Safe Bank 4(93) 2023

DOI: 10.26354/bb.6A.4.93.2023

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Implications of the CCD2 for the consumer credit market in Poland

Abstract

A properly functioning consumer credit market is important for households, economies and financial market integration. The dynamic nature of changes in the financial market, such as the digital revolution, changing consumer attitudes or the emergence of new products, necessitates the adaptation of regulations to new market conditions. Directive (EU) 2023/2225 of the European Parliament and of the Council on credit agreements for consumers and repealing Directive 2008/48/EC (hereinafter: CCD2), dated 18 October 2023, aims precisely to take into account new aspects and rules of the consumer credit market, ensuring a high degree of consumer protection. The purpose of this article is to characterise the main changes and new rules related to the offering and granting of consumer credit in the European Union, together with the recommendations related to the implementation of the CCD2 into the national legal order.

Keywords: consumer credit, consumer protection, creditworthiness, information requirements

JEL Codes: G18, G28, G51

Implikacje wynikające z CCD2 dla rynku kredytów konsumenckich w Polsce

Streszczenie

Prawidłowo funkcjonujący rynek kredytów konsumenckich jest istotny z punktu widzenia gospodarstw domowych, gospodarek i integracji rynku finansowego. Dynamiczny charakter zmian na runku finansowym, takich jak rewolucja cyfrowa, zmiana postaw konsumenckich czy pojawianie się nowych produktów, wymusza dostosowania regulacji do nowych warunków panujących na rynku. Dyrektywa Parlamentu Europejskiego i Rady (UE) 2023/2225

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w sprawie umów o kredyt konsumencki oraz uchylająca dyrektywę 2008/48/EC (dalej: CCD2), z dnia 18 października 2023 roku, ma właśnie na celu uwzględnienie nowych aspektów i zasad funkcjonowania rynku kredytów konsumenckich, zapewniających wysoki stopień ochrony konsumentów. Celem artykułu jest charakterystyka podstawowych zmian i nowych zasad związanych z oferowaniem i udzielaniem kredytów konsumenckich w Unii Europejskiej wraz z rekomendacjami związanymi z implementacją CCD2 do krajowego porządku prawnego.

Słowa kluczowe: kredyty konsumenckie, ochrona konsumenta, zdolność kredytowa, wymogi informacyjne

Kody JEL: G18, G28, G51

Introduction

Consumer credit allows for the acceleration of consumer needs in relation to the financial capacity of households at the time of borrowing (Grochowska 2015, pp. 93–122). It can also be an important instrument for long-term financing of consumer needs (Pawłowska-Szawara 2020, p. 8). In both cases, it contributes to economic growth through relatively easy access to liquid funds and thus increases demand and consumption of certain products (EBA 2023). A well-functioning consumer credit market therefore benefits consumers, producers and sellers of goods and services and stimulates economic growth (BEUC 2019).

The consumer credit market is also one of the elements of a single financial market in the EU representing one of the main priorities for action by the European Commission (EC). The concept of integrating the consumer credit market in the EU has two main objectives. Firstly, integration aims to establish uniform legal standards to foster the smooth functioning of the common EU credit market and equal access to it for all service providers. Secondly, integration measures aim to ensure a high level of consumer protection, which should increase consumer confidence in financial services, especially those offered cross-border. This protection is to come primarily from the regulation of the activities of financial institutions and the empowerment of consumers (Waliszewski 2016, pp. 121–136). This is due to the fact that the individual consumer in his/her relations with banks or other intermediaries in the financial market is usually the weaker party, mainly in terms of specialist qualifications as well as the risk accompanying the concluded transactions (Ofiarski 2019). Therefore, the new legal infrastructure in the integrated consumer credit market assumes that access to these services, both on the part of intermediaries and consumers, should be free and, in addition, information about the conditions for obtaining consumer credit by the borrower should be comparable, regardless of the place of residence of the consumer or the place where the transaction is concluded, and the prices of the compared credit services should be similar.

In the process of integrating the consumer credit market in the EU, a landmark moment was reached when the 27 Member States reached consensus on the final provisions of the Consumer Credit Directive (Directive 2008/48/EC[1]), which was adopted on 23 April 2008.

