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## Commission for granting a loan as an instrument for transferring the cost to a consumer by financial institutions in Poland

### Abstract

The aim of the study is to analyse the manner of using the commission instrument for granting loans by financial institutions in Poland, with particular emphasis on cases including early repayment of debt. The research was based on a study of 12 cases of consumer loans repayment before the due date. The study identified the impact of the commission on the APRC (particularly in case of early repayment) and the risk associated with the borrower's claim for repayment of part of the commission. The results obtained indicate that the commission for granting a loan is not only an instrument that increases the cost of the loan, but also the one which guarantees the achievement of a certain profitability in the event of early repayment thereof. Moreover, the results lead to the conclusion that, taking into account legal fees and court costs, consumers may waive the right to reclaim commission in the event of early repayment of a loan.

**Key words:** consumer credit, credit early repayment, APRC

**JEL:** G21, H81

### Prowizja za udzielenie kredytu jako instrument zapewniający stabilny zysk instytucjom finansowym w Polsce

#### Streszczenie

Celem opracowania jest analiza sposobu wykorzystania instrumentu prowizji za udzielenie kredytu przez instytucje finansowe w Polsce ze szczególnym uwzględnieniem przypadków, gdy doszło do przedterminowej spłaty całego zadłużenia. Badania przeprowadzono w oparciu o studium 12 przypadków kredytów konsumenckich, które zostały spłacone przed terminem. W ramach badań określono wpływ prowizji na wysokość APRC (zwłaszcza w przypadku wcześniejszej spłaty) oraz ryzyko związane z dochodzeniem przez kredytobiorcę zwrotu

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części prowizji. Uzyskane wyniki wskazują, że prowizja za udzielenie kredytu stanowi nie tylko instrument podnoszący koszt kredytu, ale przede wszystkim gwarantujący osiągnięcie określonej rentowności w przypadku jego wcześniejszej spłaty. Nadto wyniki prowadzą do konkluzji, że z uwagi na wysokość kosztów sądowych konsumenci mogą rezygnować z dochodzenia zwrotu prowizji w przypadku wcześniejszej spłaty kredytu.

**Słowa kluczowe:** kredyt konsumencki, wcześniejsza spłata kredytu, RSSO

## Introduction

Undoubtedly, the cost of a loan is one the most important elements thereof. Strong competition on the consumer credit market leads financial institutions to try and present their offer in a manner that makes it more attractive to the consumer. Thus, the cost of a loan often includes not only interest (resulting directly from the interest rate), but also other additional, non-interest-bearing costs, in particular the commission for granting the loan.

Currently, charging an additional fee for granting a loan is an instrument used not only by non-bank institutions, but also by SKOKs (Spółdzielcza Kasa Oszczędnościowo-Kredytowa – *Cooperative Savings and Loan Fund* – financial institutions similar to Credit Unions) and banks. Despite the fact that commissions are now a typical element of loan agreements, it is debatable how much the instrument negatively affects the consumer's situation.

The purpose of this article is to analyse the use of the loan-granting commission instrument by financial institutions in Poland in the context of increased loan costs, with particular emphasis put on the increase in the actual loan cost in a situation where the borrower decided to repay the entire debt earlier. The publication also analyses the risk incurred by consumers wishing to settle their commissions in the event of early repayment. The obtained results have practical significance for institutions and organisations focused on consumer protection on the financial market.

## Literature review and hypotheses development

Both EU and national legislators aim to improve the situation of consumers on the credit market, in particular by limiting the maximum credit cost and providing protective instruments. The main act of national law regulating the matter of credit activity provided to consumers is Law on Consumer Credit<sup>1</sup>, which simultaneously transfers the regulations laid down in Directive 2008/48/EC to credit agreements for consumers<sup>2</sup> into national law.

<sup>1</sup> Ustawa z dnia 12 maja 2011 roku o kredycie konsumenckim [Law on consumer credit of 12 May 2011]. Dz. U. of 2019, item 1083.

<sup>2</sup> 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.

