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DOI: 10.26354/bb.17.3.100.2025

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A Model Mortgage Agreement as a Win-Win Way to End the Chaos on the Mortgage Market (and Beyond)

Abstract

In the discussions concerning the consequences of the invalidation of mortgage contracts in Poland and how to reduce them, legal risk management is mentioned in the first place. Hence, the paper focuses on this risk and ways of mitigating it.

The article characterises undertakings aimed at developing and introducing into economic circulation a model mortgage credit agreement, with the intention of popularising its use in credit transactions, which should reduce the legal risk of the parties to such transactions. The starting point for this work was the recommendation of the Responsible Finance Club of 2022 postulating the elimination of prohibited contractual terms ex ante, and not, as is currently the case, ex post. The model mortgage contract and its relevance for state financial stability are also discussed.

Keywords: mortgage loans, legal risk, model credit agreement, abusive clauses

JEL Codes: K12, K15, K22

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Introduction

On 24 July, at the headquarters of the Financial Ombudsman, at the initiative of the Responsible Finance Club of the European Financial Congress (EFC), a presentation was held of a draft model mortgage credit agreement developed by a Chapter of Legal Experts consisting of academics and practitioners in civil law, particularly in the area of the consumer financial market. The work of the Chapter was headed by Prof. Michał Romanowski.

For several years, the Responsible Finance Club had been making efforts to introduce a mortgage contract template into economic circulation that would reduce the legal risks faced by the parties to loan transactions. In November 2022, a group of 63 European financial Congress (EKF) experts participating in the project for a new concept of home loans recommended "***Implementation of a uniform model home loan contract, which would aim to eliminate prohibited conditions ex ante, rather than – what was becoming a practice of everyday life – ex post***". This recommendation was a reaction to the domination of the mortgage market by "foreign currency loans".[1]

Synthetic characterisation of the process of shaping the portfolio of housing foreign currency loans in banks in Poland

Foreign currency loans were very popular mainly for two reasons:

- First, because of the interest rate disparity. Interest rates for loans in zloty (PLN) have been relatively very high since the system transformation and, although they have been decreasing quite systematically, interest rates for the Swiss franc (CHF), the euro and the dollar have been much lower.
- Secondly, due to the appreciation of the PLN against the CHF between April 2004 and July 2008, the exchange rate of the Swiss currency decreased almost linearly from over 3 to 2 PLN. For "franc" borrowers, the instalment of a specific franc loan was getting lower and lower from month to month. The trend of appreciation of the zloty was disrupted by the global financial crisis that emerged in 2007.

It is noteworthy that in the conditions of a favourable relationship and a trend of changes in the PLN/CHF exchange rate, borrowers did not question the provisions of loan agreements, regardless of their competence. This was the case both for persons, who may not have been aware of the risk of exchange rate fluctuations or the legal

1 **In particular, these were denominated loans, in which the** loan **amount** was stated in a foreign currency, but disbursed in PLN at the exchange rate of the day of disbursement of the loan, while the amount of the instalment depended on the current exchange rate, and **indexed loans**, **in which** the loan amount was stated in PLN, but converted into the foreign currency at the current exchange rate on the day of disbursement and at each instalment repayment, while instalments were repaid in PLN.

risk of loan agreement provisions, and for professionals, who cannot be attributed to a lack of competence in understanding the provisions or the consequences of the materialisation of legal risk. Gradually, the attitudes of borrowers and various persons or entities representing them changed, in particular, as a result of the possibility of obtaining extraordinary benefits from the emerging practice of interpreting consumer regulations and court decisions in litigation brought against banks by borrowers.

Initially, incidental litigation gradually took on a mass character in connection with court decisions on the invalidity of foreign currency housing loan contracts due to the presence of abusive (illicit) clauses therein, primarily in the light of European consumer legislation. In the initial period of litigation, common courts in Poland ruled in favour of banks. However, the situation changed dramatically after the Court of Justice of the European Union (CJEU) ruling in the so-called Dziubaks case. The CJEU, responding to a preliminary question from one of the Polish courts, stated that if there is an abusive condition in a contract, it should be removed and the contract should be performed without this condition. If this was impossible, the contract could be annulled. This ruling sparked a massive lawsuit by borrowers against banks, usually with the help of law firms, in the name of restoring the disturbed balance of the parties.[2]

The emergence of such a lucrative loophole has been a threat to the stability of some banks in Poland. The scale of the problem is due, inter alia, to the fact that the institutions of the state, despite warning signals, both from the banks' economic chamber (the „White book of franking credits in Poland" ZBP, 2015) and the undertakings of the Polish Financial Supervision Authority (KNB) and the Polish Financial Supervision Authority (KNF), did not take advantage of the opportunity to enact regulations limiting the materialisation of legal risks.[3]

When, as a result of market processes, prudential regulations and the maturation of granted foreign currency loans, the sale of new loans became marginal, the sale of mortgages in PLN increased. Homebuyers, no longer able to take foreign currency loans, turned to zloty loans, which were slowly cheapening due to interest rate cuts. The colloquial perception tends to treat foreign currency loans and loans in zloty as two different products. However, they have, at least, one thing in common – they are difficult to hedge against the effects of external events affecting the financial market as a whole and, consequently, each borrower.

2 It quickly became apparent that a very lucrative loophole had been created in the market for law firms representing borrowers. Law firms and organisations of francophone borrowers claim to have filed in the courts on behalf of their clients in the region of 300,000 lawsuits against banks, and 98% of the cases end with the loan agreement being declared legally invalid. The total costs of the banks in the form of compensation paid to date and provisions set up already amount to PLN 100 billion, or almost 3% of Polish GDP.

3 The most common reason for invalidation of foreign currency loan agreements by courts was the lending bank's use of its own exchange rate table, which was not questioned at the stage of signing the agreements or for several years of repayment of instalments.

Foreign currency loans and PLN loans also have in common that they are long-term obligations with a fixed maturity, but the individual instalments depend on at least two market parameters:

- on the interest rate in the case of a PLN loan;
- on the interest rate for the currency of the obligation and on the exchange rate between the currency of the obligation and the currency of settlement.

Comparison of conditions and parameters of foreign currency and PLN housing loans

A comparison of the conditions and parameters of foreign currency loans and loans in PLN in the long term shows similarities with a time lag. Examples are included in Table 1.

