the rate (in case of a variable rate or an initial fixed rate)?

No.

x) Formula:

$$K' = m'$$

$$A = \sum \frac{A_k'}{(1+i)^{t_k'}} = \frac{A_1}{(1+i)^{t_1}} + \frac{A_2}{(1+i)^{t_2}} + \dots + \frac{A_m'}{(1+i)^{1m'}}$$

2.5 Do these information requirements impact on the credit intermediaries? To what extent?

Yes, to the same extent as for lenders.

3. PRE-CONTRACTUAL AND CONTRACTUAL OBLIGATIONS IMPOSED ON THE LENDER

3.1 Are there negative and/or positive central databases or other sources of data on the candidate borrower, which are accessible to the lender? Is it compulsory for the lender to consult them and what is the consequence if he does not? Is it possible to access databases on a cross-border basis? Under what conditions?

There are both negative and positive private databases (one is owned by the banks), which are accessible to the lender. In reality, it is compulsory for the lender to consult the database even if there is no such requirement in the Act. However, it is included in the recommendation by the Financial Supervisory Authority. It is also connected with the rules regarding sound lending practices. There are no consequences for the lender if he does not consult the database. It is also possible to access the database on a cross-border basis, as long as the lender has a contractual agreement with the database provider.

3.2 Does the lender have a legal duty to provide advice to the candidate borrower? What is the extent of this obligation and its possible consequences?

It is not a legal duty but recommended by the Financial Supervisory Authority.

3.3 Is there any kind of responsibility based on the "responsible lending" principle imposed on the lender?

Yes, the Consumer Credit Act contains a provision that a lender, when dealing with the consumer, has a general obligation to follow sound lending practices. This is also included in a recommendation by the Swedish Consumers Agency.

3.4 Assuming that the European Directive on unfair terms was implemented in national law, what is the definition of an “unfair term” in your legislation? Are there typical terms for mortgage credit, which are forbidden by law?

An “Unfair term” according to 36 § Law on Contract is a term that, regarding the content of the contract, and considering the circumstances under which the contract was signed or events that have occurred thereafter as well as circumstances in general, can be seen as unfair. There is no “black list” of terms regarding mortgage credits.

3.5 Is there a legal link between the goods/services contract and the credit contract? Is there a joint and several liability between the supplier of the goods/services and the lender funding the purchase? What is the extent of this responsibility? Does the borrower have a legal obligation to possibly take action against the supplier before taking action against the lender?

Yes, to the extent that the liability is joint and several between the supplier and the lender. If the borrower has a claim to make against the supplier regarding repayment of the purchase sum or damages, the borrower may take action either against the supplier or against the lender. There are no legal obligations to take action against the supplier first. However, the liability of the lender is limited to the amount of money that he has already received from the borrower.

3.6 Is the linking of services to the mortgage credit regulated? Is it forbidden or authorised under a number of conditions?

No.

3.7 Are there certain legal requirements, which oblige the borrower to take out specific insurance with regard to the mortgage credit (for example, life insurance)?

No, but no mortgage credit for villas is approved unless fire insurance has been taken out by the borrower.

4. CONCLUSION OF THE CREDIT AGREEMENT

4.1 Must the borrower receive a copy of all the conditions of the future credit agreement in the form of a written offer or in any other form? What information must this offer contain? What are the consequences of not complying with this legal requirement?

Yes, the borrower must receive a copy of the contract, in which the conditions are laid down. The offer must contain information about the borrowing rate, the total cost of credit and the conditions under which the lender is entitled to change the borrowing rate. The consequences of not complying with the legal requirements fall under the general rules of the Marketing Practices Act.

4.2 Must the offer comply with the contractual conditions of a specific standard agreement? Who lays down this standard agreement? What are the consequences of not complying with this legal requirement?

Standard agreements are not compulsory. The Swedish Bankers’ Association has produced a standard contract for consumer credits in general (but mortgage credits are excluded) which is used by its members (banks). (No consequences if such agreements are not used.)

4.3 What rights and commitments arise for the creditor and the borrower from handing over the offer?

According to the general rules in Swedish Contract Law, the creditor is bound by the offer for a time adequate for the borrower to accept or refuse the offer. However, the offered borrowing rate is not binding for the lender and can be changed at any point until the borrower signs the credit agreement. The offer is binding for the borrower when he has signed it (when it becomes the credit contract).