The reports on the implementation of Directive 2008/48/EC presented by the EC in 2014[2] and 2020[3] pointed to the incomplete achievement of its objectives in ensuring high standards of consumer protection and supporting the construction of the single credit market. It prompted EU legislators to review the existing consumer credit rules in the EU and this was due to, among other things:

- the incorrect wording of certain articles of the Directive;
- changes in the credit market resulting from digital transformation and the use of computer applications (including AI) in processes in credit processes;
- variations in application and enforcement practices across Member States;
- the lack of coverage of certain consumer credits (e.g. BNPL products – buy now pay letter);
- changes in consumer behaviour and preferences.

In order to improve the functioning of the single market in consumer credit, the EC has initiated a process to update the rules for granting these credits, which is reflected in a new directive (CCD2) that was finally adopted on 18 October 2023.[4]

1. The consumer credit market in the European Union

At the end of October 2023, consumer credit debt in the euro area reached a record high of nearly EUR 734 billion[5]. Between 2016 and 2022, the average rate of growth of consumer credit debt across the EU oscillated around 3% per annum, with 4.9% between 2016 and 2019 and as low as 0.0% between 2020 and 2022. This was mainly due to the consequences of the COVID-19 pandemic, the war in Ukraine and the weaker economy, as well as a significant increase in inflation and interest rates, which translated into a decline in consumer sentiment and a reduction in their willingness to finance their needs with consumer credit.

In terms of volume, the four largest consumer credit markets, Germany (23.4% of EU volume), France (22.9%), Italy (13.6%) and Spain (11.2%), together hold over 71% of the EU market. This in fact implies a high concentration of this market.

1 Directive 2008/48/EC of the European Parliament and of the Council of 23 April 2008 on credit agreements for consumers and repealing Council Directive 87/102/EEC, OJ L 133, 22.5.2008, pp. 66–92.

2 Report from the Commission to the European Parliament and the Council on the implementation of Directive 2008/48/EC on credit agreements for consumers, COM(2014) 259 final, Brussels, 14.5.2014.

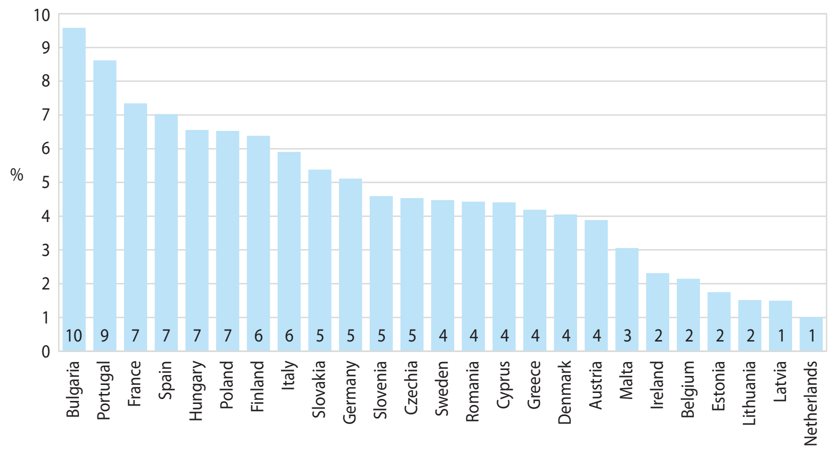
3 Report from the Commission to the European Parliament and the Council on the implementation of Directive 2008/48/EC on credit agreements for consumers, COM(2020) 963 final, Brussels, 5.11.2020.

4 Directive (EU) 2023/2225 of the European Parliament and of the Council of 18 October 2023 on credit agreements for consumers and repealing Directive 2008/48/EC, OJ L, 2023/2225, 30.10.2023, http://data.europa.eu/eli/dir/2023/2225/oj.

5 https://data.ecb.europa.eu/data.