Table 1. Comparison of selected features and processes associated with foreign currency and PLN loans

Foreign currency loans	Zloty loans
Systematic weakening of the Swiss franc against the zloty, from a level of more than 3 zloty per franc in April 2004 to the historical minimum CHF/PLN rate of 2 zloty in July 2008.	A multi-year decline in interest rates since the systemic transformation, with short-lived periods of increases until the historical minimum of the NBP reference rate of 0.1% in 2021.
In 2008, the number of new foreign currency loans granted during the year reached a historical maximum of almost 164,000 loans.	In 2021, the number of new PLN loans granted during the year reached a historical maximum of over 256,000 loans.
Despite the fact that supervision warned against currency risk, demand for 'cheap' foreign currency loans, above all in CHF, grew ever faster.	Despite the fact that supervisors warned against interest rate risks, demand for 'cheap' loans in zloty grew ever faster.
The media, politicians and the public defended the availability of foreign currency loans, seeing them as cheap money for less affluent consumers.	The media, politicians and the public encouraged borrowing by pointing out that it had never been so cheap.
After the collapse of Lehman Brothers in September 2008, the zloty weakened sharply and a prolonged period of high volatility began. At the beginning of 2015, the franc strengthened by leaps and bounds and the CHF/PLN exchange rate stabilised at more than PLN 4 per franc.	As a result of rapidly rising inflation, the NBP's reference rate began to rise monotonically, reaching 6.5 per cent, which greatly reduced demand in 2022. As a result, loan sales in relation to 2021 halved to 126,000.

Table 1. (cont.)

Foreign currency loans	Zloty loans
The instalments on foreign currency loans granted, especially from mid-2007 to mid-2008, increased strongly, causing great dissatisfaction among borrowers.	The instalments of loans, especially those granted between spring 2020 and spring 2021, increased strongly, causing great dissatisfaction among borrowers.
The materialisation of currency risk led to a large increase in loan instalments and borrowers sought a way out of the trap by challenging contracts on the grounds that the clauses contained therein were abusive under EU consumer legislation.	The materialisation of interest rate risk has led to a large increase in loan instalments and borrowers, supported by law firms with a financial interest in this, have started to seek the annulment of loan agreements, citing terms not permitted in them.
In almost all cases, borrowers allege: the banks' use of their own exchange rate tables and their failure to comply with their information obligations.	In almost all cases, borrowers or their representatives allege: defects in the banks' setting of the WIBOR index (although there are compelling reasons for the CJEU to reject such a complaint) and their failure to comply with their information obligations.

Source: own elaboration.

A comparison of the market processes in the segment of PLN and foreign currency mortgages shows a very high similarity in borrower behaviour. At the same time, it is characteristic that these processes are shifted in time, with a similar interval. When the zloty strengthened sharply and strongly against the CHF, foreign currency borrowers did not care about the risk of its strong weakening, which could cancel out their speculative gains. In a similar regime, a reversal of the trend and a strong rise in interest rates could have been expected. It was only a matter of innovative interpretations to raise flawed provisions in loan agreements. Therefore, as early as 2020–2021, it was necessary to take action as soon as possible to protect the gold loan market from the invalidation of newly concluded contracts and to start working on a model contract that would be free of reasonable legal defects and protect both parties to the contract from conflicts ending in disputes.

Under these circumstances, it should be clear to all stakeholders in the credit market that the complexity and, in particular, the ambiguity of contractual provisions, especially in the context of the European Union's pro-consumer legislation, may generate legal risks affecting the stability of banking sector entities in Poland. In general, one of two options could have been used to eliminate this risk. Firstly, to obtain a binding opinion of the relevant state institutions or authorities on the compliance of the applied provisions with the applicable law. Secondly, to bring about the elimination of any shortcomings pointed out by these entities. The second option corresponds to the concept of the Responsible Finance Club at the EKF promoted since the end of 2022. Unfortunately, the opportunity to avoid ex ante problems has not been properly exploited even though KNF initiated work to develop a uniform model mortgage contract. These started in spring 2023 and led to such a draft, which was discussed at the 15th European Financial Congress on 4 June 2025 with the participation of the Chairman of the Financial Supervision Commission, the President of the Office of Competition and Consumer Protection, the Financial Ombudsman, Members of the Financial Stability Committee, the banking community, as well as representatives of the Civil Law Codification Committee under the Minister of Justice and the academic community. In the discussion, legal experts and representatives of supervisory authorities discussed the benefits for consumers and the financial market of adopting a model mortgage contract. In conclusion, they all agreed that the implementation of the model mortgage contract could contribute to the stability of the financial market and also reduce the costs of credit intermediation. The KOF immediately undertook intensive efforts aimed at its acceptance by regulators.

The rationale for drafting and certifying a model mortgage contract

The desirability, or even necessity, of developing and certifying a mortgage contract in Polish currency is not in doubt. KOF has gathered stakeholder opinions in various forms and environments, with unequivocal support for the idea of implementing such a template.

The interests of consumers and businesses should be based on the win-win principle. Both sides win. However, the example of foreign currency lending proves that there is no shortage of those willing to break this principle and any contract between a trader and a consumer can be invalidated. If this practice were extended to the PLN loan market, everyone loses:

- The state loses, as the instability of Polish law, manifested by court invalidations of almost all long-term contracts between trader and consumer after many years of trouble-free performance, effectively deters investors so necessary to the state. Understandably, they may fear that their contracts concluded with Polish entities will also be invalidated when this is in favour of the Polish side. With a sufficiently large scale of this phenomenon and a lack of reaction from the relevant institutions or state authorities, Poland's rating, followed by the rating of Polish treasury bonds, will deteriorate significantly, increasing the already high cost of servicing Polish public debt.
- Consumers lose, as borrowers' benefits from winning disputes with banks result in worse credit conditions for consumers of credit intermediaries (higher fees and commissions etc.) and even in a reduction of credit availability. At some point, perhaps sooner than expected, the scale of legal risk will increase the price of credit to such an extent that only those who do not need credit to buy a flat will be able to afford it.

- The banks lose, as every litigation loss has a measurable financial dimension and generates losses, reducing the banks' ability to finance projects of vital importance to the economy or the population.
- The public loses because winning disputes with banks antagonises consumers of financial services into those who get rich (some borrowers) at the expense of others (depositors, taxpayers, investors).

These considerations underline the importance of drafting and implementing into banking practice an agreement, whose framework provisions will comply with both the law and the laws of economics. This is not an easy task, as controversial interpretations of consumer protection laws, the risk of biased interpretations against entrepreneurs and the harmful practice of retroactivity have led to a situation where there is uncertainty about the stability of contractual provisions between consumers and entrepreneurs.

For example, suits against banks allege that contractual provisions were not agreed with the borrower, which violates the principle of equality of parties (e.g. the methodology for calculating the exchange rate or WIBOR 3m). The fact that the transaction involves a non-professional consumer and a professional business entity (e.g. a bank) is also used tendentiously, even in situations where the consumer is a person with the highest professional competence to assess the provisions or understand the risk.

There are repeated allegations against banks that the customer was not properly informed about the risks involved in taking out a foreign currency loan, especially when the explanations given were not documented. And what is worse, in court disputes, even the validity of the customer's signed declarations that he or she understood and took note of the information provided is questioned. And this is done under the pretext that they did not understand the signed documents, but realised that signing the declaration was a prerequisite for receiving credit. This raises the issue of misrepresentation in order to obtain material benefits in the form of credit. Moreover, there is an inverted principle of equality of parties.

