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The legal aspects of financing insurance premium costs by a bank acting as an insurance intermediary

Abstract

The purpose of this study is to analyse the issue of financing insurance premium costs, in particular the bank's own commission when the bank acts as an insurance intermediary, in the light of the Consumer Credit Act, protective regulations and general provisions of the Civil Code.

The article applies the dogmatic-legal method, based on the interpretation of legal provisions, case law and scholarly view as well as selected soft-law instruments, including the KNF Recommendation U.

The findings confirm the admissibility of financing all insurance premium costs by the bank, while differentiating the assessment of charging interest on the financed commission. The study also identifies information duties of banks acting as intermediaries and signals that, where justified by the purpose of the credit and consumer protection, such financing may constitute a separate contractual relationship.

Keywords: bancassurance, financed credit costs, insurance agent commission, consumer protection, interest

JEL Codes: G21, G22, K12, K22, K23

Introduction

The steady, dynamic growth in interest in insurance as a form of credit protection has already been noted in the literature (Szczukocka 2017, pp. 153–154). The following years have seen a consistent continuation of this trend. It is worth mentioning here that in 2023, the number of policies covering credit and other financial risks

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and insurance guarantees alone amounted to 3.84 million – almost three times more than in 2015, while the amount of gross premiums written amounted to approximately PLN 2.45 billion[1]. However, the entire market is growing[2], including life insurance, and it is precisely the latter, not covering the bank's own risks, that will be the subject of this publication. In view of this development, the analysis of issues related to *bancassurance* is gaining social significance.

In the area outlined above, interest is aroused by a situation where a customer goes to a bank for a credit, the bank indicates insurance as security, in the selection of which it acts as an intermediary (insurance agent), and then proposes to finance the costs of insurance cover. In this case, the financing of insurance costs creates a complex structure whereby the bank is entitled to accumulate its own profits at the expense of the customer. Under these mechanisms, the bank may, among other things, acting as a creditor, charge commission, fees and interest on the costs of its own commission as an insurance intermediary (included in the gross value of the insurance premium). This solution raises legitimate doubts of an axiological nature and, consequently, of a legal nature (Rogoziński 2024a, p. 309), and therefore it should be assessed in terms of its compliance with consumer protection regulations, including the regime of the *Consumer Credit Act*, as well as the standard set out in Article 353(1) of the Civil Code[3], which shapes the limits of freedom of contract and general restrictions on the creation of legal relationships for participants in economic transactions, in particular with regard to the nature of the credit obligation under Article 69(1) of the Banking Law[4]. The subject of the analysis in this study is the admissibility of both the aforementioned mechanism and the interest rate on the credited insurance costs distributed by the creditor itself. In order to cover the individual issues with the widest possible scope of analysis of legally and practically relevant cases, they will include, where appropriate, references to general regulations and consumer transactions. For the purposes of this publication, the terms *"bank"* and *"creditor"* will be used interchangeably and will refer to all entities authorised to grant bank credits within the meaning of Article 69(1) of the Banking Law.

1. Insurance as credit security

Article 93(1) of the Banking Law allows banks, in order to secure claims arising from banking activities[5], to demand security as provided for in the Civil Code, bill of exchange law or in accordance with accepted customs of domestic or international trade. Security is understood as a means of strengthening a bank claim (Kosiński 2013, Art. 93, nb 1; Sikorski 2015, Art. 93, nb 7), primarily as a substitute for satisfying

1 Statistics Poland, *Statistical Yearbook of the Republic of Poland*, Warsaw 2024, p. 600.
2 Ibidem, pp. 599–600.
3 Act of 23 April 1964 Civil Code (i.e. Journal of Laws of 2025, item 1071).
4 Act of 29 August 1997 Banking Law (i.e. Journal of Laws of 2024, item 1646, as amended).
5 In accordance with the literal wording of the provision, the doctrine rightly advocates a broader scope of claims that may be covered by security (see Kosiński 2013, Article 93, nb 2).

the creditor in the event of the debtor's insolvency (Sikorski 2015, Art. 93, nb 6). One should also agree with the view that the role of security is broader and should include all instruments for minimising the risk arising from banking activities, including reducing the chances of future insolvency (Rogoziński 2019a, p. 48).