The aforementioned regulations provide for a maximum credit cost, a requirement to provide the consumer with a range of information, including the Annual Percentage Rate of Charge (APRC) and the calculation method thereof. In addition, they introduce a number of rights to which the consumer is entitled to, including the possibility of credit early repayment without the need to incur costs attributable to the credit period which has been shortened.

Despite the above-mentioned regulations, practice still shows that the level of effective protection afforded to consumers is still insufficient. The experience proves, among others, that the excessively detailed information included in the form causes the average consumer to feel overloaded with information and practically discourages the consumer from understanding the details of the offer [Czech Republic 2018]. It is also claimed that information overload ultimately leads to a decrease in decision-making capacity<sup>3</sup>. The creditor may therefore be tempted to use its contractual and informational advantage over the consumer.

Research on consumer credit regulation often shows that more and more detailed regulations still do not solve the problem of insufficient consumer protection and may even have adverse effects on consumers<sup>4</sup>, with the main emphasis on the activity of non-bank lending institutions. While available studies indicate that non-bank institutions are indeed more affected by this problem, in banks there are also loans with high APRC level offered. It is emphasised that the only way to solve the problem is to increase consumers' financial literacy<sup>5</sup>.

The practice of the Polish consumer credit market indicates that the commission for granting a loan is used not only as a non-interest-bearing instrument increasing the overall cost of the loan, but also as an instrument ensuring the lender's profit regardless of the actual duration of the loan relationship. Although Article 49 of the Law on consumer credit provides for the settlement of all costs in the event of early repayment of a loan, financial institutions have so far refused to do so, pointing to, inter alia, an interpretation laid down in a letter from the President of the Foundation for the Development of the Financial Market (incidentally representing the interests of lending institutions), which advocated an interpretation that pre-contractual costs (including commission) are not reimbursable in any part<sup>6</sup>.

<sup>3</sup> J. Fazłagić, *Zjawisko "nadmiaru informacji" a współczesna edukacja [The phenomenon of "information overload" and modern education]*, E-mentor 2010, 4(36).

<sup>4</sup> K. Kurzępa-Dedo, A. Gemzik-Salwach, *Ustawa antylichwiarska a zmiany na rynku instytucji pożyczkowych – wybrane zagadnienia (część 1) [Anti-usury Act and changes on the market of loan institutions – selected issues (part 1)]*, Humanities and Social Sciences 2018a, 2(25); K. Kurzępa-Dedo, A. Gemzik-Salwach, *Ustawa antylichwiarska a zmiany na rynku instytucji pożyczkowych – wybrane zagadnienia (część 2) [Anti-usury Act and changes on the market of loan institutions – selected issues (part 2)]*, Humanities and Social Sciences 2018b, 3(25); P. Nowak, *Ochrona Konsumenta przez ustawowe limitowanie opłat kredytowych [Consumer Protection through Statutory Debt Limits]*, *Przedsiębiorczość – Edukacja [Entrepreneurship – Education]* 2019, 1(15).

<sup>5</sup> Z. Korzeb, *Lichwa – fikcja czy rzeczywistość [Usury – fiction or reality]*, *Bezpieczny Bank* 2017, 2(67).

<sup>6</sup> Pismo Prezes Fundacji Rozwoju Rynku Finansowego do Rzecznika Finansowego z dnia 13 marca 2017 roku [Letter from the President of the Financial Market Development Foundation to the Financial Ombudsman of 13 March 2017].

The opposite position was taken by both the Financial Ombudsman and the President of the Office of Competition and Consumer Protection, who supported an interpretation according to which the earlier repaid commission shall be refunded appropriately<sup>7</sup>. The above position of the Financial Ombudsman is also presented as significant in specific court cases – however, the described position and important views are not binding in interpretation of the law<sup>8</sup>.

On the other hand, in the legal literature it is stressed that the intention of this regulation is to ensure that the economic interest of the consumer is protected, so the way in which costs are determined in the credit agreement does not prevent the consumer from exercising his or her right to early repayment of the loan<sup>9</sup>. The regulation is intended to ensure effective protection of the consumer (borrower), whereas interpretation from this perspective shall lead to the conclusion that all costs are reduced, including the commissions charged previously<sup>10</sup>.

