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Foreword

The financial-economic crisis, also affecting Hungary in the past years, cannot be solved by financial tools only. The financial services market needs conditions which it is unable to create on its own, such as trust for example. Without degrading the significance thereof, it has become clear by now, that there have been not only economic or financial reasons for the crisis of the financial-economic system, hence the element of trust is neither an economic nor financial element, but an ethical conduct. If any actor of the market for financial services (subject to its own specific rules) omits this fact, the market will not be able to revive by itself.

In this present situation the state organs – as well as market actors – have to make all possible efforts in order to solve the trust crisis leading to wavering of the financial markets.

It is important, that the competent State organs and certain non-governmental organisations deal with the situation of citizens, who without being responsible thereof, are suffering the consequences of the financial crisis. The transition of the originally financial crisis into a political and social one must be avoided.

A special responsibility is born by the Ombudsman in such a situation, who comes forward with his argumentation based on fundamental rights, alien from the perspectives of the financial markets. In his examinations related to financial services conducted in 2010, on one hand he considered how State organs fulfil their regulatory and customer protection tasks, and on the other hand how market actors – by means of their self-regulation and market behaviour – foster rebuilding trust. A special attention has also been paid to the implementation of various bank and State measures targeting the amelioration of the situation of debtors facing difficulties.

Acknowledgements

We have commenced an increasing number of examinations in the past years to reveal certain impacts of the financial crisis – either based upon the citizens' complaints, or *ex officio* - related to a rather wide range of tax law, financial services or even the operation of private pension funds. Therefore it seemed to be justified to present a comprehensive analysis of these divergent examinations by integrating them.

We could not perform these examinations without the co-operation of the authorities concerned, particularly the ministries involved, the Hungarian Financial Supervisory Authority, the Tax and Financial Control Administration, the Customs and Finance Guard, the Hungarian Chamber of Judicial Officers, the Hungarian Bank Association and its affiliates, the Hungarian Insurance Association and the Departments teaching financial law at the respective law faculties.

Special acknowledgements must be made to the Hungarian Bank Association, the Hungarian Development Bank and the Hungarian National Bank for their financial support provided for the implementation of the project.

I also would like to thank for the contributions of all my colleagues that allowed my successful closure of the examinations of the financial law project! I especially thank for the indispensable work of our former colleague, Dr. Zsolt Halász, in the theoretical foundation and commencement of the project as well as for participation in the management thereof in the first few months.

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Parliamentary Commissioner
for Civil Rights

Financial Services and Fundamental Rights

1 – A Few Words on the Competence Limits[*]

The Act LIX of 1993 on the Parliamentary Commissioner of Civil Rights (APCCR) does not contain any definition – either positive or negative – on the organs performing public services. The Act is rather taciturn in this regard: there is only one reference thereto in its cited section 16 paragraph (1), still there is no definition of this term under the APCCR.
The detailed ministerial justification attached to the proposed bill of the APCCR may offer some points of reference, when stating that "the activities of the so-called organs performing public services (e.g. health and social care) cannot be classified as actions of an authority by an ordinary meaning, yet these services may have a significant impact on constitutional rights. Considering this, it is justified to provide the option of petitioning the Parliamentary Commissioner - subject to other conditions defined by law - in the case if the proceedings or omissions of these organs result in an irregularity relating to constitutional rights. The phrase "organs performing public services" is used in the proposed bill since e.g. the Act on Local Self-Governments refers to these aforementioned services as public services."

Public services may essentially be performed in three forms: by the public administration itself (in this case the competence of Parliamentary Commissioner is defined by section 29 (1) a) of the APCCR); by public institutions or by business enterprises of the competitive sector acting under a mandate of the public administration. In this regard it is noteworthy to emphasise that the service must concern a large part of the population, so public services by character are of mass scales. Moreover these services usually cover fundamental demands instead of some dispensable luxury services.[1]

According to the position of the former Deputy Commissioner for Civil Rights – predominantly followed by subsequent commissioners – section 16 (1) of the APCCR only enables to draw consequences regarding the notion of an authority. Beyond that, *"the APCCR places the decision on classifying an organ as one performing public service within the range of interpretation by the Parliamentary Commissioners. Parliamentary Commissioners always consider as organs performing public services those institutions, that fulfil state or municipal tasks, while not qualifying as authorities. Particularly so, if the petitioner has no possibility to choose whom to contract for the performance of the service he requires, considering that there is only a limited number of, or only one service provider available therefore."* The Deputy Commissioner for Civil Rights had thus established the foundations of the "public service provider-test"[2] applicable for the examinations. Some preliminary remarks are apparent from this test: namely, that those organs not qualifying as authorities are considered to be organs performing public service, which

a) organs perform state or municipal tasks by law or by contractual obligation;

b) providers of services,

- that are subject to mandatory employment by citizens (or a defined range of citizens) or by other persons among pre-set conditions, and

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[1] LŐRINCZ LAJOS: *A közigazgatás alapintézményei.* [Fundamental Institutions of the Public Administration] Budapest: HVG-Orac, 2005, p. 244.

[2] Ombudsmen avoid using the phrase "public service provider-test".

- the provider is under to obligation to enter into a contract in case of receiving an offer thereto, furthermore
- there is only one or a limited number of service providers available;

c) public utility corporations (under obligations deriving from a public utility contract as defined by the Civil Code) not falling within the range of the above a) or b) points

d) other organisations, not covered by points a)-c), which qualify as organs performing public services under the public service provider-test.

According to Section 18 (1) of the Governmental Decree 12/2001. (I. 31.) on Housing Subsidies, the disbursing credit institutions and loan providing insurance companies (hereinafter together: credit institution) are under an obligation to verify the existence of the conditions of applications for direct or interest subsidies. The notary of the local self-governments, competent by the place of living of the applicant (hereinafter: the local self-government) certifies to the loan providing credit institutions the existence of the personal conditions of the construction allowance and the youth home-making support, as set out in Section 7 of the Governmental Decree. The regulation in force earlier, the Governmental Decree 106/1988. (XII. 26.) on Housing Subsidies – similar to the recent regulation – also assigned numerous duties and decision making powers regarding the state housing subsidies to the competence of the financial institutions.
According to legislative decision, provision of housing subsidies is a state task. A considerable part of the implementation of this task has been delegated by the State to the credit institutions and insurance companies operating under commercial terms.
Resulting from the above and according to the practice of the ombudsmen, financial institutions are considered public service providers with regards to the provision of housing subsidies.
Therefore, according to a decades old practice, financial service providers have been and will be subject to examinations by the ombudsmen – solely in the aforementioned context.

2 – On the Practice of the Ombudsman with regards to Financial Services[*]

As it has already been highlighted by the 2008 project of the Commissioner regarding homelessness: the impoverishment resulting from an inability to repay debts from various financial services and the potential homelessness as a consequence thereof, the possibility of breaking the debt spiral easily resulting in homelessness, the cessation of being homeless are all greatly effected by the financial situation of the person concerned, amongst others by his contractual relations with financial institutions, by the possibility of unilateral modification thereof by the financial service provider, by the means of execution in case of a failure to perform, and by numerous other conditions. These problems closely relate to the general principles of contract law and the enforcement of customer rights under the Customer Protection Act (hereinafter: CPA).[3]
A number of ombudsman reports has been issued in this field in the past years, and a number of recommendations and initiatives have been provided therein.[4] A part of those have been accepted by the addressees, another part of the uncovered problems still exist (*e.g.* consumer protection of the clients of financial service providers, the role of financial institutions in the implementation of execution against bank accounts, etc.), and there are also fields and institutions where no measure have so far been taken by the ombudsmen (*e.g.* the personal bankruptcy protection).
In 2008 the Parliamentary Commissioner for Civil Rights conducted an examination into what extent the relevant regulation and the respective state organs are able to guarantee the consumer

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[3] Act CLV of 1997 on Consumer Protection

[4] OBH 6048/2005, OBH 2958/2006, OBH 6320/2005, OBH 4325/2004, OBH 3693/2004.

