

REGULATION OF CONSUMER CREDIT IN POLISH LAW

Justyna Maliszewska-Nienartowicz
Nicolaus Copernicus University in Torun, Poland

Abstract

The purpose of the paper is to present the most important Polish regulations concerning consumer credits. They are contained in the Act on Consumer Credit which was adopted on 20th July 2001. Its aim was to approximate Polish law with the EU requirements predicted in the Council **Directive 87/102/EEC of 22 December 1986 on consumer credit**.

As a result the Polish legislator regulates the most important aspects of such credit agreements. First of all, the credit agreement is defined. This definition is quite wide – “credit agreement means an agreement whereby a creditor grants or promises to grant to a consumer a credit in any form”. However, it is narrowed by the list of exceptions which are discussed in the paper. **Secondly, the form and content of credit agreements are regulated** (with special care of the questions of total credit costs and real annual percentage rate). Thirdly, consumers are protected in relation to bills of exchange and cheques and also in the case of the assignment of the creditor’s rights under a credit agreement to a third person. Fourthly, the Act predicts consumer rights to discharge his obligations under a credit agreement before the time fixed by it and to withdraw from the agreement. Finally, the provisions of the Act are binding on the creditor and he cannot exclude or limit consumer rights in the agreement.

One the whole it can be said that Polish consumers are quite well protected against the unfair practices of different creditors. Now, everything depends on their readiness to use their rights as creditors can try to diminish the role of the provisions of the Act.

Key words: consumer credit, credit agreement, total costs of the credit, real annual percentage rate, consumer rights to withdraw from the agreement and to discharge his obligations under a credit agreement before the time fixed by it,

1. Introduction

The consumer is a weaker party to the credit agreement. The creditor is usually a professional who has at his/her disposal financial measures as well as sufficient knowledge about market processes. Apart from that the consumer acts under a pressure as he enters the credit agreement in certain situations, connected with the lack of money. Thus, it can be easily seen that in credit relations both parties are in unequal situation. Therefore, the weaker party – consumer - has to be protected and the consumer credit needs special regulations.

In Poland this problem is regulated in the Act on Consumer Credit which was adopted on 20th July 2001 and entered into force on 19th September 2002¹. Its regulations have been influenced by the provisions of the European Union directive as Poland has been obliged to harmonize its law with the EU Law.

2. The parties of the credit agreement and its definition

2.1. Creditor and consumer

In art. 2 (1) it is predicted that the creditor is an entrepreneur who in the frames of his/her activity grants or promises to grant a credit to a consumer. This definition is quite general and includes not only banks and other credit institutions but also other kinds of entrepreneurs, which is beneficial for consumers who borrow money not only from professional institutions.

The consumer means a natural person who enters a credit agreement for purposes which are not connected directly with his/her economic activity (art. 2 (4) of the Act). In other words legal persons cannot be treated as consumers even if they would enter a credit agreement for purposes not connected with their economic activity.

2.2. Credit agreement

According to art. 2 (1) of the Act the credit agreement means an agreement whereby a creditor grants or promises to grant a consumer a credit in any form. The final phrase –“in any form” underlines that this term is quite wide. At the same time the Polish legislator tries to list the examples of such agreements (it is an open list). They include in particular:

- 1) loan agreements,
- 2) credit agreements according to the regulations of Polish bank law,

¹ It is published in Polish Dz. U. 2001, no 100, position 1081. It was amended by the Act of 22 May 2003 (Dz. U 2003, no 109, position 1030)

- 3) agreements on deferment of the term for fulfilment of monetary obligation,
- 4) agreements according to which consumer's monetary obligation is to be fulfilled later than creditor's obligation,
- 5) agreements according to which the creditor is obliged to undertake an obligation from the third person and the consumer is obliged to give back this performance to the creditor.

All these agreements have the same economic function - granting the credit in the economic sense, independently of the juridical construction². In other words these are the agreements in which obligations are not fulfilled simultaneously, to be more precise: in which the date of payment was deferred.

