FOCUS · Spain's mortgage credit bill

In November, the Council of Ministers passed a mortgage credit bill that could come into force during the first half of 2018 if approved by Congress. This bill transposes Europe's mortgage credit directive into Spanish law.[1] However, it also contains some additional measures, such as their application to the self-employed. The main aim of these changes is to increase consumer protection, make mortgage contracts more transparent and provide the financial system with greater legal certainty.

Essentially, the bill has four pillars that would significantly alter how the mortgage market works. First, for new mortgages taken out after the law comes into force, it lowers the commission that can be charged on early repayments.[2] For variable interest rate mortgages, one of two options can be agreed. Maximum commission[3] of 0.5% of the capital repaid early in the first three years (subsequently 0%) or 0.25% commission in the first five years (afterwards 0%). For fixed-rate mortgages, the maximum commission would be 4% in the first 10 years and 3% thereafter. Und er current legislation, the maximum commission is 0.5% in the first five years and then 0.25% for variable interest rate mortgages while there is no legal limit for fixed-rate mortgages.

The bill's second pillar makes it easier to convert variable interest rate mortgages into fixed-rate. The aim is to improve the financial stability of households should interest rates rise. As interest rates are currently at an all-time low, now is a particularly good time to encourage such conversions. Over 85% of the mortgages in Spain are linked to the Euribor so that the expected rise in interest rates will increase the financial burden of a large number of households. Fixed-rate mortgages, which do not transfer interest rate risk to the borrower, keep the interest rate stable until the end of the contract and thereby help financial planning. The measures proposed, which are retroactive and apply to all outstanding mortgages, include the lowering of the notary and registration costs associated with converting mortgages and a reduction of commissions for the early repayment of mortgages, with a maximum of 0.25% of the outstanding capital in the first three years and 0% subsequently. The law would also make it easier to convert mortgages taken out in a foreign currency into euros (or into the currency in which the borrower receives most of his or her income). This provides greater protection against exchange rate risk.

The bill's third pillar establishes tougher criteria for financial institutions to foreclose on a mortgage. For this to take place, more than 2% of the capital granted or more than nine monthly payments must be in arrears during the first half of a loan's life. During the second half of the loan's term, over 4% or more than 12 monthly payments must be in arrears. This change in the law, which would apply both to existing and new mortgages, establishes a single criterion that strengthens the legal certainty of mortgage contracts. Interest for late payment has also been changed, establishing a rate of three times the legal interest rate at the time (9% in 2017) during the late payment period on the outstanding capital.

The fourth pillar of the bill focuses on greater transparency. Firstly, it aims to ensure that borrowers understand the financial and legal obligations involved in the contract. It also gives them the chance to ask the notary for free advice up to seven days before signing the contract (the notary must certify that these obligations have been understood). Tied selling is also banned (being forced to take out other products together with the mortgage, such as insurance). However, combined sales (without any obligation) are allowed, provided the product quotes are presented separately so the cost of each one can be appreciated. Finally, a Europe-wide standardised form would have to be used to ensure transparency of form, as well as specific documentation when particularly sensitive clauses are involved. The government may also approve a model contract that is simple and easy to understand, which the parties can use if deemed appropriate.

In summary, the changes introduced by the bill will encourage greater transparency, legal certainty and consumer protection for mortgage contracts. All this should help to reinforce financial stability.

1. Directive passed in 2014 which should have been transposed into national law by March 2016. Several countries have yet to do this: Spain, Croatia, Cyprus and Portugal.
2. This commission compensates financial institutions for the loss caused by early repayment.
3. In all cases, never exceeding the financial institution's potential loss.