All this demonstrates the necessity to bring about a consensual position/understanding (consensus) not only between the borrower and the lender, but also the acceptance of the framework conditions by the state representatives. In the case of consumer mortgages, the proposal around which such a consensus would be built is the draft model mortgage contract by the EKF Chapter of Experts, which received positive feedback in the surveys. Similarly, the draft presented at the Financial Ombudsman's office in Warsaw on 24 July 2025 received positive opinions from representatives of the financial safety net or financial market players, and finally in the specialist media.

It should be noted that between 2022 and 2025, there were also a few opinions against the very idea of a model contract that would comply with all the provisions of current law, under the pretext of treating banks as professional entities with a duty to prepare a legally compliant contract. These opinions came from the consumer community, compensation law firms and some media.

Nevertheless, it is important to reflect on the consequences of the courts, the government, the market, overruling their support for this document. In one discussion, it was stated that a contract drawn up on the basis of the model contract will have to face a judicial test of abusiveness anyway, so that acceptance by the relevant state institutions changes nothing and the legal risk remains. This statement is a good starting point for an empirical analysis of the situation in the foreign currency lending segment.

First and foremost, it must be taken into account that the so-called old foreign currency loan portfolio is almost exclusively traded and new foreign currency loans – with marginal exceptions[4] are not granted. The knowledge of this old portfolio is quite complete (number, value, quality, conversions, settlements, disputes, etc.) as are the cost estimates, taking into account court decisions in relation to the lawsuits filed. This can serve as a basis for estimating the cost of materialised legal risk for this type of claim. And at the same time it can serve as a premise for estimating the cost of legal risk for gold loans.

If one were to compare the dynamics of disputes between borrowers and banks, mainly the so-called ‚franking' borrowers, separately for the portfolio of housing loans in foreign currency and separately for those in PLN, the situation for loans in PLN would correspond to foreign currency loans from about seven to eight years ago, with the exception that loans in PLN are still being granted. Consequently, the portfolio is growing and is already incomparably larger than it was in the case of foreign currency lending and lender banks have extensive databases on borrowers and can estimate the cost of legal risk associated with each new loan.

Model estimate of the cost of legal risk for the home loan portfolio in the 2025 environment

The cost of legal risk is a component of the margin. Despite the lack of precise estimates, one can be tempted to make a rough estimate of this cost. Without knowing what this cost would be, one can calculate what would be the increase in the instalment of a typical loan if the margin for legal risk increased by one percentage point. For a loan with currently quite typical parameters: capital of PLN 500 thousand, variable interest rate Wibor 3M plus margin, margin of 2.2%, current Wibor 3M 5.0%, term of the loan 25 years, the instalment is almost exactly PLN 3600. Including the cost of legal risk of 1 percentage point in the margin would increase the instalment to over PLN 3,900 and the cost of servicing the loan would increase by almost PLN 100 thousand. At lower interest rates, with lower capital, these differences will be smaller. When Wibor 3M falls to 3%, the instalment will be almost PLN 3,000, and at 1% legal risk it will rise to almost PLN 3,300. If the cost of legal risk were to increase to 2 percentage points, the cost of risk would be just over 2 times greater.

4 Loans in the currency in which the borrower receives the largest part of his or her salary.

The actual cost of legal risk will depend on the share of disputed loans in the bank's entire housing loan portfolio, on the percentage of cases won by borrowers and, finally, on the cost of the bank losing the case. They will probably be lower than in the case of foreign currency loans, but the portfolio of PLN loans is incomparably larger. There is therefore no doubt that, in the event of legal risks materialising, the costs for banks will be much higher than in the case of foreign currency loans.

About the work on the draft model mortgage credit agreement

The development of a draft model mortgage credit agreement by lawyers with no institutional links to either the banking or the consumer community has had a significant impact on its design and can be expected to contribute to the introduction into legal trading of such a framework model, which should, above all, be free of legal defects, minimise legal risk and, finally, be free of conflicts of interest for the representatives of the parties to the credit transaction.[5]

Its application by banks can reduce the legal risks associated with long-term mortgages to a capital degree. It is now important for institutions and state authorities to confirm that loans made using the model contract are free of such risks. Without such a solution, uncertainty in the credit market may generate the risk of destabilisation, if not of the entire banking sector then, at least, of some banks and the opportunities to assist development using financial intermediary institutions will be significantly reduced.

[5] On 28 March 2023, i.e. shortly after the start of work on the draft agreement, an interview with Professor Waldemar Rogowski of the Warsaw School of Economics (SGH), and at the same time chief analyst at the BIK, appeared on the BANK.PL portal on the creation of mortgage loan agreement templates that are safe for banks and their customers.
Robert Lidke: *How do you assess the proposal put forward by the experts of the Centre for Strategic Thought, who suggest creating a model contract for a mortgage loan in zloty that would be accepted by the FSA or the Supreme Court, which would guarantee the inviolability of the provisions of such a contract?*
Waldemar Rogowski: *I appreciate this proposal. But in order for it to work, first of all there would have to be an appropriate legal culture and institutional culture in our country, which would mean that no one would try to question such a standard in the future. That is, if we were to reach a consensus today among all the stakeholders in such an agreement, we would have to have legal certainty that no one would challenge such a standard agreement. It is not just a matter of declaring a given contractual provision correct today, but of ensuring that in 5, 10, 15 or even 20 years' time no one would challenge it. Unfortunately, no one today can guarantee that this standard developed now and even accepted by all stakeholders will not be challenged in the future.*

Reasons for working on a model mortgage contract

In recent years, the Polish financial sector has been facing a growing problem of disputes over the validity of credit agreements concluded by banks with consumers.

While this problem originally concerned mortgage loan agreements denominated/indexed to the Swiss franc, it is now affecting an increasingly broader spectrum of financial products – for example mortgage loan agreements based on reference indices, consumer credit agreements where the sanction of free credit can be applied, or loan and lease agreements concluded not only with consumers, but also with entrepreneurs.

The above observation is confirmed by court proceedings before both national courts and the Court of Justice. Suffice it to point out that recently the Court of Justice has been leaning on the issue of the fairness of reference indices in force in the European Union under the Benchmark Regulation (BMR)[6] in case C-471/24[7] – the first Polish case concerning the WIBOR reference index. There are also three Polish cases before the Court of Justice[8] concerning the problem of credited costs in consumer loans, the resolution of which will also be important from the perspective of mortgage lending. In turn, in March 2025, the District Court in Warsaw[9] issued a ruling favourable to the borrower (entrepreneur), taking into account the aspect of transparency of contractual terms contained in a loan agreement with a variable interest rate.