Moreover, in that area, the case-law of common courts is also not uniform. It is important to mention that at an interval of only one month, the final judgments of the District Court in Gliwice were issued in cases against the same financial institution and concerning a loan concluded on the basis of the same agreement (a loan granted on the basis of this agreement is included in the research material). By judgment of 20 December 2017, file reference no. III Ca 1489/17, the court dismissed the claim in its entirety, claiming that the consumer had not demonstrated that the fee was linked to the credit period<sup>11</sup>, but by judgment of 18 January 2018, file reference no. III Ca 1653/17, the court granted the claim in its entirety, emphasising that the content of the agreement indicated that the fee was linked exclusively to the credit period<sup>12</sup>.

A deadlock will likely be solved by the Judgment of the Court of Justice of the European Union of 11 September 2019, issued in the case reference no. C-383/18, in which the need to settle all costs incurred by the consumer (including the commission for granting a loan) was clearly indicated<sup>13</sup>. However, there are doubts about how the judgment

<sup>7</sup> Stanowisko Rzecznika Finansowego i Prezesa Urzędu Ochrony Konkurencji i Konsumentów w sprawie interpretacji art. 49 ustawy o kredycie konsumenckim z dnia 16 maja 2016 roku [Statement of the Financial Ombudsman and the President of the Office of Competition and Consumer Protection on the interpretation of art. 49 of the Consumer Credit Act of 16 May 2016].

<sup>8</sup> A. Jurkowska-Zeidler, *Aktualne problemy ochrony klienta na rynku bankowym z perspektywy działalności Rzecznika Finansowego* [Current problems of customer protection in the banking market from the perspective of the activity of Financial Ombudsman], Gdańskie Studia Prawnicze 2018, 39.

<sup>9</sup> Z. Ofiarski, *Ustawa o kredycie konsumenckim. Komentarz* [Law on consumer credit. Comment], Wolters Kluwer Polska, Warszawa 2014, e-LEX, comment to article 49.

<sup>10</sup> E. Rutkowska-Tomaszewska, *Redukcja kosztów kredytu konsumenckiego a przedterminowa jego spłata w świetle art. 49 Ustawy o kredycie konsumenckim* [Reducing the cost of consumer credit and an early repayment of it in the light of art. 49 of the Consumer Credit Act (UKK)]. *Studia Prawno-Ekonomiczne* 2016, 100.

<sup>11</sup> Judgment of the District Court in Gliwice of 20 December 2017 in case III Ca 1489/17, e-LEX.

<sup>12</sup> Judgment of the District Court in Gliwice of 18 January 2018 in case III Ca 1653/17, Portal of judgments of the District Court in Gliwice.

<sup>13</sup> Judgment of the Court of Justice of the European Union (First Chamber) of 11 September 2019 in case C-383/18. InfoCuria.

should exactly be applied<sup>14</sup> and, at the moment (end of 2019), the vast majority of financial institutions still refuse to settle their credit commissions voluntarily. At the same time, possible court proceedings are connected with the necessity to incur the costs of initiating the proceedings and long-term commitment, but also with the risk of incurring further costs in the case of losing thereof. It is also underlined that the costs associated with court proceedings often turn out to be too high for the consumer<sup>15</sup>.

The presented literature describes in detail the theoretical issues related to the protection of the borrower-consumer, but does not focus much on the practical aspects of the issue. There are no studies indicating the impact of commission (and the current settlement system adopted by financial institutions) on the cost of loan in the event of its early repayment. Therefore, in order to determine the actual impact of the commission on the total cost of the loan, the following hypothesis was adopted: (1) the commission for granting the credit has a significant impact on the credit cost (APRC) – particularly in case of early repayment.

It is also significant whether consumers are ready to use their instruments to protect their rights. Analysis of the literature leads to the conclusion that the most effective method of settling commissions is legal action. However, it involves the risk of losing (as indicated above, the same court may differently assess almost identical facts), and thus incurring further costs. Due to the lack of practical studies focused on the risk of consumers deciding to take legal action, the following hypothesis was adopted: (2) the costs associated with seeking commission settlement in case of early repayment are inordinately high.

