

**The Spanish Council of Ministers has approved the forwarding to Parliament of the Real Estate Credit Bill, the purpose of which is to reduce costs associated with modifications to mortgage agreements and to reinforce transparency.**

The Real Estate Credit Bill is the result of the transposition of Directive 2014/17 of the European Parliament and of the Council (the Directive) on credit agreements for consumers relating to residential immovable property, for the purpose of reinforcing the contractual balance between lender and borrower, which includes a series of measures relative to given pre-contractual aspects, when signing the agreement and upon its execution, that transcend the provisions of the EU Directive.

In turn, while maintaining the validity of Spanish Act 2/2009, of 31 March, on the contracting of mortgage loans or credits and intermediation services for the execution of loan or credit agreements, this bill sporadically amends it.

One of the main novelties of this bill is the reduction of fees, focusing primarily on early termination and for the conversion of variable to fixed-rate agreements:

- In the event of early cancellation, in addition to establishing some new fee percentages for cancellation of those mortgages signed prior to the entry into force of the legislation, a new *ex lege* right of the borrower is configured, which will in turn have the right to the return of any excess for insurance underwritten. This will lower fees for the prepayment of variable interest loans, rescinding them as of the fifth year of mortgage validity.
- For fixed-rate loans, a maximum fee is established as opposed to the current situation in which up to two fees are applied, one of which has no ceiling.
- With regard to the conversion of variable to fixed-rate mortgages (measure not envisaged by the European Directive), the Spanish government is attempting to facilitate this change by lowering the back-end fee that a bank may collect for off-set purposes. This will be 0.25%, which may only be collected for the first three years of the life of the mortgage to be changed, and will affect all outstanding mortgage agreements.
- Furthermore, notary and registrar fees are lowered considerably, so that they would correspond to those in force for a document with no set amount and minimum registration.

Another of the novelties of the bill is the toughening of the clause on the prepayment of loans, so that for new agreements and those in force the requirement for the financial institution to initiate loan enforcement proceedings is extended. Specifically, during the first half of the validity or term of the loan, any unpaid monthly instalments should come to a total of nine or to a quantity that exceeds 2% of the capital loaned. If the enforcement is sought during the second half of its validity, this requirement comes to a total of 12 unpaid monthly instalments or to a quantity that exceeds 4% of the capital loaned.

The bill also contemplates, as does the Directive, the right of the consumer to convert the loan in a foreign currency to the currency in which the borrower receives his income or that of the Member State of residence, as mechanisms for hedging and protection against the risk of exchange rate fluctuations.

On the other hand and in general, the so-called associated sales are prohibited, i.e., those that oblige the consumer to accept a series of financial products as a condition for obtaining the mortgage, while at the same time empowering the Bank of Spain to authorise exceptions to this prohibition by memorandum. With this new situation, financial institutions should provide the consumer with two alternative offers of combined sales, i.e., offering the loan separately or as part of a package (with or without associated products).

Likewise worthy of mention is that one of the pillars of this new Real Estate Credit Act is the improvement in transparency, undoubtedly marked by the judgment of the Court of Justice of the European Union dated 21 December 2016, establishing case law in the sense of declaring the nullity of those clauses in agreements between consumers and bank institutions in which an absence of transparency is apparent to the detriment of the consumer. Therefore, in the pre-contractual phase, the lender should provide the customer, at least seven days prior to the execution of the agreement, with detailed standard documentation on the characteristics of the loan, binding for the institution, in which mention must necessarily be made on the existence of potentially sensitive clauses, scenarios for changes in instalments on the basis of forecasts of associated interest and insurance rates. During that seven-day period prior to the execution of the agreement the regulatory control of notaries and registrars is reinforced, so that the notary will advise, free-of-charge, and verify by deed that the consumer has received and understands the legal and financial consequences of the agreement to be signed and will not allow the inclusion of any clauses in the agreements that have been declared abusive by the courts.

Finally, the bill also establishes the approval of a standard model agreement containing a series of clauses to which the parties may voluntarily accede, that will be developed by regulation. Furthermore, the Directive limits the scope of application to consumers, while the approved bill broadens it to self-employed workers.

In short, with this bill, currently being approved by Parliament, a new mortgage act is endeavoured that is laden with measures that seek to protect consumers, increase the transparency of agreements of this type, avoid avalanches of lawsuits against banks such as those of recent months and also to provide the financial sector with legal certainty.