The examples indicated confirm the diagnosis that the Polish financial sector faces the challenge of arranging relations between financial institutions and consumers in a way that will be transparent, fair and based not only on legal regulations, but also on best market practices.

The lack of legal stability in the relationship between a consumer and a trader, i.e. a situation in which almost any contract can be undermined, contradicts the essence of civil law trading based on the principle of balance of interests and stability. The market economy and the law are not a zero-sum game. The interests of traders and consumers are not conflicting, but common. Trader and consumer need each other. This is the foundation of commercial law understood as the law of exchange of goods. The law of exchange states that a voluntary exchange benefits

6 Regulation (EU) 2016/1011 of the European Parliament and of the Council of 8 June 2016 on indices to be used as benchmarks in financial instruments and financial contracts or to measure the performance of investment funds and amending Directives 2008/48/EC and 2014/17/EU and Regulation (EU) No 596/2014 (OJ EU. L. 2016 No. 171, p. 1 as amended) (the "BMR Regulation").

7 Proceedings before the Court of Justice of the European Union, J.J. v PKO BP S.A., reference C-471/24, ECLI:EU:C:2025:705.

8 Proceedings before the Court of Justice of the European Union, Helpfind Recovery sp. z o.o. v Santander Bank Polska S.A.; reference C-566/24; Proceedings before the Court of Justice of the European Union, P.W. v Bank Polskiej Kasie Opieki S.A., reference C-744/24; Proceedings before the Court of Justice of the European Union, LG v Powszechna Kasa Oszczędności Bank Polski S.A., reference C-473/25.

9 Judgment of the Regional Court in Warsaw of 14 March 2025, case file no. XXIII Ga 763/24.

both parties to it. *Do ut des*, i.e. I give so that you may give. The law of voluntary exchange understood in this way is guarded by the authority of the law understood not only as a rule, but also as a good custom. Behaviour contrary to good morals is unlawful behaviour.

Short-term benefits gained by selected stakeholders as a result of mass questioning and invalidation of contracts lead to long-term losses for the entire market – both for consumers and businesses. Such a situation undermines the credibility of the Polish financial sector and the legal and judicial culture.

An attempt to respond to these challenges is the work on the preparation of a model mortgage credit agreement, the aim of which is to standardise the contractual process and thus mitigate conflicts and risks in relations between banks and consumers.

Nature of the model mortgage credit contract

The model mortgage credit agreement is a legal instrument that draws on the sources of civilisation and the idea of cooperation and dialogue, which can become good practice in the banking sector and a real support for financial market stability. The model mortgage loan agreement refers to the idea of typical contracts in the Code of Obligations (Article 72 of the Polish Civil Code) of 1933[10].

The political changes in Poland after World War II broke the direction of the development of legislation based on contractual practice. To this day, the importance – due to the excessive attachment to legal positivism accepting conflict – of legal forms in the form of codes of good practice, intended to protect, inter alia, the mass consumer of goods and services, including in the financial market, is underestimated.

Model contracts or, more broadly, model law come close to uzans (customs), which are treated as facts with legal significance. They are quite common in international law. Their universality means that they cease to be private in nature and take on a *quasi-public* character. This means that they are considered as good practices that become good custom and, consequently, law.

The model mortgage loan agreement is not a model contract within the meaning of Article 384 par. 1 of the Civil Code[11]. Its concept is close to model law and model commercial contracts used in international trade. Examples of such legal instruments can be found, inter alia, in the work of UNIDROIT, which aims to study the needs and methods of modernisation, harmonisation and coordination of private law between countries and the formulation of uniform legal instruments[12].

[10] Ordinance of the President of the Republic of Poland of 27 October 1933, Code of Obligations (Journal of Laws No. 82, item 598, as amended) ("Code of Obligations").

[11] Act of 23 April 1964 Civil Code (Journal of Laws 2025, item 1071) ("Civil Code").

[12] Official website of UNIDROIT, https://www.unidroit.org/about-unidroit/overview/ (accessed 22.09.2025).

The model mortgage contract is inspired by the work of the US Fannie Mae and Freddie Mac – institutions created by the US Congress to support the mortgage market by ensuring its liquidity, stability and accessibility. These companies have developed a standardised *Uniform Residential Loan Application* (pl. *Uniform Residential Loan Application*)[13] and educational materials for borrowers that promote transparency and security in trading and ensure proper information for both parties to the transaction.

The draft Model Mortgage Loan Agreement is not being prepared in opposition to other drafts operating in the public mind, in particular the consumer and banking community. The aim of the work is to prepare a document that will provide specific material for the discussion on how to implement the contract and on the further development of model contracts in the financial market. The concept of model contracts is to implement the postulate of consumer protection and fairness of contracting on the one hand, and to support the development and competitiveness of the Polish financial sector on the other.

Course of work on the model mortgage credit contract

The commencement of work on the model mortgage credit agreement was preceded by an analysis of the legal areas that currently pose the greatest challenges in relation to mortgage lending in Poland. Among the issues analysed were:

1) the type of interest rate available to the consumer;
2) the construction of a periodically fixed interest rate;
3) the extent of information on the interest rate of the loan indicated in the contract;
4) the need to introduce a compensation mechanism to remove a barrier to the development of fixed interest rate loans;
5) the possibility of granting credit to the consumer for non-interest credit costs;
6) reimbursement in the event of early partial or full repayment of the credit;
7) the possibility for the bank to offer ancillary services;
8) the valorisation of fees charged by the bank.

The above issues were assessed in terms of legal (at European and national law level) and business considerations. Naturally, a central issue raised during the work was the question of ensuring that the model mortgage credit contract complies with the case law of the Court of Justice on consumer protection and mortgages and with the principle of substantive and formal transparency, as required by Directive 93/13[14] and recalled by the Court of Justice on several occasions, e.g. in cases C-609/19, C-125/18, C-186/16[15].

[13] The form can be found on the Fannie Mae website: Uniform Residential Loan Application.

[14] Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts (OJ EU. L. 1993 No. 95, p. 29 as amended) ("Directive 93/13").

[15] Judgment of the Court of Justice of the European Union of 10 June 2021, BNP PARIBAS PERSONAL FINANCE SA v VE, Case C-609/19, ECLI:EU:C:2021:469; Judgment of the Court of Justice of the Euro-

However, it should be emphasised that in order to create a legal instrument that ensures a real balance between the parties and, at the same time, promotes fairness of contracting and competitiveness of the Polish financial sector, it is necessary to take into account also other, equally important areas. These areas – for various reasons – are not as strongly emphasised in the public debate as the case law of the Court of Justice in the Polish mortgage cases.