In comparison, Poland, with a 5.0% share, is in fifth place. However, the ratio of consumer credit volume to GDP significantly alters the ranking, with Bulgaria and Portugal having the largest ratios (10 and 9%) and six countries (Netherlands, Latvia, Lithuania, Estonia, Belgium and Ireland) having the smallest ratios of up to 2%[6]. Poland, together with Hungary, Spain and France, is at the top of this ranking at ca. 7%, slightly less with Finland at 6.4% (Figure 1).

Figure 1. Ratio of consumer credit to GDP in selected EU countries in 2022



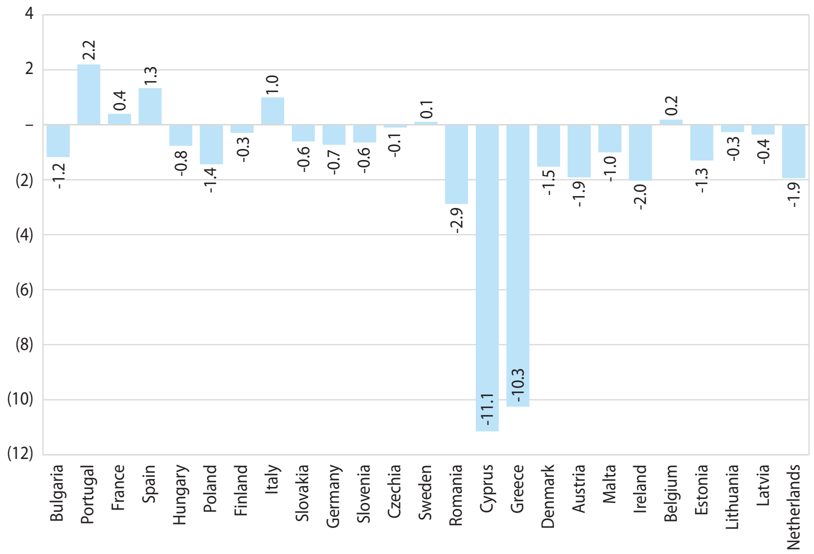
Source: ECB, https://data.ecb.europa.eu/data; https://data.ecb.europa.eu/data/datasets/BSI/BSI.M.BG.N.A.A21.A.1.U6.2250.Z01.E and similar data for other countries.

A dynamic analysis of the consumer credit volume relationship across EU countries shows uneven trends. Between 2015 and 2022, only seven of the 26 countries analysed recorded an increase in the ratio under study, most notably the Luxembourg (+4.4 p.p.), Portuguese (+2.3 p.p.) and Spanish (+1.3 p.p.) markets. In contrast, there was a relatively high decline in Cyprus (-11.1 p.p.), Greece (-10.3 p.p.) and Romania (-2.9 p.p.). The group of countries with a declining trend in the share of consumer credit in GDP also includes Poland, which still had 9% in 2019 and only 6.5% in 2022.

Variation in the level of debt in the consumer credit market is also apparent when population (per capita) is taken into account. According to data from the ECB and Eurostat, at the end of 2022 the relationship ranged from €3089 in Finland to €309 in Latvia, with an average level for the EU-25 of €1487. According to Lannoo and Andersson (2023), Northern and Western European countries are generally characterised by higher levels of consumer credit per capita compared to Central and Eastern Europe, where lower values are recorded.

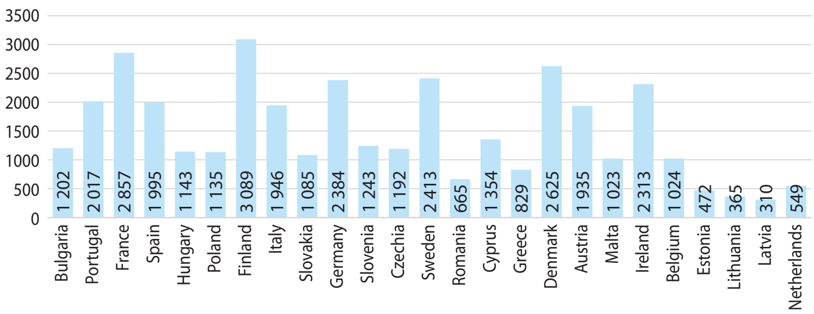
6 Calculations based on ECB Data Portal, https://data.ecb.europa.eu/data, data for 2022.