The unquestionable advantage of an insurance contract as a form of security is precisely the transfer of risk to an institution that is, in principle, solvent. This type of credit enhancement is considered to have significant advantages over traditional instruments such as mortgages and sureties. It is pointed out that mortgages themselves carry additional risks, such as macroeconomic instability affecting their value (Rogoziński 2024a, p. 191) or the occurrence of circumstances preventing the disposal of the encumbered property, which at the same time determines the debtor's financial situation (Rogoziński 2024a, p. 188). With regard to suretyship, however, the issue of suretyship being granted by persons who are in legal or factual relations with the borrower, such as family members or colleagues within the same workplace, is raised, which leads to the potential insolvency of the original debtor having the same effects on the surety (Rogoziński 2024a, p. 44). Due to the fact that the list of types of security in Article 93 of the Banking Law is open-ended (Sikorski 2015, Article 93, nb 11), insurance has also come into use, which has also been recognised by the legislator in the regulations on consumer credit[6]. The fact that this instrument is not burdened with the aforementioned risks characteristic of other institutions has led to a steady increase in interest in this form among banks.

Due to the subjective nature of the insurance relationship, three types of contracts used in the context of bank credits can be considered (Maśniak 2015, pp. 289–291):

1) The bank as an insurance intermediary – the creditor then acts as an agent of the insurance company and is subject to the provisions of the Insurance Distribution Act. It also charges a fee (commission) for its activities as an agent, which constitutes an additional financial burden for the customer – also in relation to other solutions – and exceeds the cost of the *net* written insurance premium[7]. The borrower acts as both the policyholder and the insured, and therefore benefits from the protection provided by the contract.
2) The bank acts as both the policyholder and the insured party – the subject of the insurance is the credit claim itself, e.g. bridging insurance, low down payment and repayment throughout the entire period (Więcko 2019, p. 25). In this variant, the customer is outside the insurance relationship, but, for example, on the basis of a credit agreement with the creditor, is obliged to refinance the insurance costs.

[6] Act of 20 July 2001 on consumer credit (Journal of Laws No. 100, item 1081, as amended); Act of 12 May 2011 on consumer credit (Journal of Laws of 2024, item 1497, as amended).

[7] The *net* written insurance premium is understood as the amount corresponding to the cost of actual insurance coverage – intended for compensation expenses and insurance benefits, which, together with the costs of insurance activities and remuneration such as the insurance intermediary's commission, constitutes the *gross* insurance premium (Gmytrasiewicz 2005, *Składka ubezpieczeniowa*).

3) The bank acts as an insurer on behalf of a third party – the customer takes out insurance, usually group insurance, based on the structure of Article 808 of the Civil Code.

There is a very significant difference in the ways in which the customer pursues their own interests in each of the above forms. In the first case, the borrower may independently exercise his rights under the insurance cover, as the cover relates to his interests and he is a party to the agreement. The only negative aspect from his perspective is the need to pay the bank's remuneration for its intermediary activities. This is a completely different situation from that in contracts where the bank acts as both the insurer and the insured, where, despite the fact that the borrower actually finances the insurance cover, the insurance company may bring a recourse claim against the bank's customer. Such a practice seems to be accepted[8] in the light of the current assessment of the Financial Supervision Authority expressed in Recommendation U on good *bancassurance* practices, but it raises significant axiological doubts (Rogoziński 2024, p. 159). These doubts are particularly evident in relations with consumers, where the issue of the potential abusiveness of such provisions in credit agreements is raised, shifting additional costs to the customer while at the same time making them unaware that they are not receiving additional protection in this way (Rogoziński 2023, pp. 220–221). Therefore, there is no doubt that from the borrower's perspective, the most desirable method of shaping the insurance relationship is one in which they benefit from insurance protection.

The issue related to these differences was already extensively regulated in Recommendation U in 2014, and then, even more thoroughly, in the amended version of 2023. The first version of the Recommendation already included the obligation for banks, as insurance distributors, to indicate to customers whether they act as an insurer or an insurance intermediary[9]. This obligation has been retained in the new version of the Recommendation, but further, more detailed recommendations have also been formulated in this area. This category includes, among other things, the requirement to take into account the customer's interests and the amount of remuneration of the insurance intermediary (who is also the creditor) in relation to the costs of insurance cover, which is very important in this matter[10]. This is undoubtedly the result of the KNF recognising the problem of excessive commissions charged by insurance agents, which had also been noted earlier by the European Insurance and Occupational Pensions Authority (EIOPA). In 2022, the European regulator issued a warning in which it noted that *significant portion of the gross written premium (GWP) paid by consumers finances the remuneration of banks*, while on average, only less than 30% of the premium is related to the costs of services

[8] However, this does not determine the admissibility of such a solution; for more on the legal nature of the KNF Recommendation, see Maśniak 2015a, pp. 7–9.