4.4 Is the borrower entitled legally or contractually to a right of reflection? What are the conditions linked to the exercising of this entitlement?

No, the borrower is not entitled to a general right of reflection, except for in the case of distance sales.

4.5 How does the acceptance of the offer by the borrower take place? Are there specific formal and procedural requirements to be observed?

The acceptance takes place when the borrower signs the deed. Otherwise, no special requirements are needed.

4.6 What commitment deadlines apply to the offer?

There are no such general deadlines.

4.7 When does the credit agreement come into effect?

The credit agreement comes into effect when the borrower has signed the credit agreement.

4.8 In the event that the borrower applies for several credits for one and the same purchase, is there a link between the different credits, according to which, the failure of one credit to be granted would allow him to cancel the others? What are the conditions associated with this link?

No, there is no such legal link between the different credits.

4.9 Is the contract a «real» contract (directly linked to the property), a consensual contract (agreement by the parties is sufficient) or even a solemn agreement (complementary formalities are required)?

A consumer credit contract is usually a consensual contract, but a mortgage credit contract is a "real" contract, since it is linked to the collateral.

4.10 Can the lender unilaterally lay down the conditions, according to which he will transfer the funds to the borrower?

Usually the borrower and the lender decide on the conditions together.

5. SURETY AGREEMENTS

5.1 Do the guarantors come under the same consumer protection law as the borrower? What are the principles for the protection?

No, the law only protects the borrower. However, according to a recommendation by the Financial Supervisory Authority, guarantors shall have all the relevant information concerning his responsibility in the event that the borrower fails to repay.

5.2 Does legislation stipulate a limit to the surety i.e. a time limit or a limit as to its amount?

No.

5.3 Does the lender have a legal obligation to take action against the borrower first before acting against the guarantor?

No.

6. RIGHT OF WITHDRAWAL

6.1 After the conclusion of the mortgage credit contract, is the borrower entitled legally or contractually to cancel it, especially in the event that the contract for which the loan has been applied falls through?

The borrower has no general right to withdraw from a mortgage credit contract, but since the right of early repayment is unlimited (except for the obligation to pay "interest difference compensation" in cases where the interest rate is fixed) the borrower may in reality at any time withdraw from any contract.

6.2 What is the deadline for exercising this right of withdrawal?

There is no deadline.

6.3 Is the exercising of the right of withdrawal subject to any formal or procedural requirements?

No.

6.4 Is the lender entitled to register in any way the fact that the borrower has exercised the right of withdrawal?

6.5 Are the parties subject to specific requirements in the case of withdrawal when winding up the contract?

No.

7. RIGHT OF EARLY REPAYMENT

7.1 Is the borrower legally entitled to repay early? If this is the case, what are the terms of the procedure?

Yes, see the answer to question 6.1. There are no special terms.

7.2 Is the lender allowed to charge the costs involved by the early repayment to the borrower?

See 6.1 above.

7.2 a) Is the lender allowed to charge the costs involved by the early repayment to the borrower? b) Under which conditions? C) What is the basis for the calculation of the indemnity?

a) Yes.

b) Only if it is a loan with a fixed interest rate and the lender's right of compensation is stipulated in the credit agreement.

c) The compensation may not exceed an amount, which is equivalent to a proportion of the credit multiplied by the difference between the interest rate under the credit and the interest rate plus one percentage point on Government Bonds with a maturity date corresponding to the remaining period of fixed interest for the credit.

7.3 In addition to the legally established contractual indemnity/penalties, can the lender claim for further contractual penalties?

No.

7.4 Is the right to early repayment subject to certain conditions and, if this is the case, which conditions?

No.

7.5 Is the lender allowed to suppress the early repayment option under certain conditions and, if this is the case, under which conditions?

No.

7.6 In the event of the transfer of the property, what happens to the loan? Can it be transferred or must it be repaid?

The loan may be transferred, but only if the lender accepts the new borrower. As a rule, the loan is not transferred.

7.7 Is the borrower allowed to remortgage (refinance his mortgage loan)? Must it be with the same lender or can it be with another? What are the conditions and costs involved?