Figure 2. Change in the ratio of consumer credit to GDP in selected EU countries from 2015 to 2022 (in percentage points)



Source: own compilation, based on: ECB, https://data.ecb.europa.eu/data; https://data.ecb.europa.eu/data/datasets/BSI/BSI.M.BG.N.A.A21.A.1.U6.2250.Z01.E and analogous data for other countries.

Figure 3. Level of consumer credit per capita in selected EU countries in 2022



Source: ECB, https://data.ecb.europa.eu/data; https://data.ecb.europa.eu/data/datasets/BSI/BSI.M.BG.N.A.A21.A.1.U6.2250.Z01.E and corresponding data for other countries; https://ec.europa.eu/eurostat/databrowser/view/demo_pjan/default/table?lang=en.

The different levels of consumer credit debt in the European Union represent a certain constraint on financial market integration and the growth of cross-border retail transactions. This diagnosis was one of the prerequisites for harmonising the rules for the functioning of consumer credit markets in the EU in order to bridge the differences that exist while creating conditions for free access to this type of credit also across borders and with a high level of consumer protection.

2. New rules for the functioning of the consumer credit market in the European Union proposed by Directive 2023/2225

One of the objectives of the CCD2 is to develop and implement a more transparent and efficient legal framework for consumer credit. This should lead to increased consumer confidence and protection and facilitate the development of cross-border credit activities (Recital 9 of the CCD2).

EU Member States were obliged to adopt and publish by 20 November 2025 the provisions necessary to implement Directive (EU) 2023/2225 of the European Parliament and of the Council on credit agreements for consumers and repealing Directive 2008/48/EC (Article 48 CCD2). In this aspect, it is worth pointing out the main differences in the conditions for consumer credit between the 2008 Directive (CCD1) and the 2023 Directive (CCD2):

- extending the scope of the Directive to credits below EUR 200 and raising the upper limit to EUR 100,000;
- inclusion of new products within the scope of the Directive;
- changing the rules on advertising credit products;
- the way information is presented at the pre-contractual stage;
- Revision of the creditworthiness examination rules, including the obligation to carry out a creditworthiness assessment taking into account all credits covered by the Directive;
- identifying measures to limit high interest rates;
- change to the rules on tying and bundling;
- specifying debt advisory services.

In the new Directive, it has been decided to widen the quota range of consumer credits, in order to avoid that harmful products for consumers are not covered by the Directive, including low-quota ones.

One of the objectives of the Directive was to take into account the changes that occurred in the market after 2008. Hence, it was included in its scope:

- BNPL transactions – buy now pay letter;
- interest-free credit agreement and free of other charges;
- all overdrafts, with repayment due within one month;
- crowdfunding loans and credits;
- leasing contracts that include an option to buy back the leased asset.

The Directive clarifies the rules on advertising for credit products. Firstly, standard information in advertising should be visible and presented in an attractive format, taking into account the technical limitations of the information media (e.g. smart phones, telephones) and be clearly legible or audible. Standard information in advertising should be separated from other content. Where the advertisement refers to a product promotion, the lender should make this clear; both what the promotion relates to and when it is valid.

Secondly, the Directive prohibits for the first time advertising of selected credit products. In Article 8, paragraph 7, it contains a ban on advertising content that:

- suggest that credit will improve the consumer's financial situation;
- report that the consumer's other repayment obligations have little or no impact on the assessment of the credit application;
- erroneously suggest that credit increases financial resources, is a substitute for savings or can raise the consumer's standard of living.

Thirdly, Article 8(8) contains a list of credit advertisements, the prohibition of which is at the discretion of the Member States. This concerns the possibility of prohibiting advertising in which:

- it emphasises the ease or speed of borrowing,
- provides for a discount when taking out a loan,
- the proposed grace period is longer than 3 months.