[9] Recommendation U of the Polish Financial Supervision Authority (**KNF**) on good *bancassurance* practices, Warsaw 2014, recommendation no. 19; Recommendation U of the Polish Financial Supervision Authority on good *bancassurance* practices, Warsaw 2023 (***Recommendation U 2023***), recommendation no. 11.

[10] Recommendation U 2023, Recommendation No. 20.

provided to customers[11]. EIOPA also recognised the potential for *significant and detrimental conflicts of interest and to the implementation of poor business practices to maximize profits*, and found that there were *unjustified charge to consumers* and *unfair pricing practices*[12]. In this context, the updated Recommendation U seems to be a precise response to the conclusions presented by EIOPA, as it sets 30% as the minimum share of expected compensation and benefit costs in the insurance premium[13].

In this case, the characterisation of insurance as an instrument for securing credit claims plays a significant role, as only in this case can the insurance contract be considered as an institution strengthening the position of the creditor within the existing relationship with the borrower, which allows for the adoption of an appropriate perspective in further considerations. This means that it would be wrong to treat insurance as an undertaking whose sole beneficiary would be the customer, with no effect on the bank. This is particularly true given that it stems from the bank's right to demand the establishment of such security. This is particularly important when considering the advisability of financing insurance costs.

2. Legal relationship arising from the credit agreement

The most important factor in assessing the admissibility of financing insurance costs related to bank intermediation, in the light of Article 353^1 of the Civil Code, is to determine the compatibility of such a contractual provision with the general nature of the credit. A contradiction in this respect, in connection with Article 58 of the Civil Code, leads – in general terms – to the absolute invalidity of the contractual provision. Consequently, determining the nature of a specific contractual relationship should be the starting point for deciding whether the parties are bound by specific contractual provisions (Szczygieł 1997, p. 21). There is also no doubt that all provisions of a bank credit agreement under Article 69(1) of the Banking Law, as a non-statutory agreement, including those outside the catalogue *of essentialia negotii*, must also fall within the limits of freedom of contract set out in Article 353(1) of the Civil Code (Gutowski 2022, Article 353^1, nb 66).

In order to determine the compatibility of the crediting of the bank's commission costs (as an insurance agent) with the nature of the contractual relationship of the credit agreement, the existing dispute in the doctrine regarding the definition of a credit or even the opinion on its existence will remain irrelevant[14], as the subject of consideration will only be the obligation under the credit agreement resulting from

[11] EIOPA, warning of 30 August 2022, EIOPA-BoS-22/434, https://www.eiopa.europa.eu/system/files/2022-09/10.0_eiopa-bos-22-434-warning-to-insurers-and-banks-on-credit-protection-insurance.pdf (accessed on 26 December 2024); analysed in more detail by: Rogoziński 2024a.

[12] Ibidem.

[13] Recommendation U 2023, recommendation no. 20.2

[14] For more on the definition of credit, see: Paxford, 2013, Article 69, nb 2 and the positions cited therein.

Article 69(1) of the Banking Law. In order to effectively examine the nature of a bank credit agreement and assess the compliance of individual contractual provisions with the nature of the resulting credit obligation, it is necessary to identify both the essential features of the agreement and the nature of the obligation itself. The credit agreement itself obliges the bank to make a sum of money available to the borrower for a specified purpose, which is done by paying the funds regardless of whether it is done by means of cash, bank money or electronic money (Tracz 2019, p. 109). The borrower, on the other hand, is obliged to repay the funds received and pay remuneration to the bank, which necessarily includes interest (interest rate) and, optionally, commissions (Tracz 2019, p. 110). A bank credit agreement is reciprocal in nature (Tracz 2019, p. 107).[15] The literature notes that only some of the provisions contained in Article 69(2) of the Banking Law should be treated as *essentialia negotii* (Bączyk 2020, p. 588). According to the widely held view in doctrine, the purpose of the credit is one of the objectively relevant provisions (Molis 2005, Article 69, nb 14)[16]. It is precisely the concept of the agreed purpose of the credit that seems to be of key importance in the context of further considerations, as there are no doubts as to the transfer of the amount of money or its repayment.

The legislator does not clearly indicate what may constitute the specified purpose of the credit – in this respect, it leaves it to the discretion of the parties to the agreement (Molis 2005, Art. 69, nb 14). For this reason, it is also pointed out that the degree of precision varies – from the most general, such as cash credits, which are practically devoid of it, to the highly detailed (Tracz 2007, p. 144).

