

| *Esther Hernández Sainz*

# The Right of Reflection and Comparison in Mortgage Loan Agreements according to Directive 2014/17/UE and Its Recent Implementation in Spanish Legislation\*

## Abstract

*Objective:* This article analyses and critically assesses the new Spanish rules regarding the consumer's right of reflection previous to concluding a credit agreement for residential immovable property. It also looks at how it makes consumer protection more effective.

*Research Design & Methods:* The article is based on, first, a critical analysis of the Spanish regulation and the existing literature and, second, on a comparison between the European and the Spanish regulation of this institution.

| Esther Hernández Sainz, University of Zaragoza, Faculty of Law, Calle de Pedro Cerbuna, 12, 50009 Zaragoza, Spain, e-mail: [estherh@unizar.es](mailto:estherh@unizar.es), ORCID: <https://orcid.org/0000-0002-6553-8245>.

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*Findings:* 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 obliges Member States to specify a time period of at least seven days during which the consumer will have sufficient time to compare offers, assess their implications and make an informed decision before entering into a credit agreement. Following a lengthy delay, the Directive was implemented in Spanish legislation on 15 March, through Law 5/2019 on credit agreements relating to residential immovable property. The Directive admits the right of reflection to be articulated as a period of reflection before a credit agreement is concluded, as a period of withdrawal after the conclusion of the credit agreement or a combination of the two. Spanish legislation has chosen the first option but it does not fully respect all the requirements of the Directive.

*Implications/Recommendations:* A period of reflection prior to the conclusion of a mortgage loan agreement is an essential instrument for consumer self-protection because it allows consumers to analyse pre-contractual information in depth, to compare offers, to assess the implications of each offer, and to make an informed decision. It likewise benefits banks and other lenders because it reduces consumer claims, and even benefits the mortgage loan market itself as it increases overall competence. Adequate regulation of this right is essential to sufficiently protect borrowers.

*Contribution:* This article analyses the deficiencies of the Spanish regulation on the right of reflection and formulates proposals for reform.

**Keywords:** credit agreements for consumers relating to residential immovable property, right of reflection, binding offer, right of withdrawal.

## 1. Introduction

The mortgage loan agreement for the acquisition of a home or other residential property (e.g. second homes) is probably the most important contract a consumer will conclude in their lifetime. Undoubtedly, it is the contract with the deepest impact on the consumer's financial position. Despite its importance, in Spain many scandals have broken out in connection with mortgage credit in the recent years. Many contracts have been voided because they included abusive clauses or abnormally high default rates. One factor giving rise to these problems was that consumers have signed agreements without fully understanding their content and without thoroughly comparing competing offers from different credit institutions or other lenders. Consumers did not have a compulsory period of reflection and they made decisions that were not in their best interests.

Directive 2014/17 of the European Parliament and of the Council, of 4 February 2014, on credit agreements for consumers relating to residential immovable prop-

erty, was intended to address these problems<sup>1</sup>. This Directive was implemented with a huge delay in Spanish legislation on 15 March, through Law 5/2019, of 15 March 2019, on credit agreements relating to residential immovable property<sup>2</sup>. In this article, I examine the different alternatives put forward by the EU Mortgage Credit Directive in order to guarantee consumers an effective reflection period and critically evaluate the option chosen by the Spanish legislature.

## 2. Benefits of Guaranteeing a Period of Reflection

Why is it so important to guarantee a period of reflection? Because it offers consumers a powerful mechanism for protecting their own interests, allowing them the time to analyse the pre-contractual information they have received, to compare offers and to choose the one that best suits their needs and expectations. Additionally, a period of reflection will allow them to seek advice in order to better understand the extent of each offer. The reflection period is essential to making informed decision. It also allows clients to ask their banks or financial entities about issues they do not understand, which facilitates better compliance. The existence of this period facilitates a better understanding of the contract; although it is not fully guaranteed, since the granting of a period of reflection does not necessarily mean that the consumer will reflect<sup>3</sup>.

