

The pitfalls of credit counselling service

The amendment entering into force on 21 March 2016 of Act on Credit Institutions and Financial Enterprises introduced the credit counselling service as a new auxiliary financial measure, which requires authorization. However, a number of practical questions have arisen since the amendment as to when certain counselling services fall within the concept of the new service requiring authorization. When is it mandatory to inform the customer on this specific service, and if the financial institution or intermediary subcontractor has not yet obtained authorization to carry out the service, which counselling service justifies such authorisation to be obtained?

The Act on Credit Institutions and Financial Enterprises defines the concept of credit counselling as a service distinct from credit granting and credit mediation. *It provides as follows: “ credit consultancy: shall mean the provision of personalised recommendations related to mortgage loan or financial lease of a real property granted to a consumer, being an activity distinct from the lending of a loan or money, or financial leasing, and from the mediation of financial services .”*

However, practical problem arises because Government Decree No. 462/2015 (XII.29.) on the rules for the proceedings related to granting and mediation of mortgage loan, for credit counselling and the professional knowledge of employees (using the same designation) associates the concept of credit counselling with credit granting and credit mediation. According to the Decree *“the creditor, the credit mediator or the intermediary subcontractor shall clearly inform the consumer if he/she provides credit counselling in connection with credit granting.”*

In first approach, the expressions of “*distinct*” and “*in connection with*” used by Act on Credit Institutions and Financial Enterprises and the government decree are inconsistent with one another based on their meaning in the Hungarian language. This leads to the practical problem whether the fulfilment of information obligation required during credit granting to consumers is considered as credit counselling, and thus as auxiliary financial measures according to the Act on Credit Institutions and Financial Enterprises, or it can be considered as the fulfilment of consumer information obligation directly related to credit granting , required by specific law (in Act CLXII of 2009 on Consumer credit (Fhtv.)), thus it is separated from the credit counselling.

Numerous requests for resolution were submitted to the National Bank of Hungary (MNB) in the summer in connection with what the expression used by the Act on Credit Institutions and Financial



Enterprises and the Decree cited above means, in particular that the information obligation provided to consumers also includes that the creditor puts the necessary information for comparison of different offers at customer's disposal, therefore, the information service of the creditor in its content is similar to some kind of credit counselling service.

According to the standpoint of the National Bank of Hungary, the requirements on financial institutions incurred in connection with the rendering of all financial services are that the necessary notification needs to be given to the customers on the conditions of the enlisted services. The Act on Credit Institutions and Financial Enterprises specifies requirements relating to certain financial services in this respect, Act on consumer credit includes further special provisions relating to consumer credits. The financial institutions offers information on the characteristics of own products to the customers during their general information obligation, in a particular case in the form and content specified in separate legislation.

The amendment of Act on Credit Institutions and Financial Enterprises made in the spring determined specific requirements in connection with the granting of mortgage loan or of financial lease relating to immovable property provided to consumers due to the risks identified in connection with credit granting relating to residential properties, within the framework of financial services. In accordance with this, the definition of "credit counselling" of Act on Credit Institutions and Financial Enterprises is clear in respect that this service is also distinct from the financial service of credit granting, further from the mediation of the financial service, and is mentioned as a separate auxiliary financial service. The National Bank of Hungary also emphasised that the legislator did not intend to make an opposing concept in the government decree as compared to the definition of Act on Credit Institutions and Financial Enterprises. It only intended to put it in writing that if the financial institution grants a mortgage loan or a financial lease relating to immovable property granted to the consumer to the customer, or if the mediator provides the mediation of financial services mentioned above then he is required to inform the customer if he provides auxiliary financial service relating to (beside) the above services.

The preamble of the so-called Mortgage Credit Directive serving as the basis of the amendment of Act on Credit Institutions and Financial Enterprises made in the spring supports the standpoint of the National Bank of Hungary. According to this, the personalised counselling is a separate service, which can be carried out with other credit granting or credit mediation services, but which can also be pursued separately. Therefore, in order to enable consumers to understand the type of service provided



to them, they need to be informed as to when they are provided and whether they can be provided counselling service and when not; furthermore, as to what this counselling service includes.

In conclusion, within the meaning of Act CLXII of 2009 on Consumer credit (Fhtv.), the mandatory notification given to the customer regarding the conditions of the service does not present a separate auxiliary financial service, the provision of credit counselling. The notification in accordance with Act CLXII of 2009 on Consumer credit is the fundamental requirement of a financial institution granting the loan relating to the financial service carried out by it. However, if the financial institution also intends to provide credit counselling as auxiliary financial service, then it is obligatory to notify the customer accordingly. If the financial institution has not yet obtained an authorization for the performance of the service, it is required to obtain it from the National Bank of Hungary prior to carrying out the service.