This is optional for the borrower. No legislation exists relating to conditions and costs.

8. REGULATIONS ON USURY

8.1 Is usury defined by law? What is the principle?

Yes, 31§ Law on Contracts stipulates "when a person exploits the distressed circumstances, lack of mental capacity, irresponsibility or dependence of another, in order to attain for himselfbenefits which are manifestly disproportionate to the compensation paid or promised....such a legal act shall not be binding on the person exploited.

8.2 Is this important with regard to the mortgage loan?

No.

8.3 What are the consequences of usury from the point of view of civil law and supervisory law?

The contract might be declared null and void by the court. The Financial Supervisory Authority, as the supervisory authority, could take action against the institution acting in a usurious manner.

8.4 Are there any other restrictions applicable to interest rates?

When the lender increases the interest rate for mortgage loans, he should inform the borrower.

9. LEGAL CONSEQUENCES IN THE EVENT OF INFRINGEMENT OF THE LOAN CONTRACT BY THE BORROWER

9.1 What happens if the borrower does not meet the payment conditions?

If the lender has made a reservation to this effect in the contract, the lender is entitled to repayment prior to the due date.

- 1) If the consumer is more than one month overdue with respect to payment of a sum either exceeding 10% of the credit debt, or 5% of the credit debts, and the delay relates to two or more installments, which were due for payment at different times, or;
- 2) the consumer is otherwise significantly late in effecting payment, or;
- 3) the value of the security with respect to the credit has decreased considerably, or;
- 4) it is manifestly clear that the consumer, by absconding, hiding assets or by any other conduct, is evading payment of his debts.

In the cases mentioned above:

In terms of a credit for housing purposes, when the interest is fixed for all or part of the term of the agreement for not less than three months, the lender is entitled to obtain repayment upon the expiry of the period during which the interest was fixed.

The creditor shall first remind the borrower of payments due. If the payment is not made immediately, the creditor may take action against the borrower to recover the debts.

9.2 In the event of default by the borrower, what possibilities does the law give the creditor to claim for the outstanding debt, the unpaid interest due, the interest not yet due, a lump sum or contractual penalties?

The creditor is entitled to claim the outstanding debt and the unpaid interest due, as well as the costs related to recovering the debt with assistance from an external debt collector company.

9.3 Are interest supplements possible in the event of default?

Yes, if this is provided for in the credit contract.

9.4 What consequences are there in the event of neglect of duty to maintain the building?

If the borrower/pledger grossly or purposefully neglects the duty to maintain the building, the lender has the right to repayment prior to the due date, if he has made a reservation to this effect in the agreement (see question 9.1 point 3 above).

10. IS THE UNILATERAL SETTING OF AND/OR CHANGING OF CONTRACTUAL CONDITIONS POSSIBLE DURING THE LOAN?

The creditor is entitled to change the interest rate to the disadvantage of the consumer, if this is justified by governmental credit policy decisions, by the lender's increased funding costs, or by other increases in costs, which the lender could not reasonably have foreseen at the time when the agreement was entered into. However, the creditor is only entitled to repayment prior to the due date if the lender has made a reservation to this effect in the agreement. See also question 9.1.

11. REGULATIONS RELATING TO OVERINDEBTEDNESS

11.1 Is overindebtedness defined and regulated by law?

No.

11.2 On which principles is it based?

12. OTHER PROBLEMS RELATING TO CONSUMER PROTECTION

12.1 Are there any legal limits to a maximum loan-to-value ratio and what are they?

No. Mortgage institutes generally apply a maximum LTV of 75-80 % depending on the internal credit policy rules of each institute.

12.2 Does the lender come under any restrictions when granting the loan, based on the consumer's repayment capacity?

According to current banking legislation, a bank/mortgage institution has to be reasonably sure of the borrowers' repayment capacity and has to ask for sureties (collateral) if it considers this necessary.

12.3 Does the lender have a legal obligation to give further information after the conclusion of the contract?

Yes, the lender is obliged to notify the borrower of variations in the interest rate or charges. Furthermore, in the recommendation by the Financial Supervisory Authority, it is stipulated that the creditor shall inform the guarantor if the borrower's financial situation is steadily deteriorating.