It should be agreed that the freedom left to the bank and the customer in determining the purpose of the funds made available causes problems related to defining the conceptual framework within which *the agreed purpose of the credit* is contained. Treating this concept as unlimited would make it possible to reduce it to an absurdity contrary to the laws of socio-economic trade. This could be achieved, among other things, by the bank imposing a requirement in its offer to credit future interest on the credit, which would only result in an increase in the credit amount and interest rate, and thus also in its own interest income. This should be all the more objectionable as such action could be repeated an unlimited number of times.

Furthermore, the legislator itself clearly limits the scope of possible credit purposes, as is the case with the prohibition on granting credits for the purchase of bank securities issued by the lender in Article 91 of the Banking Law (Heropolitańska 2021, p. 378). The potential negative assessment of the admissibility of financing third-party liabilities with a credit, in the case of their subjective identity with the bank acting as the creditor, was also noted (Rogoziński 2024a, p. 303). For these reasons, it should be recognised that the concept *of the purpose of a credit* is, in fact, as indicated by the doctrine (Tracz 2007, p. 144; Molis 2005, Article 69, nb 14), arbitrary, but only within very broad limits, which have

[15] Differently, among others, Dybowski, Pyrzyńska 2006, p. 249; Tanajewska 2019, p. 895.

[16] See, however, Bączyk 2020, p. 609.

only been partially specified by the legislator. The starting point for considerations on the scope of the concept *of the purpose of a credit* may be an attempt to identify it when financing the costs of insurance protection concluded through a bank as an insurance agent.

In order to determine the appropriate purpose of financing, the one presented in the credit application may be considered as a determinant. This is because it must be concluded on the basis of Article 66 in conjunction with Article 69(2) of the Banking Law, is constructed within the framework of a template provided by the bank in question (Heropolitańska 2021, pp. 277 and 280) and expresses the customer's will. In view of the above, it should be assessed that if the borrower's insurance coverage exceeds the scope of their credit application and is solely the result of the bank's request to establish security, this gives rise to a separate purpose of the credit (Rogoziński 2019, pp. 376–377). Taking into account the fact that the statutory definition of a credit agreement is linked to the purpose of the funds, it may be concluded that, in reality, the separate purposes of the credit give rise to two separate credit obligations, as indicated in the literature, the legitimacy of such a solution would also be supported by a systemic and purposive interpretation taking into account other institutions in the financial services market, in particular the regime of the *Consumer Credit Act* (Rogoziński 2019, p. 377).

Providing borrowers with additional protection under this type of liability was in line with the European financial market law's aim to satisfy consumer needs and expectations as fully as possible, which also translates directly into the security of the financial market (Rutkowska-Tomaszewska 2013, pp. 69, 84–85). In practical terms, this is also supported by the proposed variability of insurance premium financing, which also includes a comparison of the cost of opting for it with that of covering it independently – in this case, presenting this financing as an additional obligation is particularly consistent (Rogoziński 2024, pp. 61–62). An attempt can also be made to derive a logical argument according to which the borrower's various primary material needs quite intuitively constitute a completely separate category of purpose than the needs resulting from the necessity to satisfy the bank's demands.

However, the resolution of this issue remains irrelevant to the assessment of the more important question of the admissibility of including insurance cover as an additional purpose of the credit. The *net* costs of insurance protection may in each case constitute a separate subject of the credit, which should not raise any axiological or legal doubts. From the perspective of socio-economic turnover, it is justified to cover additional obligations incumbent on the borrower by means of lending the funds necessary for this purpose. Such a solution should not be hindered by the location of the source of the obligation in the credit agreement itself, just as the common practice of taking out credits to repay other credit obligations does not raise any doubts. This purpose, even in the case of refinancing premiums paid by the bank as the insurer, does not fall within the scope of considerations regarding the potential inadmissibility of lending to the creditor's liabilities, because when the borrower's obligation to refinance the costs of premiums results from the credit agreement, it constitutes the borrower's own liability (Rogoziński 2024a, p. 303). However, the financing of costs related to the bank's remuneration as an insurance agent deserves further analysis.

