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From the Editor

The importance of the security profile of our magazine is heightened by current processes and phenomena both in the financial market and its surroundings. Broadly speaking, it’s not just about the security of funds in financial transactions, but also about a simple sense of security, primarily for individuals and businesses. Such a sense of security is becoming increasingly difficult to achieve in the face of the deteriorating climate in international relations, rising tensions between states, and even armed conflicts. This is influenced, on the one hand, by the increasing complexity of some financial operations, especially the potentially most profitable ones, and by the rapidly growing risk of manipulation or fraud conducted using the latest technologies, supported by advanced psychological techniques for shaping motivations or building seemingly close relationships. In such circumstances, greed is no longer the only factor that poses a threat to economic and even physical security.

The coming year of 2025 has brought evidence that the predicted end of history was an illusion of incorrigible optimists. Moreover, there are strong grounds for pessimistic projections for the future, especially those related to the emerging new geopolitical architecture and the inherent dangers. Domestically, the most pronounced diversification of the political scene in decades and near-polarization of voter sympathies are also grounds for concern, both for Poland’s international standing and the socio-political order within the country. This, unfortunately, is no consolation; this also applies to other countries within and outside the European Union.

In this turbulent environment, the most significant signs of 2025 on the Polish financial market included:

- The Polish Financial Supervision Authority’s approval of the acquisition of a 49% stake in Santander Bank Polska by Austrian Erste Group Bank. This is one of the largest transactions in the Central European banking market in recent years, strengthening Erste’s position in the region.
- The Pekao-PZU memorandum regarding a potential merger could have significant impact on competitiveness in the Polish financial market, which would create one of the largest financial institutions in Europe. However, these events did not result in any noticeable changes for customers.

The situation for most crypto-asset investors was much worse. The scale of cryptocurrency fraud in Poland is very large and growing year by year. Without proper attention to „CHF loans" lesson, the scale of customer losses could soon become fuel for political infighting.

Meanwhile, the banking sector appears to be calming down due to disputes with clients over abusive clauses in foreign currency loan agreements. A similar impact may be seen in the limited opportunities for law firms to generate revenue from WIBOR disputes. Both of these developments are significant for the sector's stability amidst falling interest rates and the growing number of insolvent companies.

In these circumstances, it is worth wishing decision-makers enlightened decisions for the New Year 2026, and all stakeholders in the financial market prudent behavior in the allocation and use of their financial resources.

This year's final issue of Safe Bank, initiating the second hundred volumes of the journal, contains five papers in the Problems and Views section, whose authors are newcomers to our journal. Their topics cover a wide range of problems and issues, starting with threats to the banking sector and consumers resulting from the abuse of free credit sanctions. Another article is devoted to the use of internal transfer rates as a tool supporting the expansion of green asset offerings in banks. The third paper concerns a bibliometric analysis of publications on phishing. The fourth article addresses the problem of crediting insurance premium costs by a bank acting as an insurance agent. This latest study essentially serves as an approving commentary on the judgment of the Provincial Administrative Court in Warsaw regarding the administrative fine imposed by the Polish Financial Supervision Authority on a shareholder for failure to fulfill investor obligations.

In the Miscellanea section, we present a description of the debate at the panel session of the 11th Congress of Polish Economists on December 4, 2025, on banking crisis management and customer protection. This debate was held under the patronage of the Bank Guarantee Fund and concluded the program celebrating the Fund's 30th anniversary.

Inviting you to collaborate in subsequent issues of Safe Bank, I wish you an interesting read.

Jan Szambelańczyk
Editor-in-Chief

Problems and Opinions

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Misuse of Free Credit Sanctions as a Potential Threat to the Banking Sector and Consumers

Absctract

The main objective of the article is to assess the threat of the free credit sanction to both the banking sector and consumers. The sanction of free credit (SKD) leads to depriving the lender of income (such as interest, fees, commissions, premiums, costs, etc.) from the consumer credit granted. If it is applied, the lender loses the revenue due from the credit granted and the borrower is, in principle, only obliged to return the principal of the credit used. In order to familiarise the reader with the issue of SKD, a review of the literature as well as Polish and EU case law was carried out. In the empirical part, on the other hand, an analysis was carried out, based on a comparison of financial data on SKD in individual banks in two periods, i.e. as at 31.12.2023 and 30.06.2024. After an analysis of legislation (in particular Directive 2008/48) and case law, the first hypothesis was confirmed. On the basis of studies of bank data and Poles' attitudes to the withholding of information in the lending process, the second hypothesis was also confirmed, according to which the abuse of SKD poses a threat not only to the banking sector, but also to the beneficiaries themselves – consumers.

Key words: free credit sanctions, credit scam, consument

JEL Codes: G11, G18, G21

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Introduction

Although cases concerning Swiss franc loans still account for a significant proportion of civil court cases, there is a noticeable decline in the number of new cases being brought, in contrast to cases concerning free credit sanctions (SKD), which are increasingly being brought before the courts. SKD is a consumer protection measure provided for in Article 45 of the Consumer Credit Act (Journal of Laws of 2024, item 1497, as amended), in force since 18 December 2011. A borrower may avail themselves of this sanction if the lender violates their obligations as detailed in this Act. According to data from the Polish Bank Association, by the end of 2021, between 100 and 200 such proceedings were pending before Polish courts, but by 2024, the number of SKD cases exceeded 10,000 and continues to show an upward trend. Although the line of jurisprudence has so far been favourable to banks (e.g. 84% of cases won by Bank Millenium as at 30 September 2024), borrowers who are attempting to take advantage of SKD continue to file new lawsuits. Disputes also go beyond the first and second instances, as exemplified by the referral of a question concerning SKD to the Supreme Court by the Regional Court in Poznań (ref. III CZP 3/25) and the influx of cases in this area to the CJEU (e.g. C-714/22) (Leśko, Folwarski 2025).

In order to provide an overview of the issue of SKD, a review of the literature and Polish and EU case law was conducted. In the empirical part, an analysis was carried out based on a comparison of financial data concerning SKD in individual banks in two periods, i.e. as at 31 December 2023 and 30 June 2024.

Given the popularity of SKD in Poland, it seems reasonable to hypothesise that the abuse of free credit sanctions may pose a threat not only to the banking sector, but also to consumers themselves. According to the second hypothesis, it can be concluded that SKD in the Polish legal system does not always meet the condition of proportionality provided for in Directive 2008/48.

1. Characteristics of free credit sanctions

In order to answer the question of how SKD may affect a consumer credit agreement, it is first necessary to define consumer credit itself (Article 3(1) of the Consumer Credit Act, hereinafter referred to as the CCA). It is a credit agreement for an amount not exceeding PLN 255,550 (or the equivalent of this amount), which the creditor grants or promises to grant to the consumer within the scope of its business (Brzozowski i in. 2023, p. 224).

A sole trader entering into a contract directly related to their business activity may also benefit from the protection guaranteed by provisions sanctioning prohibited contractual provisions and their incidental control. Such an entrepreneur will have the status of a consumer if the contract they are challenging is directly related to their business activity and, moreover, the content of the contract indicates that it is not of a professional nature for the entrepreneur. The connection between the contract and its professional nature may be expressed through a statement included in the content of the contract or established in the context of the entrepreneur's business activity. The scope of the determination is also made, in particular, by comparing its actual scope with the scope indicated in the CEIDG. However, a sole trader may demonstrate that the contract concluded was not of a professional nature for them, regardless of its scope as specified in the CEIDG, e.g. in a situation where the entry in the CEIDG is broader than the activity actually performed by the trader. In such a case, the actual scope of the business activity conducted by the entrepreneur is taken into account, and not the one specified by the formal entry in the register (Balwicka-Szczyrba, Sylwestrzak 2024, p. 764).

In disputes concerning the Consumer Protection Act, the status of a consumer is often questioned by representatives of the defendant banking sector. It is reasonable to assume that if an entrepreneur has concluded a contract as a consumer and not as part of their business activity, they will be subject to the protection afforded to them as a consumer and, consequently, will be entitled to benefit from the Consumer Protection Act. Pursuant to Article 6 of the Civil Code (k.c.), it is the lender, i.e. the bank, that has the obligation to prove that the borrower cannot benefit from consumer status, but it is recommended that a borrower who wishes to benefit from consumer protection actively participate in arguing their status (Kozak, Pilawska, Tomanek 2025, pp. 29–30).