12.4 Does the lender have any legal obligation to disclose the existence and amount of any commission he would have to pay on the occasion of the conclusion of the loan contract (to an intermediary, other)?

No.

THE UNITED KINGDOM

PRELIMINARY OBSERVATION

Mortgage regulation under statute came into effect in the UK in October 2004. Since then 1st charge mortgages have been regulated by the Financial Services Authority (FSA) under the Financial Services and Markets Act 2000. 2nd charge mortgages are regulated under the Consumer Credit Act 1974 as amended.

1. SCOPE

1.1 What significant legislation is there in your country regulating the protection of the mortgage borrower?

Consumer credit and 2nd charge mortgage loans

All lenders and mortgage intermediaries must have Consumer Credit Licences (issued by the Office of Fair Trading) in order to be able to trade.

The Consumer Credit Act 1974 applies to 2nd charge loans secured on the borrower's property. Where it does apply, lenders have to give consumers detailed specified documentation and follow specified procedures.

The Unfair Terms in Consumer Contracts Regulations 1994/1999 can be used to challenge terms in mortgage contracts that consumers consider to be unfair.

The Financial Ombudsman Service deals with complaints from customers of banks and building societies about mortgage lenders.

The FSA regime for 1st charge mortgages:

The vast majority of "first-charge" loans are known as "regulated mortgage contracts" and will be regulated by the Financial Services Authority (FSA).

All lenders and intermediaries who lend on or arrange "regulated mortgage contracts" need to be authorised by the Financial Services Authority (FSA). The FSA requires authorised firms to meet specified standards of solvency, fitness and competence. Detailed rules have been issued governing how lenders and intermediaries do business with consumers.

The Financial Ombudsman Service applies to all loans made or arranged by lenders and mortgage intermediaries.

The Consumer Credit Act 1974 continues to apply to "second-charge" loans.

The Unfair Terms in Consumer Contracts Regulations 1994 (as amended by the Unfair Terms in Consumer Contracts Regulations 1999) continues to apply.

1.2 Do the consumer protection measures only concern loans to private persons?

Current position:

The Consumer Credit Act's definition of "individual" includes partnerships and other unincorporated bodies of persons. This means that only companies and other incorporated bodies are excluded from the Act's provisions.

FSA regime

A "regulated mortgage contract" is defined as a loan secured by a first charge on property owned by the borrower, at least 40% of which will be occupied by the borrower or his/her immediate family. Loans to businesses are therefore largely excluded but if a partner of a firm offers his own home as security (perhaps amongst a range of securities) for a loan intended to fund the business – that part of the loan is covered by the FSA regime.

1.3 Are the consumer protection measures limited by the purpose of the loan (e.g. for housing) or the existence of the surety?

Current position:

Under Consumer Credit Act 1974 provisions, the purpose of the loan is relevant. The rules are complex but, broadly speaking:

2nd charge lending is covered by the Act.

Loans under £25,000 are included, but loans above this amount are not. Loans above £25,000 will be included from April 2008.

Where a loan under £25,000 is for the purchase of land or the provision of a dwelling on land, it will not be covered, provided the lender is an "exempt body". Banks and building societies are, typically, exempt bodies. From April 2008 loans over £25,000 for business purposes will also be exempt and this will exempt most Buy-to-Let-lending.

Further loans to finance repairs or improvements to residential premises are not covered if an exempt lender also provided the original loan to purchase the property or build the premises, or if an exempt lender refinances both the original purchase/building loan and the repairs/improvements.

Loans under £25,000 which are for a non-housing purpose, for example, to buy a car, are covered by the Act.

Revisions to the Consumer Credit Act:

The UK Government is currently consulting on amendments to the UK's domestic consumer credit legislation. One (confirmed) proposal is that the £25,000 limit should be abolished: this would bring all second-charge loans to consumers within scope of the Act.

FSA regime:

The purpose of the loan is irrelevant.

2. PRE-CONTRACTUAL INFORMATION TO BE DISCLOSED TO THE MORTGAGE BORROWER

2.1 Is any minimum and/or compulsory information on the lender and the transaction on offer (type, object, duration, costs, etc.) required at the advertising stage?

FSA regime:

The FSA's detailed rules about the content of advertisements for mortgages apply to 1st and 2nd charge loans.

