A STEP FURTHER ON THE ENHANCED PROTECTION OF INDIVIDUAL BORROWERS IN REAL ESTATE FINANCINGS

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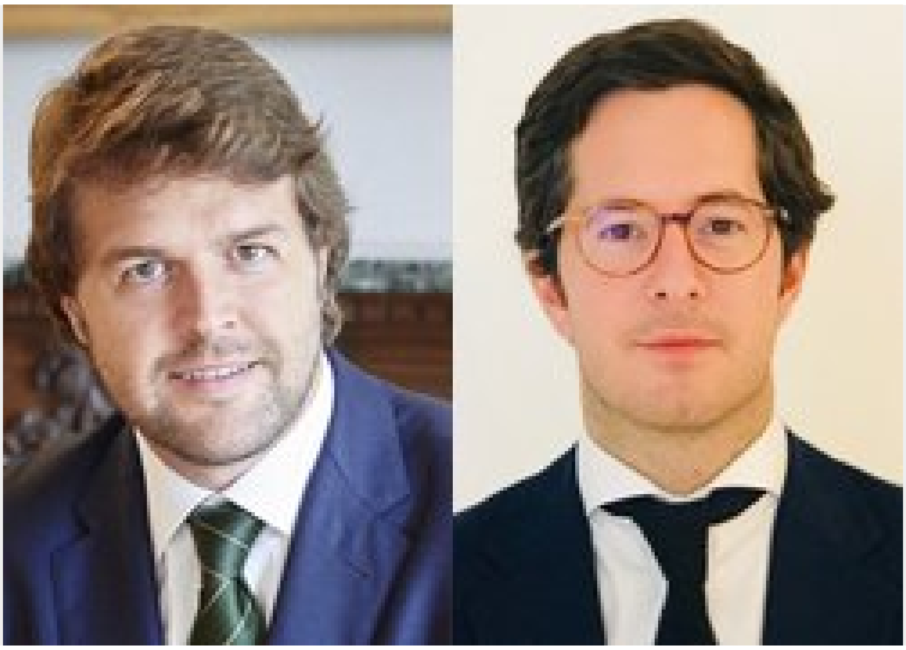

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For the very first time in Spanish history, the parliament -boosted by the European Directive 2014/17/UE (the "Directive")- has enacted a law focusing on real estate financing to individuals through a thorough regulation of the contracting procedure. The Spanish Law 5/2019 reguladora de los Contratos de Crédito Inmobiliario ("LCCI") shapes the new features of real estate financing to individuals in furtherance of an enhanced borrowers' protection paradigm based on transparency, clear and comprehensive information and an utmost legal certainty.

New duties ahead for banks

The borrowers' protection is the legal cornerstone of the LCCI from which a number of obligations are imposed on banks.

Banks are obliged to carry a thorough assessment of the consumer's creditworthiness making the availability of a mortgage loan dependant on a favorable outcome of the same. Additionally, banks shall make sure that their staff possesses an appropriate and updated level of knowledge and competence to prevent a negligent advisory to potential borrowers. However, many banks may struggle –and some might not be capable of- in providing their employees involved in the loan commercialization with the required 50-hours course by 16 June 2019, when the LCCI is coming into force.

Banks are also constrained by the duty to deliver pre-contractual personalized information for the purpose of enabling an informed decision of the borrowers after comparing credits available on the market. Needless to say, that the *European Standardised Information Sheet* (ESIS or FEIN in Spanish) is the main document to be delivered to the borrower at least ten (10) days before the granting of the mortgage loan agreement (the "reflection period"). It is remarkable that contrary to the Whereas 23 of the Directive, the Spanish lawmaker has ruled that the parties cannot contract the loan within that reflection period but until after it has elapsed, even if they want to. In this manner, the parties' decision to contract the loan earlier is imperatively superseded by such legal time frame hindering, this way, the contract formation, irrespective of the experience and degree of knowledge of the borrower. On top of that, the proper delivery in time of the pre-contractual information by the bank to the borrower shall be overseen by a notary who will assess and verify this matter by granting a notarial act that cannot be signed the same day of the mortgage loan which will make the process lengthier, since the borrower will be obliged to appear twice before the Public Notary.

There are other controversial issues on the LCCI, such as the allocation of costs to banks, the limitation on default interest and early repayment fees, the number of installments necessary to accelerate the loan, etc.

Lawsuits will plummet

The good note of the LCCI is that lawsuits will likely decrease. It is known that in the last years Spain has gone through a legal turmoil collapsing the courts judicial activity motivated by the widespread use of several financing clauses that eventually turned out to be declared abusive and hence void (e.g. floor clauses on ordinary interests). The LCCI has forbidden some of these clauses, and now it governs mandatorily several questions giving little room for negotiations between the parties, since borrowers will not be able to withdraw rights provided by the LCCI. Hence, since most of the financial clauses of the loan are already ruled by the LCCI it is reasonable to expect a plummeting on the number of lawsuits brought by individuals in the coming years concerning the financial terms of the loan entered after the entry into force of the LCCI.

Lower dynamism

The LCCI's safeguard measures have been established for the sake of balancing the parties (both the lender and the borrower). Notwithstanding, some of the measures adopted by the Spanish lawmaker, on the determination to provide the borrower with the highest level of protection possible, go way further than initially expected by the Directive and create additional restraints at the expense of sacrificing the dynamism of the legal transactions.

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