## Material and methods

The research material used for the purposes of the study was detailed data on 12 consumer loans granted to consumers included in the same creditworthiness category and repaid significantly before the agreed credit term. The research included in particular loan agreements, loan documentation, documents related to the complaint procedure and possible arbitration or court proceedings. Seven of the analysed loans were granted by SKOKs and 5 by banks, while all loans were distinguished by a fixed total amount. A summary of the basic information concerning the analysed loans is presented in Table 1.

On the basis of the above-mentioned data, a study of each credit ratio was carried out. First of all, the WIBOR6M rate was determined as of the day of concluding the agreement, in relation to which the margin of each credit was calculated. The

<sup>14</sup> A. Wachnicka, *Redukcja kosztów w razie przedterminowej spłaty kredytu konsumenckiego w świetle orzeczenia TSUE C-383/18 [Reduction in the total cost of consumer credit in case of early repayment in light of the CJEU ruling C-383/18]*, Internetowy Kwartalnik Antymonopolowy i Regulacyjny (iKAR) [Online Antitrust and Regulatory Quarterly (iKAR)], 2019, 8(8).

<sup>15</sup> A. Bogusławski, *Pozasądowe rozwiązywanie sporów z podmiotem rynku finansowego jako element ochrony konsumenta [Out-Of Court Settlement Of Disputes With An Entity Operating On The Financial Market As An Element Of Consumer Protection]*, Journal of Finance and Financial Law 2016, 1(3).

amount actually paid to the consumer (the amount of the loan minus the amount of the commission) was determined, in respect of which the relative share of the commission charged for granting the loan was calculated. The results obtained for each individual loan were then compared.

**Table 1. Basic loan parameters used for research**

Loan	Conclusion date of the agreement	Type of institution	Amount of loan (PLN)	Amount of commission (PLN)	Contractual lending period (months)	Actual lending period (months)	Interest rate on the day of concluding the agreement
A	10/18/2013	SKOK	140,000.00	2,800.00	120	13	12%
B	10/23/2013	SKOK*	37,500.00	7,500.00	60	1.5	14%
C	10/30/2014	Bank	99,960.00	4,760.00	96	36	9%
D	11/13/2014	Bank	208,947.49	3,134.21	84	22	6.99%
E	12/8/2014	Bank	237,800.00	4,756.00	98	39**	7.26%
F	5/22/2015	SKOK	25,000.00	3,500.00	120	6	9.40%
G	6/30/2015	SKOK	25,000.00	3,500.00	60	4	9.75%
H	11/20/2015	SKOK	37,000.00	6,660.00	120	23	9.70%
I	2/29/2016	SKOK	47,000.00	5,640.00	120	20	9.70%
J	2/29/2016	SKOK	10,000.00	1,950.00	120	20	9.20%
K	10/17/2017	Bank	140,000.00	2,800.00	72	16	10%
I	10/23/2017	Bank	200,000.00	30,800.00	120	13	9.90%

\* SKOK was taken over by the bank (after the loan was repaid).

\*\* loan repaid earlier after 36 months in part and after 39 months in full.

Source: own materials.

The amount of the fee to be refunded to the consumer in accordance with the judgment of the Court of Justice of the European Union (the value of the fee charged was multiplied by the ratio of the unused credit period to the contractual credit period, where actual duration in days was applied) was calculated. Complaint, amicable and court proceedings were analysed to determine whether the institutions had voluntarily settled commissions.

The next step was to calculate the APRC (assuming no change in the interest rate) in accordance with the methodology laid down in Annex 4 to the Law on consumer credit: 1) contractual loan duration taking into account the commission charged for granting the loan; 2) contractual loan duration assuming no commission for



granting the loan (each time a repayment plan was properly simulated, the loan amount less commission was assumed as the loan amount); 3) actual loan duration, taking into account the commission charged for granting the loan.