Lenders that have respected the reflection period could claim that the error was inexcusable in these circumstances, because the consumer had time not only to assess the implications of the contract before signing it, but also to request clarifications and to make an informed decision. However, the guarantee of a period of reflection also involves some relevant risks for the lender that should be highlighted. Thus, if the reflection period is articulated through a binding offer, the facts and circumstances that were taken into account when the offer was made could change. The consumer's solvency could decrease, for example, if he or she engaged new debts in that period. Therefore, according to the regulation of the right of reflection and comparison, it is essential that there be a balance between the adequate protection of the consumer and the protection of creditors against possible fraudulent behaviour or the alteration of the concurrent circumstances when the offer is issued.

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<sup>1</sup> For a general and deeper overview of the Directive, see (Tapia Hermida 2014, Roncero Sánchez 2014, *La protección...* 2015, Arroyo Almayuelas 2017).

<sup>2</sup> For a general analysis of the new Spanish Law, see (Sáenz de Jubera Higuero 2019, *Comentario a la Ley...* 2019).

<sup>3</sup> See more (Hernández Sainz 2017, p. 7).

The advantages gained from the reflection period transcend the single credit relationship between borrower and lender to reach the mortgage loans market itself. A period of reflection enables consumers to compare different offers, making the mortgage credit market more competitive. In the long term, it will result in better products and a reduction in costs for consumers. Finally, it is even conducive to the creation of a single mortgage loan market within the EU, because the real possibility of comparing products together with cross-border marketing of mortgage loans through new technologies is key to ending the still national segmentation of the mortgage credit markets.

### **3. The Right of Reflection in Directive 2014/17/EU**

#### **3.1. Options Given to the Member States for the Setting of Right of Reflection**

The right of reflection is set out in Article 14.6 of the Directive 2014/17/EU as a minimum right with a length of seven days. Member States may introduce more stringent provisions in order to improve consumer protection, such as a longer term or more effective compliance controls than those provided for in Directive. This right may be articulated as a period of reflection before the credit agreement is concluded, as a period of withdrawal after the conclusion of the credit agreement or a combination of the two. I analyse these three options below.

##### *Period of reflection before the credit agreement is concluded*

From a joint interpretation of paragraphs 3, 4, 6 and 11 of article 14 of the Directive, it can be deduced that the previous period of reflection cannot be configured as a simple minimum term between the delivery of the pre-contractual information and the signing of the contract. The national legislation must oblige the lender to formulate a binding and complete contractual offer that must not be modified within this period of seven days or more. The lender must wait for the future borrower to make a decision. So that consumers have a period in which to be able to decide whether or not to conclude the mortgage loan agreement, with the certainty that while they reflect and take a decision, the offeror will not modify the content of the offer, nor revoke it. The consumer can also propose modifications or additions, thus creating a counter-offer. In this case, if these new conditions proposed by the consumer were accepted, it would not be opened a new offer period, because the agreement is concluded. If the lender does not fully agree with the consumer's proposal and decides to make a new one, this new offer should again take the form of a binding offer.

A "binding offer" and European Standardised Information Sheet (ESIS) must not be confused, since they constitute different documents, even if their content

does overlap. The offer must be included in a different document, separate from the ESIS, and must be provided on paper or in another durable medium (article 14.3). The Directive even admits that Member States oblige lenders to deliver the ESIS before the binding offer is made. Then the ESIS would have the value of an invitation to offer. Later, when the lender has decided to grant the loan, he should make a binding offer. In this case, a new ESIS should be attached to the offer if there is any change in relation to the content of the ESIS previously submitted.

The eleventh paragraph of article 14 of the Directive also requires that a copy of the draft contract be delivered. In interpreting that article, one could think that the binding offer is something different from the draft, when in fact the offer must materialise through the delivery of a complete proposal of contract made by the lender. I cannot imagine what content other than the draft of contract itself might contain the binding offer.

