

Regarding the actually incurred costs that can be claimed from consumers in connection with early repayment of consumer credit relating to residential immovable property pursuant to Act No. 257/2016 Coll., on Consumer Credit

Regulation	<ul style="list-style-type: none"> • Act No. 257/2016 Coll., on Consumer Credit, as amended (CCA) • Directive 2014/17/EU of the European Parliament and of the Council of 4 February 2014 on credit agreements for consumers relating to residential immovable property and amending Directives 2008/48/EC and 2013/36/EU and Regulation (EU) No 1093/2010 (MCD) • Commission Regulation (EC) No. 1126/2008 of 3 November 2008 adopting certain international accounting standards in accordance with Regulation (EC) No 1606/2002 of the European Parliament and Council, as amended (EU-IFRS)
Provisions	<ul style="list-style-type: none"> • Articles 117, 90, 92, 95, 106 and 110 of the CCA • Recital 66 and Article 25(3) of the MCD • IAS 1 and IFRS 9 of the EU-IFRS
Question	<p>What costs can a creditor claim as compensation from a consumer in connection with early repayment of consumer credit relating to residential immovable property?</p>
Answer	<p>Pursuant to Article 117(1) of the CCA, the consumer has a right to repay consumer credit fully or partially at any time during the duration thereof. In such cases, the consumer is entitled to a reduction in the total cost of the consumer credit, such reduction consisting of the interest and other costs the consumer would have had to pay if the consumer credit had not been repaid early.</p> <p>Pursuant to Article 117(2) of the CCA, in the event of early repayment of credit, the creditor is entitled, where so agreed in the consumer credit agreement,¹ to claim compensation from the consumer for <u>costs actually incurred in connection with early repayment</u>. The exceptions to this right are the cases given in Article 117(3) of the CCA where the creditor may not claim compensation from the consumer for the costs linked with early repayment. In other instances, pursuant to Article 117(5) of the CCA, the compensation for costs linked with consumer credit relating to residential immovable property may not exceed the interest the consumer would have paid between the moment of early repayment and the end of the period for which the borrowing rate is fixed. From the wording of Article 117(3) of the CCA, it follows that early repayment of consumer credit is always possible in the period for which no fixed borrowing rate is set, without the creditor being entitled to compensation for costs.</p> <p>In the case of early repayment of consumer credit relating to residential immovable property connected with the sale of immovable property, the acquisition or construction of which or the maintenance of the rights to which was financed by that credit, or by which that credit was secured, pursuant to Article 117(2) of the CCA the compensation for costs may not exceed 1% of the consumer credit repaid early,</p>

¹ Pursuant to Article 106(1)(q) of the CCA, the agreement on consumer credit for house purchase must contain information on the right to early repayment of consumer credit and the potential right of the provider to claim compensation for costs incurred. The private-law consequences of not stating this information are governed by Article 110(5)(a) of the CCA: "If, in violation of the law, the consumer credit agreement lacks information in writing on any right of the creditor towards the consumer or on the conditions under which the creditor may exercise that right, the creditor shall not have that right". The early repayment fee and the method for calculating it are part of the prescribed content of the pre-contractual information provided to applicants for consumer credit for house purchase in the form of the European Standardised Information Sheet (Article 95(2) and Annex 4 of the CCA) Pursuant to Article 92(1)(q) of the CCA, the conditions for early repayment on a general level must be made permanently available to consumers.

or CZK 50,000, whichever is the lower, provided that the duration of the agreement on consumer credit relating to residential immovable property is longer than 24 months (Article 117(4) of the CCA).

Costs actually incurred by the creditor in connection with early repayment of consumer credit for house purchase.

The spirit and purpose of Article 117 of the CCA is to allow the consumer genuinely to repay early, in accordance with the MCD. From Article 117(2) of the CCA, it follows that the creditor is entitled only to compensation of costs that fulfil the condition of expenses actually incurred in connection with early repayment.

Actually incurred costs are only such costs that were objectively necessary and justified in the given case. The criterion for actually incurred expenses is therefore not met by costs for actions which were not necessary in connection with early repayment (for example, unjustified travel expenses or other costs for unnecessary meetings with the consumer) or which are excessive. For example, remuneration paid to a lawyer for performing standard administrative work linked with early repayment which exceeds the costs of having an employee of the provider perform the same work is not an actually incurred expense. In this context, it must be pointed out that pursuant to Article 90(1) of the CCA, the information referred to in Article 117(6)² of the CCA should be provided free of charge.

In the opinion of the CNB, costs whose existence and amount are not affected by whether or when the consumer repays early do not fulfil the criterion of costs linked with early repayment.