The last element of the research was the calculation of costs that the consumer would have to hypothetically bear in advance in the case of a court settlement of commissions (each time it was assumed that the consumer uses professional assistance and incurs costs: claim fees, minimum advocate fees, stamp duty on the granted power of attorney) and costs that hypothetically will be incurred jointly if the case is lost (claim fee, appeal fee, minimum legal fee in the second instance, minimum costs of representation of the bank, stamp duty on the granted power of attorney). The amounts were calculated in accordance with the Act on Court Fees in Civil Cases<sup>16</sup> and the Regulation of the Minister of Justice on lawyers' fees<sup>17</sup> (up to date as on the date of the audit). A percentage ratio between the values obtained and the amounts to be recovered has been calculated.

## Results and discussion

Commissions charged by lenders in the examined cases ranged from PLN 1,950.00 (J) to PLN 30,800.00 (L) and represented between 1.52% (D) and 25% (B) of the amount disbursed to the borrower. On average, in all cases, commission constituted 12.35% of the amount disbursed (5.76% for banks and 17.06% for SKOKs). The margin (interest minus WIBOR6M) ranged from 4.96% to 11.30% and 7.73% on average (6.70% for banks and 8.47% for SKOKs). Detailed data are presented in Table 2.

According to the results obtained in studied cases, it is difficult to find a correlation between the amount of commission for granting a loan and the borrower's margin and other loan parameters, in particular amount or time thereof. The loans of the highest value had the lowest interest rates (D and E) and there was no correlation between the value of the loan and the interest rate of the commission (D and E versus L). At the same time, commissions exceeding 20% of the value were charged for the shortest and longest loans (B, H and J). Moreover, the amount of the margin is not related to the loan term. There is also no relationship between the amount of the margin and the percentage share of the commission charged (Figure 1).

The recorded differences in the margin could be dictated by changes in the credit market situation (loans were granted within 3 years). However, having taken into account that in all examined cases there was a similar creditworthiness, it is difficult to find a correlation between the market situation, creditworthiness and credit

<sup>16</sup> Ustawa z dnia 28 lipca 2005 roku o kosztach sądowych w sprawach cywilnych [The Act on court fees in civil cases of 28 July 2005]. Dz. U. of 2019 items 785, 1043, 1469, 1553, 1655, 1802, 1815, 2020.

<sup>17</sup> Rozporządzenie Ministra Sprawiedliwości z dnia 22 października 2015 roku w sprawie opłat za czynności adwokackie [Regulation of the Minister of Justice of 22 October 2015 on fees for lawyers' activities]. Dz. U. of 2015, item 1800, Dz. U. of 2016 item 1668, Dz. U. of 2017 item 1797.

parameters and the amount of commission charged for granting the credit. Indeed, this amount appeared to be established on a discretionary basis. Nevertheless, the number of cases studied is too low to draw conclusions about the entire credit market (which is not the purpose of this publication).

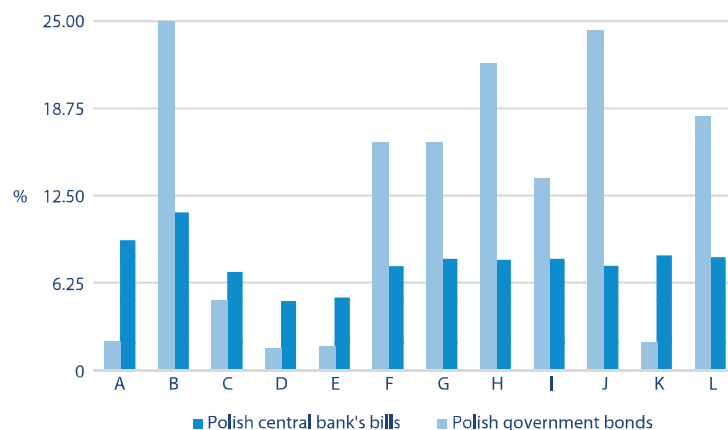
**Table 2. Basic parameters of loans and costs incurred by the borrower**