rights of the citizens employing financial services.[5] The Commissioner attached importance to collecting the positions of the largest possible number of state organs concerned, such as the Minister of Justice and Policing, the Director of the Hungarian Financial Supervisory Authority (hereinafter: HFSA), the Director of the National Consumer Protection Authority (hereinafter: NCPA) and the Governmental Commissioner for the program called "New Order and Liberty". Thus before publishing his report, he had summoned to these institutions regarding their practice related to violations of the rules on personal loan contracts, the unilateral modification of contracts, the information provided by financial institutions, the transparency of contractual terms and conditions, the execution of demands, personal credit bankruptcy, the proceedings of mediation bodies, responsible crediting, and the consumer protection activities of the NCPA and the HFSA.
The fundamental objective of this examination was to reveal the implementation of consumer rights with regards to financial services and the respective practice of state organs. Considering that the Commissioner's main task is to protect civil rights, the examination covered the enforcement of the requirement of legal security as derived from the principles of rule of law, as well as the enforcement of the right to due process deriving from the above provisions.
Taking into account the responses received upon the summons and deriving from the consequences drawn from earlier complaints, the examination of the ombudsman uncovered irregularities effecting the system in three different fields: regarding the competence and procedure of the authorities concerned (HFSA and NCPA); personal bankruptcy protection; as well as procedures of mediation bodies regarding financial services.

The responses received from the summoned organs outlined a rather strange legal interpretation practice for the Commissioner regarding consumer protection competencies of the authorities and the application of consumer protection instruments. According to the position of the NCPA, it lacks competence to act in affairs regarding financial services, since control over persons and organisations within the scope of the Act XCII of 1996 on Credit Institutions and Financial Enterprises (hereinafter: ACI) is exercised by HFSA, in compliance with section 4 c) of Act on Financial Supervisory Authority.[6] The Director of the NCPA interprets this regulation so as it provides for HFSA not only controlling the prudence of financial services and providers thereof, but also performing customer protection control. The Director of HFSA however expressed his opposing views, and maintained, that the relevant regulation[7] designates the National Consumer Protection Authority to act as consumer protection authority, therefore the supervision of compliance with the rules of the CPA falls within the competence of NCPA, as the organisation having general consumer protection competencies. The HFSA avoids application of the CPA because it has no competence thereto.
Based upon this interpretation the HFSA deals with the consumer complaints it receives, but this procedure has practically nothing to do with the one under the scope of the CPA. The Commissioner in his report highlighted the indefensibility of this legal approach, as illustrated by the following example. According to the legal approach and by the information provided on the website of HFSA, and approved by the leaders of that Authority in their responses to summons issued in several earlier cases, the "Authority may not intervene in individual legal disputes about entering into and with regard to the performance of contracts". In his response the Director of HFSA noted, that the problems registered in complained cases are examined by the respective Authority, however not individually, but generally as part of the already ongoing examinations. Consumer protection irregularities are also sanctioned in their decisions closing the prudence examinations. The position of the Commissioner is that the failure of that Authority to proceed

5 OBH 1600/2008.
6 Act CXXXV of 2007 on the Financial Supervisory Authority
7 Section 7 (1) of Governmental Decree 225/2007. (VIII. 31.)

in individual cases does not comply with the requirements deriving from the rule of law. However it remains important to see that the requirement of procedures in individual cases does not in involve any right or obligation of that Authority to exercise judicial competencies to solve legal disputes between the parties. In concordance with the ombudsman report proceedings in individual cases do refer to an examination to the merits of a case, possibly followed by the legal consequences set out by the Act on Consumer Protection. The Commissioner contests that the HFSA is not entitled to apply the rules of the Act on Consumer Protection. This debate is however likely going to become obsolete with the entry into force of Act XLVII of 2008 on the Prohibition of Unfair Commercial Treatment of Consumers.

The examination of the Parliamentary Commissioner has not uncovered too many progressive measures in relation to the prevention of personal credit bankruptcy. The Commissioner supports every effort made by the ministries concerned as well as by the HFSA to increase the knowledge of clients about financial information. He considered equally advancing the mandatory application of a risk-assessment declaration regarding the option to purchase a real estate as a security to a contract.

The position of the ombudsman however maintains that in order to prevent personal bankruptcies – either resulting from bank loans or from other debts – further measures should be taken. One such step would be – urged by the Commissioner – that the clients should not just sign their contracts, but should give their informed consent. This informed consent necessitates the obligation of the service provider to actively offer advisory instructions, or in other terms – financial service providers should bear an obligation to explain the consequences of the contractual terms and conditions even by exemplary calculations.

Another important step would be – particularly due to the danger of execution (loss) of the residual property – the regulation of the means and timing of the enforcement. In this regard there is a particular importance attached to the regulation of how much time may pass between the termination of the loan contract and the execution of the demand of the financial institution. It may happen, as experiences of previous complaints show, that the financial service provider terminates the loan contract because of the delayed payment of the client, meanwhile – since the value of the real estate securing the loan significantly exceeded the amount thereof – the bank had no interest in early foreclosure. The reason for this seemingly unreasonable delay is the over-securing the creditor's claims: in such a case the late collection of the interest for delay – which considerably exceeds the amount of the usual interest applicable for the transaction – results in a significantly larger profit and revenue, without undertaking any further risks. Although the report does not mention explicitly, similar problems may result from the creditor foreclosing too early after the termination, leaving no time for the debtor to sell the real estate on his own terms.

The third range of the revealed problems are connected to the execution as well. This relates to the lowest estimated value of the real estate to be considered during the execution process. The Act on Judicial Execution[8] (hereinafter: AJE) allows for reducing the reserve price of the residual property to half of the estimated value at auctions following two failed auctions. If the auction failed, the real estate can be purchased for half of its estimated value. According to the position of the Commissioner this rule does not fully serve the interests of either the creditor, or the debtor. The creditor can only partially collect its claims, while the debtor is not released from all of his burdens, meanwhile he is loosing his home, thus his situation becomes utterly without prospects.

As the ombudsman marked in his report, it is adverse from the perspective of the realisation of legal security, that the state hardly limits the financial service providers with information superiority by consumer protection means, while it provides limited consumer protection instruments to the clients, who are in a significantly weaker position. All these have the ability to

[8] Section 160 of Act LIII of 1994 on Judicial Execution

violate the principle of legal security, the requirement of due process and the right to property. Therefore he was convinced that the clients of financial service providers need a protection that equals to the one enjoyed under the CPA by the clients of business organisations selling unsafe products. In his understanding this protection can be guaranteed by the clients of financial institutions having sufficient information about the services they intend to employ, financial consequences thereof and the employment takes place by informed consent. Meanwhile he considers inevitable that in case of execution against a real estate, nobody should face more serious consequences, than those of breaching their contractual obligations.
The developing picture outlined in the third field – namely the operation of mediation bodies – during the examination it became evident that the procedures of mediation bodies regarding financial services has not been efficient enough. In a significant number of cases the service providers do not submit themselves to the decision, in many instances they do not wish to even take notice of the commencement of the proceedings since they do not consider that these institutions have sufficient professional financial skills for deciding financial complaints.
However, if the financial institutions do not believe that these bodies are professionally prepared enough to deliver comforting solutions to the debates submitted to them, the response to this must not be ignorance of the operation of these bodies, because by that they debate the objective and existence of a system of institutions established particularly for the simplification of dispute settlement. This bears a direct threat to the rule of law.
In order to solve the revealed irregularities concerning constitutional rights, the Commissioner has suggested to the Prime Minister that the Government

- shall formulate an amendment to the legislation on consumer protection and the HFSA in order to clarify the competencies and range of operation of the HFSA and the NCPA, and to establish an obvious obligation to proceed any and all consumer complaints;
- shall complete the regulations of the ACI with the obligation of financial service providers to actively offer advisory instructions and the determination of a deadline for the collection of claims after cancellation;
- to amend the AJE, not to include a possibility to purchase a residential property for half of the estimated value thereof.