2.2 Are there any advertising restrictions imposed on credit institutions?

2nd charge loans:

Advertisements must be in accordance with the Advertising Regulations. Briefly, advertisements must not be misleading, and certain words and expressions which are considered objectionable are banned. Advertisements must also provide the reader with a reasonable picture of the terms on which credit is likely to be granted, in particular the amount and the rate of the credit charge. They must also ensure that applicants for credit are made aware of any qualifications which will be applied, such as the applicant's age, occupation, place of residence and so on.

FSA regime (1st charge):

All advertisements need to comply with the FSA's rules.

2.3 Assuming that your national credit institutions apply the Code of Conduct for Home Loans, please confirm disclosure of all information listed under the Code's general information list and European Standardised Information Sheet (see Annex I) and indicate any additional information given to consumers according to national legislation or practice. Please indicate if any listed information is not disclosed, and include the reason for that exception.

The FSA rules require lenders and intermediaries to give consumers prescribed pre-application information in the form of a Key Facts Illustration (KFI). The FSA has developed this document in full knowledge of the ESIS and it broadly meets the ESIS' requirements.

Is there any legal or contractual obligation to disclose exact and full information as to his personal circumstances imposed on the borrower?

No.

2.4 Is there a legal obligation to disclose an Annual Percentage Rate of Charge (APRC) to the mortgage borrower? What is the method of calculation applied? What are the components included in the APRC? Does the calculation of the APRC imply that the lender makes any specific assumptions as to the evolution of the rate (in case of a variable rate or an initial fixed rate)?

2nd charge lending:

If a credit advertisement includes an interest rate then it must also show the APRC. The APRC must be calculated in accordance with three sets of Regulations: the Consumer Credit (Total Charge for Credit) Regulations 1980, the Consumer Credit (Agreements) Regulations 1983 and the Consumer Credit (Advertisements) Regulations 1989.

FSA regime:

Where an advertisement shows an interest rate then it also has to show the APRC. The APRC must also be included in the pre-application illustration.

2.5 Do these information requirements impact on the credit intermediaries? To what extent?

Yes: the rules apply to credit intermediaries as well as lenders.

3. PRE-CONTRACTUAL AND CONTRACTUAL OBLIGATIONS IMPOSED ON THE LENDER

3.1 Are there negative and/or positive central databases or other sources of data on the candidate borrower, which are accessible to the lender? Is it compulsory for the lender to consult them and what is the consequence if he does not? Is it possible to access databases on a cross-border basis? Under what conditions?

Current position:

The UK has two main credit reference agencies: Experian and Equifax. These hold sophisticated databases of information – both "positive" and "negative" on consumers. The rules which apply to how the data is collected, kept and used are set out in our Data Protection legislation. Consumers normally sign declarations when taking out loans to confirm that they understand that their data will be kept and may be used for credit referencing purposes. It is not compulsory for lenders to consult the databases when deciding whether or not to lend. Access to databases is governed by a principle of "reciprocity": a lender may only obtain data from a database if it contributes to that database on an equal basis. Put simply - you can't get out more than you put in. Information from UK databases is not currently available on a cross-border basis. The controllers of the data would need to be very confident that the data was being used correctly before they would agree to release it.

FSA regime:

Use of the credit reference agencies continues, in accordance with the data protection legislation.

3.2 Does the lender have a legal duty to provide advice to the candidate borrower? What is the extent of this obligation and its possible consequences?

FSA regime:

There is no specific duty to give advice in all circumstances. Lenders and intermediaries may choose to offer advice, and if they do so, will have to follow certain rules.

3.3 Is there any kind of responsibility based on the "responsible lending" principle imposed on the lender?

FSA regime:

The FSA rules introduce a concept of responsible lending.

3.4 Assuming that the European Directive on unfair terms was implemented in national law, what is the definition of an "unfair term" in your legislation? Are there typical terms for mortgage credit, which are forbidden by law?

Current position:

Our Unfair Terms in Consumer Contracts Regulations 1994 define an "unfair term" as being "any term which contrary to the requirement of good faith causes a significant imbalance in the parties' rights and obligations under the contract to the detriment of the consumer". The Office of Fair Trading has issued guidance to firms on terms which may contravene the Regulations, but only the Courts can give a definitive decision on individual cases.