One might get the impression that financing the bank's commission as an insurance intermediary by means of a credit granted by it (as part of the financing of the gross insurance premium) bears some similarities to the previously cited example of financing future interest. This conclusion seems to be accurate, given that both interest and the agent's commission constitute the bank's remuneration and are elements of the cost of the credit itself[17]. Therefore, it should be considered that the provisions imposing on the customer the obligation to pay the costs of the credit (commission, interest, etc.) covering the bank's remuneration would actually calculate them only on the capital *allegedly made available*. Accepting this reasoning would mean that such provisions would have to be classified as invalid in their entirety on the basis of Article 58 of the Civil Code in conjunction with Article 353(1) of the Civil Code and Article 69(1) of the Banking Law. In that case, the thesis that, apart from the permissible use of the credit and thus the possibility of disposing of it in this respect, the costs which do not constitute the borrower's economic objective, as they do not result from the borrower's previously expressed will, but originate from the desire to increase the bank's profits and at the same time lead only to the achievement of this profit by imposing specific mechanisms on the customer, exceed the permissible use of the credit. This would apply to the cost of the bank's commission (as an insurance agent) incurred as part of the insurance for the credit being taken out.

Ultimately, this conclusion cannot be accepted due to the fact that the borrower may, for any reason, not have the funds or not want to use them to cover the costs of the insurance agent's commission themselves, as is the case with other bank commissions (Mędrzecka 2024, p. 184). Then, considering the link between obtaining this security and the very receipt of the credit[18], which is important to the borrower, it should be recognised that financing the insurance intermediary's commission – when the borrower does not want to pay it himself – is also in his interest and, consequently, within the permissible purpose of the credit. It is worth mentioning, however, as previously noted, that the purpose of obtaining insurance would still be separate from the main purpose of the credit.

Further doubts may arise, however, from the practice of making the conclusion of the entire proposed bank credit agreement conditional on the financing of costs such as the bank's commission as an insurance agent, including on the basis of the general protection provided for consumers (in relation to consumer customers). It is unacceptable for a bank to use its economic or informational advantage over a protected borrower to oblige them to take out further credits to cover its own remuneration (Rogoziński 2024, pp. 61–62)[19]. Pursuant to Article 10 of

[17] As in the case of the total cost of credit for consumer credit (see Article 5(6) of the *Consumer Credit Act*). This topic will be further developed in this publication.

[18] For more on this phenomenon, see: Rogoziński 2019, pp. 376–377.

[19] This would also raise doubts on the grounds of contractual fairness, discussed in more detail in: Romanowski 2013, p. 393.

the Insurance Distribution Act[20], the customer is legally guaranteed the right to choose which insurance offer (and from whom) to use in order to satisfy the bank's demand. Consequently, by reasoning *a maiori ad minus*, they should be able to cover the remuneration costs themselves. To achieve this, the bank is obliged to clearly present this option, as well as the individual costs that make up the entire contract (Rutkowska-Tomaszewska 2018, p. 21; Szymczak 2017). This is particularly important given that only a properly informed borrower could make a fully informed decision that the bank's financing of the insurance agent's commission is in their own interest, which, as argued above, is closely related to the purpose of the credit and the agreement itself. Once all of the above obligations have been fulfilled, in conjunction with the application of the regulations resulting from the new Recommendation U, it seems that there should be no doubt as to the admissibility of such a provision on the financing of an insurance intermediary's commission.

3. Admissibility of charging interest on the credited costs of the insurance broker's commission

In order to provide a complete picture of the legal situation related to the crediting of commission costs of a bank acting as both an insurance intermediary and a creditor, it is important to assess the regulations under the *Consumer Credit Act*. This is also of great importance due to the share of the consumer credit market in the Polish economy, which is at the forefront of the European ranking in this respect (Penczar 2024, p. 106) and the suggested potential further development of this market due to Directive 2023/2225 (Penczar 2024, pp. 112–114).

A credit agreement within the meaning of Article 69(1) of the Banking Law will constitute a consumer credit within the statutory meaning if the borrower is a consumer and the value of the subject matter of the agreement is up to PLN 255,000 (Grochowski 2024, Article 3 nb 9 and 11). A concept of broad significance in the light of the considerations and regulations analysed is the crediting of credit costs. The credit costs themselves consist of interest and non-interest credit costs (Gil, Szlaszyński 2022, p. 63) – the latter include insurance premiums (Szanciło 2023, Chapter 3, II). The coverage of this entire group of benefits has been the subject of numerous doctrinal and jurisprudential positions. It is impossible to find in the literature and case law a view that the crediting of credit costs on the basis of the *Consumer Credit Act* would be inadmissible; on the contrary, it is a widely accepted practice, also by the legislator (Czuchwicki 2025, p. 194). It is also supported by economic arguments, such as the possibility that the consumer may not have the necessary funds to pay, for example, a commission or insurance premium. However, there are significant doubts as to the admissibility of charging capital interest on

[20] Act of 15 December 2017 on insurance distribution (i.e. Journal of Laws of 2024, item 1214, as amended).

such a credit – this is a matter that has been the subject of preliminary questions referred by Polish courts to the Court of Justice of the European Union – C-71/24 (Regional Court in Krakow), C-566/24 (District Court in Łódź), C-744/24 (District Court in Włodawa).