Firstly, it must be emphasised that the freedom to conduct business activities, including banking activities, cannot be restricted without a valid legal basis – orders and prohibitions introduced otherwise than on the basis of a law (Article 22 of the Constitution of the Republic of Poland[16]). According to Article 20 of the Constitution of the Republic of Poland, this freedom constitutes the basis of the economic system of Poland. In turn, in accordance with Article 76 of the Constitution of the Republic of Poland, the public authority is obliged to protect consumers, inter alia, against unfair market practices – the scope of this protection is determined by the relevant acts. Thus, the model mortgage loan agreement cannot limit the scope of banking activities in relation to mortgage loans to a greater extent than the relevant European and national regulations, primarily the Mortgage Credit Directive[17], Mortgage Credit Act[18], Banking Law[19] or the BMR Regulation. In addition to the issue of ensuring full consumer protection, it is crucial that the above principles and values included in the Polish Constitution are also addressed. The model credit agreement has been prepared with the above contexts in mind.

Secondly, consumer protection should take into account the interests of all consumers using banking services, e.g. borrowers, depositors and other customers – consumers. The interests of individual consumers, as well as different groups of consumers, are different, and it is therefore necessary to apply mechanisms that do not protect the interests of one group at the expense of ignoring the needs of other consumers. An example of such an action could be an attempt to limit the availability of loans with a certain type of interest rate for consumers. Therefore, the model mortgage contract must not restrict access to certain types of mortgage products that may be desired by some consumers.

Thirdly, the financial market should be viewed as part of the critical infrastructure of the state. The banking system plays a key role in it. Supervision of banks and,

pean Union of 3 March 2020, MARC GÓMEZ DEL MORAL GUASCH v BANKIA SA, reference C-125/18, ECLI:EU:C:2020:138; Judgment of the Court of Justice of the European Union of 20 September 2017, RUXANDRA PAULA ANDRICIUC and Others v BANCA ROMÂNEASCÃ SA, reference C-186/16, ECLI:EU:C:2017:703.

16 Constitution of the Republic of Poland of 2 April 1997, (Journal of Laws 1997 No. 78, item 483) ("Constitution of the Republic of Poland").

17 Directive 2014/17/EU of the European Parliament and of the Council of 4 February 2014 on consumer credit agreements relating to residential immovable property and amending Directives 2008/48/EC and 2013/36/EU and Regulation (EU) No 1093/2010 (the "Mortgage Credit Directive").

18 Act of 23 March 2017 on mortgage credit and the supervision of mortgage credit intermediaries and agents (i.e. Journal of Laws 2025, item 720) (the "Mortgage Credit Act").

19 Act of 29 August 1997 Banking Law (i.e., Journal of Laws 2024, item 1646) (the "Banking Law").

in particular, of the implementation of the prudent and stable bank management directive referred to in Article 22aa(1) of the Banking Act and of meeting capital adequacy requirements (which directly translates into sector stability) is carried out by the Financial Supervision Commission. In the course of the work, it is crucial to address the recommendations and positions of the FSC and to gain supervisory approval for the concept of a model mortgage loan agreement, which will be discussed in more detail in the section on possible ways to implement the agreement.

A separate, but important issue raised by stakeholders in the course of work on the model mortgage agreement is the desirability of creating uniform educational materials for consumers, which would be an additional element supporting the understanding of mortgage issues. Such materials would complement the implementation of the principle of substantive transparency. This issue, because of its practical benefits for consumers, deserves a separate discussion once the drafting of the contract itself has been completed.

Consultations are currently underway with those who submitted comments on the first draft of the model mortgage contract presented on 24 July 2025 during the announcement of the EFC Recommendation at the Financial Ombudsman's office[20]. Once this stage has been completed, the EKF Expert Group will prepare a final draft of the agreement, which is expected to be developed by the end of October 2025.

A summary of the key mechanisms envisaged in the model mortgage agreement is presented below. It should be noted that due to the ongoing stakeholder consultation, the final wording of some of the provisions may be subject to minor modifications.

Plain language directive

The model mortgage contract is written in simple and non-legal language using direct phrases to identify the consumer and the bank. The model mortgage credit agreement shall, as far as possible, move away from formalised terms, the meaning of which may not be understood by an attentive and interested consumer. Where it is necessary to use a formal concept with a specific legal or economic meaning, explanations and examples are provided in the body of the contract to facilitate understanding of the concept.

The model mortgage credit contract is intended, among other things, to give effect to the principle of formal transparency by ensuring that the provisions are comprehensible. And the unambiguity of its provisions is intended to have a positive impact on the substantive aspect of this principle.

[20] The draft is available at: https://www.efcongress.com/aktualnosci/wzor-umowy-modelowej-dla-kredytow-hipotecznych/ (accessed 22.09.2025).

The form of the model mortgage credit agreement is part of a broader trend of businesses preparing materials that '*speak to the customer*'. In June 2025, the provisions of the Accessibility Act came into force[21], which requires financial sector entities, among other things, to use language that facilitates understanding of the nature of products and services. According to the Accessibility Act, plain language should resemble spoken language. The model mortgage contract *'speaks to the customer'*.

The interest rate of the loan

The model mortgage contract provides for two interest rate options: variable interest rates and periodic fixed interest rates. It is up to the consumer to choose which type of interest rate to use. The model mortgage contract does not provide for a fixed interest rate for the entire duration of the loan. This is due to the fact that such a mortgage loan is currently not offered by banks in Poland due to the macroeconomic and legal conditions (at this point unclear as to the possibility of collecting compensation in the case of early repayment of the loan due to the drafting of Article 40 of the Mortgage Credit Act).

European law provides for the possibility of offering consumers loans based on three types of interest rates: fixed, variable and a combination of both – periodically fixed. In doing so, European law does not indicate a preferred form of interest rate for the consumer, leaving both consumers and businesses free to do so. It must be emphasised that the Court of Justice has not questioned in its case law the possibility of offering mortgage loans with a specific interest rate. The possibility to offer loans with indicated types of interest rates is reflected in Article 29(2) of the Mortgage Credit Act.

For the above reasons, limiting the model mortgage contract to one form of interest rate is not justified and could be challenged as incompatible with European and national law.

Variable interest rate

The variable interest rate is defined contractually as the sum of a reference index and a margin. The reference index is subject to objective changes resulting from changes in the reference rate of the National Bank of Poland. The value of the margin is fixed. The model mortgage credit agreement contains information on the variable interest rate, the reference index and the administrator of this index as provided for by the BMR Regulation and the Mortgage Credit Act. The model mortgage

[21] Act of 26 April 2024 on ensuring compliance with the accessibility requirements of certain products and services by business entities (Journal of Laws of 2024, item 731) (the "Accessibility Act").

credit agreement does not provide for the provision of detailed information on the methodology for determining the respective reference index. This approach is in line with the Advocate General's opinion of 11 September 2025 in Case C-471/24[22].