3.5 Is there a legal link between the goods/services contract and the credit contract? Is there a joint and several liability between the supplier of the goods/services and the lender funding the purchase? What is the extent of this responsibility? Does the borrower have a legal obligation to possibly take action against the supplier before taking action against the lender?

No such liability for mortgage loans but Section 75 of the Consumer Credit Act 1974 does provide for joint and several liability as described above in respect of 2nd charge lending.

3.6 Is the linking of services to the mortgage credit regulated? Is it forbidden or authorised under a number of conditions?

If a consumer takes out an interest-only mortgage, he will usually need to buy a repayment (investment) vehicle which will repay the capital at the end of the loan term. The sale of such investment products is regulated under the Financial Services Act 1986.

The other "services" (products) which consumers typically buy at the same time as a mortgage are general insurance products. Sales are covered by the FSA's Insurance Conduct of Business Rules (ICOB) regime.

3.7 Are there certain legal requirements, which oblige the borrower to take out specific insurance with regard to the mortgage credit (for example, life insurance)?

Life insurance remains a matter for the consumer to decide, as does insurance to protect the mortgage payments if the consumer becomes ill or loses his job.

4. CONCLUSION OF THE CREDIT AGREEMENT

4.1 Must the borrower receive a copy of all the conditions of the future credit agreement in the form of a written offer or in any other form? What information must this offer contain? What are the consequences of not complying with this legal requirement?

FSA Regime:

In addition to the KFI (referred to in relation to question 2.3 above), the lender must send the borrower a formal mortgage offer set out in a format prescribed by the FSA. Failure to comply with this requirement will render the loan unenforceable.

4.2 Must the offer comply with the contractual conditions of a specific standard agreement? Who lays down this standard agreement? What are the consequences of not complying with this legal requirement?

Under the FSA regime, loan contracts must be issued in a specified form. With certain terms spelt out.

4.3 What rights and commitments arise for the creditor and the borrower from handing over the offer?

Under the Consumer Credit Act 1974, the loan is not concluded until the borrower signs the copy of the proposed credit agreement. If either the lender or borrower withdraws from a proposed credit agreement, this terminates any outstanding loan offer. Any fees paid in advance by the borrower must be repaid to him.

Under the FSA rules borrowers are not required to sign mortgage offers received from lenders.

4.4 Is the borrower entitled legally or contractually to a right of reflection? What are the conditions linked to the exercising of this entitlement?

The FSA Regime does not require a cooling-off period for regulated mortgage contracts. This is because a natural period of reflection will arise as the conveyancing process is being concluded and the borrower is able to withdraw from the purchase (and therefore the loan) at any time up to "completion".

4.5 How does the acceptance of the offer by the borrower take place? Are there specific formal and procedural requirements to be observed?

In relation to loans covered by the Consumer Credit Act, the borrower must sign and return the copy of the proposed credit agreement.

In practice, the procedure is much the same whether the loan is regulated under the Consumer Credit Act or not. However, as the transfer and mortgage of land in the UK have their own special formal and procedural features, they are invariably handled by a solicitor or other conveyancing specialist on behalf of the borrower and lender.

4.6 What commitment deadlines apply to the offer?

Current position:

Until the offer is accepted and the loan transaction concluded, either the lender or the borrower is free to withdraw from what is merely a prospective agreement.

4.7 When does the credit agreement come into effect?

Current position:

The credit agreement comes into effect when the agreement and other documents have been executed and the loan transaction completed. If the loan is to be released to the borrower in stages, for example, as building work proceeds, the usual procedure in the UK is for the documentation to be executed for the full amount of the loan at the outset, although, obviously the borrower's liability at

any one time is limited to the sums actually released. It is possible (though most unusual in practice) to execute separate documentation for each sum released.

4.8 In the event that the borrower applies for several credits for one and the same purchase, is there a link between the different credits, according to which, the failure of one credit to be granted would allow him to cancel the others? What are the conditions associated with this link?

In the context of loans secured on property, a lender will normally wish to take a “first charge” which is formally registered at the Land Registry. Any subsequent loans take second, third, fourth place in priority and these are therefore less common for large loans required for house purchase. Second charge loans are more common in respect of repairs or alterations to a property. Where this additional borrowing is arranged with a different lender from the first charge loan, there is no link as suggested in the question – the two loans are separate and independent of each other.