The SKD is regulated in Article 45u.k.k., according to which the consumer is protected when the lender:

- fails to comply with the written form of the credit agreement,
- fails to comply with the formal requirements covered by the agreement,
- exceeds the permissible limit of maximum fees and interest for late repayment of the credit, specified in Article 481 § 21 of the Civil Code, namely twice the statutory interest for late payment, which is twice the sum of the NBP reference rate and 5.5 percentage points),
- exceeds the permissible limit for non-interest loan costs, which is 25% of the loan amount for costs independent of the loan period and 30% of the loan amount for costs dependent on the loan period (Heropolitańska i in. 2021, pp. 536–537).

The formal requirements covered by the agreement include: the date of conclusion of the credit or loan agreement, the amount of the credit or loan, the borrower's or loan recipient's consumer status, and the consumer's declaration of taking advantage of the free credit sanction within a specified period (Kozak, Pilawska, Tomanek 2025, p. 23).

Pursuant to Article 221 of the Civil Code, a consumer is a natural person who performs a legal transaction with an entrepreneur not directly related to their business or professional activity. The decisive factor for granting consumer status is the moment of conclusion of the agreement. Both national and European regulations protect consumers who perform activities for non-commercial purposes, which are understood as not directly related to their business activity or remaining outside it (Cempura, Kasolik 2020, p. 183).

The free credit sanction (SKD) leads to the creditor being deprived of income (such as interest, fees, commissions, contributions, costs, etc.) from the consumer credit granted. If it is applied, the creditor loses the income due from the credit granted, and the borrower is, in principle, only obliged to repay the principal of the credit used (Czech 2023, pp. 670–715).

However, the free credit sanction does not cover the costs of establishing bank collateral if the consumer is not obliged to pay them under the agreement. These costs are not considered to be the lender's income, therefore they cannot be charged to the bank (Kozak, Pilawska, Tomanek 2025, p. 14). The free credit sanction does not currently apply to mortgage agreements (Czech 2023, p. 671).

The SKD may partially limit the effect of the penalty of invalidity in favour of the consumer in relation to a consumer credit agreement, because according to Article 58 § 1 of the Civil Code, a typical case of a penalty of invalidity could have negative consequences for the consumer, e.g. in the form of an obligation to immediately repay the credit used. Assuming that Article 45 of the Consumer Credit Act does not constitute lex specialis in relation to Article 58 § 1 of the Civil Code, it should be concluded that in the absence of the required elements in the agreement, the agreement may be considered valid but subject to SKD, rather than applying the rigour of invalidity of the agreement (Czech 2023, pp. 670–715). Another important issue related to SKD is the moment of contract performance, as the Civil Code does not define contract performance in Article 45(5). The case law also presents two different views in this regard (Leśko, Folwarski 2025):

1) the one-year period should be counted from the date of performance of the agreement by the creditor, i.e. from the date of disbursement of the loan
2) the one-year period should be counted from the date of performance of the agreement by both parties, i.e. from the date of full repayment of the loan.

The first position is taken, inter alia, by the Regional Court in Warsaw, in case V Ca 2783/23, which interprets Article 45(5) of the Civil Code as the performance of the agreement by one of the parties to the contractual relationship, namely the lender, who pays the borrower the funds constituting the subject of the loan agreement, thereby fulfilling the performance characteristic of the loan agreement.

The Regional Court in Kielce in case II Ca 1590/24, on the other hand, represents the second view, according to which Article 45(5) of the Consumer Credit Act provides for the expiry of the consumer's right to submit a written statement after one year from the date of performance of the agreement, which is not tantamount to the payment of the loan amount by the bank. According to the Regional Court in Kielce, the performance of the agreement should be defined as a state in which all obligations under the consumer credit relationship have been duly fulfilled, including obligations arising under the Act, such as obligations relating to the main performance and ancillary performances, both on the part of the consumer and the creditor, which are performed voluntarily or compulsorily. A consumer credit agreement is therefore performed on the date on which the consumer has repaid the last amount due under that agreement to the creditor. However, the contract is not performed if one of the parties still has obligations under it, regardless of whether they are specified in the contract or arise by operation of law. The Regional Court in Kielce emphasised that the only moment of performance of the contract is the fulfilment of all obligations arising from the contract, and accepting any earlier date would result in different decisions in the same factual circumstances.

In connection with the important issue of when a consumer's right to use the SKD expires, the Regional Court in Poznań decided to refer this question to the Supreme Court. In addition, the court asked whether it is permissible to stipulate in a consumer loan agreement that interest will also be charged on the part of the loan that was used by the borrower to pay commission. The Supreme Court will thus decide whether banks may charge interest on the costs of loans, in particular on commission. The third question from the Regional Court in Poznań concerned the issue of whether, in a situation where the actual annual interest rate and the total amount to be paid by the consumer were incorrectly calculated in the loan agreement, the sole reason for which was the inadmissible inclusion of interest on non-interest loan costs, such a breach constitutes grounds for applying the SKD. The Supreme Court's answer in this case will regulate the issue of applying SKD in a situation where the incorrect determination of the APR and the total cost of the loan is solely the result of the impermissible charging of interest on the credited costs. The Supreme Court's ruling on the second and third questions of the Regional Court is important insofar as most SKD lawsuits are based on the allegation of interest on costs included in the loan and on the allegation of incorrect calculation of the APR and the total cost of the loan (Leśko, Folwarski 2025).

The CJEU also took a position on SKD in its judgment of 13 February 2025 in case C-472/23. In response to a preliminary question in which a Warsaw district court considered whether the overstatement of the APR due to the unfairness of certain provisions of the agreement constituted a breach of the information obligations under Directive 2008/48, the CJEU ruled that Article 10(2)(g) of Directive 2008/48 on consumer credit agreements must be interpreted as meaning that the fact that the credit agreement specifies an annual percentage rate of charge which turns out to be inflated because some of the terms of that agreement were subsequently found to be unfair within the meaning of Article 6(1) of Directive 93/13 on unfair terms in consumer contracts and therefore not binding on the consumer, does not in itself constitute a breach of the information obligation laid down in that provision of Directive 2008/48. Furthermore, C-472/23 CJEU clearly separated the effects of Directive 93/13 and Directive 2008/48, as it took as a reference point in its considerations the total cost of the credit, which also includes costs that the consumer undertakes to bear on the basis of potentially unfair terms. In this way, the CJEU prevented a chain reaction whereby the calculation of the APRC would be made dependent on the calculation condition contained in Directive 2008/48.

This position of the CJEU leads to the conclusion that the possibility of using the SKD is excluded for the objection most frequently raised in lawsuits by borrowers or assignees of consumer claims (Wandzel, Trzaskowski 2025).

One of the most recent examples of EU case law on the SKD is case C-714/22, in which Profi Credit Bulgaria underestimated the APR in a loan agreement. In its reasoning for the judgment, the CJEU cited Article 23 of Directive 2008/48 in conjunction with its recital 47, which states that although the choice of the system of penalties applicable in the event of a breach of national provisions adopted in accordance with that directive is a matter for the Member States, the penalties thus provided for should be effective, proportionate and dissuasive. The penalties should therefore be sufficiently severe in relation to the seriousness of the infringements they are intended to punish, in particular by ensuring a genuinely dissuasive effect and by complying with the general principle of proportionality. The CJEU took the view that the penalty of depriving the creditor of the right to interest and fees in the event of an APR being indicated which does not include all those costs reflects the seriousness of the infringement committed by the bank and is dissuasive and proportionate. Since the inclusion of the APR in a credit agreement is of significant importance to consumers, the CJEU ruled that the Bulgarian national court may apply ex officio national provisions under which the absence of such information results in the credit being considered interest-free and free of charges, which corresponds to the SKD provided for in the Polish legal system.

There is no doubt that the application of the SKD in the absence of an APR meets the conditions of Article 23 of Directive 2008/48, according to which the sanctions adopted by Member States must be effective, proportionate and dissuasive. Analysing the institution of SKD in accordance with a pro-European and pro-constitutional interpretation, it should be concluded that while these sanctions meet the criterion of effectiveness and have a deterrent effect, they cannot be fully considered to comply with the criterion of proportionality. In certain situations, consumers are given excessive privileges at the expense of creditors (banks – entrepreneurs).