There are two options to configure a binding offer. With one, the consumer is allowed to accept the offer at any time within that seven-day period (or the longer period provided by national legislation). In the other, the law may force the consumer to wait for the deadline to conclude the contract. That means that the reflection period must always be respected by the lender, who cannot force the consumer to contract, and cannot, either, withdraw the offer during the period in which it is binding; but that term may be waived or imperative for the consumer.

In the first case, the reflection period becomes a right, and consumers can conclude the agreement as soon as they wish. Great Britain, Belgium, and Italy have chosen this option. In the second case, the contract can only be concluded once the legal binding period of reflection has expired. This is intended to encourage consumers to assess the offer, preventing them from concluding the contract for a certain period. This term is limited to a maximum length of ten days. It does not mean that the reflection period should only last ten days – it could be longer, but the minimum waiting period that is imposed on the consumer for the signing of the contract cannot exceed ten days. For example, in French Law, article L331–34 of the Code de la Consommation provides for a reflection period of thirty days, during which the lender cannot withdraw the offer, nor compel the consumer to sign the contract. At the same time, the consumer may not accept the offer until at least ten days after receiving it. In this way, after ten days, the consumer could sign the contract, or he could continue assessing its implications and comparing it with other offers for twenty more days.

The greatest risk for the lender during this period of the previous reflection is that the relevant circumstances it has taken into account to make the offer could change before the consumer finally signs the contract. According to recital 23 of the Directive, the reflection period or the right of withdrawal should cease if

the circumstances that the lender took into account upon making the offer have changed (for example, if the consumer imposes new charges on the property or engages new debts). I believe that these limitations on the binding nature of the offer should be expressly regulated, as is the case in the British legal system.

*Period of post-contractual reflection: the right of withdrawal*

The other possible option provided by article 14.6 of the Directive is to grant the consumer a right of withdrawal with a minimum length of seven days after the conclusion of the contract. This right can be exercised by simple notice to the other party and no reasons need to be given. It may be exercised even in cases of distance selling of mortgage loans. A concrete legal regime for this right of withdrawal has not been provided, perhaps because the European legislature itself has serious doubts about the usefulness of this mechanism in mortgage credit agreements. After the conclusion of the contract, the consumer will invest the money in the purchase or in retaining property rights in the real estate. It could therefore be very difficult for consumers to reconstitute the amount received, if they have decided to withdraw from the credit agreement<sup>4</sup>.

However, the right of withdrawal may be useful in cases in which the purchase agreement of real estate for whose financing the loan was obtained, is not ultimately concluded. This is the solution adopted in French legislation<sup>5</sup>. Arroyo Almayuelas has proposed that a solution to this problem would be to condition the exercise of the right of withdrawal to consumers not transferring the funds they have received to a third party during the period in which they may exercise the right of withdrawal. So, if the consumer has decided to unilaterally terminate the contract, they could return the money received<sup>6</sup>. In practice, the solution is not viable because the mortgage is normally constituted on the property that is acquired with the loan.

*Combination of a pre-contractual period of reflection and a right of withdrawal after the contract has been concluded*

Finally, Mortgage Credit Directive also enables the reflection period to be configured as a combination of a binding offer and a right of withdrawal free of charge and without giving any reason. The consumer shall have a double period

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<sup>4</sup> See (Díaz Alabart & Álvarez Moreno 2015, pp. 47–49).

<sup>5</sup> See article L 313–36 *Code de la consommation: L'offre est toujours acceptée sous la condition résolutoire de la non-conclusion, dans un délai de quatre mois à compter de son acceptation, du contrat pour lequel le prêt est demandé.*

<sup>6</sup> See (Arroyo Almayuelas 2017, p. 23).

of reflection: before and after the conclusion of the contract. In my estimation, this protection is excessive. It does not seem reasonable that after guaranteeing the consumer a period of reflection before the conclusion of the contract, they will be allowed to withdraw from the contract immediately after the conclusion without any reason.

The best option is to allow a period of reflection before to conclude the contract, in the form of a binding offer with a length broad enough to compare offers from different lenders and to assess their implications. This solution protects the consumer while not imposing excessive burdens on the lender.