There are also some exclusions from this definition. According to art. 3 (1) and (2) of the Act it does not apply to the following credit agreements:

- a) involving amounts less than 500 PLN or more than 80 000 PLN or amounts equal to the given but in foreign currency;
- b) under which the consumer is required to repay the credit within a period not exceeding three months;
- c) under which the consumer is not obliged to pay interests or any other charges connected with credit;
- d) in the form of the debit balance on a current account, unprovided in the agreement but existing with the creditor's consent for a period of at least three months (however, the provisions of art. 6, 9 and 10 of the Act shall apply to such credits);
- e) hiring agreements if they do not provide that the title will pass ultimately to the consumer;
- f) intended for the purpose of acquiring property rights in land or in an existing or projected building, intended for the purpose of renovating or improving a building as such³;
- g) intended for the payment of credit incurred for purposes listed in point g;
- h) in the form of deferred payment for non-pecuniary performance which consist of continuous delivery of electric energy, water, gas etc., if the consumer is obliged to pay for the performance in certain periods of time;

² Compare E. Łętowska, *Prawo umów konsumenckich (Consumer Contracts Law)*, Warszawa 2002, s. 465.

³ This point is formulated in the Act in a very detailed way. It predicts different forms of rights connected with land and buildings.

- i) under which the limit of the credit on the current account or other savings accounts (other than credit accounts) is predicted (however, the provisions of art. 5a and 11 of the Act shall apply to such agreements).

It should be noticed that the exceptions predicted in points a-c are quite similar from the consumer's point of view – they are not very risky for him/her (apart from the credit agreements which involve the amounts of more than 80.000 PLN). Maybe therefore, the Polish legislator decided to exclude these types of credit agreements from the general definition. As far as credits with the amounts of more than 80.000 PLN are concerned it should be underlined that they usually do not serve the consumption purposes. Thus, they differ from the usual credit agreements.

Polish legislator also decided to exclude from the definition of the credit agreement such types of them which aim at certain purposes e.g. acquiring of the land or building, usage of things and rights for certain amount of money, continuous delivery of certain non-pecuniary performances. Moreover, the Act does not generally apply to the debit balance on the current account as well as to the limit of the credit predicted in the agreements concerning current and savings accounts. However, there are some provisions which regulate these types of credit agreements (they will be presented in point 7.2. of the paper).

On the whole it can be seen that this broad definition of the consumer credit is limited by the list of exceptions. Different reasons dictated these exclusions. However, it should also be noticed that most of them are similar to the list of exceptions predicted in the art. 2 of the **Council Directive 87/102/EEC of 22 December 1986 for the approximation of the laws, regulations and administrative provisions of the Member States concerning consumer credit**⁴. This means that Polish legislator acted under the influence of these regulations.

3. The form and content of the credit agreement

The credit agreement should be made in writing, unless the more specific regulations predict another particular form (however, these forms are even stricter e.g. the agreement in the presence of a notary). The consumer shall receive a copy of the written agreement. This is a very important consumer right as he/she will be able to read all the terms of the agreement once again after the conclusion of contract. It should be noticed that this is necessary in order to exercise another right – to withdraw from the credit agreement (it will be presented in point 6 of the paper).

The written agreement should contain the following data:

⁴ O.J. of the European Union L 42, 10.02.1987, pages. 48-53.

1. the identity of both consumer and creditor such as the name, surname and address (if the creditor is a legal person also the information on the number in the register);
2. the amount of credit;
3. the rules and terms of its repayment;
4. the annual percentage rate of charge and a statement of the conditions under which the annual percentage rate of charge may be amended;
5. payments, commissions and other costs of credit;
6. information about total costs of the credit and real annual percentage rate (these terms will be explained in the next point of the paper);
7. the way of the credit security, if the agreement predicts it and the amount of payment connected with it;
8. information about any other costs connected with the agreement, which should be paid by the consumer;
9. information about total amount of all costs, payments and commissions which are to be paid by the consumer;
10. information about the consumer right to discharge his obligations under a credit agreement before the time fixed by it and the consequences of such earlier repayment of the credit;
11. information about the time, way and consequences of the exercise of the consumer right to withdraw from the agreement;
12. information about the consequences of violation of these agreement terms which regulate the rules and terms of the credit repayment.

Thus, it can be seen that any credit agreement shall contain much information in order to be compatible with the provisions of the Act. The particular emphasis was put on a very detailed determination of different costs related to credits. Additionally, the total sum of these costs should be given in order to let a consumer know what kind of financial burden he/she is going to take. It should also be added that flagrant infringement of the requirements concerning the content of the credit agreement or omission of the obligation of delivery of its copy is connected with the financial penalty – the fine (art. 19 of the Act).

