

CONSUMER LENDING IN THEORY AND PRACTICE



PETR TEPLÝ

KAROLINUM

Consumer Lending in Theory and Practice

Petr Teplý

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TABLE OF CONTENTS

LIST OF FIGURES -----	8
LIST OF TABLES -----	10
LIST OF ABBREVIATIONS -----	11
FOREWORD-----	12
THEORETICAL PART -----	13
1. THEORETICAL BACKGROUND: DEFINITION OF RESPONSIBLE BORROWING AND LENDING -----	15
1.1 DEFINITION OF RESPONSIBLE LENDING -----	17
1.2 DEFINITION OF RESPONSIBLE BORROWING -----	19
1.3 DEFINITION OF SECURITY -----	21
2. THEORETICAL ASPECTS OF REGULATION AND SUPERVISION OVER CONSUMER CREDIT MARKETS – A CASE STUDY ON THE CZECH REPUBLIC -----	23
2.1 GENERAL FRAMEWORK -----	24
2.2 REGULATED PART OF THE CONSUMER CREDIT MARKET IN THE CZECH REPUBLIC -----	26
2.3 UNREGULATED PART OF THE CONSUMER CREDIT MARKET IN THE CZECH REPUBLIC -----	34

3.	THEORETICAL ASPECTS OF CONSUMER CREDIT MARKETS – A CASE STUDY ON THE CZECH REPUBLIC -----	39
3.1	HOUSEHOLD INDEBTEDNESS IN THE CZECH REPUBLIC AND IN THE EUROPEAN UNION -----	39
3.2	ANALYSIS OF CONSUMER CREDIT PRODUCTS IN THE CZECH REPUBLIC -----	51
3.3	FINANCIAL LITERACY -----	65
	EMPIRICAL PART -----	71
4.	METHODOLOGY OF CONSTRUCTION OF THE NAVIGATOR OF RESPONSIBLE LENDING -----	73
4.1	NAVIGATOR CONSTRUCTION -----	73
4.2	THE POTENTIAL LENDER (SUPPLY SIDE) -----	74
4.3	EX-ANTE CREDIT PARAMETERS (PRODUCT DESIGN) -----	80
4.4	EX-POST CREDIT PARAMETERS -----	85
4.5	CREDIT APPLICANTS (DEMAND SIDE) -----	87
4.6	OUTLINE OF THE CALCULATION OF THE NAVIGATOR VALUE -----	87
5.	RESULTS OF THE NAVIGATOR FOR 2013 -----	93
5.1	RESULTS OF THE NAVIGATOR FOR A CZK 30,000 CREDIT -----	93
5.2	RESULTS OF THE NAVIGATOR FOR A CZK 100,000 CREDIT -----	97
5.3	OVER-ALL RESULTS OF THE NAVIGATOR 2013 -----	101
5.4	COMPARING THE NAVIGATOR RESULTS IN 2012 AND 2013 -----	103
6.	CONCLUSION -----	105
7.	REFERENCES -----	107
8.	APPENDIX -----	113
9.	ENCLOSURES -----	125
9.1	THE CZECH CREDIT CONSUMER ACT (ENGLISH TRANSLATION) -----	125
9.2	THE ANNUAL PERCENTAGE RATE OF CHARGE CALCULATION – A CASE STUDY -----	162
9.3	AN ALTERNATIVE VIEW ON INDEBTEDNESS -----	165
9.4	REGULATION OF THE CZECH CONSUMER CREDIT MARKET – A REGULATOR'S VIEW -----	169
9.5	REGULATION OF THE GLOBAL CONSUMER CREDIT MARKET – A REGULATOR'S VIEW -----	171
9.6	FINANCIAL EDUCATION – A CASE STUDY -----	174

9.7	RESPONSIBLE LENDING IN A BANK – A CASE STUDY -----	177
9.8	RESPONSIBLE LENDING IN A NONBANK INSTITUTION – A CASE STUDY -----	180
	ABOUT AUTHOR -----	185
	INDEX -----	186