The Commissioner has initiated

- that the HFSA and the NCPA should regularly publish the identity of the service providers subject to measures they have taken;
- that the Bank Association and its members shall create and apply a code of conduct for the sufficient information of clients, and that they should participate in the training of the members of mediation bodies;
- that the competent Ministers and the Governmental Commissioner in charge of the implementation of "New Order and Liberty" program shall set up a strategy to prevent personal bankruptcies and to introduce a procedure for individuals going bankrupt.

3 – Enforcement of Fundamental Rights in the Employment of Personal Financial Services[*]

In the course of the global financial crisis severely hitting Hungary as well, PROF. DR. MÁTÉ SZABÓ launched several examinations *ex officio* in order to reveal the means of enforcement of fundamental rights in financial law relations effecting citizens.[9]

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[9] Case no. AJB-2183/2010

As an element of these examinations, he purported to survey whether the amendments of the legislation to limit unilateral modification of contracts have created sensible changes in the formulation of contractual terms and conditions of the financial institutions, whether transparency and comprehensibility of the contractual terms have been improved during the past two years, and what practical measures have been taken by the financial service providers for the realisation of the requirements of responsible crediting. In his examinations, he requested information from the Ministers concerned, the Director of the HFSA and from the Hungarian Bank Association.

Information of clients

As the Minister of Justice and Policing pointed out in his response, any further increase of the obligation to inform would not necessarily improve efficiency. *There are so many obligations to make declarations and so much information burdening the client before, and in connection with entering into contract that the outcome can be the very opposite of what informing originally intended to achieve.* There is an extremely detailed, standing regulation on financial services, and within those particularly on credit accommodation and on the obligation to inform about the risks related to credits. These regulations describe the basic rules of informing the clients, the general terms and conditions and the consumer loans, including the mandatory information and the rules on the annual percentage rate of charge.

These rules also regulate the cases, where a consumer or personal loan contract is void. The minimal mandatory elements on the content of the contracts described in these regulations consist of all those conditions and rules which – sufficient knowledge thereof supposed – enable the clients to recognise the contractual risks.

Special emphasis must be attached to the fact, that the legal regulation has a long standing part prescribing a separate risk-assessment declaration and adjacent information for clients, in case of contracts for currency credits or contracts including an option to purchase the real estate. The regulation also provides for an exhaustive list of the mandatory elements of such a declaration.

Beyond the legal regulations, the institutions concerned agreed in a Code of Conduct to provide for sufficient information defined by the Code of Conduct to their existing and future clients before entering into, and during the performance of contracts upon the potential dangers of the credit services. The thematic examination of the Authority revealed significant improvement of the client information activities of these institutions. As a result of the Code of Conduct, the majority of the institutions exceeding their prior habits, inform their clients (or future clients) before entering into contracts both orally and in writing.

According to the position of the Bank Association, the banks have made considerable efforts to improve transparency and comprehensibility of the contractual terms and conditions. Financial institutions intend to formulate their own regulations in a way to create a transparent structure for the clients, and to enable them to quickly identify what rules do apply to particular services. In compliance with these, they developed separate personal and commercial regulations beyond the General Terms and Conditions applicable to the full range of their clients. There is a general aspiration to stipulate the terms and conditions applicable to the actual legal relation of the bank and the clients in the regulatory documents (contract, regulations, list of conditions, announcements) not exclusively by references to different legal sources.

Meeting the requirements of transparency is greatly hampered by the extremely complex – and unfortunately often incoherent – regulatory background, and in a number of cases, by the disproportionately short period provided for the establishment of the achievable situation before the entry into force of the legal regulations. Different starting date of the temporal scope of the various parts of the legal regulations inevitably forces adjustments of banking regulations, and such multi-stage amendments of the regulations do unavoidably impede the orientation of the clients. Another factor also to be accounted for is that the documents consisting of the general terms and conditions and banking regulations of financial institutions are legal documents,

therefore transparency has to or should be equally important therein as the clear assertion of legal requirements. According to the information provided by the Bank Association, if the credit is subject to state interest subsidies or to state guarantees, the client is informed about the conditions of employment thereof, and about the legal consequences of potential breaches of the contract during the repay period.

Unilateral Amendments of Contracts

Unilateral amendment of a contract is an important element of the banking practice, because relying on non-changing circumstances of refinancing throughout the full credit period is impossible. In case of mid- and long term loans the contractual provisions enabling subsequent unilateral modification of interest rates and other terms and conditions are unavoidable, since banks usually finance their long term loans from short term sources. As the Bank Association noted in its response, the right of unilateral modification is the legal admission of the fact, that in long term credit relations there is a continuous need to grant the balance between services and adjacent considerations. Inasmuch as banks could not react to anticipated changes in the future, then those anticipations would mean a risk "to be paid for", resulting in increasing price of credits. The reason thereof, by major simplification, is that the bank collects excess money from those having surplus and agrees to repay that in order, while – also under its own name – it loans from this money to credit applicants. As those having surplus (savings) do not intend to immobilise their money for as much time as the credit applicants intend to set as repay periods, the bank needs to apply financial market sources too, and repay those from subsequently applied sources. Since the price of these frequently renewed short term sources is incalculable for the bank, it is forced to reset the price of its long term loans in order to be able to buy new market sources from the incoming remittances. If the risk of changing refinancing circumstances should be borne exclusively by the banks, that would most probably result in narrowing credit activities and increasing prices for credits. In the position of the Bank Association unilateral modification is also a risk management tool of the banks.

The term become generally known when the Committee Examining Personal Financial Services came to the consequence in 2006, that the possibility of unilateral amendments create an unjustified power for the financial service providers, therefore it must be limited by law.

According to the information provided by the Minister of Finance, the Parliament, in order to limit the unilateral modification practice of financial institutions, amended the rules on unilateral modification of contracts in the Act on Credit Institutions and Financial Enterprises (ACI) on the 23rd March, 2009. The new regulation entered into force on the 1st August, 2009. The banks maintained, that the application of certain rules was not clear, therefore representatives of the Government, the Bank Association, the HFSA and the Hungarian Competition Authority (HCA) agreed to suspend for two months the unfavourable amendments of contracts. Meanwhile the Government has prepared an amendment to the regulation introduced in March that year, and a Code of Conduct would be prepared to define the detailed general principles of a fair attitude toward clients.

Rules of the ACI have been amended as from the 1st January, 2010. The ACI stipulates, that the banks could increase their fees or costs as much as the consumer price index has increased in the previous year. According to this new law, the creditor may exercise its right to unilaterally modify the contract, if the contract had given an exhaustive list of the objective circumstances justifying such modification, and the pricing principles had been set in writing. The adequacy of the pricing principles is controlled by the HFSA, by taking into account the Code of Conduct as accepted by the financial institutions. The reasons justifying unilateral modifications of contracts is listed in that Code of Conduct. The most significant of those reasons are the ones determining the cost of the sources of the banks (country risk premium, central bank base rate, interest rates of client deposits, interbank rates). The financial institutions signing the Code of Conduct agreed not to