Fallback clause

The model mortgage agreement provides for the introduction of a so-called 'fallback clause', setting out the rules for determining the interest rate of the loan in the event of a material change, the non-publication of a reference index or the occurrence of an event that makes it impossible to determine the variable interest rate on the basis of the originally indicated. reference index This clause should be completed on a case-by-case basis by the bank applying the model mortgage credit agreement.

This solution was chosen so as not to create barriers to the implementation of the model mortgage contract. Indeed, banks' fallback clauses are generally prepared in a comprehensive manner – covering a variety of financial products and not just the mortgage contract with consumers. Requiring them to be separately tailored in detail could make the implementation of a model mortgage credit agreement significantly more difficult and, in extreme cases, even impossible.

Given the novelty of the model contract in the Polish financial sector, it is crucial that the process of its introduction does not encounter excessive barriers. If this project is successful, further work could be undertaken to standardise further legal areas in banking activities.

Periodically fixed interest rates

A periodically fixed interest rate is fixed in the contract for the first fixed interest period. In the contract, the consumer and the bank agree on the length of the fixed interest period and the value of the fixed interest rate. It is possible to gradually extend the fixed interest periods depending on the stage of development of the fixed interest loan market.

Before the end of the fixed interest period, the customer is offered a new fixed interest rate for the next fixed interest period. If the customer does not accept the new interest rate (this is an autonomous decision of the customer), the loan will bear a variable interest rate calculated as the sum of the reference index and the margin.

The model mortgage contract does not provide for so-called transfer period – a mechanism that allows for a change of lender if the customer does not accept the new fixed interest rate. In order to change lender, the customer can refinance the loan at market terms.

[22] Opinion of Advocate General Laila Medina delivered on 11 September 2025, in Case C-471/24, ECLI:EU:C:2025:705.

Compensation

The implementation of an effective compensation mechanism is crucial for the development of fixed-rate loans in Poland.

The model mortgage agreement provides for the possibility for the bank to collect compensation in the case of a loan with a periodically fixed interest rate. The bank does not have the possibility to collect compensation in the case of a loan with a variable interest rate.

Compensation may only be charged if the NBP reference rate on the date of the earlier partial or full repayment of the loan is lower than on the date of the fixed interest rate applicable to the fixed interest period. The compensation is calculated with reference to the current fixed interest rate period. The compensation may not exceed 1.5% of the amount of the early repayment for each year remaining until the end of the fixed interest rate period in question. The compensation depends on the amount of the early repayment, the NBP reference rate at the early repayment date and the number of years remaining to the end of the relevant fixed interest period.

Both the Mortgage Credit Directive (Article 25(3)) and the Mortgage Credit Act (Article 40) provide for the possibility of collecting compensation in connection with early repayment of the loan by the consumer. According to these regulations, the compensation must not be a punishment to the consumer for the early repayment of the loan, it should be objective and fair and related to the costs and loss incurred by the bank.

The issue of compensation was decided by the Court of Justice in Case C-536/22[23], in which the CJEU confirmed that the mechanism for its calculation is not limited to determining the costs incurred by the bank in connection with the early repayment of the loan.

A key problem in Poland in determining compensation is the wording of Article 40 of the Mortgage Credit Act, which does not fully implement Article 25(3) of the Mortgage Credit Directive. The provision omits the requirement that the compensation must be *„fair and objective"*, and moreover limits it only to the costs incurred directly by the lender, without taking into account that the compensation may relate to the loss incurred by the lender.

As a consequence of the inaccurate construction of Article 40 of the Mortgage Loan Act, banks are abandoning the compensation mechanism for fear of challenging the correctness of the calculations.

Such a situation is undesirable and unfavourable both: from the perspective of the consumer and the bank. The lack of an effective compensation mechanism hampers the development of the offer of loans with fixed or periodically fixed interest rates and leads to higher credit costs for all consumers, not only for those who repay the loan early.

[23] Judgment of the Court of Justice of the European Union of 14 March 2024, MW, CY v VR Bank Ravensburg-Weingarten eG, Case C-536/22, ECLI:EU:C:2024:234.

It should be clarified that when granting loans with fixed or periodically fixed interest rates, the bank hedges the interest rate risk by entering into hedging transactions e.g. in the IRS market[24]. The bank does not hedge individual loan receivables, but the entire portfolio of receivables. The bank's main and direct costs associated with the early repayment of periodically fixed (or fixed-rate) loans arise from the need to hedge the bank's exposure to interest rate risk. The aforementioned circumstance is the source of the practical difficulty of determining the amount of costs directly related to securing of a specific individually designated loan and thus addressing the premise of Article 40(7) of the Mortgage Loan Act.

It should be pointed out that it should be the task of the legal doctrine and the competent authorities to interpret Article 40 of the Mortgage Credit Act in line with the Mortgage Credit Directive and the CJEU ruling in Case C-536/22. At the same time, it would be desirable to introduce legislative amendments that would unambiguously align the content of this provision with the requirements of EU law.

Credit costs

The model mortgage contract provides for the possibility of granting credit to the consumer for non-interest costs of the loan such as commission or insurance premiums. The exercise of the option to credit costs is an autonomous decision by the customer.

The possibility of crediting costs has attracted considerable interest in the doctrine. It is also the subject of rulings by national courts, including the Supreme Court e.g. in the case I CSK 4175/22[25], in which the Supreme Court confirmed the possibility of crediting costs and charging interest on the capital made available to the consumer to cover these costs (as remuneration for the use of capital). The issue of crediting of costs (in relation to consumer credit) also concerns three Polish cases pending before the Court of Justice: C-744/24-1, C-566/ 24-1, C-473/25[26].

The resolution of the above cases will certainly affect market practice in both consumer and mortgage lending.

Notwithstanding the above, it should be emphasised that, at least in the case of mortgage credit, the possibility of crediting costs should be regarded as a solution for increasing the availability of housing credit and thus intrinsically serving the consumer. The above statement refers to a situation in which the consumer, knowingly and having been properly informed of the economic consequences of the cost-credit mechanism, is willing to make use of it.

This is due to the fact that, in the absence of own funds to cover non-interest credit costs, the consumer would be placed in one of the following two situations:

24 IRS (interest rate swap) transactions.

25 Order of the Supreme Court – Civil Chamber of 15 June 2023, reference I CSK 4175/22.

26 See footnote 3 above.

1) the consumer would not be able to obtain a mortgageor;
2) the consumer would be forced to use other credit products to finance the non-interest costs of the credit, e.g. a consumer credit with a less favourable interest rate due to the lack of security in the form of a mortgage on the property.

Such a situation would prevent or prolong the process of granting the mortgage credit and would require the consumer to do the same thing twice. Furthermore, it would expose the consumer to unjustified double non-interest charges on the loan. Such a situation would be economically disadvantageous for the consumer. Thus, the crediting by the bank, within a single mortgage credit agreement, of both the primary purpose of the agreement and the costs associated with the granting of the credit significantly simplifies trading and is in fact a pro-consumer solution.