One example of costs for which compensation is not permissible pursuant to Article 117(2) of the CCA, as they are costs incurred by the provider in connection with the arrangement of the agreement for consumer credit relating to residential immovable property and not in connection with early repayment, is the commission paid by the provider to an intermediary for the intermediation of consumer credit for house purchase. In this case, the commission is an expense incurred specifically to create a legal relationship and not an expense linked with early repayment of the loan.³ It relates to the moment of arrangement of the loan and is essentially an electable cost incurred by the provider, who determines its amount and method of payment to the intermediary. One possible eligible cost within the meaning of Article 117(2) of the CCA is remuneration paid to an intermediary for work actually performed in connection with early repayment (i.e. not remuneration paid in advance for possible future work linked with possible early repayment by the consumer in the future), as

² Pursuant to Article 117(6) of the CCA, the provider, upon being informed by the consumer of the consumer's intention to repay a loan for house purchase early, shall provide the consumer, without undue delay, with the following information in order to allow the consumer to weigh the consequences of early repayment:

- a) a calculation of the outstanding amount the consumer will be required to pay in the event of early repayment, broken down into the principal, interest and other costs linked with early repayment,
- b) information on the amount of compensation for the provider's costs pursuant to paragraph 2, stating all the assumptions used to calculate it, and
- c) information on other consequences of early repayment for the consumer, including information on the conditions under which the provider may not claim compensation for costs linked with early repayment pursuant to paragraph 3.

³ See Supreme Court of the Czech Republic Ruling No. 25 Cdo 861/2006. This ruling states (among other things): *"In the case under review, the plaintiff spent money on paying a commission to an estate agent under an agency contract, the subject of which was that estate agent's commitment to engage in activity in return for remuneration (a commission) in order to create an opportunity for the appellant to conclude an apartment lease agreement, which agreement was subsequently concluded. The purpose of the agency contract was therefore fulfilled, and the costs associated therewith were actually incurred to that end. Therefore, they did not become excessively incurred even after the rights and obligations arising from the lease were not exercised (regardless of whether this was due to the lessor's breach of contractual obligations), since the costs were incurred specifically to establish the legal relationship (lease); its duration, the methods of, or reasons for, termination, and the other rights and obligations arising from it are no longer relevant..."*

long as the condition of actually incurred expenses is simultaneously met.

The CNB considers costs provably recorded in the creditor's accounts which make up the basis of the creditor's financial statements⁴ (IAS 1 and IFRS 9 of the EU-IFRS and Articles 3 and 7 of Act No. 563/1991 Coll., on Accounting, as amended) to be costs actually incurred by the creditor in connection with early repayment pursuant to Article 117(2) of the CCA. "Internal company costs", i.e. costs incurred by one department of the creditor to the benefit of another department of the creditor, such as internal interest swaps, cannot be considered actually incurred costs.

Neither the reduction in the provider's interest earnings following early repayment of consumer credit relating to residential immovable property, nor the provider's interest costs on its debts are costs incurred in connection with early repayment of consumer credit for house purchase. The first case involves a loss of profits, not a cost. In the second case, these are again costs (incurred in vain) for the provision of consumer credit, not costs incurred in connection with early repayment of consumer credit for house purchase. Therefore, neither the reduction in profit on the interest margin, nor any refinancing costs (incurred in vain), irrespective of their designation (e.g. "opportunity costs", "cost of funding", "loss of interest income"), come under the costs actually incurred by the provider in connection with early repayment of the loan, as the legally required link with early repayment is not present. Therefore, they cannot be the subject of the compensation that the provider may claim from the consumer pursuant to Article 117(2) of the CCA.

The conditions for actually incurred costs and connection with early repayment will be met mainly by administrative costs incurred by the provider for processing early repayment (i.e. costs directly linked with the processing and implementation of the consumer's application for early repayment or the consumer's notice of the making of an extraordinary payment on the loan), typically, that is, the pro rata staff costs – the pay of the employee who processes the application for early repayment, cadastral fees, postage costs, costs of printing and copying documents, telephone charges and office supplies consumed). Other eligible costs include expenses for any notary services necessitated by early repayment.

Providers may also prove fulfilment of the conditions for actually incurred costs and connection with early repayment in the case of other costs. However, these costs would have to be actually incurred (in accordance with the principle of due care by a manager who anticipates that the consumer might exercise his/her right to early repayment). They could not include financial costs incurred regardless of whether the loan is repaid early or not, and they would have to be provably incurred in a specific amount in connection with the early repayment of the particular loan. Simultaneously, the amount of compensation may not exceed the creditor's financial loss.

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⁴ i.e. not managerial accounts, internal company accounts and similar records.