2. SKD and the proportionality requirement under Article 23 of Directive 2008/48

Currently, there is a view in legal doctrine and the banking market that SKD should not be applied to all cases described in Article 45 of the Consumer Credit Act. M. Bednarek gives examples of technical errors, such as typos and obvious calculation errors, as exceptions. As soon as the creditor identifies an error made, for example, as a result of a calculating device malfunction, they should notify the consumer of the error, which follows from the rule of performance of obligations established in Article 354 of the Civil Code. While typos may slightly distort the name or address of the creditor, in the case of calculation errors, greater doubts should be raised – such an error, if not corrected in time, may significantly affect the amount of the liability incurred or the interest charged on it, which is of significant importance to the consumer. What is more, the consumer may become uncertain about the accuracy of the fees charged by the creditor or even suspect that these fees have been deliberately inflated. It seems worth considering a proposal that only in the case of an error made to the detriment of the consumer, the bank should correct the amount and reduce it to the correct level, and in the case of an error to the benefit of the consumer, it should bear the costs resulting from the error itself. Similarly, the above should be excluded in the opposite situation, where the creditor's details are omitted from the agreement because the consumer is aware of them. However, the free credit sanction should apply to contracts concluded at a distance or outside the bank's premises, because in such cases the consumer's doubts about the creditor's details seem to be fully justified (Bednarek 2009, pp. 20–21).

Both distance contracts and off-premises contracts are defined in Article 2 of the Consumer Rights Act of 30 May 2014. Pursuant to Article 2(1) of the Consumer Rights Act, a distance contract is defined as a contract concluded with a consumer within an organised distance contract system, without the simultaneous physical presence of the parties, with the exclusive use of one or more means of distance communication up to and including the moment of conclusion of the contract. An important requirement for a contract to be classified as a distance contract is that the contract with the consumer must be concluded within the framework of the above-described system, excluding other, primarily traditional, direct methods of concluding contracts. By way of comparison, Directive 2011/83/EU refers to an 'organised system of distance sales and services', which is a broader concept and can be interpreted as a system allowing the trader to perform more activities than just concluding contracts, e.g. performing distance contracts (Kocot, Kondek 2014, p. 9).

On the other hand, a contract concluded outside the business premises (Article 2(2) of the Consumer Protection Act) is defined as a contract between a trader and a consumer concluded (Czech 2016, p. 47):

- with the simultaneous physical presence of the parties in a place that is not the business premises of the entrepreneur (e.g. at the consumer's place of residence),
- as a result of accepting an offer made by the consumer in the circumstances referred to in point 1 (e.g. when the entrepreneur collects offers from consumers at their place of work),
- at the business premises of the entrepreneur or by means of distance communication immediately after establishing individual and personal contact with the consumer at a place that is not the business premises of the entrepreneur, with the simultaneous physical presence of the parties (e.g. when a consumer is invited on the street to the business premises in order to present the entrepreneur's commercial offer),
- during a trip organised by the trader for the purpose or with the effect of promoting and concluding contracts with consumers (e.g. if, during a sightseeing trip, consumers are offered the opportunity to purchase household appliances from a given trader).

For a contract to be considered as concluded outside the business premises, it is essential that both parties are physically present in the same place when performing a specific activity, otherwise the contract will be considered as concluded at a distance (Rogacka-Łukasik 2015, pp. 17–25).

Since Article 30(1)(14) of the Consumer Credit Act introduces the condition 'if the agreement provides for it' into the information obligation, it seems reasonable that there is no need to provide information about loan repayment safeguards if they are not provided for in the agreement. This situation is important because in one of his recent statements on SKD, the vice-president of the Polish Bank Association (ZBP) gave an example of a lawsuit in which there was an allegation of incorrect designation of loan insurance, even though the borrower did not incur any insurance costs, as clearly stated in the agreement (Krupa-Dąbrowska 2024).

This position is also taken by M. Bednarek, according to whom the absence of such collateral in the agreement is tantamount to the lender not requiring it and therefore not having to inform the consumer about it. The question therefore arises as to what happens if it has been agreed that the consumer will provide security, but this information is not included in the agreement. M. Bednarek believes that even in this situation, the possibility of using SKD should be excluded, because the consumer was informed and agreed to the security conditions, and the use of SKD only because this condition was omitted in the agreement would mean excessive formalism or discrimination on the part of the lender (Bednarek 2009, pp. 20–21).

However, such a proposal seems unfounded, because if the contract does not include information about the loan security, in the event of a dispute over the contract, there is no certainty that the bank has fulfilled its information obligation and actually informed the borrower about it. Moreover, in the event of doubts regarding the repayment of the liability and the manner of its settlement, the borrower seems to be deprived of elements of the agreement that are important from their perspective, as they cannot find any information on the agreement form about how the security was established.

The opinion of representatives of the banking community should also be taken into account. A study presented by the president of the Polish Bank Association shows that the allegations raised by so-called compensation law firms are not only disproportionate, but sometimes even absurd. In one of the lawsuits, the bank's reference to the Office of Competition and Consumer Protection (UOKiK) instead of the President of UOKiK was considered to be incorrect information about the supervisory authority.

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supervisory authority. There was also an allegation of a lack of information about the address for electronic delivery, even though the bank was not obliged to provide it. Another violation, according to the law firm, was the bank's reference to the 'Table of Fees and Commissions' instead of describing the fees and costs explicitly in the agreement. The banks were also accused of failing to specify the variable interest rate clause, even though the agreement stated that the interest rate was subject to change depending on the indices determined by the National Bank of Poland, and the bank had informed the consumer what the maximum interest rate was and how high it could be. It can therefore be concluded that the above lawsuits, even if they are dismissed by the court, unnecessarily take up space in an already overcrowded court calendar (mainly due to Swiss franc cases) and, in addition, involve unnecessary costs for the consumer and the bank (Białek 2024, pp. 1–9).

Although the purpose of Article 45 of the Consumer Credit Act is to protect consumers from a lack of information or from false, misleading or fraudulent information, according to M. Bednarek, it should not be used to discriminate against lenders and enforce SKD regardless of the banks' intentions. The question of whether a breach of the conditions set out in Article 45 of the Consumer Credit Act could have negative consequences for the consumer is also important. An important proposal is therefore not to impose sanctions in cases where the creditor has not acted unfairly or unreliably towards the consumer (Bednarek 2009, pp. 20–21). The president of the Polish Bank Association also proposed legislative changes regarding SKD. The first suggestion is to exclude claims under Article 45 of the Consumer Credit Act from free sale in order to limit the participation of compensation companies in court disputes. Similar to M. Bednarek, he argues that a breach of information obligations by the creditor should have a negative impact on the borrower's financial situation and thus have a negative impact on the consumer's decision to conclude the agreement. This would eliminate the above-described lawsuits with absurd allegations, which are brought en masse by paralegal firms seeking easy profits in SKD. Another suggestion is to limit the list of grounds for SKD to only those that are relevant and have a negative impact on the borrower's financial situation, so that consumers' rights are not abused. The ZBP also proposed that sanctions be adjusted in proportion to the significance of the banks' violations and that a fixed rate of legal representation costs be introduced for court cases in the area of SKD, which would be independent of the WPS (Białek 2024, pp. 1–9).

The proposed amendments presented by M. Bednarek and the President of the Polish Bank Association seem to refer primarily to the condition of proportionality mentioned in Article 23 of Directive 2008/48. As a result of the above changes, it would be possible to guarantee a fair outcome of sanctions for the bank for violating the regulations, as a result of which the consumer found himself in an unfavourable financial situation. Depriving the bank of revenue solely on the basis of the condition set out in Article 30(1)(1), consisting in the omission of consumer or bank details from the form, seems disproportionate. The possibility of obvious errors, as pointed out by M. Bednarek, should also be taken into account, as the application of such a severe sanction for them is highly unfair to the bank.

In its latest judgment in Case C-472/23 concerning SKD, the CJEU ruled that Article 23 of Directive 2008/48 on consumer credit agreements, in conjunction with its recital 47, does not preclude national legislation which would provide for a uniform penalty consisting in depriving the creditor of the right to interest and fees, regardless of the individual seriousness of such a breach, insofar as that breach is likely to undermine the consumer's ability to assess the extent of his obligation. However, in recital 49 of the judgment, the Court noted that these penalties should be effective, proportionate and dissuasive, which also means that it is permissible to differentiate penalties depending on the seriousness of the alleged infringement in the case of, for example, the new Consumer Credit Act. such a decision is, however, a matter for the national legislature, which should assess the appropriateness of such differentiation.

Such differentiation would be extremely important given the seriousness of potential banking infringements, which, according to the current wording of Article 45 of the Consumer Credit Act, are treated uniformly. It also seems closer to the principles of proportionality set out in Article 23 of Directive 2008/48. The above considerations may lead to the conclusion that the first hypothesis, indicating a lack of proportionality in the application of SKD on the Polish market, should be confirmed.