Additional services

The model mortgage contract provides for the possibility of offering additional services to the consumer as part of a combined sale, as referred to in the Mortgage Credit Act (Article 9(4)–(6)) and the Mortgage Credit Directive (Article 12(1)). Before the contract is signed, the loan offer, in particular the margin, with and without additional services, is presented to the customer. The costs arising from the additional services are also presented to the customer. It is up to the customer to decide which credit offer is more attractive to him.

Modification clause

The model mortgage contract provides for the possibility of valorisation of the fees charged by the bank during the term of the loan. Fees and commissions may be updated once a year, and their change depends solely on the Inflation Index. The bank may choose not to update the fees and commissions.

The mechanism proposed in the model mortgage credit agreement regarding the possibility to change fees and commissions addresses the CJEU ruling of 13 February 2025 in Case C-472/23 (Lexitor)[27]. The CJEU, on the basis of the consumer credit legislation (of some relevance in the case of mortgage credit), indicated that the conditions for changing the fees associated with the performance of a credit agreement should be set out in the agreement in a clear and concise manner, so that the average, properly informed and reasonable consumer is not in doubt as to the events that may give rise to a change in fees or as to the relationship between those events and the change in fees itself. The proposed mechanism meets the conditions indicated.

[27] Judgment of the CJEU of 13.02.2025, C-472/23, paras 44, 45 and 47.

Possible methods for implementing the model mortgage credit agreement

An important issue that arises in the discussions on the model mortgage agreement is how it should be implemented by credit institutions, in particular whether banks should be obliged to apply it or whether its application should be voluntary. This circumstance is important in view of at least five factors.

1) Compatibility with the Polish Constitution in terms of the principles of freedom of economic activity and the duty to protect consumers;
2) Potential to stabilise contractual relationships and thus reduce legal risks in the form of massive contract invalidation;
3) Creation of a framework to support the development of the competitiveness of the banking sector (issue of regulatory flexibility);
4) Exclusion of ex post control of abusive contract terms under Directive 93/13;
5) Timing and difficulty of implementation.

Several solutions for implementing a model mortgage contract are possible, each with its own legal and business considerations. When discussing the best way to implement a model mortgage contract, it is important to bear in mind not only the desire to address the most pressing issues affecting consumers and the banking industry, but also the long-term implications for all stakeholders.

Among the options for the implementation of the model mortgage contract discussed at the 15th European Financial Congress, among others, were:

1) a recommendation to use the model mortgage contract issued by the Experts of the European Financial Congress;
2) the adoption of a model mortgage credit agreement in the form of good practice by an industry organisation;
3) certification of the model mortgage credit agreement through the position or recommendations of state bodies e.g. the Financial Stability Committee;
4) adoption of a model mortgage credit agreement by means of an annex to an “opt-in” regulation of the competent minister;
5) making the use of the model mortgage credit agreement mandatory in the form of an annex to the law.

The model mortgage credit agreement is primarily intended to serve the function of ordering and stabilising the contractual relationship between the consumer and the bank. In order for the model mortgage contract to fulfil this function, it is necessary to give it the appropriate certification, optimally coming from the authority of the (broadly defined) state and state bodies. Nevertheless, it should be emphasised that, in the current situation of ever-worsening chaos, any form of adoption of a model mortgage contract will be a good step towards restoring order and balance to the parties – stemming the further spread of the crisis. A brief discussion of the various implementation methods follows.

Good practice

The adoption of a model mortgage contract as a good practice being a result of an EKF Recommendation or, going one step further, a recommendation from an industry organisation, e.g. the Polish Banks Association, is the solution that is operationally simplest and can be implemented in a short period of time compared to the other options, as it does not require legislative changes or the involvement of state authorities.

In such an option, the use of the model mortgage contract would be completely voluntary for all banks. As presented above in the article, the importance of good practice in stabilising and reducing legal risks should not be overlooked. Given that model contracts are a new instrument for the financial sector and are not widespread in the Polish legal system, it may be beneficial to integrate them into market practice and trading in a way that allows a gradual uptake of this solution. As indicated above, good practices that are widely used in trading become good practice and consequently law. However, this is a process that takes place gradually and is stretched over time.

Certification of the competent authority

A desirable way to implement the model mortgage contract would be to obtain certification from the competent authorities dealing with the security and stability of the financial sector: Financial Stability Committee or a state-owned bank – Bank Gospodarstwa Krajowego. Such a pathway could involve the authority issuing a position or recommendation on the voluntary application of the model mortgage contract, or it could involve the use of a "*comply or explain*" formula.

The application of such a solution requires more time, as well as the involvement of state authorities. However, certification by a state authority will significantly strengthen the authority of the solutions indicated in the model mortgage contract, confirming their fairness.

Importantly, certification of the model mortgage agreement in the above formula, leaves credit institutions with considerable flexibility to adapt its provisions to changing market conditions or new business needs, without unduly restricting business opportunities.

Certification by a state authority is a moderate and compromise alternative to other options – it does not significantly restrict the freedom to conduct business, while at the same time enhance trading certainty and provide an additional element of the consumer protection regime. Implementing the model mortgage contract in this way should be the "*minimum goal*" for further action.

Annex to the "*opt-in*" regulation

The introduction of a model mortgage credit agreement by way of an annex to a regulation of the competent minister in an "*opt-in*" formula, i.e. assuming voluntary application, is gaining more and more supporters.

Naturally, this is a longer and more complicated process than certification by a state authority, but nevertheless brings tangible benefits. It guarantees legal stability and reduces legal risk, while not raising constitutional concerns (as in the case of a law) and retaining sufficient flexibility in the event that changes need to be made to the content of the model mortgage contract. The model mortgage credit contract is subject to a presumption of fairness enjoyed by the laws and regulations in accordance with Article 1(2) of Directive 93/13.

It is necessary to emphasise that the presumption of fairness pursuant to Article 1(2) of Directive 93/13 and in light of recital 13 of the preamble covers both mandatory and dispositive provisions. According to recital 13 of the preamble to Directive 93/13: "*the expression 'mandatory provisions' used in Article 1(2) also includes rules which, according to law, are to be applied between the contracting parties provided that no other arrangements have been made;*". The wording "*applicable laws or regulations*" should be interpreted in the context of the meaning given to it by Directive 93/13. It follows from recital 13 that this wording also includes dispositive provisions, so that the implementation of the model mortgage credit agreement as an annex to the implementing regulation in an *opt-in* format (i.e. in the form of a dispositive provision) enjoys a presumption of fairness.

Doubts about the possibility of the presumption of fairness of dispositive provisions arise from the mistranslation of some Court of Justice rulings. In some rulings, the English word "*mandatory*" referring to statutory or regulatory provisions has been translated as "*mandatory*" instead of "*binding*". These include, for example, cases: C – 125/18[28], C-779/18[29] or Case C-192/20[30].