### **3.2. Guarantees for the Effectiveness of the Right of Reflection**

To ensure the right of reflection is effective, consumers must know they have this right in order to demand it be respected. Appropriate sanctions for their infringement are also needed.

In order to ensure that consumers know their right to reflect and compare, the Directive requires section 11 of the ESIS to inform about the existence of a reflection period and/or a right of withdrawal. These rights should also be mentioned in the general information document that lenders must have available for the public in general.

Another key instrument to guarantee the effectiveness of the right of reflection is that the Member States provide for adequate sanctions for lenders who do not respect it. Article 38 of the Directive does not specify the nature of these sanctions, requiring them only to be effective, proportionate, and dissuasive. A majority of Member States have opted for administrative sanctions.

There are no provisions in the Directive on possible private remedies. If the reflection period takes the form of a right of withdrawal, it is evident that the consumer may claim their right before the courts. If the lender does not accept the termination of the contract and its consequences, since the decision to resolve is unilateral and does not require any justification, the court will declare that the contract is terminated. In practice, the lender may hinder, but not prevent the exercise of the right of withdrawal. It is more difficult to find a solution when a Member State has chosen a period of prior reflection and the lender does not respect it, refusing to formalise the contract under the terms of the offer or instructing the consumer to sign it before the end of the reflection period.

## **4. The Right of Reflection in the Spanish New Law 5/2019 on Credit Agreements Relating to Residential Immovable Property**

### **4.1. General Remarks**

Law 5/2019 on credit agreements relating to residential immovable property has implemented the European Union Directive 2014/17/EU with great delay and it has not repealed the previous regulations. Order EHA/2899/2011 is still in force, but has been modified by Order ECE/482/2019. It applies to mortgage credit agreements concluded between a credit institution and a natural person, whether or not that person was a consumer. Law 2/2009 is also in force, applying to mortgage loans granted to a consumer, in a professional manner, by any natural or legal person that does not enjoy the status of a credit institution. This hodgepodge of rules makes it difficult to understand the scope of the right of reflection in Spain. Nonetheless, I will next present the main conclusions that are obtained from a joint application of these three regulations.

### **4.2. Contractors to Whom a Right of Reflection is Granted before They Conclude a Mortgage Loan Agreement**

Law 5/2019 applies to mortgage loans granted to consumers and also to individual entrepreneurs when the guarantee falls on their home or other residential property (e.g. a holiday or a second home). Directive 2014/17/EU is designed to protect consumers but it enables this extension. In my opinion, this is positive. However, it should have been limited only to loans secured by a mortgage on entrepreneurs' primary residence.

The rules for protecting consumers of banking services contained in Chapter II of Title III of Order EHA/2899/2011 apply, on a mandatory basis, to customers or potential clients of a credit institution, who are natural persons, even when they act for purposes related to his trade, business or profession. These rules also apply when other entities or people who are not a credit institution grant credit for residential immovable property.

### **4.3. Option for a Right of Reflection before the Conclusion of the Mortgage Loan Agreement**

In the Spanish legal system, there is no right of withdrawal in mortgage loan agreements. Consumers do not have a period of reflection after the conclusion of the contract. This option is logical since it is very unlikely that a consumer will exercise it once he has acquired the flat, house, or other immovable property for



whose purchase he has received the loan<sup>7</sup>. For the implementation of the right of reflection, the Spanish legislature has chosen to provide a right of reflection prior to the conclusion of the agreement. It takes the form of a binding offer with a compulsory minimum length of ten days, three days more than the minimum required by the Directive. This period of reflection is mandatory and consumers cannot waive it (see article 3 Law 5/2019).