4. The total cost of the credit and real annual percentage rate

These are new terms which were introduced by the Polish Act under the influence of the EU directive. Therefore, they are defined in a separate provision of art. 7. **Total cost of the credit means all the costs of the credit including interest and other charges which should be paid by the consumer with the exception of certain costs e.g. connected with the account from which the repayment is realised; with the establishment, change and expiry of credit security and insurance; resulting from the changes of exchange rates.**

Thus the Act obliges creditor to calculate this “total cost of credit” and include this information in the credit agreement. Apart from that, he is obliged to inform the consumer about “**real annual percentage rate of charge**”, **expressed as an annual percentage of the amount of the credit granted and calculated according to mathematic formula contained in the Annex**⁵. In this annex we can also find the examples of calculations which should be helpful for the creditors

The calculation of these amounts is a very important task as the art. 16 of the Act predicts that in the advertisements concerning consumer credits creditors are obliged to inform about the real annual percentage rate of charge, calculated on the basis of the total cost of credit⁶. In this way the requirement to inform consumers in the broadest possible way is realized. This obligation is also predicted in order to fight against practice which is dangerous for consumers: official announcement of percentage rate on a relative low level connected with burdening consumers with different charges and payments⁷.

5. Consumer protection in relation to bills of exchange and cheques and assignment of the creditor's rights under a credit agreement to a third person

A bill of exchange or a cheque can be drafted by the consumer in order to secure the credit. In this situation there is a danger of infringement of his/her interests as the rules of liability predicted in the regulations on bills of exchange and cheques are strict e.g. the debtor cannot raise all objections to the following purchasers of the claim⁸. However, if the bill of exchange or a cheque can be acquired only by

⁵ Compare point 1 of the Annex attached to the Act.

⁶ If this obligation is not fulfilled, the creditor will be punished by fine (art. 19 of the Act).

⁷ See E. Łętowska. op. cit., s. 466.

⁸ Compare J. Pisuliński, G. Tracz, *Ochrona interesów ekonomicznych konsumentów w stosunkach kredytowych* [w:] *Ochrona konsumenta. Część I. (The Protection of Consumer Economic Interests in the Credit Relations* [w:] *Consumer Protection, Part I*), edited by E. Traple, M. du Vall, Warszawa 1998, s. 31.

transfer (they should contain the clause „not for order” or its equivalent), these limits are not binding. Thus, only drafting of the bill of exchange or cheque „for order” is dangerous for the consumer⁹.

Therefore, the Act predicts that: „the bill of exchange or cheque given to the creditor in order to fulfill or secure the performance of the credit agreement should contain the clause „not for order” or its equivalent” (art. 9 (1)). In this way consumers are protected against strict liability connected with the drafting of bills of exchange or cheques. Moreover, the creditor is obliged to give back the bill of exchange to the consumer as soon as he fulfils his obligations connected with the credit agreement.

The other situation - assignment of the creditor’s rights under a credit agreement to a third person – is also dangerous for consumers as it can deprive them of the right to plead against that third person any defence which was available to him against the original creditor, e.g. set-off. Therefore, the Act predicts the protection of the consumer in this field: in the case of assignment of the creditor’s rights to a third person, the exclusion or limitation of any defence which was available to consumer against the original creditor have no legal effects (art. 10 (1)). Thanks to this provision consumer is protected even if this „third person” does not meet the requirements predicted by the Act in relation to the creditor¹⁰.

6. Consumer rights to discharge his obligations under a credit agreement before the time fixed by it and to withdraw from the agreement

According to art. 8 of the Act consumers are entitled to discharge their obligations under a credit agreement before the time fixed by it. However, the time of repayment should be the same as predicted for payment of the installments and the consumer should inform the creditor about his plans at least three days before making the earlier repayment.

As a result of earlier repayment the consumer is discharged from the obligation to pay interests for the period after the repayment of the credit. If the credit agreement did not predict the interests, then the consumer is entitled to the reduction of charges and payments connected with credit proportionally to the period, by which the time of usage of the credit was shortened. What is also important, the Act excludes a very common practice of predicting commissions for the earlier repayment of the credit. Art. 8 (3) predicts that creditors cannot require commission in this situation. They are also obliged to settle with the consumer within fourteen days since the earlier repayment.

⁹ Ibidem.

¹⁰ Compare E. Łętowska, op. cit., s. 467.