Significant discrepancies arise from differences in the interpretation of the term «*total amount of credit"* and its significance for determining the basis for interest calculation. It seems indisputable, based on the case law of the CJEU and the Supreme Court, that the total amount of credit cannot include credit costs, both interest and non-interest[21]. These judgments are based on the unanimous assumption that the amounts included in the cost of the credit are not actually paid to the consumer and therefore do not form part *of the credit made available*, a concept which defines the total amount of the credit. Some legal scholars disagree with this position (Gil, Szlaszyński 2022, pp. 73–74). The inadmissibility of including credited credit costs in the total amount of credit under the provisions of the *Consumer Credit Act* has been beyond doubt since 22 July 2017, when this issue was resolved by the legislator in Article 5(7) by explicitly stating in the legal definition of the total amount of credit that it cannot include credited credit costs (Czech 2025, Article 5, nb 234 and 238). However, the assessment of the legal consequences of this solution is controversial, which is related to the discussion on whether the determination *of the total amount of the credit* is identical to *the amount paid out under the credit agreement*[22]. The very concept of the amount paid out raises considerable doubts due to the dominance of cashless transactions. The equalisation of the release of the amount with the disbursement of funds is also controversial, as an amount may be released, a significant part of which is collected by the bank a second later, e.g. for its own remuneration – such actions are sometimes assessed as not constituting an actual disbursement of the credit amount[23].

It is the second of these concepts – *the amount paid out* – that replaced the first under the amendment to the *Consumer Credit Act* of 23 October 2013 as the basis to which the interest rate is applied (Gil, Szlaszyński 2022, pp. 73–74). Proponents of the admissibility of charging interest on credited credit costs argue that *the amount paid out* is a term with a broader meaning, also covering financed credit costs, which leads to their inclusion in the interest-bearing capital (Matuszewska-Różańska 2024, pp. 63–65; Gil, Szlaszyński 2022, pp. 60–62). This, in turn, is based on arguments about the purposefulness of the 2013 amendment, the rationality of the legislator in distinguishing between concepts – here also the EU legislator, who in Article 3(j) of Directive 2008/[24], also makes the interest rate dependent

21 Judgment of the CJEU of 21 April 2016 (C-377/14) *Radlinger*; Judgment of the Supreme Court of 30 January 2019 (I NSK 9/18), LEX No. 2643248.

22 The Supreme Court's case law is criticised for incorrectly equating these concepts (see Gil, Szlaszyński 2022, pp. 73–74).

23 Judgment of the Regional Court in Warsaw of 20 February 2024, V Ca 3268/23, LEX No. 3709915

24 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 EU L 133, 2008, p. 66, as amended).

on *the amount of credit paid out*, defining *the total amount of credit* separately[25] – a literal interpretation, as well as the unquestionable admissibility of consolidation credits, under which existing credit obligations are covered, the general remuneration of a bank credit agreement under Article 69(1) of the Banking Law (Matuszewska-Różańska 2024, pp. 63–65; Gil, Szlaszyński 2022, pp. 60–62). There are legitimate reservations about the latter argument, including those related to the perceived lack of grounds for unequivocally recognising a bank credit agreement as fully remunerated (Korpalski 2016, p. 49; Janiak 2002, p. 59). Nevertheless, the view that interest on credit costs is permissible is supported by some court rulings, including Supreme Court ruling[26], and deserves approval insofar as it states that the regulation of the *Act* on consumer credit does not preclude the charging of interest on credit costs. It is worth noting that the definitions in the Mortgage Credit Act are formulated analogously in this respect (Czech 2024, Article 4; Czech, 2025, Article 5, nb 3, 8, 146, 236). In view of the above, it should be assumed that, in the light of both regulations, interest on the credited insurance premium, including the commission of the bank acting as an agent, is permissible.