modify unilaterally the terms and conditions as unfavourable to their clients having loans for a less than one year term.
In order to inform the clients about modifications, and to grant them the possibility of clearance of their credit if they consider that modification unfavourable compared to other bank credits, the financial institutions as a general rule must inform the client 60 days before the entry into force by post or by other durable medium. The client has the right to terminate such contract without any fees payable therefore until the entry into force of the unfavourable modification. Credits subject to state interest subsidies are excluded from the scope of this 60-days-rule, because in those cases the fees to be paid for the credit is limited. The upper limit of such fees of credit is bound to the yield of government securities, published monthly by the Government Debt Management Agency, and those are to applied from the subsequent month. Therefore the credit institution cannot declare the interest rate 60 days before, because it has no knowledge at that time about the yield of government securities to be taken into consideration.
This amendment of the ACI has opened up a possibility for the client to terminate the contract by paying no additional fees therefore prior to the entry into force of such increase in fees, costs or interests. The regulation prohibits such unilateral modifications of the contract by the credit institution, which would introduce new fees or costs. The means of calculation of actual fees regulated by the contract cannot be changed unilaterally and unfavourably to the client.
As it was pointed out by the Minister of Justice and Policing, the constraint to modification by law of credit agreements is the contractual freedom, according to the standing practice of the Constitutional Court. Contractual freedom is a material element of the market economy, an independent constitutional right, although not enjoying fundamental right protection, still subject to limitations only by constitutional grounds. The Constitutional Court however observed: "if social changes effect a great mass of contracts, it is reasonable – and subject to no constitutional objections – if the legislation prepares a general solution for the modification or amendment of legal relations. The state may however change the contents of existing contracts under the same conditions as it is done by the judiciary. Amendments of durable legal relations by law is only possible by the application of the maxim of "clausula rebus sic stantibus". The legislator – as well as a court – is entitled to modify standing and durable contractual relations after a subsequent change of circumstances if the keeping in force of the contract with unmodified content would infringe the lawful interest of a party, the change of circumstances was not reasonably foreseeable, and exceeds the risk of usual changes. As an additional condition of intervention by law, the social volume of the change of circumstances must be mentioned, i.e. it must impact a great number of contracts. […] In case of a dispute […] the Constitutional Court is competent to judge the constitutional compliance of the intervention, much like it is done by courts in cases related to actual contracts, when it modifies the contract to match the altered circumstances."
The HFSA found a violation of law by a credit institution in an examination performed in the beginning of 2009 (GTC[10] examination) concerning the unilateral modification of a contract in the case of CIB Bank Zrt, and ordered the payment of a fine of 6.5 million HUF. The reason thereof had been the bank violating the ACI, when it had increased once the credit fees of its credits on mortgages based upon reasons not predefined in the general terms and conditions. In the examination of FHB Bank Nyrt, the HFSA has not experienced violations, however it found solicitous the legal solution applied for the modification of the contract resulting in termination of the payment of fees of group life insurances serving as cover for credits assumed from the clients. The HFSA drew the attention of the Bank to that in a executive letter. The HFSA has not experienced violations of law in the case of the other credit institutions. In a general consumer protection examination launched in 2010 by the HFSA, it has been found that the examined institutions only modify unilaterally the interest rate of credits and only employ changes favourable to the client in the event of realisation of the circumstances provided in the Code. The

10 General Terms and Conditions

HFSA has also found, that the institutions in the examined period have characteristically applied unilateral modifications for decreasing their interest rates, while there were no instances of unilateral interest rate increases. The experiences provide that the institutions have developed their pricing principles according to the Code and the Act on Credit Institutions, and they observe the rules thereof.

There was a dramatic increase in the remittances of credits in 2008 and 2009 due to the global financial crisis. HFSA has consequently launched a thematic examination in Summer 2009 regarding the increasing remittances of currency credits at 12 financial institutions. HFSA has examined, whether the modifications happened in conformity with the law. However, there was a significant change in the regulatory background during this examination – as stated above, HFSA may perform examinations to control the Code of Conduct. It became reasonable therefore, that the results of the Summer 2009 examination regarding changes of remittances should be used in the thematic examination regarding the Code of Conduct, and deliver its decision based upon all of these findings.

The President of the HFSA evaluated as a major step forward that the changes in the regulation of the unilateral modifications of the terms and conditions have rendered credits more transparent for the future, and these also contributed to the establishment of a balance between the parties in their contractual relations. Another advancement is the mandatory establishment of pricing principles, which also furthers transparency of the costs of credit products.

The Government initiated the correction of the regulations on unilateral modifications of contracts, that has been realised by the Act CL of 2009 on the Amendment of Certain Financial Regulations. The rules are in force from the 1st January, 2010, and they are only applicable in case of consumers while micro-enterprises have been omitted from the scope of the Act.

The Act includes a reference to the Code of Conduct, inasmuch as the HFSA takes into account the regulation contained therein when it examines the adequacy and application of the pricing principles.

Banks have taken a number of measures for the implementation of the new law:

- they redesigned their regulations and general terms and conditions;
- they have prepared the list of grounds for unilateral modification of contracts, what has been integrated in the general terms and the contracts as well;
- clients received information by mail about the possibility of unilateral modification of contracts (list of grounds);
- a new risk declaration and table of terms has been prepared, in order to ease the choice of consumers, and offer practical definitions to the most important phrases used in banking services;
- credit forms have been modified;
- in order to ease the choice of consumers, credit calculators have been published at the internet sites of banks.

They have undertaken that in case of a credit for less then a one year term, and not subject to automatic renewal the creditor will not unilaterally modify the terms of the contract in a way unfavourable to the client. In other terms, they do not apply unilateral modifications for annual credits (except for bank account loans and credit cards) even if they are otherwise entitled to do so. According to the Bank Association it also shows, that "such obligations can be undertaken for short terms only. For longer periods one would require prophetic abilities." The principle of symmetry grants avoidance of abuses of this right of the bank. This principle of symmetry requires, that in the case if the unfavourable change of circumstances or conditions result in a unilateral increase of the interest, fees and costs payable by the client, than in case of a favourable change must also be asserted in favour of the client. There is also information provided if the client has the right to terminate the contract free of charge.

At the time of the conclusion of the contract it is agreed that a one-sum paying off would be possible in case of currency credits in the same currency. Measures prescribed by the Code of Conduct and applied by the banks:

- for the sake of clarity and comprehensibility banks have revised and amended their client information sheets, regulations and the contractual forms applicable;
- bank administrators and casual sales partners have been trained within their banks for the open and constructive communication with clients;
- banks continuously control the communication practice of their administrators by means of trial purchases program;
- clients are going to receive even more detailed information about their credit affairs in the future, including information on the possible breaches of the respective contracts;
- a separate declaration is prepared about the actual occurrence of information, which also lists the documents forwarded to the client during his information;
- in case of a valuation, the bank issues a certification on the numerical data thereof;
- banks have redesigned their regulations on pricing principles, regarding the unilateral modifications of interests, fees and costs, including both favourable and unfavourable changes;
- according to *inter alia* the requirements of the HFSA the list of ground for unilateral modification – whether favourable or unfavourable – of interests, fees and costs have been prepared and integrated into the bank regulations;
- risk-assessment declarations used earlier by banks have been completed with interest risks and risks related to the living conditions of the client, and the utilisation of such declarations have been extended to all personal credit products during the information phase and at the time of contracting alike;
- before collecting their claims, banks pay special attention to give comprehensive information to the clients about the amount of their debt and the consequences of possible failure to pay;
- clients facing financial difficulties receive immediate detailed information on bridging solutions. The bank also draws the attention of the client that by increasing the time-span of the credit the remittances decrease disproportionately, since longer time-span evokes higher credit fees.

Considering these, the Client Information Sheets have been completed, demonstrating changes in remittances. The banks presented direct links at the websites to that of the HFSA, pointing to applications and documents (product descriptions, credit calculator, household budget calculator) assisting the decision of the clients. The said links also appear on the printed bank information sheets.

Examination of the HFSA resulted in a number of condemnatory resolutions, particularly due to the violations of:

- specific principles related to prior information;
- regulations on the content requirements of letters consisting of demand notes;
- contracts of agents and representatives, due to the provisions on notification.

Changes of Consumer Protection Rules

The protection of clients applying for credit and the consumer protection is served by the Act CLXII of 2009 on Consumer Credits, which implements the Directive 2008/48/EC of the European Parliament and of the Council. The act goes beyond the regulation of the directive, and extends most of its provisions to mortgages and financial leasing agreements as well, in order to increase consumer trusts. It contains provisions for commercial communication, pre-contractual information, the contents of the contract, waiver and advance payment. Except for certain rules applicable from the 1st March, 2010, such as the rules on advance payment, the regulation of the

Consumer Credit Act[11] entered into force on the 11th of June. The following new rules require special attention:

– In commercial communication of credits (advertisements) the amount of the annual percentage rate of charge (APR) must appear prominently, to one decimal. Moreover, if there is any reference to any costs of the credit, a representative example must be presented for the credit product.