The Act on Consumer Credit also predicts the consumer **right to withdraw from the agreement** (art. 11). He can exercise this right in the period of ten days since the conclusion of the agreement and he does not have to give reasons for his withdrawal¹¹. This is a very important and far-reaching right. He has ten additional days to think everything over. If he thinks that the conclusion of the credit agreement was not good for him, he can withdraw from it.

If the credit agreement does not contain information about the right to withdraw from it, then the consumer can do it within ten days since he gets information about this rights. However, for the sake of stability of contractual relations this right can be exercised in the period of no more that three months since the conclusion of the agreement. These time limits are regarded as being kept, if the consumer before their expiration makes a statement on the withdrawal from the agreement (it is sent to the place which address is given by the creditor, also the pattern of such statement should be given during the conclusion of the agreement)

In can be concluded that Polish legislator improved the consumer position by recognition of his right to withdraw from the agreement without giving reasons. Consumers very often act under the creditor's pressure and cannot evaluate his situation properly at the time of the conclusion of the agreement.

7. Particular types of the credit agreements

7.1. Agreements for financing the supply of particular goods or services

These types of agreements are regulated separately in the Act as they differ from the usual credit agreements. The first group: credits for financing the supply of goods and services are very common in practice. Thanks to them consumers can meet their personal needs, even if they do not have appropriate financial measures. However, these agreements are not always beneficial for them. Therefore, the Act regulates them in a detailed way, beginning with the requirements concerning their content.

Apart form the usual information, such agreements should contain:

- a description of the goods or services;
- the cash price and the price payable under the credit agreement ;
- the part of the price which should be paid in cash;
- the terms on which the consumer becomes the owner of goods, if the sale agreement was concluded with the reservation of the ownership;

¹¹ This right is excluded only in these types of credit agreements which are concluded for financing the supply of such goods or services which prices depend on prices on the financial or stock exchange markets.

- information that the credit can be obtained only for the creditor indicated by the seller (this concerns the situation in which the seller concluded an agreement, according to which the credit for financing the goods or services can be obtained only from this creditor).

Moreover, in the case of withdrawal from the sale agreement (because of non-performance or inappropriate performance) this withdrawal has also effects for the credit agreement. However, there must be an agreement between the seller and the creditor according to which the credit for financing the goods or services can be obtained only from this creditor. In this situation the creditor is obliged to give back to the consumer the costs of the credit, apart from the preparatory and security charges.

It should be noticed that this protection is not full. There may be situations in which the seller and the creditor are not bound by the above-mentioned agreement. Therefore, the Act predicts additionally that if the person who conclude the sale agreement with the consumer, grants the credit in his own name, then the withdrawal from the sale agreement has also effects for the credit agreement. In this situation the creditor is obliged to give back to the consumer the costs of the credit, apart from the preparatory and security charges. Moreover, if the consumer credit was designed for the acquisition of goods or services on the basis of the agreement concluded away from business premises or the distance agreements, then the withdrawal from such agreement has also effects for the credit agreements (art. 12 (1) of the Act). Thank to such detailed regulations the consumer is well protected in the situations when he buys goods or services on credit.

7.2. Agreements in the form of debit balance or predicting the limit of credit on the current account or other savings accounts

Unpredicted in the agreement debit balance on a current account is generally excluded from the scope of the Act (compare point 2.2. of the paper). However, some of its provisions should be used to this type of situation, in particular art. 6. It predicts that „if the unpredicted in the agreement debit balance on a current account exists with the creditor’s consent for a period of at least three months, then the creditor is obliged to inform the consumer in writing about the annual percentage rate and other costs of credit and about their changes”. Moreover, the consumer is protected in relation to bills of exchange and cheques and in the case of assignment of the creditor’s rights under a credit agreement to a third person (art. 9 and 10 of the Act shall be applied also to debit balance unpredicted in the agreement).

Similarly, the credit agreements under which the limit of credit on the current account or other savings accounts (other than credit accounts) was predicted are

generally excluded from the scope of the Act. However, its provisions concerning the right to withdraw from the agreement should apply to them. Moreover, art. 5a predicts that such credit agreements should be made in writing and the consumer shall receive its copy. The agreement should contain information on:

1. the identity of both consumer and creditor such as the name, surname and address (if the creditor is a legal person also the information on the number in the register);
2. the annual percentage rate of charge and a statement of the conditions under which the annual percentage rate of charge may be amended;
3. the way of the credit security, if the agreement predicts it and the amount of payment connected with it;
4. the credit limit if it is determined;
5. information about charges, commissions and other costs which should be covered by the consumer in the relation to the agreement;
6. the conditions of the repayment of the credit;
7. information about the time, way and consequences of the exercise of the consumer right to withdraw from the agreement.

