

Experiences on the NET programme from the perspective of the creditor bank

Nemzeti Eszközkezelő Zrt. (NET Zrt.) was established in accordance with the action plan for the protection of family homes specified by the Hungarian Banking Association and the Hungarian Government, with the task to purchase the homes of debtors who are most disadvantaged socially. Within this framework, the legislator made Act CLXX of 2011 on the protection of the homes of natural persons unable to fulfil their obligations arising from loan agreement, aimed at finding a solution for the situation of the debtors heavily indebted due to the mortgage loan agreement, which is acceptable both to the creditors, debtors and the State.

The essence of the programme established by the NET Zrt. is that the debtor (albeit on temporary basis) gives up the ownership title to his immovable property but may remain as a tenant at his home. The Hungarian State purchases the immovable property offered and the creditor cancels the remaining debt of the debtor. Consequently, the creditor bank can receive an amount paid by the state even when the enforcement proceedings would substantially no longer result in an outcome in the case of a natural person who is most disadvantaged socially.

The law includes strict requirements relating to the criteria for the eligibility under the NET programme. Thus, the social situation of the debtor and the market value of the mortgaged real property have a decisive importance. The decree relating to the functioning of NET Zrt. specifically regulates that there is a possibility to purchase a specified number of 1500 residential properties each month. These conditions ensure that the programme does not create unaffordable budgetary burdens, and the State can only interfere in the basic mechanism of market based lending in particularly justified cases.

One of the most controversial provisions of the NET law is Subsection 1 of Section 15, according to which execution is suspended in respect of all enforcement rights registered on the residential property offered for purchase under point g) of section 52 of Act LIII of 1994 (on Judicial Enforcement). The question arises whether the suspension may cover all acts of enforcement or in respect of enforcement proceedings exclusively relating to immovable property.

In case of residential properties, the enforcement right necessary for the seizure and sale of the property is only registered in the enforcement proceedings. As a consequence of this, the suspension may only relate to the enforcement procedure instituted for the property on the basis of its literary interpretation. Notwithstanding the unambiguous wording, it is often argued in practice that the Act on



Judicial Enforcement does not specifically regulate the partial suspension of the enforcement proceedings. As a further counter-argument for literary interpretation, the enforcement proceedings must be completely suspended, as it cannot be stated prior to the arrangement with NET Zrt. whether, after the sale and purchase, the bank continues to have a claim and in what amount against the debtor. It has become an interpretation in the practice, according to which the suspension has to be interpreted as whole and complete enforcement proceedings; it does not consider that the party seeking enforcement has no possibility of enforcing his legitimate claim during the judgement period taking months. If NET Zrt. does not purchase the real estate due to the property conditions or possibly the quota achieved, the judgement period may easily be lost in terms of enforcement. This is confirmed by the experience that in most cases the financial institution continues to have a claim after the sale and purchase by NET. Based on this, the clear wording of the law would be justified, which takes the interest of financial institutions better into consideration during the judgement period of participation in the NET programme.