Fourthly, the Directive changes the way information is provided at the pre-contractual stage by modifying the Standard European Consumer Credit Information Sheet, which is to have two parts:

- Part I: Key information[7]:
  - Identification of the lender or credit intermediary;
  - Total loan amount;
  - Duration of the loan agreement;
  - The borrowing rate or, where applicable, the different borrowing rates applicable to the credit agreement;
  - The annual percentage rate of charge (APR);
  - Total amount to be repaid;
  - Costs in the event of late payments.
- Part II: additional information on the credit agreement:
  - Instalments and, where applicable, the order in which they will be credited;
  - Warning of the consequences of non-payment or late payment;
  - Right of withdrawal;
  - Early repayment;
  - Address details of the lender or credit intermediary.

Fifthly, Article 15 mandates that the consumer must unambiguously and voluntarily consent to the conclusion of any credit agreement or purchase of ancillary services. This is intended to eliminate the practice of including already filled-in default options or – by default – ticked boxes in the contract.

[7] The key information, which has been added for the first time, consists of two parts that must appear on the first and second page of the standard information sheet. As recital 37 of the CCD2 states: "*To help consumers understand and compare different offers, the key elements of the credit should be provided in a prominent way on the first page of that form, through which consumers should see all essential information at a glance, even on the screen of a mobile telephone. In case all of the key elements cannot be displayed in a prominent way on one page, they should be displayed in the first part of the Standard European Consumer Credit Information form on two pages at most.*" Recital 37 of the CCD2.

Sixthly, Article 12(1) introduces an obligation to provide the consumer with a fair and free pre-contractual explanation (See more extensively Gałązka 2021, pp. 68–69). In particular, creditors are obliged to explain to the consumer the information contained in the standard information sheet, the main provisions of the proposed credit agreement or the proposed ancillary services, as well as the consequences of concluding the agreement, including the consequences of not servicing the credit on time[8].

Seventh, Article 3 of the CCD2 defines advisory services as 'personal recommendations made to the consumer in respect of one or more transactions relating to credit agreements and constituting an act separate from the granting of credit and from the act of credit intermediation'. In addition, where a creditor or credit intermediary provides advice, they are obliged to disclose to the consumer whether the recommendation will be based solely on their own product range or whether it also includes other market products, and to inform the consumer of any fee for advice. In addition, when advising the consumer, the creditor must obtain the necessary information and assess the consumer's financial situation in order to recommend the most suitable product, in line with the principle of acting in the consumer's best interest. It is incumbent on Member States to provide independent, easily accessible advice to consumers who are in default on their consumer credit obligations or who may be at risk of such default.

Eighth, according to Article 16(4), the use of the term "independent advisor" will only be possible where a creditor or financial intermediary recommends a sufficiently large number of offers available on the market, or where they do not receive remuneration for advice from one creditors.

Ninthly, the CCD2 regulates tying[9] and bundling practice[10]. According to Article 14(1), combined sales are allowed while tying is prohibited. Specifically, this means that the creditor will be able to require the consumer to open a bank account or take out credit insurance) from which capital instalments or other charges will be collected, but the costs of servicing such an account will have to be included in the total cost of the credit in the contract.

[8] Pursuant to Article 11 of the Consumer Credit Act of 12 May 2011 (Journal of Laws 2011 No. 126, item 715), 'The creditor or credit intermediary shall, prior to the conclusion of a consumer credit agreement, provide the consumer with explanations regarding the content of the information provided prior to the conclusion of the agreement and the provisions contained in the agreement to be concluded, in such a way as to enable the consumer to take a decision regarding the consumer credit agreement'. What remains to be interpreted is the possible difference in scope between Article 12(1) of the Directive and Article 11 of the Consumer Credit Act

[9] Bundling practice means offering or selling a credit agreement as a package with other separate financial products or services where that credit agreement is not available to the consumer on a standalone basis.

[10] Tying practice means offering or sale of a credit agreement as a package with other separate financial products or services where that credit agreement is also available to the consumer separately but not necessarily on the same terms and conditions as offered in combination with those other products or services.