LIST OF FIGURES

- Figure 1: Total numbers of submission received by the CNB in 2009–2014
- Figure 2: Results of credit intermediary audits by the CTIA in 2010–2014
- Figure 3: Macroeconomic and microeconomic impacts of the crisis
- Figure 4: Change in the volume of consumer credit in the Czech Republic in 2007–2014
- Figure 5: GDP dynamics in the Czech Republic and other countries in 2007–2014
- Figure 6: Changes in household consumption and unemployment rate in the Czech Republic in 2010–2014
- Figure 7: Changes in household indebtedness in the Czech Republic in 1994–2014
- Figure 8: Bank product penetration in the Czech Republic, compared to the Eurozone
- Figure 9: Comparison of indebtedness and wealth in the Czech Republic and selected Eurozone countries
- Figure 10: Nonperforming consumer loans provided by banks to individuals between 2007 and 2014 (figures as at the end of each period)
- Figure 11: Insolvency petitions against individuals in December 2008 – June 2015
- Figure 12: Debt reliefs and personal bankruptcies in the Czech Republic between December 2008 and June 2015
- Figure 13: Repossessions ordered by courts in the Czech Republic in 2001–2014
- Figure 14: Volume of consumer credit in the Czech Republic in 2005–2014 (year-end)
- Figure 15: Consumer credit volume in the Czech Republic in 2005–2014 (volume of new transactions in each year)
- Figure 16: Year-on-year changes in the volume of new consumer credit provided by banks and non-bank lenders in 2007–2014
- Figure 17: Volume of consumer credit provided by banks in the Czech Republic in 2005–2014, by maturity (as at the end of each period)
- Figure 18: Banks' interest rate margins on consumer credit, falling due within a year in the Czech Republic, Germany, Greece and Slovakia in 2009–2014 (% of new transactions as at the end of each year)
- Figure 19: Volume of consumer credit provided by CLFA members in the Czech Republic in 2005–2014 (volume of new transactions in each year)
- Figure 20: Short-term loan structure by age groups in the Czech Republic as of 31 December 2014
- Figure 21: Macroeconomic impact of a low level of financial literacy
- Figure 22: Proportions of high-score respondents in OECD categories of financial literacy
- Figure 23: Navigator results for the CZK 30,000 credit model with a one-year maturity term (responsible lenders)

Figure 24: APR charged by selected credit providers – CZK 30,000 credit with a one-year maturity term

Figure 25: Navigator results for the CZK 100,000 credit model with a five-year maturity term (responsible lenders)

Figure 26: APR charged by selected credit providers – CZK 100,000 credit with a 5-year maturity term

Figure 27: Navigator 2013 results for the entities under review (responsible lenders)

Figure 28: Navigator 2013 results for the entities under review (loan sharks)

Figure 29: The 2012 and 2013 Navigator results for responsible lenders

LIST OF TABLES

Table 1: Six factors of over-indebtedness

Table 2: Institutions involved in consumer market regulation and supervision in the CR as at 30 September 2015

Table 3: Financial arbitrator's disputes (proceedings under way) divided by areas in 2014

Table 4: Major non-bank consumer credit providers in 2014

Table 5: Key factors of financial literacy

Table 6: Lenders classified by the NRL

Table 7: Credit providers supervised by the CNB and those outside supervision

Table 8: Basic parameters of a CZK 30,000 credit model and a CZK 100,000 credit model

Table 9: An example of NRL calculation for a CZK 30,000 no-purpose loan with a maturity term of 1 year

Table 10: An example of NRL calculation for a CZK 100,000 no-purpose cash loan with a maturity term of 5 years

Table 11: List of companies for the CZK 30,000 credit model with a 1-year maturity term

Table 12: List of companies for the CZK 100,000 credit model with a 5-year maturity term

Table 13: A list of banks and payment institutions subject to regulation and to Czech National Bank's supervision, as at 31 October 2013

Table 14: A list of entities – members of the Czech Leasing and Financial Association, providing consumer credit as at 31 October 2013

Table 15: Information about the parameters of the CZK 30,000 credit model

Table 16: Information about the parameters of the CZK 100,000 credit model

Table 17: An example of the questionnaire for banks concerning a CZK 30,000 credit

Table 18: An example of the questionnaire for banks concerning a CZK 100,000 credit

Table 19: Navigator detailed results for a CZK 30,000 credit

Table 20: Navigator detailed results for a CZK 100,000 credit

Table 21: Navigator 2013 detailed results for 53 entities under review

LIST OF ABBREVIATIONS

APR	annual percentage rate of charge
CBA	the Czech Banking Association
CCA	the Consumer Credit Act
CCB	CRIF – Czech Credit Bureau, a. s.
CNB	the Czech National Bank
CLFA	the Czech Leasing and Financial Association
ČSOB	Československá obchodní banka, a. s.
CSR	corporate social responsibility
CTIA	the Czech Trade Inspection Authority
ECB	the European Central Bank
FA	Financial Arbitrator
GDP	Gross Domestic Product
HC	Home Credit International a. s.
MCD	Mortgage Credit Directive
MFCR	the Ministry of Finance of Czech Republic
MIT	the Ministry of Industry and Trade
NERV	the National Economic Council of the Government
NGO	non-governmental organization
NRL	the Navigator of Responsible Lending
PIGS	Portugal, Italy, Greece, Spain
OECD	the Organisation for Economic Co-operation and Development
RMBS	Residential Mortgage-Backed Security