4.9 Is the contract a «real» contract (directly linked to the property), a consensual contract (agreement by the parties is sufficient) or even a solemn agreement (complementary formalities are required)?

These distinctions have no particular significance in UK law. Clearly, a mortgage loan requires the consent of both parties and where a mortgage involves the taking of security over land or buildings, it will be ‘real’ because land and buildings are ‘real estate’. Moreover, because of the economic importance of contracts secured on land, the legal procedures for transferring or mortgaging ownership of land have always been more formal than those regulating the transfer or mortgage of other forms of property.

4.10 Can the lender unilaterally lay down the conditions, according to which he will transfer the funds to the borrower?

Yes, even where a loan is regulated under the Consumer Credit Act 1974, a lender is generally free to specify the conditions upon which it is prepared to lend. It is then up to the borrower to decide whether to accept the loan on those terms.

5. SURETY AGREEMENTS

5.1 Do the guarantors come under the same consumer protection law as the borrower? What are the principles for the protection?

The FSA regime is silent on the subject of guarantors. For loans regulated under the Consumer Credit Act 1974, a guarantor must be given a copy of the guarantee document, which must be in a format prescribed by the legislation. This document must contain all the terms of the loan and must be signed by, or on behalf of, the guarantor. The guarantor must also be given a copy of the actual loan agreement between the lender and borrower. The Guarantee must also contain a prescribed Statement of Rights, with text as follows:

“The Consumer Credit Act 1974 covers this guarantee and lays down certain requirements for your protection. If they are not carried out, the creditor/owner cannot enforce the guarantee against you without a court order.

Until the agreement between the creditor and debtor has been made, you can change your mind about giving the guarantee. If you wish to withdraw, you must give written notice to the creditor which must reach him before the main agreement is made. Once it has been made you can no longer change your mind.

Under this guarantee you may have to pay instead of the debtor and fulfil any other obligations under the guarantee. But you cannot be made to pay more than the debtor could have been made to pay. However, if the debtor fails to keep his side of the agreement, the creditor must send him a default notice (and a copy to you) giving him a chance to put things right before any claim is made on you.

5.2 Does legislation stipulate a limit to the surety i.e. a time limit or a limit as to its amount?

The Consumer Credit Act does not apply to loans over £25,000 but this limit is abolished in April 2008.

5.3 Does the lender have a legal obligation to take action against the borrower first before acting against the guarantor?

6. RIGHT OF WITHDRAWAL

6.1 After the conclusion of the mortgage credit contract, is the borrower entitled legally or contractually to cancel it, especially in the event that the contract for which the loan has been applied falls through?

No – the general right of cancellation does not apply to a regulated agreement secured on the land. However, a loan can be redeemed at any time under general mortgage law and practice.

6.2 What is the deadline for exercising this right of withdrawal?

See answer to 6.1 above.

6.3 Is the exercising of the right of withdrawal subject to any formal or procedural requirements?

See answer to 6.1 above.

6.4 Is the lender entitled to register in any way the fact that the borrower has exercised the right of withdrawal?

See answer to 6.1 above.

6.5 Are the parties subject to specific requirements in the case of withdrawal when winding up the contract?

See answer to 6.1 above.

7. RIGHT OF EARLY REPAYMENT

7.1 Is the borrower legally entitled to repay early? If this is the case, what are the terms of the procedure?

There is no legal entitlement to repay early, but this is always possible. The lender may make a charge – see answer below.

7.2 Is the lender allowed to charge the costs involved by the early repayment to the borrower? Under which conditions? What is the basis for the calculation of the indemnity?

The FSA rules allow lenders to make an early repayment charge, but the amount (or way in which the amount is calculated) must be made clear to the borrower before the loan agreement is concluded.

7.3 In addition to the legally established contractual indemnity/penalties, can the lender claim for further contractual penalties?

No.

7.4 Is the right to early repayment subject to certain conditions and, if this is the case, which conditions?

Any conditions would have to be made clear to the borrower before the loan is concluded.

7.5 Is the lender allowed to suppress the early repayment option under certain conditions and, if this is the case, under which conditions?