Loan	Amount of loan (PLN)	Amount of commission (PLN)	Duration of the Agreement (months)	Interest rate	WIBOR6M (as of the day of concluding the agreement)	Margin	Share of commission in the amount at the borrower's disposal
A	140,000.00	2,800.00	120	12%	2.70%	9.30%	2.04%
B	37,500.00	7,500.00	60	14%	2.70%	11.30%	25.00%
C	99,960.00	4,760.00	96	9%	1.96%	7.04%	5.00%
D	208,947.49	3,134.21	84	6.99%	2.03%	4.96%	1.52%
E	237,800.00	4,756.00	98	7.26%	2.06%	5.20%	2.04%
F	25,000.00	3,500.00	120	9.40%	1.96%	7.44%	16.28%
G	25,000.00	3,500.00	60	9.75%	1.79%	7.96%	16.28%
H	37,000.00	6,660.00	120	9.70%	1.80%	7.90%	21.95%
I	47,000.00	5,640.00	120	9.70%	1.74%	7.96%	13.64%
J	10,000.00	1,950.00	120	9.20%	1.74%	7.46%	24.22%
K	140,000.00	2,800.00	72	10%	1.81%	8.19%	2.04%
I	200,000.00	30,800.00	120	9.90%	1.81%	8.09%	18.20%

Source: own materials.

The APRC calculated for original terms of loans ranged from 7.71% (D) to 27.52% (B), with 14.19% on average (10.63% for banks and 16.74% for SKOKs). Excluding commission (simulation of a loan without commission), APRC ranged from 7.22% (D) to 14.95% (B), 10.21% on average (banks – 9.01%, SKOKs – 11.06%). More diverse results were obtained in the case of APRC, according to the actual loan repayment date. The values ranged from 8.05% (D) to 560.20% (B), with 68.00% on average, while 14.23% for banks and 106.40% for SKOKs (mostly due to taking into account the B loan, the average for SKOKs without B is 30.77%). Detailed results are presented in Table 3.



**Figure 1. Overview of the lenders' margin and the ratio of commission to loan value**

Source: own materials.

**Table 3. List of APRC values obtained**

Loan ratio	Contractual APRC	APRC excluding commission	APRC in case of early repayment
A	13.25%	12.68%	15.05%
B	27.52%	14.95%	560.20%
C	10.91%	9.41%	11.30%
D	7.71%	7.22%	8.05%
E	8.02%	7.43%	8.20%*
F	13.90%	9.81%	50.48%
G	17.76%	10.19%	50.51%
H	15.56%	10.10%	23.99%
I	13.62%	10.14%	18.89%
J	15.61%	9.59%	25.71%
K	11.53%	10.68%	12.92%
L	14.96%	10.33%	30.71%

\* The calculation also includes partial early repayment.

Source: own materials.

The results obtained indicate that the commission for granting a loan leads to an increase of 3.99% of APRC on average in the case of the loan term specified in the agreement. However, APRC significantly increases in the case of early repayment of a loan – this phenomenon is particularly visible in case of SKOKs (logical consequence of higher average commissions). While verifying hypothesis 1, it should therefore be stated that the commission for granting a loan in the case of repayment according to the schedule does not significantly affect the cost thereof (APRC), whereas the situation is different in the case of early repayment when the commission charged rises the cost multiple times.

Importantly, in all analysed cases, the lenders did not reimburse (settle) the commission for granting the loan due to early repayment thereof by the borrower (December 2019). In 11 examined cases, a complaint procedure was conducted, which also did not result in a refund of the commission. Following the judgment of the Court of Justice of the European Union referred to hereinabove, until the end of 2019 only one bank (C) verified its decision and obliged itself to settle the commission. In 8 cases, court proceedings are pending (A, D, E, G, H, I, J and L), while in one case, arbitration proceedings are pending before the Financial Ombudsman (B). In some cases, intervention proceedings before the Financial Ombudsman were also carried out but did not bring any results.