– The obligation to provide pre-contractual information is equally binding on creditors and credit intermediaries as well.

– According to the Act, a new APR regulation has been introduced. The most important change it applied as for the contents, is that the costs not directly charged by the bank must be included in the APR, such as insurance fees and fees payable to the register of title deeds.

– The possibility of advance payment must be presented to all credit applications. In the case of consumer credits the creditor is entitled to ask for additional fees for advance payment in periods, when the interest rate of the credit is fixed; also in case of a credit on mortgage, only when advance payment occurs in the interest rate period. The act determines the maximum amount of chargeable fees, and it stipulates, that advance payment of insurance contracts concluded as guarantee, or contracts on credit margins, due in a one-year-period and not exceeding 200 000 HUF, must be allowed for free of charges. (In the case of mortgages only a less than one-million forint final clearance is allowed free of charge.)

– The consumer may rescind the credit contract within 14 days of conclusion thereof. If the consumer has already assumed the credit, he can rescind the credit contract free of charge within 14 days, nevertheless he must repay the full borrowed amount within 30 days, along with any and all interests payable until the date of repayment from the day of the employment of the credit, according to the contract.

– In order to provide for more efficient treatment of complaints, such activities of financial institutions have been regulated as well. Thus financial institutions and and payment institutions grant the client the possibility to present complaints regarding conduct, activity or omission of the the financial or payment institution orally (by phone or personally) or in writing (by means of documents delivered personally or by other methods, by mail, fax or e-mail).

It was also prescribed, that the financial and payment institutions must accept complaints at least one working day of the week, between 8-20 by phone. It is also stipulated, that complaining phone calls must be recorded. Inasmuch as the complaint is dismissed, the financial or payment institution must inform the client, that it may forward its complaint – depending on the nature thereof – to the HFSA (Authority) or to a mediation body, with a reference made to respective addresses of those organs.

The modification of the Act on the HFSA gives authority to the existing HFSA procedures upon complaints. This strengthens the consumer protection tasks of the Authority, and thereby it may counter more efficiently against individual violations. An efficient consumer protection rule is set out by Section 4 of the Act on the HFSA, without prejudice the conclusion of individual contracts, validity, consequences and termination thereof. These issues remained in the jurisdiction of courts. The relevant rules of the Act XLVII of 2008 on the Prohibition of Unfair Commercial Treatment of Consumers have been implemented in this regard. The law only excludes the decisions in individual civil law claims from the Authority's consumer protection competence. Other prerogatives of the Authority such as the examination of the general terms and conditions and other regulations are without prejudice to judicial procedures in order to enforce civil law claims of the clients.

From the 1st January, 2010 any provision stipulating an option to purchase as a guarantee of the contract is void, if it is attached to a residual property, where the debtor actually lives. Thus financial institutions have no possibility to acquire unilaterally, without additional procedure (the

11 Act CLXII of 2009

initiation of an execution procedure, *etc.*) a residential property inhabited by a consumer this way, making him homeless.
A fundamental change has been introduced by the amendment of the Civil Code, regarding private persons excluding private entrepreneurs: the creditor claims deriving from credit agreements registered or opened in a foreign currency cannot be mortgaged *vis-à-vis* real estate properties or ownership competences of private persons. Any contractual regulations contrary thereto are void.
The Act on Real Estate Registry has been supplemented with the prohibition of registration of mortgages burdening real estate properties or shares thereof owned by private persons – excluding private entrepreneurs – established in relation to creditor claims deriving from credit agreements registered or opened in a foreign currency.
This practically terminated currency mortgage crediting for private persons. Existing currency credits have been omitted from the scope of the regulation, meanwhile the enforcement of evacuations of residential properties have been suspended until a period after the 15th April, 2011.
It can be concluded, that significant legislation has been introduced to strengthen consumer protection at the field of financial services, however, the practical consequences thereof cannot be drawn yet. No regulations have been introduced so far in relation to so called consumer clubs, subject to numerous complaints submitted to Parliamentary Commissioner of Civil Rights. These complaints had to be dismissed, due to a lack of competence.
On the other hand, "collapsing" credits resulted in a situation requesting treatment. One element (meant to be temporary) of this treatment is the ban on evacuation of residential properties.

Responsible crediting
The information provided by the Minister of Justice and Policing also covered that even before the newly introduced regulations of 2009-2010, there existed prudential rules related to minimising credit risk at individual or portfolio levels, and rules demanding that credits must be subject to sufficient coverage. All these rules have been continuously monitored and amended as required in the aforementioned period. These rules – however indirectly – can be classified as regulatory elements stipulating prudent crediting.
The Minister added regarding credit restrictions, that the legal regulation of prudent personal credits has been extended as a consequence of the financial crisis, to include rules limiting or tightening credit applications in order to avoid becoming over-insolvent. New measures also become possible by these rules in order to strengthen the stability of the financial intermediary system.
The new Section 199 of the ACI entered into force on the 11th June, 2010. This new law expressively limited the number of credit employed by a singe client from the same financial institution within the same calendar year. According to this law, a person may employ credits below the amount of 250 000 HUF, with an APR exceeding 65% only once a year. The objective of this tightening was ousting the so-called fast loans, but the regulation may also be directly relevant to repression of becoming over-insolvent and to a crediting better adjusted to the endurance and productive capacity of clients. As for the annual percentage rate of charge the Governmental Decree 83/2010. (III. 25.) must also be mentioned, as not only the one to contain the definition of annual percentage rate of charge but also to strengthen respecting credit constraints and providing sufficient information.
The Parliament enacted in 2009 the Act CLXII of 2009 on Consumer Credits (hereinafter ACC), which has introduced detailed rules for credits employable by private persons, has regulated communication preceding conclusion of credit contracts and the obligation of credit institution to provide information, requirements of credit contracts as for the form and contents. It also requires a mandatory examination of credit-worthiness, clarifies the issues of the rights of advance payment and the fees related thereto as well as the question of waiver. The entry into force of this new law happened in two steps, on the 1st of March and on the 11th June, 2010.

Rules of the ACC providing for a waiver by the client have entered into force on the 1st March, 2010. According to those, the client may rescind the credit contract within fourteen days of its conclusion, and he may even terminate the contract in case the credit had already been assumed (Section 21 (1) of ACC). The provision embodied in Section 22 (1) of the ACC serves to settle the claims emerging from unthoughtful purchase at so-called product-presentations. According to this rule, the consumer may rescind a contract adjacent to a purchase of a product or a service, in order to exercise a right deriving from the implementation of a binding legal act of the European Union.

Another standing rule of the ACC limits numerically the fees charged for advance payment (by percentage of the amount of advance payment), to counter the high fees as experienced earlier. It even prohibits charging such fees in certain cases. Section 23 (1) of the ACC expressively stipulates that the consumer in all circumstances enjoys the right of complete or partial advance payment of his credits.

In order to establish the conditions of responsible crediting and employment of credits, Section 14 (1) of the ACC – entering into force on the 11th June, 2010 – expressively designates the obligation of the creditor to evaluate the credit-worthiness of the client by accessible information.

The Government has accepted the Governmental Decree 361/2009. (XII. 30.) on Prudent Personal Crediting Conditions and the Examination of Credit-worthiness. The objective of this Governmental Decree is to abet responsible crediting, to diminish the risk of currency credits, and to prevent over-insolvency of individual clients. According to the Decree, financial and payment institutions must in all cases examine the credit-worthiness of the prospective individual clients, and they could not credit persons by only considering the guarantees offered. Creditors must determine in their domestic regulations the methodology of calculation and incomes and information to be considered in the determination of the credit capacity limits (representing the monthly maximum repayable credit amount) credit for certain credit types. For the credits opened in currencies, or currency credits the credit capacity limit must be set lower than in case of forint credits.