Current position:

This is not applicable under UK law.

7.6 In the event of the transfer of the property, what happens to the loan? Can it be transferred or must it be repaid?

See answer below.

7.7 Is the borrower allowed to re-mortgage (refinance his mortgage loan)? Must it be with the same lender or can it be with another? What are the conditions and costs involved?

Yes. The borrower has complete freedom to re-finance his mortgage loan subject to any early repayment conditions imposed by the existing lender. Where the borrower goes to another lender, the mortgage documentation must be completed so that the new lender can take a first charge on the property. There will be costs associated with this, although some lenders offer to pay the transfer costs as part of the new mortgage deal offered to the borrower.

8. REGULATIONS ON USURY

8.1 Is usury defined by law? What is the principle?

Current position:

No: Laws against usury were repealed in the UK in 1854. The provisions of the Unfair Terms in Consumer Contracts Regulations provide a safeguard against extortionate or unfair loans. 2nd charge loans regulated under the Consumer Credit Act 1974 will be subject to the new «unfair relationship» provisions from April 2007.

8.2 Is this important with regard to the mortgage loan?

The term 'usury' is not, as explained above, applicable under current UK law. The Courts' powers are potentially very important.

8.3 What are the consequences of usury from the point of view of civil law and supervisory law?

8.4 Are there any other restrictions applicable to interest rates?

No.

9. LEGAL CONSEQUENCES IN THE EVENT OF INFRINGEMENT OF THE LOAN CONTRACT BY THE BORROWER.

9.1 What happens if the borrower does not meet the payment conditions?

Current position:

Ultimately, the lender has the right to foreclose on the loan contract. Details of the lender's contractual and legal rights under the Consumer Credit Act 1974 (for 2nd charge loans where regulated under the Act) were set out in our response to Question 4.1 of the 1992 Study.

9.2 In the event of default by the borrower, what possibilities does the law give the creditor to claim for the outstanding debt, the unpaid interest due, the interest not yet due, a lump sum or contractual penalties?

FSA Regime:

The FSA rules require lenders to contact borrowers as soon as the outstanding debt amounts to two months' unpaid payments. Interest due may be added to the sum owed, but not interest on the interest. No punitive sums may be added.

9.3 Are interest supplements possible in the event of default?

Not under the Consumer Credit Act 1974. For secured loans which are not regulated by that Act, the loan agreement will usually provide for arrears to be added to the capital. This means that the arrears will themselves attract interest.

9.4 What consequences are there in the event of neglect of duty to maintain the building?

Current position:

Neglect of such a duty, if it was prescribed in the loan agreement, would amount to breach of contract.

10. IS THE UNILATERAL SETTING OF AND/OR CHANGING OF CONTRACTUAL CONDITIONS POSSIBLE DURING THE LOAN?

This is a complex area and one which is increasingly influenced by the provisions of the Unfair Terms in Consumer Contracts Regulations. Broadly, lenders may not set contract terms which allow them complete freedom to change conditions unless there are justifiable reasons for their doing so. Although lenders have a unilateral right to set and change interest rates, even this is subject to restrictions within the terms of the Regulations. Additional detail relating to variations of contracts regulated by the Consumer Credit Act 1974 were set out in our response to Question 8 of the 1992 Study.

11. REGULATIONS RELATING TO OVER-INDEBTEDNESS

11.1 Is over-indebtedness defined and regulated by law?

No.

11.2 On which principles is it based?

Not applicable (see above answer).

12. OTHER PROBLEMS RELATING TO CONSUMER PROTECTION

12.1 Are there any legal limits to a maximum loan-to-value ratio and what are they?

No.

12.2 Does the lender come under any restrictions when granting the loan, based on the consumer's repayment capacity?

Current position:

Restrictions are effectively market-driven. It would not be prudent for a lender to grant loans without taking into account the consumer's repayment capacity.

12.3 Does the lender have a legal obligation to give further information after the conclusion of the contract?

The FSA rules require lenders to give consumers specified information at least once a year after the conclusion of their contract.

12.4 Does the lender have any legal obligation to disclose the existence and amount of any commission he would have to pay on the occasion of the conclusion of the loan contract (to an intermediary, other)?

FSA rules require that commission paid or received is disclosed by both lenders and intermediaries.