FOREWORD

This book deals with consumer lending from both theoretical and empirical points of view. The first section, focusing on theory, presents definitions of responsible lending and responsible borrowing. Next, the book discusses theoretical aspects of regulation and supervision over consumer markets and concludes with a discussion on the wider context of financial literacy, household indebtedness and the Czech consumer credit market including relevant legal, regulatory, supervisory and risk management issues. In the empirical section, the book uses The Navigator of Responsible Lending as an evaluation tool to assess both bank and non-bank consumer credit in the Czech Republic. Enclosures to the book include additional texts relevant to consumer lending (including targeted case studies and an English translation of the Czech Consumer Credit Act) and therefore provide the reader with several perspectives on the topic. The analyses and conclusions presented by the author are on the leading edge of basic and applied research since theoretical concepts are applied to, and tested against, real financial data. The complexity and rigorousness of the case studies and analyses in the book follow the conventions of the Law and Economics branch of science. Although our empirical research is done as a case study on the Czech Republic, its basic ideas and analysis methodologies might be easily applied to other countries as well.

Finally, we would like to thank our reviewers Associate Professors Eva Zamrazilová and Vladislav Pavlát for their valuable comments on the book. In addition, we extend our gratitude to Prof. Michal Mejstřík and his research team at EEIP, a. s. for expert comments on the empirical part of the work, Ms. Yael Roshwalb for her valuable contribution in editing this book, and finally to an employee of Karolinum Press, Mr. Jan Hejzl. The remaining errors and omissions naturally remain responsibility of the author.

In Prague on 25 November 2015

Petr Teplý

THEORETICAL PART

THEORETICAL BACKGROUND: DEFINITION OF RESPONSIBLE BORROWING AND LENDING

In this chapter we address the dual concepts of responsible borrowing and lending, which are the key concepts for the construction of The Navigator of Responsible Lending in the empirical part of this book. In the past, responsible lending has received attention from world institutions and organizations as documented by works of Financial Stability Board (2011), OECD (2011) or more recently by World Bank (2012), Hubbard-Solli (2013) or Prouza (2013). Responsible borrowing and lending should be considered in a broader context of the over-indebtedness of the population (Porter, 2012) and of financial inclusion (World Bank, 2013). To address over-indebtedness effectively, we split the issue into two parts: prevention (*ex-ante* approach) and alleviation of the consequences of over-indebtedness (*ex-post* approach), as shown in Table 1.

Alternatively, Prouza (2013)¹ identifies a primary reason for households' borrowing: the need to have steady living conditions over the years,² which is possible through obtaining debt. Obviously, not all households can afford pay their debts, especially when young families overstate their future income, which can partly be explained by the life-cycle economic theory (Betti, 2007). Moreover, Prouza (2013) lists three main drivers of households' over-indebtedness: financial imprudence, the occurrence of unexpected events and poverty. First, financial imprudence means poor financial decisions-making resulted

1 See also Section 9.5 for a detailed discussion on regulation of the global consumer credit market.

2 Compare with the Friedman's Permanent Income Hypothesis developed by Friedman (1957).

Table 1: Six factors of over-indebtedness

Over-indebtedness factors
Prevention of over-indebtedness
<ul style="list-style-type: none"> • Responsible lending • Responsible borrowing and cash management • Responsible loan repayment management
Alleviation of the consequences of over-indebtedness
<ul style="list-style-type: none"> • Debt counselling • Court solutions • Out-of court solutions

Source: Author based on European Commission (2007)

either from poor planning of future expenses and income (Tufano, 2009) or from the individual's over-confidence bias to repay debt (Kilborn, 2005). Second, the occurrence of unexpected events that affect debt repayment causes another driver of over-indebtedness (Morduch, 1995). This can happen on the individual-specific level (either through lower income resulting from a job loss or through higher expenses resulting from expensive medical care or through family issues such as divorce) or on the debt contract-specific level (a sudden rise in interest rates or lower value of collateral). Finally, poverty might cause heavy over-indebtedness³ when people with low creditworthiness take loans to cover their expenses and do not earn enough to repay their debts. Even worse, some people take out a new loan, not only to repay current loans, but also to cover expenses on execution, which implies a vicious circle. Teplý (2012b) compares this vicious circle of indebtedness with Uroboros, a mythic snake eating its own tail, showing that short-term distorted thinking (e.g. taking a new loan on current loan repayment) can result in long-term catastrophic consequences (e.g. personal bankruptcy or repossession).