The regulation practically exhaustively determined the mandatory amount of own contributions to real estate loans and other credit types. Another important change is the prohibition of opening credits exclusively based on guarantees submitted applicable from the 11th June, 2010.

The President of the HFSA has emphasised however for future regulations the perspectives of transparency, that also requires instruments provided to the creditors. In order to achieve this - as it was marked several times by the HFSA – introduction of a full list credit information system and the necessary regulatory framework thereof would be fundamental. A part of responsible crediting is to objectively and prudently reveal the credit bearing capacity – and this could not be reliable operated without the introduction of such a system, according to the position of the HFSA.

The majority of recent changes protect the interests of clients to become insolvent in the future. (the Consumer Credit Act, for one example). The HFSA shares the assumption, that the application of the newly prescribed credit constraints may prevent the consumers getting stuck in a debt spiral or becoming over-insolvent in the future.

The Act on the HFSA in its Section 9 (1) m) reads: "the Authority publishes at its website […] the information of clients of financial institutions on the comparison of credit and leasing products." Accordingly the Authority prepared and published the so-called credit and leasing product selecting application. The data used therein is gathered from the regular supply of data by the supervised institutions. This way data contained in the application is up-to-date and complete, which also enables information of the consumer about the products and conditions thereof available in the market, and he is able to compare those to each other in order to come to an appropriate decision.

The HFSA evaluated that newly introduced laws and self regulations both significantly contribute to more thorough information. However it must be emphasised that the client himself has a

special role in the successful operation of the institutional framework of consumer protection, as it is heeded by the HFSA in its activities to develop financial culture. The consumer must also act responsibly and prudently in the course of his employment of credits, therefore it is expected from him as well to consider his endurance, genuinely consider his needs and options, inform himself, ask, read the contractual documentation, since this is how he will discover his obligations while also gaining a better position to more efficiently exercise his rights related to the credit contract.

Those acceding to the Code of Conduct are obliged to continue their crediting activities according to the provisions of the Code of Conduct. Compliance with the rules of the Code of Conduct is subject to supervision by the HFSA.

By the accession to the Code of Conduct, the creditors agree to consider the known credit capacity limits of their clients in the course of their credit assessments, before delivering a positive decision;

– they develop transparent services tailored to the needs of clients, based upon the conduct of a reasonable and informed consumer;

– they supply correct and complete information about the services they provide, and they strive to make the client understand the characteristics of the service offered in order to consider the anticipated risks;

– they pay special attention to present those risk, which may result in an increase of the remittances.

Suggesting the clients to consider the credit endurance capacity of their household is extremely important in connection with responsible crediting. Clients should be advised to consider the income and financial standing of those they live with, along with their credit endurance capacity, too.

When submitting the credit application they check whether their client is present in the Central Credit Information System (CCIS), and if the information contained therein results in the dismissal of the application, they seek to save the client from unjustified costs.

The Decree also stipulates, that in the determination of the credit capacity limit the creditor must consider all known credit debts of the client, regardless to those being due to the same or other creditors. The creditor is obliged to use reasonable and requisite care in order to reveal the financial situation of the client, including requests of information from all credit information systems it has joined or it is a member to.

The response of the Bank Association marked the lack of a complete list credit information system as a "painful imperfection of the Hungarian regulatory framework" particularly in a crisis situation. Notably, this issue divided a few years ago the Parliamentary Commissioners themselves. What is the value of the cited provision of the decree without a complete list credit information system? How can it be enforced? According to their response the "Hungarian legal system sets up no real barriers to the unlimited insolvency of private persons, based upon the priority attached to the rights of personality and data protection." This cannot be prevented by whatever similar goodwill is present in the regulations, until there is a complete list credit information system. Until the client is not listed in the recent CCIS (the registration of delayed debtors) due to non-payment, he remains able to employ unsecured credits from all banks and cooperative banks, since there is only the – not necessarily correct – declaration of the client proving he has no credit at other institutions. An evidence to the reality of this fact is that the largest number of standing credits of one client according to the CCIS is 18, and the average number of credits per listed persons is above 1.5. The Bank Association has not stated that all clients employ credit by cheating on the banks, but it has maintained, that clients tend to overestimate their own credit endurance capacities. If there was a complete list credit information system showing the credit burden of the client, a more precise estimation of the necessary, yet still bearable amount of the credit would be feasible. There would even be an possibility to

dismiss apparently exorbitant claims. There is no possibility thereto according to the information received, "not even by the application of seers".
Most banks have ceased to credit in Swiss franc, and they also terminated merchandising credit constructions without an income certificate, solely based on the submitted guarantees. Many banks have ceased to sell unit-linked credits combined with life insurances.
Except for certain rules applicable from the 1st March, (like to those regulating advance payment), the Act on Consumer Credits entered into force on the 11th June. This law has brought a number of new regulations extremely relevant to consumer protection. These effect commercial and pre-contractual communication in relation to credits, examination of credit-worthiness, obligation to inform about the modification of costs, waiver by the client and a number of other issues.

Bankruptcy Protection of Individuals

Regarding bankruptcy protection of individuals, i.e. the settlement of their debts, the response of Minister observed, that several legal regulations strived to prevent and manage bankruptcies directly or indirectly between 2008 and 2010. As for the solutions for a procedure to settle the debts of private persons, and enacting an act on the subject matter, several ministries started to co-operate in 2009 and this resulted in several regulatory concepts, even the legislative work has been launched. The concept outlined therein suggested three subsequent stages for such procedures (agreement phase, expeditious bankruptcy and durable reimbursement procedure). The agreement phase would serve the development of the debt settlement plan and the acceptance thereof by the creditors. Lacking such consensus, an expeditious bankruptcy would follow to satisfy the creditor demands, and finally a durable reimbursement procedure would be reached.

The Minister of Justice and Policing has pointed out, that regarding the need for more comprehensive solution in the preparatory legislative work it is to be examined how it would be possible to make financial institutions and other creditors (public utility companies, tax authorities and condominiums) be more interested in their agreements with private persons. If the regulation results in an increasing risk of non-payment by clients, or there is a realistic peril of the debtors hiding their revenues in violation of the agreements, cheating their creditors, or finally seeking to prolong the procedure then the legislation would meet social concordance in vain. The supervising liquidator can only perform his duties, if the law provides him with the competencies and rights to prevent and reveal abusive conduct of the client. After bankruptcy protection has been reached, another factor to be taken into account can be the client seeking for revenues in the black market instead of aiding the settlement of his debts. It must be also considered, that salaries of supervising liquidators is a cost that can evoke tremendous budgetary effects.
All these must be recited to illustrate: the draft act can only be presented to the Parliament if the legal and institutional (and for the payment institutions, informatics and debtor-registration) conditions are not unconstitutionally constraining the rights of the debtor, meanwhile these conditions must be appropriate to supply reliable information about the favourable or unfavourable changes in all three stages of the process. It is also important that debtors and family members must not be able to abuse the bankruptcy protection. They must not be able to cheat on the supervising liquidator and the creditors. One cornerstone would be the determination of who is entitled for protection and what conditions will be applicable. The solutions to be found must properly convince those who would cost dearly to the state, indirectly to the whole society, yet remain hopeless to settle their debts at least partially – either due to their complete lack of any wealth, or to other circumstances, or by their unworthiness to protection – not to apply for the protection.