3. Abuse of SKD as a threat to the banking sector

The mere abuse by consumers of their rights under the SKD can be considered a violation of the idea of responsible lending. This concept is defined as responsible lending by lenders and responsible borrowing by consumers. In the post-crisis reality, in view of the phenomenon of excessive indebtedness, it ceased to be merely a postulate and became a subject of interest for both EU and, consequently, national legislators. Although 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/ 5, and the Act of 12 May 2011 on consumer credit do not contain a direct reference to the above idea, some of their provisions should be interpreted as prerequisites for its implementation. The idea of responsible lending has become particularly important in the post-crisis period, and compliance with it is crucial to ensure the proper functioning of the financial market, in particular the consumer credit market (Rutkowska-Tomaszewska 2018, pp. 115–124).

Although in Poland it most often refers to the lender's responsibility and their use of unfair market practices (including misselling, exemplified by payday loans), in this case there is a risk of violating the idea of responsible borrowing, i.e. abuse by borrowers who may incur their obligations in an irresponsible and unethical manner.

Table 1. Respondents' attitudes towards withholding information in the lending process

Question	Year	Respondents' answers in %			
		never	sometimes	often	always
Is it morally acceptable to conceal information during the credit process if its disclosure would prevent the loan from being granted?	2018	74,6	21,8	2,2	1,4
	2017	81,9	14,3	1,5	2,3
	2016	83,2	13,6	1,8	1,4

Source: own work based on: G. Borys, R. Manacka, *Creating consumer protection law vs. responsible borrowing on the consumer loan market*, Annales Universitatis Mariae Curie-Skłodowska, sectio H – Oeconomia, Vol. 53, No. 3 (2019), Zielona Góra 2019, pp. 27–28.

According to research by A. Lewicka-Strzałecka (2018), respondents cited dishonesty on the part of lenders (50.8%) as the main reason for accepting the concealment of information in the lending process. 41.3% of respondents considered that the need to satisfy an important need was a sufficient reason, while 7.9% were of the opinion that such action was a socially acceptable standard of consumer behaviour. Among the respondents who chose 'never' as their answer, 55.2% considered that concealing information in the credit process is simply illegal. One-third of respondents cited ethical considerations as the basis for their response, and 12.1% cited the risk associated with concealing information (according to Borys, Manacka 2019, pp. 27–28).

As credit is now widely available and becoming increasingly popular through the emerging model of 'living on credit', consumer demand for credit is on the rise. The goal of borrowers is to obtain credit in a manner that is not always honest and responsible, which is why it is not uncommon for them to omit important information from the bank during the creditworthiness assessment process or to provide information that does not fully reflect the actual situation. According to E. Rutkowska-Tomaszewska, unethical behaviour on the part of borrowers at the pre-contract stage is caused by fear of rejection and financial exclusion, which consists in limiting the use of financial services. Consumers also cite a sense of social exclusion, which they believe is a consequence of financial exclusion, as a reason for providing unreliable information. Despite the consumer embellishing and misrepresenting their financial situation, the bank may still grant the loan, but this carries the risk of the borrower not fulfilling their obligations responsibly and on time. In extreme cases, there may even be a problem with repaying the debt due to a lack of funds (Rutkowska-Tomaszewska 2018, pp. 115–124).

This situation may prompt consumers to look for a solution that would not have too negative an impact on their financial situation (e.g. no need to repay the entire debt as a result of withdrawing from the contract) and could even bring them certain benefits. The ideal solution therefore seems to be the SKD, which in certain cases of irresponsible borrowing allows only the principal to be repaid, without interest and additional costs, which entails an unjustified loss for the bank.

In order to assess how significant a problem SKDs currently are for banks, the financial data of banks as at 31 December 2023 (annual report) and 30 June 2024 (half-yearly report) were compared.

Table 2. Comparison of SKD data in selected banks

Name of the bank	31.12.2023 r.			30.06.2024 r.		
	Number of cases	Value of dispute in PLN thousand	Provision in PLN thousand	Number of cases	Value of dispute in PLN thousand	Provision in PLN thousand
PKO BP S.A.	1159	20700	no data	1975	41200	no data
Alior Bank S.A.	1219	44100	no data	1703	65700	28000
Millennium Bank S.A.	419	no data	none	683	no data	none
BOŚ Bank S.A.	19	442,07	no data	23	617	none

Source: own study based on annual reports for 2023 and semi-annual reports for 2024 for PKO BP S.A., Alior Bank S.A., Millennium Bank S.A. and BOŚ Bank S.A.

The list of banks reporting information on SKD shows an upward trend in the number of pending cases. The value of disputes is also growing, almost doubling at PKO BP S.A. In most cases, there is no data on the provisions created by the bank for SKD, with the exception of Alior Bank S.A., which in the first half of 2024 set the level of provisions for this item at PLN 28 million. On the other hand, Millennium Bank S.A. and BOŚ Bank S.A. decided not to create a provision for SKD, justifying this with the low probability of cash outflows due to the favourable judgments for banks to date.

4. Abuse of SKD as a threat to consumers

It should be noted, however, that consumers themselves rarely file lawsuits regarding SKD. Most of the plaintiffs are companies that purchase SKD receivables from consumers, which they consider to be a new potential source of income (SKD receivables are purchased for as little as 10–20% of their value) (Białek 2024, pp. 1–9).

According to research by the Polish Bank Association, the SKD institution is increasingly being used as a lever to obtain free capital by various types of debt purchasing entities and paralegal firms, which file lawsuits en masse in this matter. Aware of this practice, courts are increasingly submitting preliminary questions to the CJEU, wondering whether the court has an obligation to examine ex officio the unfair nature of a contractual term also in the case of a debt assignment agreement concluded by a consumer with a third party, if, in court proceedings, the third party invokes this agreement as the basis for its legitimacy in taking action against the trader who is the consumer's original contractor (Case C-80/24).

Until now, the CJEU has recognised the transfer by a consumer of rights under EU directives to a third party who is not a consumer as permissible, so it is likely to take a similar position in this case. The transfer of a claim by a consumer does not necessarily mean that they waive their rights, so it should be considered reasonable for transfer agreements to be economically advantageous to them in accordance with Directive 2008/48 or Directive 93/13. However, there are examples in EU case law where the CJEU has held that a trader acquiring a consumer claim does not thereby become a consumer and should therefore not be entitled to the procedural protection afforded to consumers (C-173/23). This would therefore mean that in the event of a dispute between two businesses, the Polish national court would be exempt from the obligation to examine ex officio the unfair nature of a contractual provision contained in a consumer debt assignment agreement (Węgrzynowski 2024).

The President of the Polish Bank Association points to the structure of this legal institution, which entitles consumers to seek sanctions for every violation committed by banks, and the activities of compensation companies that exploit the SKD to challenge loan agreements on a massive scale, as the main causes of abuse in the SKD. The President of the ZBP accuses such entities of using the SKD institution solely to maximise their own profits at the expense of consumers. Their activities may destabilise the functioning of the financial market (Bankier.pl 2024).

The entities already mentioned in the article that offer consumers legal assistance in the field of SKD often resort to aggressive marketing (often using social media) to attract customers. These entities are also often characterised by controversial acquisition methods and the use of abusive clauses in debt assignment agreements (Gajda-Kozłowska 2024).

When reviewing the first few offers in an internet search engine, it is easy to see that most companies follow a uniform pattern: they advertise their effectiveness, repeatedly emphasising the free analysis of the borrower's situation, and even guarantee compensation within a maximum of 14 working days from the signing of the agreement. However, there is no standard contract or company procedure, and more details about the services provided can only be obtained by calling the helpline or sending a form to the helpdesk. When reading the company's website, every few paragraphs the reader encounters a flashy, bold and colourful panel with the slogan 'take advantage of free credit with us' 'get rid of credit costs' or 'I want to take advantage of the free credit sanction', referring to the next step, in which the borrower can send their credit agreement to the company.

The president of the Association of Financial Companies in Poland also draws borrowers' attention to the wording used by compensation law firms, which may mislead consumers. Slogans such as 'we will recover at least… for you', 'we will reduce your instalment by…', 'the total financial benefit is…' may prompt consumers to make decisions that they would not have made if they had reliable knowledge about SKD, their own situation and potential costs. The above practices of paralegal firms can therefore be considered misleading within the meaning of Article 5 of the Act on Combating Unfair Commercial Practices. Another, no less controversial issue is the remuneration of paralegals, which is often defined ambiguously in the contract, depriving the client of the possibility of realistically estimating the amount due after winning a court case concerning SKD. At this point, it is worth asking whether the conditions for abuse are met and whether the principle of transparency of the model contract under Article 385 § 2 of the Civil Code has been violated (Czugan 2024).