Tenth, according to Article 18(3) of the CCD2, "the *assessment of creditworthiness shall be carried out on the basis of relevant and accurate information on the consumer's income and expenses and other financial and economic circumstances which is necessary and proportionate to the nature, duration, value and risks of the credit for the consumer*". Where the creditworthiness assessment is carried out using automated data processing, the consumer has the right to obtain the intervention of a human being representing the creditor. This means that the consumer has the right to a fair and understandable explanation of the assessment carried out and of the functioning of the automated data processing, taking into account the variables that have been used in the creditworthiness assessment. The consumer, in turn, in such a case has the right to present his or her position and may request a reassessment.

Eleventhly, Article 34 of the CCD2 obliges member countries to promote measures to support consumer financial education, including on responsible borrowing and debt management. Programmes and projects in this area should be dedicated primarily to consumers who have no credit experience and are taking out a commitment for the first time in the consumer credit segment and to borrowers accessing credit offers through digital tools. The Directive sees financial education as a key condition for the integration of credit markets in the EU. It is accepted that financially aware consumers can benefit from the opportunities of the single market. Indeed, education enables a better understanding of credit products and rational decision-making in the financial sphere, taking into account the risks arising from the purchase of a particular financial service[11]. Furthermore, financial education of the public improves the status of consumers in terms of knowing, exercising and enforcing their rights. According to the diagnosis, financial education should take place throughout life (Penczar 2014, p. 13). This is further justified by the fact that the dynamic development of financial markets, under conditions of globalisation, has contributed to the emergence of many innovative credit products or transfer to third markets used in other conditions. Hence, the intentions and actions of the European Commission aim to integrate markets for consumer services by, inter alia, increasing legal protection, which in turn requires appropriate qualifications of the users of these services.

Twelfth, pursuant to Article 36(2) of the CCD2, lenders are obliged to have appropriate relevant procedures and policies in place for the early identification of borrowers experiencing financial difficulties. This includes requirements to restructure the loan, at a stage prior to the commencement of enforcement proceedings. As emphasised by D. Adrianowski (2019, pp. 94–112), the right to restructure the liability and other forms of settlement of the client with the bank is one of the most important factors for its protection. According to the CCD2, restructuring measures may include partial or full refinancing of the loan or modification of the existing contractual terms, such as extending the term of the agreement, temporary suspension of loan instalment payments, partial debt forgiveness and debt consolidation, among others.

[11] Many bank customers have problems understanding even the simplest financial products (Marcinkowska 2011, pp. 5–19).

The Directive does not change the consumer's right of withdrawal – without giving any reason – up to 14 days from the conclusion of the agreement, nor the right of early repayment. However, it is clarified that in the event of early repayment, the consumer is entitled to a reduction in the total cost of the credit outstanding, taking into account all the costs (interest and non-interest) calculated by the creditor.

It is left to the jurisdiction of EU Member States to set interest rate caps or restrictions on excessive charges for other costs (fees and other non-interest costs).

3. Impact assessment of the implementation of Directive 2023/2225 and recommendations for the Polish consumer credit market

The assessment of the effects of implementation helps to properly direct the actions introducing the regulations into practice and also to determine their impact on obliged entities. Among the various diagnostic methods used for this purpose, the expert method[12], classified as a heuristic method[13], is relatively popular.

For the purpose of assessing the impact of the new rules of the consumer credit market in the European Union and in Poland, a survey conducted and by the author, among experts of the Polish credit market, was used. The survey was conducted in October/November 2023 as part of the agenda of the European Financial Congress (EKF Research) in cooperation with Deloitte (Penczar 2014). Nineteen experts participated in the study. In addition to assessing the impact of the CCD2 regulation, the broader research objective was to assess the opportunities and threats to the development of the Polish consumer credit market in the 2026 perspective and such issues for consumer finance market players.

Among the positives of CCD2, creating potential for market growth, the experts highlighted above all the following:

- adapting regulations to the rapidly changing economic and business environment;
- extending the Directive to all players, which will reduce arbitrage in the consumer finance market and lead to equal rights and obligations for all credit market participants and a more level playing field;

[12] It most often involves conducting surveys among a purposively selected group of experts in a particular field. This method is applicable for projecting unknown or uncertain and long-term impacts requiring highly specialised knowledge. In addition to expert techniques, focus group interviews, panel studies, semi-structured interviews, brainstorming (single or mixed), morphological methods, Gordon's analogies are also applicable; see (Antoszkiewicz 1990, p. 103 et seq.).