There are several definitions of responsible lending and borrowing. In general terms, we distinguish that i) responsible lending refers to the offer of loans (by lenders) and ii) responsible borrowing refers to the demand for loans (by borrowers). With respect to the above general definitions, responsible lending and borrowing requires fair play on both sides. Responsible borrowing is an essential counterpart of responsible lending, because loan providers depend on correct and complete information from and about the potential borrower. We want to highlight that asymmetric information ranks to one of key issues of finance, which was first discussed in the seminal article by Akerlof (1970).

3 See Section 9.3 for a more detailed discussion on indebtedness. We should note that excessive indebtedness of households might result in systemic risk (i.e. the risk of market contagion resulting in lower financial stability of the whole sector).

1.1 DEFINITION OF RESPONSIBLE LENDING

However, no unique definition of responsible lending⁴ exists. For instance, European Commission (2009a) offers the following definition: “*Responsible lending means that credit products are appropriate for consumers’ needs and are tailored to their ability to repay. This may be obtained through having an appropriate framework in place to ensure that all lenders and intermediaries act in a fair, honest and professional manner before, during and after the lending transaction.*” We offer a different definition: “*Responsible lending does not cause any significant harm to the debtor and simultaneously maintains or increases his living standard.*” From the lender’s point of view, responsible lending can be viewed in two major areas: client creditworthiness assessment and product suitability assessment.

1.1.1 CLIENT CREDITWORTHINESS ASSESSMENT

Correct assessment of the client’s creditworthiness is vital for credit granting. If the client’s creditworthiness is underrated, there is a higher probability of the client’s failure to repay the loan. Theoretically, the credit provider or intermediary should be concerned with correctly assessing the borrower, and the borrower should be concerned with proper repayment of the loan and the related costs, fees and expenses. However, this is not always the case. The European Commission (2009a) draws attention to the fact that a mortgage provider and intermediary may have different motivations where there is the possibility to:

- 1) Sell the mortgage collateral;
- 2) Transfer the borrower credit risk using financial derivatives.⁵

Credit providers and intermediaries are motivated not to perform proper evaluation of the clients’ creditworthiness. This speeds up the process and, as a result, more clients are won and more commission is earned. Employees of financial institutions who are paid for the numbers and volume of loans sold regardless of what happens further with each credit case may have a similar motivation.

A similar situation can be expected in the Czech market: a financial institution lends money to a borrower with a low creditworthiness, assuming ex ante that the borrower will fail to repay the loan. If this is the case, the creditor seizes the collateral, e.g., a computer or domestic electronic devices etc. It should be mentioned in this context that some loan providers or their representatives offer to conclude a loan with the borrower at his or her home. Thus they will

4 See Sections 9.7 and 9.8 for case studies of responsible lending in a bank and a nonbank respectively.

5 For example, Residential Mortgage-Backed Security, “RMBS”.

have an opportunity to assess the value of the things that can be seized in repossession in case of the borrower's default.⁶ However, the provision of loans to borrowers with a low creditworthiness is in contravention of the CLFA Memorandum on Consumer Protection in Consumer Credit Provision.⁷

11.2 PRODUCT SUITABILITY ASSESSMENT

Besides client creditworthiness assessment, it is also necessary to assess the suitability of the credit product for the borrower. This can be done at two levels:

- 1) Assessment of the suitability of the product design;
- 2) Assessment of the suitability of the credit product for the given borrower.

As to product design, we should mention in particular the recent credit product innovations that have occurred in the USA and in some EU member countries including, though to a minor extent, the Czech Republic. Such innovative products are, for example, interest-only mortgages, self-certification mortgages or revolving credits. Although some EU member states have statutory limits on financial indicators, such as the loan-to-value ratio or loan-to-income ratio, these binding limits have not always been respected. As said, this has not been very common in the Czech financial market.