Although the SKD offers consumers legal protection and a wide range of grounds for exercising it, it also has negative consequences in the form of the risk of abuse of rights and exposure to unfair market practices on the part of paralegal firms and compensation companies. No research will show how many of the cases pending in the SKD are actually based on a valid legal basis and a real violation of regulations by the bank, and how many of them are the mass production of entities that treat consumers and their financial situation instrumentally. Due to often reckless decisions to incur a liability or to obtain it in an unreliable manner, consumers may also expose the bank to losses, which, due to the SKD penalty, loses the opportunity to obtain potential income from the loan granted. Although the practice of creating provisions for SKD is not yet very common, some banks decide to create them, thus temporarily giving up funds that could be used, for example, for investments and incurring the cost of lost opportunities.

Summary

The assessment of the risk associated with SKD is ambiguous. On the one hand, banks fear an increasing number of lawsuits and an unfavourable position of Polish and European jurisdiction, on the other hand, as illustrated by examples of SKD bank reserves for two banks, they do not have adequate reserves, arguing that the probability of cash outflows is low, guided by the favourable case law for the banking sector to date. The risk borne by the consumer is also difficult to estimate unequivocally, as borrowers are exposed to manipulation by companies that purchase SKD receivables and promise high returns. Many consumers are unaware that these are unfair practices and that they may receive only a small fraction of the potential profit of the company to which they sold these debts.

The position of the Supreme Court will be crucial in determining whether SKD may pose a greater threat to borrowers or lenders. This position may reinforce the current line of jurisprudence, which is favourable to the banking sector, and thus reduce the number of SKD lawsuits. Such a decision would also be consistent with the CJEU's latest approach to SKD cases, which is decidedly sceptical about challenging them. A transparent position of the Supreme Court on this matter would contribute to reducing the number of SKD cases in courts because, as demonstrated in the verification of the first hypothesis, the abuse of free credit sanctions poses a threat not only to the banking sector, but also to consumers themselves, who are exposed to unfair practices by companies purchasing SKD receivables. The second hypothesis, questioning the fulfilment of the condition of proportionality (Directive 2008/48) in lawsuits filed by companies purchasing SKD claims, has been confirmed, hence it is extremely important for the Supreme Court to refer to the principle of proportionality in its latest resolution. This would allow for the establishment of clear criteria that would entitle the use of SKD and eliminate lawsuits based on trivial and disproportionate allegations against creditors.

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Fund Transfer Pricing Mechanism as a Tool Supporting the Expansion of Green Asset Offerings in Banks

Abstract

The article analyses the potential use of the internal funds transfer pricing (FTP) mechanism as a tool to support the development of green assets in the banking sector under increasing climate risk regulatory pressure. The author argues that FTP, traditionally applied in the management of liquidity risk and interest rate risk, can be extended to incorporate an environmental component that enables the internalisation of costs and benefits associated with financing both low-carbon and high-emission investments. The paper discusses the European Union's regulatory framework and proposes specific solutions, such as preferential FTP rates for green assets, additional charges for investments exposed to elevated climate risk, and the application of green liquidity curves. The analysis indicates that a properly calibrated green FTP mechanism can support banks' sustainable finance strategies, influence pricing policies and balance-sheet structure, and improve access to stable funding sources. At the same time, the article highlights risks related to the implementation of this approach, in particular the risk of greenwashing, maturity mismatches and potential deterioration of the risk profile, which underscores the need for close integration of FTP with ALM processes and climate risk management.

Keywords: fund transfer pricing, green assets, banking, ESG, sustainable development, liquidity risk, pricing policy

JEL Codes: G21, Q01, Q56

Introduction

In recent years, environmental considerations have gained increasing prominence within regulatory frameworks, a trend that has become particularly visible in the financial sector. Historically, non-financial disclosures in banking were largely voluntary, shaped primarily by internal strategies and market expectations.

However, the growing relevance of climate-related risks has led to a clear shift towards formalisation and standardisation, driven by supervisory and legislative requirements. As noted by Bolognesi, Burchi, Goodell and Paltrinieri (2025), new regulations are gradually replacing voluntary disclosures, compelling banks to systematically integrate environmental factors into business strategies and risk management processes.

In bank-based financial systems, credit institutions play a pivotal role in capital allocation and the financing of economic activity, thereby acting as key transmission channels of the green transition. By shaping financing conditions, banks translate regulatory expectations and financial sector strategies into corporate investment decisions that support a low-emission and sustainable economic model (Sanchez Carrera, Giombini, Calcagnini 2025). Against this backdrop, the banking sector faces the challenge of integrating climate-related regulatory requirements into traditional risk management frameworks while maintaining financial stability.

The objective of this article is to identify potential applications of fund transfer pricing (FTP) mechanism in shaping funding structures that favour low-emission assets. The paper examines both opportunities and risks associated with incorporating an environmental component into FTP frameworks, taking into account regulatory constraints as well as strategic implications for banks.

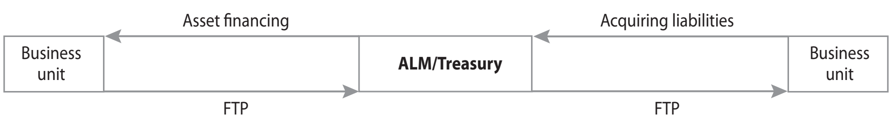
The literature on environmental risk and on fund transfer pricing (FTP) has, in the vast majority of cases, developed along separate lines, treating these issues in isolation and focusing primarily on the incorporation of climate-related factors into the framework of standard banking risks (Cardenas 2024; Korzeb, Niedziółka, Szpilko, Pietro 2024). The relatively scarce contributions that address the inclusion of a green dimension in internal transfer rates concentrate predominantly on capturing the negative effects of environmental factors (Reddy 2021; Ludwig 2023). By contrast, the approach adopted here focuses on incorporating environmental aspects into the quotation of FTP rates as an incentive to expand the supply of green assets. Existing studies frequently propose reducing customer lending rates for the financing of green investments (Li, Lu, Lin 2022; Sutrisno, Widarjono, Hakim 2024), yet in these cases the FTP dimension is omitted. In such a configuration, green investments are attractive from the client's perspective, as they may be associated with more favourable credit conditions. From the viewpoint of a bank's business line, however, the absence of a corresponding reduction in internal funding costs results solely in a compression of margins. As a consequence, such products become less profitable, which may limit the willingness of business units to actively promote them.

The integration of sustainability criteria into the FTP mechanism enables internal pricing to reflect the cost of financing in accordance with the environmental characteristics of investments, including the cost of additional liquidity buffers as well as potential provisions, inter alia, for legal risk in the case of high-emission projects. Moreover, the inclusion of climate-related factors supports more effective management of interest rate risk by capturing the differentiated impact of green and carbon-intensive investments on the bank's balance sheet profile in response to changes in market rates, taking into account the distinctive features of green assets. These include, in particular, the long term financing horizon of ecological projects, the high share of fixed-rate instruments (such as green bonds), dependence on regulatory and climate policy frameworks, and increased sensitivity to shifts in market conditions.

1. Fund transfer pricing as a risk management tool in banking

In accordance with KNF Recommendation P, banks are required to apply internal mechanisms that attribute costs and benefits arising from different types of liquidity risk in order to assess the profitability of ongoing business activities as well as within the new product development process. This is achieved through the application of fund transfer pricing (FTP), which constitutes a key internal financial management tool in credit institutions, used to assign funding-related costs and revenues to assets and liabilities (Dermine 2012, pp. 1–2). In addition, FTP supports strategic decision-making with respect to resource allocation and financial planning (Elliott, 2018). Within liquidity risk and interest rate risk management frameworks, the FTP mechanism plays a central role by enabling the effective transfer of funding costs and capital-related benefits in a manner consistent with both managerial objectives and regulatory requirements (KPMG 2016).

Figure 1. Operating principle of the FTP mechanism



Source: own elaboration.

Within the FTP framework, the function of an internal financial market in a bank is typically performed by a central unit, such as the Treasury department, or by a dedicated unit responsible for asset and liability management (ALM). Business lines responsible for both funding acquisition (e.g. deposit-taking) and asset financing, including lending activities and investments in financial instruments, transact with this central division under internally defined pricing conditions.

From an operational perspective, activities that generate liabilities, such as customer deposits, transfer the corresponding funds to the central function and receive remuneration in the form of an internally determined transfer rate (FTP). Conversely, when funds are required for the financing of assets, they are obtained from the central department at the applicable FTP rate, reflecting the internal cost of funds.