The judgment in Case C-192/20 confirms the above conclusions on mistranslation – in para. 31[31] of the judgment, the CJEU indicates that „*mandatory rules*" are excluded from the scope of review under Directive 93/13. Then, in para. 32[32] of this

[28] Judgment of the Court of Justice of the European Union of 3 March 2020, Marc Gómez del Moral Guasch v Bankia SA, C-125/18, ECLI:EU:C:2020:138.

[29] Judgment of the Court of Justice of the European Union of 26 March 2020, Mikrokasa S.A. and Revenue Niestandaryzowany Sekurytyzacyjny Fundusz Inwestycyjny Zamknięty v XO, C-779/18, ECLI:EU:C:2020:236.

[30] Judgment of the Court of Justice of the European Union of 10 June 2021, Prima banka Slovensko a.s. v HD, C-192/20, ECLI:EU:C:2021:480.

[31] "*Furthermore, according to Article 1(2) of that Directive, contractual terms reflecting mandatory statutory or regulatory provisions will not be subject to the provisions of that Directive*" – CJEU judgment in Case 192/20, paragraph 31.

[32] "*In that regard, the Court has stated on several occasions that, as is apparent from the thirteenth recital in the preamble to Directive 93/13, the exclusion from the scope of that directive provided for in the said Article 1(2) covers both the provisions of national law applicable between the contracting parties*

judgment, the CJEU confirms that, in accordance with recital 13 of Directive 93/13, dispositive provisions are also excluded from the scope of control.

In addition to the judgments of the Court of Justice containing a mistranslation, there are a number of judgments which confirm the exclusion of the dispositive provisions from the scope of control under Directive 93/13 e.g. Case 81/19, paragraphs 34 and 35[33].

The introduction of a model mortgage contract by way of an annex to an "*opt-in*" regulation of the competent minister should be the target method of implementation.

Obligation to apply the Act

The implementation of the model mortgage contract through a statutory obligation to apply it raises significant constitutional concerns. The choice of such a method leads to a significant restriction of the freedom of economic activity referred to in Article 20 of the Polish Constitution. It is, in fact, the imposition by the state of a method of carrying out the entrepreneur's operational activity, which is unacceptable.

In addition to the above issue, it should be pointed out that this method also has other significant disadvantages:

1) the unpredictability of the outcome of the legislative process – the final content of the agreement may differ significantly from the proposed draft;
2) the very limited possibility to change the content of the model mortgage agreement if necessary due to business or legal factors.
3) long implementation period.

Given the above considerations, it is important to point out that the choice of a statutory route to implement the model mortgage contract is not expedient or desirable and, in the long term, may significantly impede access to mortgage credit for consumers.

irrespective of their choice and those applicable in the absence of a provision to the contrary, that is to say, in the absence of other agreements between the parties. This exclusion is justified by the fact that it must rightly be presumed that the national legislature has established a balance between the total rights and obligations of the parties to certain contracts, which the Union legislature clearly intended to preserve (Banco Santander and Escobedo Cortés judgment, paragraph 43 and case law cited therein)." CJEU judgment in Case 192/20, paragraph 32.

[33] "*As pointed out in paragraph 25 of this judgment, the expression 'applicable laws or regulations' within the meaning of Article 1(2) of Directive 93/13 also includes, in the light of recital thirteen in the preamble to that directive, rules which are relatively binding, that is, rules which will lawfully be applied between the contracting parties where no other arrangements have been made. However, from that point of view, that provision does not make any distinction between, on the one hand, rules which apply irrespective of the choice of the contracting parties and, on the other hand, dispositive rules.*" [para 34] and "*In that regard, on the one hand, the fact that a national dispositive provision may be derogated from is irrelevant for the purposes of verifying whether a contractual term reflecting such a provision is excluded by Article 1(2) of Directive 93/13 from the scope of that directive.*" [paragraph 35] Judgment of the Court of Justice of the European Union of 9 July 2020, NG and OH v SC Banca Transilvania SA, C-81/19, ECLI:EU:C:2020:532.

It is high time to put an end to the legal chaos in the credit market

In recent years, the Polish financial sector has been facing a growing problem of disputes over the validity of credit agreements concluded by banks with consumers. The reality has become abnormal, as it is difficult to consider as a natural state of permanent legal warfare, a permanent state of legal epidemic infecting the stability of the financial system and destroying individual credit relations.

The purpose of this article was not to assess the legal cause of such a state of affairs, but to indicate a way to put a definitive end to similar wars for the future in the interests of everyone, i.e. bank customers on the asset side (borrowers), bank customers on the liability side (depositors who are also customers of the Bank Guarantee Fund), credit institutions, and more broadly financial institutions, supervisors and regulators, legislators, the executive, courts, consumer protection ombudsmen, the stock exchange, the economy as a whole, etc.

The financial market infrastructure is becoming – irrespective of the technical and legal approaches – one of the key elements of the modern critical infrastructure threatened by cyber-attacks by cyber criminals, including from the direction of Russia. One cannot ignore the geopolitics in which we find ourselves, and the fact that Poland is a frontline country already targeted by direct attacks from Russia.

Let us remember that chaos meant in Greek mythology the personification of the primordial state before the elements of the universe were ordered. It was the primordial state of existence from which the first gods (Earth(Gaia) and Heaven(Uranos)) originated. Chaos had three characteristics:

1) it was a bottomless abyss into which everything continually falls; it is the opposite of an earth with a stable foundation;
2) was a place without fixed directions, where everything falls apart in different directions;
3) was a sphere separating heaven and earth, with chaos remaining between them.

All three of these characteristics of chaos fit into the already long-standing legal war in the mortgage market, which, after the so-called franking credits, has entered the area of gold credits and is ‚testing' the possibility of invading further areas of the financial market. War is destruction, which only serves those who want the war to continue, never to end. However, such a reality is not the norm, cannot be the norm, because it is abnormal and leads to disaster, sooner or later.

We have high hopes for the results of the consultation on the already finished draft model mortgage contract presented to all stakeholders at the meeting at the Financial Ombudsman as a recommendation of the European Financial Congress (Responsible Finance Club). Particular hopes should also be pinned on the Financial Stability Committee as a kind of guardian of the critical infrastructure for the stability of the State, i.e. all its citizens, which is the financial market. The model mortgage contract can and should become a template for mass contracts concluded by financial institutions with consumers of financial services and products, not only in the banking sector, but also in the insurance and investment sectors. It also represents an opportunity for the development of the mortgage bond market in Poland.

Calling a spade a spade, we have been dealing for years with legal chaos, which it is high time to put an end to. Vestigia terrent! Let us not tread in footsteps that deter, because we will never get out of it. Let us remember that, above all, time is of the essence.