[13] Heuristic methods are classified as creative problem-solving sciences. In the case of heuristic methods, intuition, foresight and gut feelings play an important role, which should be characterised by the persons selected for the study – professionals in the field under study, experts, in more detail: (Orzeł 2005; Antoszkiewicz 1990).

- reducing regulatory arbitrage by bringing a wider range of financial products and services, hitherto excluded from the Directive (e.g. BNPL), within its scope;
- increasing consumer protection, which will have a positive impact on the transparency and credibility of the financial sector, resulting in market growth;
- product and contractual transparency, e.g. through the implementation of additional forms with more information on credit parameters, e.g. through the obligation to provide a completely new document – the so-called SECCO (Standard European Consumer Credit Overview) – and greater (although insufficient) adaptation of information obligations to digital media;
- the further development of innovative fintech and e-commerce solutions that banks will be able to offer their customers in collaboration with the digital players sector;
- a commitment by member states to support financial education and provide consumers with access to debt counselling;
- regulating the consumer finance sector, which will increase consumer confidence in the non-bank lending market;
- curbing unfair practices such as automatic renewal of the credit agreement or the automatic ticking of relevant default options (so-called boxes) on lenders' forms.

Among the risks to the development of the consumer credit market associated with the implementation of CCD2, the experts participating in the survey pointed to:

- the need to revise procedures, offers and update systems to comply with the directive, which will generate additional costs, while a large part of the provisions contained in the CCD2 have already been regulated in Polish law and implemented in banking systems;
- potentially increased operational cost of providing finance and increased time in the customer service process;
- the increased risk involved in assessing a consumer's creditworthiness, which should be done in the interests of the consumer and not to reduce credit risk on the part of the creditor;
- the need to provide, at the consumer's request, an explanation of the credibility assessment principles, including the rules used in the automated processing of personal data and their impact on the final decision;
- the possibility for the customer to challenge the credit decision for automated processes;
- the introduction of a large amount of mandatory information in consumer credit advertising, which may make it difficult for the consumer to understand;
- shifting the burden of responsibility for the consumer's decisions to the creditor;
- still extensive information obligations that do not lead to the consumer knowing and understanding more.

The CCD2 furthermore limits the range of parameters used to assess creditworthiness, for reasons of consumer privacy. The assessment is to be made solely on the basis of information concerning the consumer's financial and economic situation, primarily based on his or her income and expenditure. The assessment of creditworthiness, or rather creditworthiness, has so far been based more on a richer set of information, including non-financial information such as age or occupation, although these have not been crucial in verifying creditworthiness. Reducing the scope of analysis of information about the borrower carries the risk of reducing the effectiveness of scoring models.

Experts also pointed to the lack of consumer databases and information for assessing creditworthiness in Poland as a threat to the credit market. The CCD2 imposes an obligation on creditors to obtain from the applying consumer information about his/her income and expenses. When, in the creditor's assessment, the extent of the information needed is sufficient, supporting evidence must be obtained from the consumer and the data obtained must be verified through a system of traditional paper documents. This has at least two disadvantages. The first is a return to the paper income certificates used in the past. The second is the risk of fraud or unreliability of the certificates submitted.

Summary

The adoption of new rules for the functioning of the consumer credit market in the European Union was necessary in order to improve competition and ensure a high level of consumer protection. Dynamic changes in the credit market, linked inter alia to the development of digital services and the use of artificial intelligence, have resulted in the emergence of new credit products and changes in consumer attitudes. The purpose of the CCD2 is precisely to adapt its provisions to the new market conditions. There is no doubt that the implementation of the CCD2 Directive into the Polish legal order will be a challenge for entities offering and granting consumer credit, resulting, inter alia, from the necessity to incur adjustment costs and introduce rules and solutions not previously in force. It also represents an opportunity to increase market potential by increasing consumer confidence in the market and providers.

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