In this manner, the FTP mechanism performs the function of allocating internal funding costs and revenues, thereby supporting the management of product and organisational unit profitability, while enabling more precise control of liquidity risk and interest rate risk at the level of the bank as a whole. Each of these risks is reflected in a separate component of the internal transfer rate, as illustrated below (Lubińska 2020, pp. 70–72):

$$WST = BASE + LIQ + Adj, \tag{1}$$

here:

BASE – base rate, representing the internal price of transferring interest rate risk from the business line to the central function,

LIQ – liquidity rate, representing the internal price of transferring liquidity risk from the business line to the central function,

Adj – business adjustment, used to respond to the current market situation, often defined as commercial spread.

Transfer of interest rate risk

Under the FTP mechanism, interest rate risk is neutralised by assigning to each asset or liability a synthetic financial instrument whose characteristics reflect the market interest rate appropriate for a given time horizon, such as maturity. This process is analogous to entering into an interest rate swap between the operating unit and the central clearing division, thereby eliminating the impact of interest rate risk at the level of the business unit's local balance sheet (Lubińska 2020, pp. 78–80).

The simulated nature of this transaction makes it possible to allocate net interest margin (NIM) to specific products, clients, or individual transactions, which in turn enables detailed profitability analysis and creditworthiness assessment at the micro level. Such an approach substantially enhances the management of financial performance and supports allocation decisions within the bank's organisational structure. This mechanism may be illustrated by the following example.

A retail business unit offers a client a five-year loan at a fixed interest rate of 5%. The central unit supplies the business line with funding for this loan at an internal transfer rate of 4.2%. This rate reflects the cost of raising capital with an equivalent maturity structure and risk profile. The transaction ensures that interest rate risk, understood as the variability of the instrument's value over time, is transferred to the central unit, where a consolidated hedging strategy is implemented. The approach supports the management of IRRBB (Interest Rate Risk in the Banking Book), which is of particular relevance in the context of prudential supervision, notably in light of the recommendations set out in the EBA Guidelines on the management of interest rate risk arising from non-trading book activities (EBA 2018). Within this arrangement, the business unit records a profit equal to the difference between the rate offered to the client and the internal transfer price, amounting to 0.8%. The internal transfer rate used to shift interest rate risk may be derived from a reference curve reflecting the market cost of funding, most commonly based on IRS or OIS curves. The transfer rate assigned to a given transaction should be aligned with its maturity profile, thereby enabling the identification of duration gaps and the effective management of exposure within the central unit.

Transfer of liquidity risk

Liquidity risk is defined as the risk of being unable to meet financial obligations as they fall due and constitutes one of the key threats to the stability of a financial institution. Effective liquidity risk management requires an adequate measurement of the maturity and repricing structure of balance-sheet items on both the asset and liability sides, as well as the efficient allocation of costs and responsibilities for the risk generated. The FTP mechanism also enables the modelling of liquidity costs, both those arising from maturity mismatches and those associated with maintaining contingency buffers. Internal transfer prices assigned to business units reflect prevailing market liquidity conditions as well as the long-term objectives of balance-sheet management. The liquidity charges applied for this purpose complement the base rate responsible for transferring the interest rate risk of a given instrument. Long-term loans, for example, are burdened with a liquidity cost, while stable deposits may generate liquidity benefits (Skoglund, Chen 2015, pp. 588–618). Importantly, FTP supports compliance with regulatory liquidity requirements, such as the Liquidity Coverage Ratio (LCR) and the Net Stable Funding Ratio (NSFR), as defined under Basel III. Venkat and Baird (2016, pp. 35–37) emphasise that, in the post-2008 regulatory environment, liquidity should no longer be treated as a zero-cost resource. Enhanced buffer requirements impose on banks the obligation to allocate liquidity costs directly to business units. According to best practice, such costs should be charged at the level of individual products or transactions, so as to reflect differences between customer segments and product lines.

An example of this mechanism on the liability side may be described as follows. A business unit raises a one-year term deposit and transfers it to the central unit, thereby shifting the associated risk and receiving remuneration in the form of an FTP rate. The transfer rate reflects the market value of a deposit with the same maturity as well as its degree of stability. When the business unit subsequently reports a need for liquidity in order to finance a loan, the central unit provides the required funds and charges the business line an internal transfer rate. This rate reflects the market cost of long-term funding.

An appropriate representation of liquidity costs, combined with their incorporation into the bank's incentive framework, enables the alignment of business decisions with regulatory objectives, including the reduction of excessive dependence on short-term wholesale funding. In accordance with supervisory requirements, the mechanism should remain sufficiently adaptable to evolving market conditions and to the institution's risk profile. All material items on the bank's balance sheet are subject to FTP-based valuation.

2. Regulatory framework for green finance

The scale of global financing needs associated with sustainable development by 2030 far exceeds the capital resources currently available, underscoring the urgency of mobilising adequate funding for the green transition. The shift towards a low-emission growth model entails substantial investment outlays that cannot be financed by the private sector in isolation, thereby increasing the reliance of enterprises on bank-based financing.

Banks, equipped with significant intermediation capacity, are therefore positioned to play a central role in supporting green investment. Their ability to engage in environmentally oriented projects, however, depends critically on the existence of a stable and predictable regulatory environment, as well as on the availability of appropriate institutional instruments. Bowman (2010) argues that voluntary initiatives undertaken by financial institutions remain insufficient in the absence of clear regulatory frameworks and effective economic incentives. Coordinated action within the financial sector, encompassing both public policies and the activities of commercial banks, enhances the efficiency of capital allocation towards environmental objectives through monetary policy instruments, macroprudential tools and targeted support for low-emission projects. As emphasised by Kerr and Hu (2025), the mobilisation of private capital necessitates the implementation of effective pricing mechanisms, such as carbon taxes or emissions trading schemes, which enhance the economic viability of environmentally low-emission investments.

The implementation of appropriate regulatory frameworks constitutes a necessary condition for reorienting banks towards environmentally sustainable activities. Empirical evidence provided by Bouattoura, Kalaia and Helali (2024) indicates that an initial increase in banks' engagement with environmental issues may be associated with higher operating costs and a temporary deterioration in financial stability. Once a certain efficiency threshold is reached, however, the effectiveness of climate-related actions begins to exert a positive influence on the resilience and long-term sustainability of financial institutions. In this context, the integration of regulatory, market and political pressures is essential for enabling the banking sector to effectively support the energy transition while preserving macroeconomic stability (Monasterolo et al. 2024).

The role of banks in financing the green transition is also reflected in corporate performance outcomes. Dai, He, Guo, Zheng and Zhang (2025) demonstrate that the introduction of the *Green Credit Guidelines* in China led to a statistically significant improvement in the environmental performance of highly polluting firms. A *difference-in-differences* analysis shows that the average increase in ESG scores among firms covered by the programme ranged from 2.3 to 3.7 points, which was correlated with a substantial reduction in greenhouse gas emissions. The transmission mechanisms operated through both tighter financing constraints and enhanced incentives for innovation, with the policy proving more effective in state-owned enterprises, firms operating in competitive markets, and entities located in more economically developed regions.

In parallel, the harmonisation of definitions of financial products supporting green development is required to ensure their consistent interpretation across financial institutions. The absence of coherent standards hampers the efficient allocation of capital and constrains the financing potential of the low-emission transition. Consequently, further empirical research and the development of institutional frameworks enhancing the transparency and credibility of green financial instruments are necessary (Akomea-Frimpong, Adeabah, Ofosu, Tenakwah 2022).

Growing public awareness of climate change has increased the importance of environmental factors in customers' assessments of financial institutions (Kurowski 2024, p. 84). Clients increasingly take into account a bank's reputation, management policies and ESG performance when making investment and credit decisions.

Collectively, these interdependencies have led to the establishment of formal rules governing the implementation of sustainable development principles and their implications. These developments have, in turn, had a direct impact on bank risk management, in particular on liquidity risk and interest rate risk, both of which exert a significant influence on the specification and calibration of fund transfer pricing policies. The following section presents the key regulatory acts introduced in recent years that address environmental issues and discusses their relevance for the aforementioned risk categories.

Table 1. Impact of climate risk–related regulations on liquidity risk, interest rate risk and the fund transfer pricing mechanism

Regulation	Significance
Regulation (EU) 2019/2088 – SFDR (Sustainable Finance Disclosure Regulation)	Integration of climate-related factors into the framework of standard banking risks, including liquidity risk and interest rate risk.
EU Taxonomy (Regulation (EU) 2020/852)	Establishment of criteria for classifying assets as green, translating into fund transfer pricing (FTP) rates[a)].
Commission Delegated Regulation (EU) 2021/2178	Impact on the classification of assets as green through the introduction of the GAR indicator, translating into FTP rate quotations.
Regulation (EU) 2024/1623 – CRR III	Incorporation of ESG risks, including environmental factors, into the bank's strategy and risk management framework, along with the introduction of new market risk modelling principles affecting the FTP base component that transfers interest rate risk. Updates to credit risk weights under the standardised approach influence the selectivity of lending. To reflect these new requirements, banks may utilise the FTP mechanism.