However, the situation requires additional consideration in terms of its shape from the perspective of the Civil Code and the Banking Law. In this context, it is worth noting some interesting developments in case law. On the one hand, the Supreme Court ruled in favour of the admissibility of interest on, inter alia, bank commission (in the role of creditor) when an attempt was made to transfer the discourse from the Civil Code on the basis of interest to the regulation of Article 69(1) and (2) of the Banking Law and its limitation to the credit made available, free of costs[27]. On the other hand, however, two interesting arguments were put forward against the admissibility of interest:

1) violation of the nature of the capital interest obligation[28];
2) the application of an analogy to the prohibition of anatocism under Article 482 of the Civil Code.[29]

These views are also raised in disputes concerning consumer credit as arguments in favour of applying the interest rate exclusively to the total amount of the credit. However, their implications go beyond the regime of the *Consumer Credit Act*, which is of considerable importance for borrowers who cannot benefit from its advantages.

[25] It is worth noting that this definition has been retained in the newer version of the Directive (see Article 3(8) of Directive 2023/2225 of the European Parliament and of the Council (EU) 2023/2225 of 18 October 2023 on credit agreements for consumers and repealing Directive 2008/48/EC (OJ EU L 2023, item 2225, as amended).

[26] Judgment of the Regional Court in Kielce of 29 May 2025, II Ca 614/25, LEX No. 3891788; Judgment of the Supreme Court of 22 February 2023, II CSKP 786/22, OSNC 2023, No. 10, item 97.

[27] Judgment of the Supreme Court of 22 February 2023, II CSKP 786/22, OSNC 2023, No. 10, item 97.

[28] Judgment of the District Court in Bartoszyce of 4 November 2021, I C 983/20, LEX No. 3280686; judgment of the Regional Court in *Toruń* of 25 May 2022, VIII Ca 169/22, LEX No. 3369969; judgment of the District Court in Słupca of 27 June 2022, I C 146/22, LEX No. 3561755; judgment of the Regional Court in Kielce of 1 February 2023, II Ca 1858/22, LEX No. 3511122.

[29] Judgment of the Regional Court in Toruń of 25 May 2022, VIII Ca 169/22, LEX No. 3369969.

The first conclusion is that the credited costs of the credit do not constitute capital made available to the borrower, as they are not actually at their disposal. The legal nature of interest as remuneration for the use of someone else's capital is not in doubt[30], and therefore it is essential to analyse what this use consists of. At this point, it should also be noted that in the objections raised against the admissibility of charging capital interest, all non-interest credit costs should not be equated, due to, among other things, the differences mentioned earlier between the net written insurance premium and the insurance intermediary's commission, which are elements of the gross premium, i.e. the insurance premium within the meaning of Article 805(1) of the Civil Code.

Some rulings do indeed distinguish the commission (albeit in the role of the creditor), which, as the bank's remuneration, raises particular legal doubts as to whether its cost constitutes the basis for interest[31]. Similarly, the issue of the potential inability to recognise the insurance premium paid to the insurer as capital made available as a benefit to a third party was raised, albeit without in-depth analysis[32]. However, this should be rejected, as it still covers the payment of the borrower's liability, who receives insurance protection (Rogoziński 2024a, p. 254). This is also another argument for distinguishing, in the course of assessing the admissibility of interest on individual credited costs, between the *net* written premium, which is the direct cost of insurance cover, and the insurance agent's commission.

The case law questioning the classification of capital allocated to the bank's remuneration as used by the borrower, and thus the possibility of charging interest on this amount, seems justified. This would apply to the amount of the bank's commission as an insurance intermediary. It is worth noting that Article 69(1) of the Banking Law defines the concept *of the amount of credit used*, which is subject to repayment with interest by the borrower, but it seems that in the event of the entire credit being disbursed, it will not differ from *the amount made available to the borrower* or *the credit granted,* which in turn forms the basis for calculating the commission (Gil, Szlaszyński 2022, pp. 61–62). It is precisely the concept *of the amount made available to the borrower* that is often the starting point for challenging the right to charge interest on the credited credit costs. However, for the reasons explained earlier in this paper, it should be assumed that the credited costs are also included in this amount. This may be the case regardless of the assumption that a credit for the payment of an insurance premium constitutes a separate contractual relationship. It is also impossible to disagree with the statements that, as a rule, interest will be calculated on the total amount of the credit used (Gil, Szlaszyński 2022, pp. 61–62). However, this amount cannot include the part for which the obligation to pay interest would exceed the nature of the obligation, which would lead to its invalidity (Szczygieł 1997, p. 21). The nature of interest is to compensate the creditor for the temporary restriction on the use of capital caused by its use by

[30] See Kondek, Somerski 2015, footnote 28 and the publications extensively cited therein.
[31] Judgment of the Regional Court in Poznań of 23 April 2024, XV Ca 150/24, LEX No. 3731597.
[32] Ibidem.

the borrower (Lemkowski 2007, p. 165). This restriction does not apply when the capital has never actually left the creditor and the borrower has not received it and is only required to transfer further money towards the repayment of this amount[33]. Thus, in such a case, the interest base amount must be reduced – this is the case when the bank's commission is financed.