It must also be examined, who can be appointed as a liquidator to the debtor, what rights shall he enjoy, how he could represent professionally and impartially the interests of the creditors, meanwhile gaining the active co-operation of the debtor for the settlement of his debts.
Special attention must be paid to the treatment of family property relations, particularly relevant to the co-debtors and that the transactions between family members must be identifiable and controllable on the one hand, and not to be abusive to the bankruptcy protection instruments on the other. Inclusion of debts resulting from loans borrowed from private persons can also lead to abuses, because it is judicially uncontrollable, if such contracts have been concluded at all, and if the contents thereof are really equal to those admitted by the debtor. This problem must also be managed in the drafting procedure.
Beyond bank credit debts, public utility debts, public debts and common cost debts of condominiums demand special tending, since these form the other major group of debts adjoining bank credits.
The means and methods of adjusting the regulation to debtor-saving measures and debt treatment service according to social laws should also be surveyed.
Finally the Minister noted, that in the drafting process foreign regulations are going to be studied as well as the international private law aspects of the prospective regulation, considering that the debtor's property or family relations may contain aspects entailing foreign law or jurisdiction.
Regarding problems like the present level of insolvency developed from earlier credit contracts it must not be omitted, that the legislator tried to directly ameliorate the situation of the debtors by the Act IV of 2009 on the State Guarantee of Payment for Habitation Credits and the Act XLVIII of 2009 on the Amendment of Certain Acts for the Protection of Citizens Having Habitation Credits.
The Act IV of 2009 on the State Guarantee of Payment for Habitation Credits provides for the possibility to apply for a bridging credit subject to minimal monthly remittances by those who lost their jobs due to the crisis in order to save their homes. The state offers absolute guarantee of payment to such bridging credits up to 70 or 80%.
Legal aid does not relate closely to the bankruptcy protection of individuals, however it may contribute to the prevention of homelessness by furnishing a more efficient enforcement of rights for those entitled thereof. It also helps accessing legal remedies. The system of legal aid is available since the 1st April, 2004 and it ensures the application of a professional legal expert for those socially in need thereof.
The Act on Legal Aid (ALA) legal aid is accessible to those reduced thereto as a main rule, subject to an examination of their incomes and revenues. Contrary to that main rule, homeless people at temporary shelters receive legal aid without such an examination. In the framework of non-contentious supports it is possible to receive advice in their legal disputes or affairs inflicting their everyday life (such as particularly housing, labour law issues, access to public utilities). It is possible to general legal information or to ask for drafting a document or petition. It must be noted furthermore, that usury became punishable as a crime under the Criminal Code in 2009.
The President of the HFSA informed the Commissioner that the draft prepared to introduce the institution of personal bankruptcy – actively supported by the HFSA – was finally not accepted.
The amendment of the law regarding the collection of the claim means only effective legal aid for a part of the seriously insolvent debtors – those who are subject to non-judicial foreclosure – but it fails to do so in respect to options to purchase.
The Recommendation 2/2008 of the Presidency of the Hungarian Bank Association has been accepted in 2008 regarding the practice to be followed in order to simplify credit redemption.
Portability of state subsidised real estate loans is being blocked by the law, and the Governmental Decree on the Conditions of Prudent Personal Crediting and Examination of Creditworthiness also rendered harder the redemption of loans. An amendment thereof – as stated by the response – for the introduction of portability of state subsidies has been initiated and supported by the banking community.

Regarding the amelioration of the situation of the debtors facing difficulties the Bank Association has emphasised, that in October 2008 leading personal banks undertook an agreement concluded with the Minister of Finance aiding the debtors facing difficulties. Moreover, the Code of Conduct of banks does cover the complete credit process, from prior information to aiding debtors possibly in a hard situation.
The banks did much to aid the troubled clients: almost eighty-thousand clients have been offered the restructuring of their credits. A number of banks have acted before the debtor actually got into trouble: endangered clients have been suggested a number of possibilities.
Regarding the prevention of personal bankruptcies the Bank Association informed the Commissioner that the regulatory framework - lacking a complete list credit registration system – allows for unlimited insolvency of debtors. According to this response, the economic crisis would have stroke much less debtors if such a list had been operational in the past years.
This fundamental defect cannot be complemented by using other risk management tools of the creditors. The Governmental Decree on Responsible Crediting is also unable to counter this situation, because it is late, and the earlier regulations have generated further problems. Voluntary credit registration systems may only have a beneficial effect in a few years time and even at that time with only limited efficacy. Even if offering and employment of the credit had been conducted responsibly by the contracting parties, and careful credit assessment is presumed, there will be no protection available for the client loosing his job, or in case of spouses, both become unemployed. According to the position of the Bank Association the main source of the problems of clients with currency credits are not the increasing remittances, but the situation of the labour market and the exaggerated employment of credits by private persons, regardless of the credit opened in forint or in some other currency. By itself the modification and tightening of the rules of execution does not offer an appropriate guarantee for the prevention of personal bankruptcies. The situation of the debtor and the creditor is already set when the case reaches the execution phase along with the amount of the demand and the value of the collaterals cannot be changed either. Re-contracting, applied in relation to terminated loan contracts is also a business interest for banks with a fair market approach, due to the decreasing values of collaterals because of the crisis. Unfortunately tendencies of external factors (such as the level of unemployment) are not subject to the aforementioned regulations, so if the debtor is unable to pay even a minimal sum, this instrument is not applicable.
In this aspect the Bank Association summarised the claims management practice and credit relief constructions of banks as follows:
Banks comply with strict internal rules in case of the delayed payment of debtors. The regulation establishes the tasks to be done step by step, including:

– contacting the client following the first delay, at a pre-set time (by phone or in writing) in order to find a solution how the client could settle his delayed debt;
– a procedure is to be followed in case of failed contacting attempts. If the client had cared for submitting his contact details to the bank, the bank makes all reasonable steps to contact the client and acquire a substantive response from him.

Subject to successful contacting and cooperation from the client side, banks apply a number of credit relief constructions. These offer correct solutions not just to settle the delayed debt without an execution procedure, but also to manage the negative change of the solvency of the client in order to restore thereof.

Due to the restructuring programs developed by the banks, more than 70 thousand credit transactions (real estate, consumer and leasing contracts) have been restructured since the beginning of the crisis. Restructuring may extend to an increase of the term of credit, temporary decrease of remittances, or rescheduling the capital reimbursement. This required considerable organisation and work force realignment. Restructuring bank procedures have been greatly effected by the cooperative consent of the clients and the assumption related to the restoration of

solvency of the client. Often restructuring does not mean a final solution, because in some cases delay appears again.
Only a few hundred contracts have been restructured in the framework of the state debt saving program regulated in a separate Act, due to the strict, less lifelike regulatory boundaries.
At the end of 2009 banks have managed 6040 thousand personal credits, 1174 thousand of which had been mortgaged. By the end of 2009 the rescheduled credit portfolio had been quintupled. Banks have re-negotiated more than 1% of their portfolios in order to save the contracts. This means 72 600 credit contracts, 23 700 of which have been mortgaged, 46 500 have been other personal credits. Restructuring of credits of troubled debtors continues in this year, too.
The ombudsman pointed out, that the client receives a pile of papers consisting of a vast amount of information. Also, the burden of documentation of the information (even meaning dozens of declarations of acknowledgements of information), which results in the loss of the merits of the transaction. In other terms, the client will not find out the actual risks. Thus, the stricter and more detailed regulations have been introduced by the Hungarian law regarding financial services and the risks thereof, the more these information lost their substance.
He added, that client information must be rendered substantial and comprehensive, because recent practice fails to fulfil its objectives, and it even expressively counteracts the very goals of the regulation. *A practice based on the defects of the regulation holds a continuous and direct threat of an irregularity related to the requirement of legal security and the right to property.*
Regarding unilateral modifications of contracts the Office of the Parliamentary Commissioner has opened examination in its case no. 4938/2008. In its earlier report he referred to "that [he found] inevitable from the perspective of the right to due process and the implementation of legal security the creation of the regulation. As for the form of the regulation, he consider[ed] an act of the Parliament the appropriate solution, maintaining, that the self regulation of a bank or the Bank Association can be pictured as the regulation detailing that act. What is also important: both should be presented the sooner the better in order to offer appropriate security for the clients."
Nevertheless I believe, that the recent regulation meets the criteria set out in 2008, regarding both the structure and the contents of the regulation, and therefore it is suitable for the protection of the rights of the clients.

As it was emphasised in the earlier report of the ombudsman: every credit institution is obliged to maintain a responsible crediting and to treat and manage the money of its depositors and relocation of such sources in the same way. He welcomed in the examination conducted in the framework of this project, that high level legal regulations describe the provisions limiting and tightening credit employment in order to prevent over-insolvency.