However, this right of reflection is set up in the new Law, 5/2019, in such a manner that it does not meet the requirements of article 14 of the Directive. The Spanish Law does not impose a real duty on creditors to formulate an irrevocable contractual offer that covers all its content. Article 14 of Law 5/2019 only requires that an ESIS be delivered to the consumer, “which will be considered a binding offer for the creditor during the agreed term before the signing of the contract, which must last at least ten days”. The ESIS is only a summary of the most relevant information related to the contract but does not itself constitute a complete contractual offer. At the same time, section d) of Article 14.1 requires the delivery of a draft contract. So it is not clear if the draft contract itself is part of the binding offer.

In my opinion, the binding offer must cover all the content of the future agreement and not merely the data highlighted in the ESIS. The offer, to the extent it can be considered as such, must be a complete contractual proposal in which all the elements that will make up the contract are duly delimited. The irrevocable offer cannot be restricted to the content of the ESIS since the Directive requires a complete binding offer to be made. The ESIS is no more than a document that summarising the contractual proposal in a standardised format to facilitate the comparability of offers from different lenders. The ESIS is an aid for better understanding and assessing the real offer that shall be constituted by a draft of the credit agreement provided to the consumer.

In fact, in the text of the ESIS it must be indicated that the information contained in that document will remain unchanged, and “it will be applicable if the lender decides to grant the credit”. It follows from this that the ESIS is not an irrevocable offer<sup>8</sup>, because the lender can withdraw it. We should remember that article 14.4 of the Directive enables the ESIS to be delivered before the provision of a binding offer by the creditor.

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<sup>7</sup> See more in (Arroyo Almayuelas 2017, p. 23; Hernández Sainz 2017, p. 16).

<sup>8</sup> In the same way (*Comentario a la Ley...* 2019, p. RB-6.41).

#### 4.4. Length of the Reflection Period

Article 14 LCCI provides that an ESIS with a binding offer value must be delivered to the borrower at least ten days before the agreement is signed. So, the minimum term of seven days required by Directive 2014/17/EU is exceeded. This results in better consumer's protection.

However, article 14 LCCI does not clarify when this minimum term of ten days should begin. It is not clear if the term begins when the ESIS is delivered or after all pre-contractual documents mentioned in this article are provided to the future borrower. According to article 14 LCCI, the lender must deliver to the borrower, along with the ESIS, a standardised warning sheet on special risks, a document with the loan repayment fees in different scenarios, a copy of the draft contract and information on expenses. As I interpret it, the minimum period of ten days begins when the last of these documents has been delivered<sup>9</sup>. And when does it finish? The content of the ESIS is binding for the lender until the contract is signed, even when the signature takes place after the ten days that the reflection period must last. Consequently, the ten-day period of reflection may be extended until such time that both parties sign the contract<sup>10</sup>.

Although it is not expressly clarified, from a joint interpretation of articles 14 and 15 LCCI, we should conclude that the ten-day or longer period is also compulsory for the consumer, who will not be allowed to sign the contract until the end of that term. Before signing the contract, the Notary who is to authorise the public deed must draw up a document certifying that the minimum ten-day term has been fulfilled. The consumer, even when he has already decided to conclude the contract, must necessarily wait until the ten-day term has expired to sign it. This provision is intended to implement not only a right to reflection but to impose on consumers a real duty to reflect.

But does such a lengthy compulsory period of reflection benefit consumers? As I see it, it does not, as they could potentially lose out on a business opportunity in acquiring a house or other form of immovable property. It would have been more convenient to establish a longer voluntary reflection period, with a duration of at least 14 days, accompanied by a shorter compulsory period with a maximum length of just seven days, during which the consumer should not be allowed to conclude the agreement.

This new regime reduces consumer protection when a credit institution grants the loan because Order EHA/2899/2011 has been modified. A former regulation contained in Article 23 of Order EHA/2899/201 established a reflection period of fourteen days if the bank client, whether a consumer or otherwise, expressly

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<sup>9</sup> See (Marín López 2019, p. RB-5.15).