This means that although these types of agreements (related to the current or saving accounts) are excluded from the scope of the Act, they have to meet the most basic requirements concerning their form and content. Apart from that, consumers can withdraw from these types of agreements.

8. Semi-imperative character of the provisions on consumer credits

Art. 17 of the Act predicts that agreements cannot exclude or limit the consumer rights predicted in the Act, also in the case of choice of any foreign law. In such situations the provisions of the Act shall be used.

This means that its regulations are binding on creditors to be more precise they have a semi-imperative character. In other words the creditor can include in the agreement such terms which are more beneficial for the consumer than predicted in the Act but he cannot predict provisions which are stricter than predicted in the Act.

9. Conclusion

It should be noticed that there has been much change in recent years in the types of credit available to and used by consumers. These new forms of consumer

credit will continue to develop. Therefore, consumers should be protected against any unfair practices of the creditors. This can be done in different ways.

First of all, the consumer should receive adequate information on the conditions and cost of credit and on his obligations (this information should include, inter alia, the annual percentage rate of charge for credit). The provision of information on the cost of credit in advertising and at the business premises of the creditor can also make it easier for the consumer to compare different offers. Consumer protection can be further improved if credit agreements are made in writing and contain certain minimum particulars concerning the contractual terms. Moreover certain consumer rights can be predicted in particular: to discharge his obligations before the due date (then he should be entitled to an equitable reduction in the total cost of the credit) and to withdraw from the agreement. Finally, consumers should be suitably protected in relations to the bills of exchange and cheques and in the case of the assignment of the creditor's rights arising under a credit agreement.

All these ways of consumer protection are predicted in the Polish Act on Consumer Credit. Thus, it can be said that its regulations are beneficial for consumers. The only problem is connected with the exclusion from its scope of credit agreements intended for the purpose of acquiring property rights in land or in an existing or projected building or intended for the purpose of renovating or improving a building as such. Such exclusion is also predicted in the Council Directive **87/102/EEC of 22 December 1986 on consumer credit. Unfortunately, Polish legislator repeated its regulations and did not take into account the fact that these types of agreements are very often concluded by Polish consumers. Thus, they are deprived of the protection predicted in the Act when they conclude the credit agreement connected with the purchase of a house or a flat. Nowadays this is the biggest complain on the part of Polish consumers.**

Literature:

1. Łętowska E. (2002): *Prawo umów konsumenckich (Consumer Contracts Law)*, Warszawa;
2. Maliszewska-Nienartowicz J. (2002): *Ustawa o kredycie konsumenckim – dostosowanie polskich regulacji do wymogów prawa wspólnotowego (The Act on Consumer Credit – the Adaptation of Polish Regulations to the Requirements of the Community Law)*, Przegląd Prawa Gospodarczego 9 (The Review of Economic Law);
3. Maliszewska-Nienartowicz J. (2003): *Ochrona interesów konsumentów w stosunkach kredytowych po nowelizacji ustawy o kredycie konsumenckim (The*

Protection of Consumer Interests in the Credit Relations after the Amendment of the Act on Consumer Credit), Przegląd Prawa Gospodarczego 11 (The Review of Economic Law);

4. Pisuliński J. (2001): *Ustawa o kredycie konsumenckim (The Act on Consumer Credit)*, Prawo Bankowe 9 (Bank Law);
5. Pisuliński J., Tracz G. (1998): *Ochrona interesów ekonomicznych konsumentów w stosunkach kredytowych (The Protection of Consumer Economic Interests in the Credit Relations)* in E. Traple, M. du Vall, ed.: *Ochrona konsumenta. Część I. (Consumer Protection, Part I)*, Warszawa.
6. Piś-Barganowska J. (2002): *Prawne konsekwencje wystawienia weksla przez konsumenta-kredytobiorcę (Legal Consequences of Drafting a Bill of Exchange by the Consumer-Debtor)*, Prawo Bankowe 3 (Bank Law).