The amount of commission to be reimbursed to the borrower ranged from PLN 1,621.68 to PLN 27,528.60 and usually it was approximately PLN 3,000. Initial costs related to the judicial hearing of a case mostly amounted to PLN 1,117 (maximum value of PLN 4,617) and ranged from 16.77% (L) to 68.88% (J) of the claim value (39.47% on average). The total costs that a consumer would have to incur if a court case was lost most frequently amounted to PLN 3,134 (maximum PLN 12,834) and ranged from 40.81% (L) to 193.26% (J) of the value of the enforced claim (109.98% on average). Detailed results are presented in Table 4.

The analysis of the results obtained leads to the conclusion that the lower the amount to be cleared, the higher the relative costs the borrower (consumer) has to bear at the beginning, the higher the amount at risk of pursuing the claim is consequently. The need to incur costs in the order of 40% of the value of the claim compared to the expected duration of the proceedings and the risk of incurring further costs (exceeding the value of the claim on average, in J case more than 190%) may undoubtedly constitute a barrier for a large group of consumers, which discourages effective litigation with the lender (in some of the cases examined, consumers, due to high costs were afraid of court issue). Thus, hypothesis 2 has been verified positively. Additionally, consumer behaviour will depend on current case-law, and further research is necessary for their precise assessment.

**Table 4. A list of expenses related to the claims for commission settlement by way of legal actions in case of early repayment of a loan**

Loan ratio	Amount of commission to be settled (PLN)	Costs in advance (PLN)	Percentage of the amount claimed	Costs in case of a loss (PLN)	Percentage of the amount claimed
A	2,500.14	1,117.00	44.68%	3,134.00	125.35%
B	7,306.85	2,217.00	30.34%	6,234.00	85.32%
C	2,971.53	1,117.00	37.59%	3,134.00	105.47%
D	2,305.61	1,117.00	48.45%	3,134.00	135.93%
E	2 933,59*	1 117,00	38.08%	3 134,00	106.83%
F	3,326.53	1,117.00	33.58%	3,134.00	94.21%
G	3,241.23	1,117.00	34.46%	3,134.00	96.69%
H	5,376.83	2,217.00	41.23%	6,234.00	115.94%
I	4,709.08	1,317.00	27.97%	3,534.00	75.05%
J	1 621.68	1,117.00	68.88%	3,134.00	193.26%
K	2,162.35	1,117.00	51.66%	3,134.00	144.93%
L	27,528.60	4,617.00	16.77%	11,234.00	40.81%

\* The settlement shall also take into account any partial early repayment.

Source: own materials.

## Conclusions

The results obtained prove that the commission for granting a loan is an instrument often used by lenders (whereas it was noted that SKOKs charge higher commissions on average than banks). In the cases studied, the amount of commissions charged seems to be discretionary and non-based on specific loan parameters. Nevertheless, commissions have a small impact on APRC when the loan is repaid as specified in the schedule.

However, in the event of early repayment, financial institutions do not reimburse the fee for the part of the unused credit period, even though such an obligation can be inferred from Article 49 of the Law on consumer credit. Thus, the lending commission is used by lenders as an instrument to guarantee a certain profit irrespective of the actual time of capital provision, transferring at the same time the lender's risk of early repayment directly to the borrower. Due to the above, the cost of a loan repaid earlier is significantly higher.

In the vast majority of cases, complaint or intervention proceedings shall not result in the settlement of commissions. Therefore, borrowers are forced to seek settlement through court proceedings. The costs to be incurred at the beginning

of the proceedings, including the costs to be incurred by the consumer in the event of a loss, undoubtedly create a significant barrier, which discourages from court settling thereof (especially if lower amounts are claimed). The risk incurred in bringing a court case often exceeds the value of the claim.

The fact that not all borrowers will decide to pursue judicial recovery of an appropriate part of the commission, may lead – despite the Court of Justice of the European Union ruling – to financial institutions in Poland maintaining a policy related to the non-settlement of commissions in the event of early repayment of a loan and consequently to further use of commissions as an instrument to guarantee the assumed profitability of the loan. Therefore, high court costs, due to the ineffectiveness of other state institutions, lead to the limitation of consumer rights protection.

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