<sup>10</sup> See (*Comentario a la Ley...* 2019, p. RB-6.41).

requested it. Article 23 also provided that once the client and the bank had shown a willingness to conclude a mortgage loan agreement and the consumer's creditworthiness assessment had been done, the consumer could request the entity deliver him a binding offer. The term for the acceptance of this binding offer had to be indicated, but it might not last more than fourteen calendar days from its delivery. The bank customer could accept the offer before the deadline expired. Its binding nature was limited to the specific loan agreement to which it referred and insofar as there were no changes in the borrower's financial and solvency situation. Order ECE/482/2019 has repealed article 23 of the Order EHA/2899/2011 and there is now no difference between bank clients and other borrowers.

The exact time when the lender must deliver the binding ESIS and the draft contract in relation with the contracting process has not been determined. The document with the binding offer should be delivered once the property has been appraised and the borrower's credit-worthiness has been assessed.

#### **4.5. The Mandatory Character of the Reflection Period**

The reflection period must be respected by the lender in any case. The lender cannot oblige the borrower to conclude the contract before the reflection period has expired. During this period of time, the borrower may be advised on the content of the contract proposal by the Notary. Since ESIS does not constitute a binding contractual offer, simple acceptance on the part of the borrower does not determine the conclusion of the contract. The borrower cannot compel the lender to enter into the contract. The contract is only concluded if the two parties sign it and a Notary issues a public deed. However, the content of the public deed must coincide with the content of the ESIS. ESIS is not a real binding offer but its content must be reflected in the mortgage contract.

In order to avoid abuses, the lender should be allowed to revoke the offer if, during the reflection period, the consumer's solvency is suddenly reduced, or if the value of the property on which the guarantee falls decreases substantially (e.g. if a fire destroys the house), or if he imposes new charges on that property. Spanish legislation should be modified to include a new provision that permits lenders to revoke the offer if the borrower undertakes any action which results in a relevant reduction of his solvency, or when an exceptional change of circumstances occurs.

#### **4.6. Guarantees of Compliance with the Period of Reflection**

To grant the effectiveness of this right of reflection, it is essential that consumers know of it. The information on this right according Spanish Law is defective. The Law provides that the heading and section 11 of the ESIS must inform about it. Nevertheless, the expressions used and the explanation over these expres-

sions arouse doubt as to the irrevocable character of the offer, and they confuse consumers. The document indicates that the ESIS document does not constitute an obligation for a creditor to grant a consumer a loan. If there is not an obligation to grant the loan, there is not a binding offer nor a real period of reflection.

In Spanish law, supervision of compliance with this right of reflection is carried out by the Notaries. The Notary has become a gatekeeper of the compliance with the pre-contractual information duties imposed on lenders. The new Law includes a modification of their disciplinary regime. If they breach their duties of advising consumers before the authorisation of the deed that contains the mortgage credit agreement, they will be severely sanctioned. They also must verify that the reflection period has been respected. They will not issue the public deed if the minimum ten-day reflection period has not been respected.

## **5. Conclusions**

A period of reflection prior to the conclusion of a mortgage loan agreement is an essential instrument for consumers' self-protection because it allows consumers to analyse pre-contractual information in depth, to compare offers, to assess the implications of each offer, and to make an informed decision. It likewise benefits banks and other lenders because it reduces consumer claims. It even benefits the mortgage loan market itself because it increases competence. So the right of reflection is set out in article 14.6 of the Directive 2014/17/EU as a minimum right with a length of seven days. Member States can articulate it in one of three ways: as a period of reflection before the credit agreement is concluded, as a period of withdrawal after the conclusion of the credit agreement or a combination of both.

The Spanish legislature implemented Directive 2014/17/EU with a huge delay through the Law 5/2019 which does not repeal previous legislation. So it is difficult to understand the present scope of the right of reflection in Spain. The new Law imposes on lenders the obligation to deliver an ESIS with the value of a binding offer with a minimum length of ten days. This term is also compulsory for consumers, who will not be allowed to sign the contract until the end of that term. This is a good option because a right of withdrawal does not protect consumers.