This assessment is also strongly supported by the second argument cited from case law, which postulates the application of an analogy to the prohibition of anatocism under Article 482 of the Civil Code. The Regional Court in Toruń presented a bold view, especially considering the prevailing belief in the doctrine of the narrow application of Article 482 of the Civil Code, which would not cover, for example, the prohibition on charging capital interest on capital interest (Balcerowiak 2014, pp. 24–25; Czech 2025a, pp. 50–56). However, accepting the validity of the view extending this prohibition to the entire collection of compound interest motivated by the protection of the debtor (Machnikowski 2024, Article 482, nb 10) and taking into account – in the case of the re-separation of commission from other credit costs – the similarity in charging remuneration on remuneration, which occurs both in charging interest on interest and interest on the credited commission, this postulate of applying analogy can be defended by recognising the particular similarity[34]. However, contrary to the content of the ruling itself, it seems that this view cannot be applied in the case of financing other credit costs, i.e. net written insurance premiums. An analogy based solely on the similarity of charging costs on costs does not seem to be so similar in nature and should therefore be considered unjustified (Kabza 2010, p. 55) – similarly in the case of adopting the prevailing view regarding the scope of regulation of Article 482 of the Civil Code, which would explicitly indicate that there is no uniform standard for relatively similar activities. Adopting the above position would be of significant importance for the systemic assessment of the provisions and would determine the admissibility of interest in the cases in question.

In view of the above, it is reasonable to adopt a mechanism whereby the full amount of the credit, including the entire insurance premium, will be equal to the amount *of the credit granted* and *the sum made available to the borrower*, and *the amount of credit used*, which, solely for the purpose of calculating interest, will be reduced by the bank's commission as an insurance agent, as well as by other forms of remuneration for the bank. However, it will not be reduced by the amount of the *net* insurance premium and will not be reduced at all as an amount to be repaid. In this context, consideration should be given to the situation where the customer decides to conclude the contract through another agent. In that case, unlike in the more widely discussed case, the crediting of the agent's commission would be based on the actual use of the creditor's capital. There would also be no risk of violating the principle of contractual loyalty resulting from the bank deriving excessive profits from commissions (as an insurance agent). The need to protect the

33 This is also the case in the previously cited case law.

34 Resolution of the Supreme Court (7) of 29 September 2009, III CZP 41/09, LEX No. 518164 – as cited in: Kabza 2010, p. 55.

customer from the harmful effects of excessive commissions British case law, also based on CJEU case law, has established a non-normative obligation to disclose the amount of commissions (Rogoziński 2024a, pp. 288–291). This obligation seems to be aptly formulated and worthy of being transferred to Polish banking practice, but it points to specific risks arising from this particular structure, where the insurance intermediary and the creditor are one and the same entity. The above arguments speak in favour of distinguishing between the two situations, allowing the bank to earn interest on the financing of another insurance agent's commission.

Summary

One must agree with the views that there should be no doubt as to the admissibility of a bank financing a *net* written insurance premium. However, the financing by the creditor of the costs of its own commission as an insurance intermediary (agent) should be considered permissible if it is done on an optional basis and the relevant obligations to provide the customer with complete and comprehensible information on the costs of financing the commission are met, e.g. in the form of simulations or comparisons of alternative financing methods (Rogoziński 2024, pp. 61–62, 96; 2024a, pp. 318–319).

However, due to systemic, practical and logical arguments, the financing of insurance premiums could be classified as having a separate purpose, and thus as a separate contractual relationship. This would only be the case, however, if the insurance was the sole result of the bank's request, not included in the credit application, and if there were reasonable protective considerations in favour of this.

However, the view present in the doctrine, which unconditionally accepts the charging of interest on the bank's commission, including as an insurance intermediary, cannot be shared. Doubts in this regard are raised not by the most frequently cited provision of the *Consumer Credit Act*, but by the application of the general sanctions of the Civil Code, which negatively assess the compatibility of such interest with its nature within the meaning of Article 353^1 of the Civil Code.

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