[a)] The impact of classifying an asset as green on FTP rate quotations is explained in section 4 of the article.

Source: own elaboration.

Regulation (EU) 2019/2088 (SFDR) represents one of the first European Union legal acts to systematically regulate the disclosure obligations of financial market participants in the area of sustainable development. The SFDR framework significantly affects the risk profile of banks by requiring the integration of environmental, social, and governance (ESG) risks into traditional categories of financial risk. SFDR mandates the disclosure of how ESG risks are considered in decision-making processes and the transparent reporting of principal adverse impacts of investment decisions in this area (Arts. 8–9, 19), which generates implications for the reputational risk of financial institutions, indirectly influencing wholesale funding costs and the bank's liquidity risk profile. Consequently, the directive underlines the necessity of incorporating ESG risks, including environmental risks, into internal risk transfer mechanisms and the allocation of funding costs.

A key document for implementing sustainable development principles within the structures of financial institutions is the *EU Taxonomy*, adopted in 2020 (*Regulation (EU) 2020/852*). This legal act does not impose an obligation on banks to maintain a portfolio of green assets; it serves solely as a classification framework. The *Taxonomy*'s disclosure requirements regarding the share of sustainable investments entail the need to conduct appropriate liquidity analyses, assessing both the marketability of a given asset and its impact on the liquidity component of the internal fund transfer pricing (FTP) rate, which incorporates the cost of maintaining an adequate liquidity buffer.

A document directly relating to the shape of banks' balance sheets is the *Commission Delegated Regulation (EU) 2021/2178*, which introduces the Green Asset Ratio (GAR). This regulation aims to emphasise transparency in disclosures and clarity in asset classification, complementing the provisions of the *EU Taxonomy*. In response to the deficiencies of the GAR indicator, the BTAR ratio (*Regulation 575/2013*) was introduced, covering a broader range of assets that meet the *EU Taxonomy* compliance criteria, thereby contributing to a more favourable assessment of credit institutions and their adaptive actions directed towards achieving the European Union's environmental objectives. Both indicators encourage banks to review their loan portfolios and steer business activity in a way that facilitates the attainment of sustainable development targets. Support for engaging business lines in developing green asset offerings is provided by the FTP mechanism, which, through the application of preferential rates, promotes the structuring of internal transfer prices in a manner that enables the execution of a business strategy aligned with regulatory requirements.

The legal framework governing the disclosure of ESG-related risks is set out in *Regulation (EU) 2024/1623* – CRR III. It establishes reporting and governance obligations concerning ESG risks, particularly the integration of climate and environmental factors into the bank's strategy and standard risk management framework. The newly introduced market risk modelling approach requires sensitivity analyses to interest rate changes, the results of which may be reflected as adjustments to the FTP base component that transfers interest rate risk, thereby penalising products with high interest rate sensitivity. Significant changes in credit risk requirements and capital rules compel banks to adopt a selective lending approach, necessitating corresponding adaptations to internal transfer pricing strategies. Additionally, the framework mandates the incorporation of ESG considerations into internal capital calculations and the integration of sustainability factors into stress testing for long-term ESG impacts, as well as into systems for risk identification, measurement, and monitoring. These provisions affect both liquidity and interest rate risk, while also shaping internal transfer pricing policies that steer business activities toward sustainable finance.

Currently applicable regulations do not mandate a minimum share of green assets in banks' portfolios, nor do they set binding targets for the coming years, although the introduction of such regulatory requirements cannot be excluded in the future. The current regulatory framework in this area is primarily disclosure- and classification-based, focusing on the categorisation of assets as green, the imposition of disclosure obligations, and the strengthening of ESG risk management.

Until now, proposals have been under consideration to introduce green capital preferences, known as the Green Supporting Factor (GSF), which would reduce capital requirements for environmentally sustainable assets, alongside a complementary brown penalising factor (BPF) for high-emission assets. The EBA report (EBA 2023a) ultimately did not recommend implementing either mechanism. The principal reason for this decision was the lack of empirical evidence demonstrating that green assets outperform high-emission investments in terms of conventional banking risks. The report stresses that capital requirements should remain aligned with actual risk, as applying a GSF could otherwise disrupt the appropriate allocation of capital.

3. Green fund transfer pricing model

Despite the growing interest in assets classified as green, there is still no conclusive evidence that they are significantly less exposed to traditional banking risks or that they exhibit a higher level of safety. Analysis by Baek and Kang (2025) indicates that banks' engagement in environmentally sustainable practices generally improves asset portfolio quality, reducing the share of non-performing loans and client default risk. At the same time, financing green and innovative projects that are not yet fully established in the market may increase credit risk due to limited information on potential repayment capacity. The authors emphasise that careful project assessment and gradual allocation of funds allow for the mitigation of negative impacts on asset quality while supporting the development of green initiatives. Consequently, appropriate management of climate-related risks enables banks both to enhance the stability of their loan portfolios and to progressively finance the green transition. At the same time, the prospect of stricter requirements regarding the *greenness* of assets is becoming increasingly realistic. Regulatory changes and related expectations for banks are being introduced gradually, initially through reporting obligations. However, the banking sector is preparing for substantial changes in the form of requirements that would impose a specific percentage threshold defining the share of green instruments in banks' portfolios. Among the potential solutions to expand the green asset offering, the following are highlighted.

FTP rate discount

The mechanism involves the introduction of a fixed FTP rate discount, applied as an adjustment to the standard internal transfer pricing rate in accordance with formula (1). The adjustment is applied to the internal transfer rate for products that meet the green criteria defined under the *EU Taxonomy* regulation. In the first step, a transaction eligible for preferential treatment receives the standard FTP rate, which is subsequently reduced by a fixed discount amount, as follows:

$$WSTgreen = BASE + LIQ - 10\ p.b. \tag{2}$$

The magnitude of the adjustment reflects the lower cost of funding a green product through sustainable finance instruments, including the issuance of green bonds, which typically exhibit lower yields demanded by investors compared with traditional debt securities. This results in reduced issuance costs for the bank. The difference in cost largely depends on market conditions, and the phenomenon of a green premium has already been termed the *greenium*. Market analyses indicate that the *greenium* in Europe ranges between 2 and 10 basis points.

This is confirmed, among others, by an analysis conducted in 2022 by the Climate Bonds Initiative, which examined 93 green bond issuances with a total nominal value of USD 93.3 billion. The study found that these bonds experienced higher demand and stronger spread compression compared with conventional issuances. In euro-denominated bonds, the average spread compression was 18.2 basis points versus 16.4 basis points for standard (environmentally neutral) bonds, while in US dollars the respective figures were 29.1 basis points versus 22.6 basis points. Approximately 20% of the analysed issuances were priced below their own yield curves, indicating the presence of a *greenium*. Green bonds also exhibited better secondary market liquidity and greater investor interest. The results suggest that, despite challenging macroeconomic conditions, the green label provided issuers with more favourable financing terms (Climate Bonds Initiative 2022).

Similar conclusions are drawn from research published in *Economics and Finance* in 2025, indicating that green bonds in Europe exhibit lower yields than their conventional counterparts, with the so-called *greenium* ranging from 3 to 15 basis points. This implies that issuers of green debt instruments can benefit from slightly cheaper financing, reflecting growing investor interest in instruments aligned with sustainable development goals. In the case of the Chinese market, this effect is less stable and more difficult to capture clearly, primarily due to lower

ESG standardisation and differing institutional conditions. The findings therefore suggest that the European green bond market is more mature and consistently offers a premium in the form of lower capital costs, whereas the Chinese market requires further standardisation for the *greenium* to play a similar role as in Europe (Silva, Blankson 2025). In both cases, the lower cost of financing provides the basis for applying an FTP rate discount, creating space to reduce interest rates on loans financing environmentally sustainable projects.

Additional charge for climate risk

Climate risk, understood as a potential threat, consists of two components: transition risk arising from changes in economic activity and physical risk associated with natural disasters. The presence of either component increases the probability of client default and generates credit risk. Research by Liu, Cao, Dong, and Wu (2025) shows that higher ESG risk among borrowers, due to high-emission activities or weaknesses in corporate governance and social practices, raises banks' funding costs and reduces the profitability of the loan portfolio. These results indicate that insufficient management of ESG, including climate-related risk, by clients increases banks' exposure to potential financial losses.