But the new law does not clearly establish the scope and nature of this right of reflection. Article 14 attributes to the ESIS the value of a binding offer, but this document contains only a summary of the contract and not its full content. In my opinion, the binding offer must cover all the content of the future agreement and not merely the data highlighted in the ESIS. It is a draft contract which should be delivered to the borrower before the contract is concluded with the value of a binding offer to guarantee a real right of reflection.

Consumers should know their right to reflect and its real scope, but Spanish Law provides that the ESIS must indicate that “it will be applicable if the lender decides to grant the credit”. From this it follows that the ESIS is not an irrevocable offer, because the lender can withdraw it. If there is not an obligation to grant the loan, there is not a real binding offer and nor is a right to reflection guaranteed. The consumer does not have the security of being able to assess a contract offer that can ultimately lead to a valid contract with the content laid down in the ESIS.

Spanish Law 5/2019 should be modified in order to attribute the draft of the mortgage loan agreement the value of a binding offer with a length of ten days. The ESIS should inform consumers properly of this right of reflection.

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## **Prawo do zastanowienia i porównania w umowach o kredyt hipoteczny zgodnie z dyrektywą 2014/17/UE i jej niedawnym wdrożeniem do ustawodawstwa hiszpańskiego**

(Streszczenie)

*Cel:* W artykule poddano analizie i krytycznej ocenie nowe hiszpańskie zasady dotyczące praw konsumenta do informacji przed zawarciem umowy o kredyt na nieruchomości mieszkalne. Przeanalizowano również, w jaki sposób zwiększają one skuteczność ochrony konsumentów.

*Metodyka badań:* Artykuł opiera się, po pierwsze, na krytycznej analizie hiszpańskich rozwiązań prawnych w oparciu o istniejącą literaturę, a po drugie, na porównaniu europejskich i hiszpańskich przepisów prawnych w tym zakresie.

*Wyniki badań:* Dyrektywa Parlamentu Europejskiego i Rady 2014/17/UE z dnia 4 lutego 2014 r. w sprawie konsumenckich umów o kredyt związanych z nieruchomościami mieszkalnymi zobowiązuje państwa członkowskie do wprowadzenia obowiązku ustawowego polegającego na co najmniej siedmiodniowym okresie, w którym konsument będzie miał czas, aby porównać oferty, ocenić ich skutki i podjąć świadomą decyzję przed zawarciem umowy kredytowej. Z dużym opóźnieniem dyrektywa została implementowana do ustawodawstwa hiszpańskiego poprzez ustawę z dnia 15 marca 2019 r. w sprawie umów o kredyt związanych z nieruchomościami mieszkalnymi. Dyrektywa ta dopuszcza prawo konsumenta do okresu do namysłu przed zawarciem umowy o kredyt albo prawo odstąpienia od umowy po jej zawarciu, albo połączenie tych dwóch możliwości. Hiszpańskie ustawodawstwo wdrożyło pierwszą opcję, ale nie w pełni implementacja respektuje wszystkie wymogi dyrektywy.

*Wnioski:* Okres zastanowienia przed zawarciem umowy o kredyt hipoteczny jest niezbędnym instrumentem samoobrony konsumenta, ponieważ umożliwia mu dogłębną analizę informacji przed zawarciem umowy, porównanie ofert, ocenę skutków każdej oferty i dokonanie świadomej decyzji. Jest on również korzystny dla banków i innych pożyczkodawców, ponieważ ogranicza roszczenia konsumentów, a nawet przynosi korzyści rynkowi kredytów hipotecznych, gdyż zwiększa ogólne kompetencje. Odpowiednie uregulowanie tego prawa ma zasadnicze znaczenie dla wystarczającej ochrony kredytobiorców.

*Wkład w rozwój dyscypliny:* W artykule przeanalizowano braki hiszpańskiej regulacji dotyczącej prawa do zastanowienia i sformułowano propozycje zmian w obowiązującym prawie.

**Słowa kluczowe:** konsumenckie umowy o kredyt związane z nieruchomościami mieszkalnymi, prawo do zastanowienia, wiążąca oferta, prawo odstąpienia od umowy.