He experienced during his examination, that these provisions are practically impossible to abide. Credit institutions cannot have genuine information on the real financial situation of the clients. He agreed, that – as it have been noted by the Authority and the Bank Association several times – the introduction of a complete list credit information system would be fundamental, along with the creation of the necessary regulatory environment. Revealing the endurance capacities of the clients objectively and prudently is a part of responsible crediting, what cannot operate reliable without such a system.
Thus, in simpler terms, it is unsurmountable that the credit institutions comply with the legal regulations, when they have to rely on exclusively the debts declared by the client from "all known credit debts of the natural person from the same or from other creditors" in the course of the determination of the credit capacity limits. This not just empties the regulation, which therefore fails to place barriers of individual over-insolvency, but it also burdens the credit institutions with unachievable obligations.

The ombudsman therefore observed, that lacking a complete list credit information system this provision – due to impossibility of its enforcement – causes an irregularity regarding the requirement of legal security deriving from the rule of law.

In the past years the ombudsman formulated several proposals in order to introduce personal bankruptcies. Unfortunately, it has not yet happened to this day, although both the HFSA and (to our best knowledge) banks supported it.

The ombudsman have declared already in 2008: it is undoubted, that the foundations of the regulation of the private bankruptcy need to be solid as far as the precise objective and the detailed rules of the institution. However, the importance of introducing the institution in Hungary as soon as possible remained unchanged. That would provide substantive protection to insolvent natural person debtors. Special care must be taken in the new regulation to avoid the possibility of anybody abusing it, by means of unjustly disposing of one's financial obligations.

It is reasonable to note, that amelioration of troubled debtors require solutions based on the co-operation – though to different extent and by different means – of the state, financial service providers and the society. Bankruptcy protection of private persons is only one, however important element thereof. Inasmuch as personal bankruptcy does not complement other solutions regulated and applied in the law in force for the settlement of the situation of troubled debtors (bridging loans, legal aid, credit redemption, rescheduling, payment allowances, etc.), these solutions does also not redeem the decades-old lack of the rules on personal bankruptcy protection.

Over-insolvency of personal clients is strongly connected to the destiny and future of their earlier credits. In case of long term transactions (sometimes even covering a 20 years term) special attention must be paid to means of maintaining those, if there is – even a significant – change of circumstances. Portability of state subsidised loans on real estates is banned by the legal regulation, and redemption of credits is further hampered by Governmental Decree 361/2009. (XII. 30.) on Prudent Personal Crediting Conditions and the Examination of Credit-worthiness. Amendments thereof, particularly making state subsidies portable – insofar it is compatible with objectives of the subsidies – is at least worth consideration.

A significant portion of the problems derives from the fact, that the financial knowledge of many clients still has not reached a level required to understand the characteristics, functioning, conditions and risks of the services available in the market – and in several cases employed by them. The responsibility for this is only partially theirs. Many had no possibilities to obtain such knowledge during their studies. Beyond the need of regulation for prudent and responsible crediting therefore a much larger role must be played by measures – not primarily regulatory ones – for the establishment of responsible credit employment and a general improve of the financial culture. Drawbacks of the financial culture of the people will recreate defected knowledge, and may lead to an unchanged level of information of the clients employing financial services, despite of any legal regulatory efforts to the contrary. Concluding all these I deem inevitable the improvement of the financial culture of the population.

The ombudsman therefore sought the Government with his legislative proposals and initiatives to remedy the irregularities regarding fundamental rights and prevent occurrences thereof in the future.

4. The Report on Prolonged Consumer Protection Proceedings by the HFSA[*]

There were several complaints submitted to the Commissioner about the consumer protection proceedings of the HFSA. All these complaints referred to exceeding significantly administrative

[*] DR. ADRIENN DEZSŐ, legal officer (OPC). AJB-146/2011.

deadlines.[12]

In order to successfully complete the examination the Commissioner has summoned to the HFSA, requesting information on the reasons of such excesses of deadlines. In one of the cases the complaint arrived in an e-mail to the HFSA from the petitioner on 16th February, 2010, complaining about the procedure applied by ERSTE Bank Zrt, and the decision have posted to the client on 29th December, 2010. In another case the petitioner submitted a complaint on 19th April, 2010 about the procedure of CIB Bank Zrt, and the HFSA delivered its resolution on 31st January, 2011. In the third case the HFSA commenced its proceedings on 3rd June, 2010 and delivered a resolution on 2nd February, 2010.
According to section 27 of the Act on the HFSA, administrative actions of the Authority are subject to the rules of the Act on the General Rules on Administrative Actions Procedure and Administrative Services[13] (AAP) with derogations prescribed by law. According to the text in force at the time of the complaints, section 48/C (2) of the Act on the HFSA stipulated the relevant deadline have been 45 five business days.[14] The following are excluded from the administrative deadlines: the period of the clarification of conflicting competence, and the designation of the competent authority; the time reserved for submitting supplementary information and data required for the clarification of the facts, starting from a summons to that effect; the time-span of the procedures of specialised administrative authorities; the period, when the procedure have been suspended; the preparation period of expert opinions; the period from the summons of the authorities or from posting the decision to its actual delivery, and the period reserved for communication through advertisement, commissioned delivery or procurator service.

The HFSA presented in its response to the summons: *"due to the financial-economic crisis the number of consumer complaints submitted to the Authority have multiplied. Meanwhile earlier management of the Authority did not disregard the complete examination of the affairs not within its competence. The realisation thereof – with unchanged capacities – was impossible within the deadline prescribed by law."*
The response from the HFSA covered also that *"consumer protection proceedings were commenced despite the fact the Client's complaint did not meet the requirements of AAP vis-à-vis written petitions, or the Authority had competence for the case. Among others, such practice resulted in an extremely high number of cases and procedures at the Consumer Protection Directorate of the Authority. The new management deemed important to lawfully close procedures already commenced. The management of the Authority acting from the 1st of July, 2010 has realised the problem emerging from the extreme case-load, and has taken the necessary measures to completely settle the stockpiled cases within appropriate deadlines. Accordingly, there was a structural reorganisation in force from the 1st of September, 2010. As a novelty, complaints submitted to the Authority are filtered according to regulations established by law. Cases within the competence of the Authority are processed within the deadline prescribed by law, and there is a resolution or order delivered within a deadline acceptable to the Client. In all consumer protection cases logged after the 1st of September, the Authority pay special attention to the compliance with administrative deadlines."*

Regarding the fact, that administrative authorities must constantly examine their competence in all phases of the procedures, and take the measures prescribed by AAP for missing competences, the response of the Authority cannot be accepted. The high number of complaints received and the defects of personal conditions do not excuse the administrative authorities from failure to

12 A signifcant number of complaints regarding the same subject matter have been received earlier. N.b. AJB-6964/2010., AJB-7132/2010., AJB-4648/2010, AJB-7710/2010., AJB-575/2011., AJB-462/2011.
13 Act CXL of 2004
14 Administrative deadline for consumer protection cases have been extended to three months by a regulation in force since the 1st of January, 2001. See: section 66 (2) of the Act CXXXV of 2007 on the Financial Supervisory Authority

comply with administrative deadlines prescribed by law. The interest of the client is the closure of the case within a reasonable time, the examination of the complained acts of the financial institution as soon as possible.

In all of the complained cases the Authority has summoned to the financial institution concerned, and requested documents and information. The period between such summons and the performance thereof is excluded from the calculation of the administrative deadline. Taking this into account, it can be concluded, that the procedure of the Authority resulted in a decision in the complained cases months after their submission.

Accordingly the ombudsman observed, that the HFSA has exceeded significantly the administrative deadline prescribed by law in several cases, which resulted in an irregularity regarding the right to due process and the requirement of legal security deriving from the rule of law.

In order to prevent future occurrences of the revealed irregularities in connection with a constitutional right, the ombudsman asked the President of the HFSA to pay special heed in the future to comply with administrative deadlines applicable in consumer protection cases.