The European Commission (2009a) believes that there is room for significant improvement in assessing the suitability of particular products for particular clients. Examples include the sale of teaser-rate loans, which the borrower would need to refinance within a short period of time or risk moving to a much higher repayment level that may be unaffordable to him/her (this happened during the crisis in the USA). Loans issued in foreign currencies, which caused problems in Hungary and in the Baltic states, are another example (indebtedness in foreign currencies is not a problem in the Czech Republic). In Hungary, for instance, the proportion of mortgages in foreign currencies (especially in Swiss francs) was 64 % as at 30 September 2010. During the global crisis, clients' mortgage instalments increased significantly, owing to the depreciation of the Hungarian forint and to increased interest rates. The Hungarian government responded by taking a relatively extreme measure: mortgage provision in foreign currencies has been banned by law since August 2010 (Hungarian National Bank, 2010).

In evaluating the client's creditworthiness, the credit provider or intermediary should assess, for example, the following criteria (European Commission, 2009b):

6 The possibility of signing a contract at the client's home is officially presented as exclusive service.

7 <http://www.clfa.cz/index.php?textID=94>

- 1) Loan-to-value ratio;
- 2) Loan-to-income ratio;
- 3) Purpose of the loan agreement;
- 4) Loan type and length;
- 5) Early retirement plans;
- 6) Access to fixed/variable loan interest rate;
- 7) Age;
- 8) Savings track record.

1.2 DEFINITION OF RESPONSIBLE BORROWING

“Responsible borrowing means that individuals, when seeking to buy a credit product, will make efforts to inform themselves of the products on offer, be honest when providing information on their financial situation to the lender or credit intermediary, and take their personal and financial circumstances into account when making their decision.” (European Commission, 2009a, p.10). As a consequence, this prudence should help the borrower select the credit product that is most appropriate for their needs, potentially leading to lower default rate. If borrowers do not respect this principle, this will undermine the potential effects that could be achieved through financial institutions’ responsible lending policies.

In this context, distinction should be drawn between two types of potential borrowers who provide inaccurate or false information about themselves during the credit approval process:

- 1) Client who purposefully provides false information in order to get a loan;
- 2) Client who provides wrong information due to negligence or lack of knowledge (no deliberate deception).

As follows from this classification of clients, it is not a general rule that financially literate consumers choose to borrow responsibly. Such a consumer may purposefully provide false information in the loan application in order to get loans that would otherwise not be available to him. Responsible borrowing is therefore also associated with the provision of correct, complete and sufficient information from the borrower to the lender (and vice versa). On the other hand, irresponsible purchases of certain credit products such as the mentioned self-certified mortgages, and a subsequent inability to repay debt, is sometimes referred to as one of the factors that contributed to the global financial crisis (European Commission, 2009a). Moreover, we argue that credit insurance (i.e. paying off a balance in the event of a life crisis) can play a role of keeping people solvent when bad things happen in life (see also the above-mentioned discussion on over-indebtedness).

Generally it can be stated that financial literacy is essential for responsible borrowing, because, as a rule, financially literate consumers are better able to understand their financial situation and to better assess which offer is the most economically advantageous for them (European Commission, 2007). Attention is drawn to the poor financial literacy of the population of the Czech Republic, for example, by CNB (2010b), Mejstřík and Teplý (2011), NERV (2011), Teplý (2012) or more recently by Hradil (2013), Teplý et al. (2013) or Mejstřík et al. (2014).

There are a number of principles for responsible borrowing and lending, for example, Teplý et al. (2013) offer the following five responsible borrowing rules:

- 1) Borrow only from established lenders – address as many high-quality credit providers as possible and compare not only the financial criteria (i.e., how much you will repay in addition to what you have borrowed) but also the non-financial criteria (i.e., the contractual conditions concerning in particular, the penalties for failure to repay on time etc.). How to identify a good credit provider? Generally, good credit providers are banks and the companies that are members of CLFA, i.e., institutions that are subject to some regulation.
- 2) Read before signing. If you do not understand an agreement or any specific obligation, do not sign it on the spot. There is always the possibility to take it home and examine it in detail in consultation with other people.
- 3) If you fail to get a loan from established lenders, take it as an indication that you would not be able to repay. Loan sharks will not help you: they will make your situation even more difficult.
- 4) If you get into arrears with your instalments, address first of all the company from which you have the loan and try to reach an agreement on a change in instalments or on an extended repayment time. Do not borrow to repay a debt, otherwise you will find yourselves in a debt spiral and it will come out badly. Sooner or later a loan shark will deprive you of all you have. Established lenders, on the other hand, have proper tools to help you as a client in such situations and it is in their interest to help the client endure the difficulties.
- 5) If you have a problem, address it and seek help from professionals. There are a number of non-profit organisations in the Czech Republic that provide advice and solutions to families with financial problems.