Similarly, it is possible to apply an additional charge to loans financing high-emission sectors of the economy, for example:

$$FTPbrown = BASE + LIQ + 17{,}5\ bps^{1} \qquad (3)$$

High exposure to climate risk is associated with additional provisions to cover potential losses. The introduced penalising cost represents the economic cost of raising additional capital, resulting from a reduction in available capital caused by the creation of provisions. The cost of such risk can be allocated to the business line as an additional transaction charge, in accordance with formula (3). For assets with heightened regulatory or climate risk, such as the potential for withdrawal arising from the implementation of a zero-emission policy, the financial institution may revise the risk parameters in the model employed to estimate Expected Credit Loss (ECL) (Iwanicz-Drozdowska 2024, pp. 74–82).

Example:

EAD (*exposure at default*) – in this case, the loan amount of PLN 10 million.

PD (*probability of default*) – for a standard loan amounts to 1% (EBA 2023b, pp. 16–18), whereas for a loan exposed to climate and regulatory risk, it is 5% (EC 2024, p. 5).

LGD (*loss given default*) – for a standard loan is 10%, whereas for a high-emission loan it is 25% (Pozdyshev, Lobanov, Ilinsky 2025, p. 29), reflecting lower residual asset values, stranded asset risk, and the impact of physical risk.

[1] The amount of the penalising margin is explained in a later section of the article.

The provision is calculated in accordance with the following formula:

$$ECL = PD \cdot LGD \cdot EAD \tag{4}$$

Thus, for a loan of PLN 10 million exposed to climate risk, the provision amounts to:

$$ECL = 0{,}05 \cdot 0{,}25 \cdot 10\,000\,000 = 125\,000$$

Consequently, for a loan exposed to heightened climate risk, the bank must set aside a provision of PLN 0.125 million. In the given example, the provision represents 1.25% of the loan amount. Considering a cost of capital of 14% (Bank.pl 2025), the additional FTP surcharge, reflecting both the level of the provision and the capital cost required to cover it, amounts to:

$$0{,}0125 \cdot 14\% = 0{,}175\% = 17{,}5\ bps$$

The system outlined above facilitates the achievement of ESG objectives and supports decarbonisation, while providing a measurable incentive for business lines to increase the proportion of green assets on the bank's balance sheet. However, this approach entails the risk of misuse through greenwashing, which could lead to the subsidisation of green products without generating a tangible impact on sustainable development. A critical aspect for consideration remains the establishment of clear criteria for classifying products or enterprises as high-emission.

Another important aspect of the green FTP mechanism is the possibility of adjusting funding costs based on the client's geographic location. Customers operating in regions particularly vulnerable to the physical effects of climate change, such as floods, droughts, or wildfires, may face higher FTP charges reflecting increased physical risk. This approach allows banks to internalise potential future losses stemming from climate-related events, whose frequency and severity are rising due to ongoing global warming. In practice, this may lead to higher borrowing costs for these clients and, in extreme cases, to limited access to financing. Inadequate calibration of this mechanism could result in the exclusion of certain clients from credit access in high-risk regions, raising important considerations regarding the role of financial institutions in facilitating a fair and equitable energy transition. The advantage of this approach lies in assigning accountability for decision-making to the business line, encouraging thorough evaluation of client activities. Effective implementation also requires advanced analytical tools and the development of robust climate risk models.

Green liquidity curves

The solution based on the use of green liquidity curves is an extension of the proposal described in section *FTP rate discount*. The introduction of separate curves accounts for the variation in the environmental premium depending on the maturity of the instruments. In practice, green bond issuances with longer maturities may exhibit different levels of *greenium* compared with short-term papers, reflecting differences in risk profiles, liquidity, and institutional investor demand. This is confirmed by the study of Bianchini, Giannozzi, and Roggi (2024), which indicates that the presence of a green premium varies according to bond maturity. The authors note that this effect is more pronounced for shorter-tenor bonds, suggesting that investors more frequently prefer short-term issuances due to lower risk and greater predictability of environmental outcomes. As the maturity lengthens, the intensity of the *greenium* diminishes, and in the long-term segment of the market the effect loses statistical significance. This is likely due to increasing uncertainty regarding the durability of green projects and ESG reporting standards over a longer horizon. Consequently, demand for green bonds is highest in the short- and medium-term segments, whereas in the long-term segment investors adopt a more cautious approach, limiting the scale of observed price discounts.

Assessing the *greenium* for each maturity enables the creation of a liquidity curve where each tenor is adjusted downward relative to the standard curve by the value of the corresponding premium. This method allows for lowering the FTP cost while varying the reduction according to the transaction's maturity.

Hu, Zhong, and Cao (2022) show that the level of *greenium* in the Chinese corporate green bond market depends on both the maturity date and the issuer's quality and credit risk. Significant discounts are observed for bonds issued by non-state-owned enterprises, which carry higher risk but also demonstrate greater engagement in projects with tangible environmental impact. Demand for green issuances is primarily driven by institutional investors, guided by regulatory requirements, the limited supply of certified instruments, and increasing pressure related to sustainable development policies. Strengthened regulatory frameworks after 2019 improved market transparency and credibility, which translated into higher *greenium* and greater investor confidence in green bonds. The article by Löffler, Petreski, and Stephan (2021) confirms that premiums on green bonds are not uniform and vary depending on bond maturity. Consistent with the findings of Hu, Zhong, and Cao (2022), higher discounts are mainly observed for short- and medium-term tenors, whereas long-term bonds exhibit a smaller green premium. The authors attribute this variation to a combination of the issuer's credit risk, institutional investor demand, and the transparency and certification of the issuance, which enhance trust in green bonds. Therefore, bond maturity is a key factor shaping the *greenium*, with shorter-term papers attracting higher demand and generating a more pronounced premium.

The acquisition of a green asset, as well as demonstrating its greenness, appears to be a complex and not yet fully formalised process. This primarily entails additional administrative requirements and the need to apply specific legal and procedural measures. Another aspect is the risk of abuse in this area, including the falsification of green certificates and broader greenwashing practices, as discussed in the summary of this article.

4. Impact of green FTP on pricing policy and balance sheet structure

The implementation of fund transfer prices supporting sustainable development directly affects the interest rates offered to clients, and consequently also shapes the balance sheet structure. Internal asset pricing, which treats loans financing certified green investments preferentially, leads to a reduction in the FTP rate, regardless of whether the adjustment is applied as a fixed discount or via a correspondingly lowered liquidity curve. The external interest rate consists of the internal transfer rate and the business margin, as follows:

$$\textit{External interest rate} = \textit{FTP rate} + \textit{business margin} \tag{5}$$

A reduction in the FTP component, while maintaining the business margin at the same level as environmentally neutral products, leads to a decrease in the client interest rate. This provides an incentive for clients to invest in products with green characteristics, without requiring business units to adjust their margin to achieve climate-related strategic objectives. An additional reduction in the business margin for products supporting environmentally sustainable activities would constitute a further incentive for clients to select such products. Conversely, for investments supporting high-emission activities, a higher FTP rate, with the business margin held constant, will naturally influence client decisions.

These measures undoubtedly steer business activity toward sustainable development by promoting the financing of environmentally sustainable investments. For retail clients, the majority of loans typically support the acquisition or renovation of real estate, which represent well-understood assets for the bank, with risk assessments grounded in historical data from similar credit exposures. Regarding corporate investments, financed projects may comprise innovative initiatives aimed at promoting sustainable development. The limited credit history of such assets, combined with the small number of documented cases of financing long-term investments that may ultimately prove inefficient, can lead to borrower default. Consequently, these assets may be classified as stranded, generating credit risk that necessitates the establishment of provisions to cover potential losses.

An increase in the share of green assets in banks' balance sheets is expected to have a positive effect on the institution's credit rating as assessed by external rating agencies (Moody's, S&P, Fitch), which incorporate environmental, social, and governance (ESG) factors into their methodologies. It should be emphasised, however, that the primary objective of a credit rating remains the measurement of a financial institution's ability to meet its obligations and the assessment of its default risk. ESG factors function in this process as supplementary variables that may modify the bank's risk profile. They do not constitute an independent rating category but are integrated into traditional credit risk analyses. Stewart (2025) shows that current ESG rating methodologies vary across rating agencies, resulting in difficulties in comparing outcomes and interpreting ESG-related risk. The author highlights the need for a unified approach to ESG ratings in order to increase transparency and consistency of information for investors and stakeholders. Examples of the impact of ESG factors on rating agency assessments are provided below.

Until August 2023, S&P Global Ratings published ESG Credit Indicators (Segal 2023), which reflected the impact of ESG factors on credit ratings in both descriptive and numerical formats. Currently, instead of a numerical scale, S&P continues to provide narrative descriptions of ESG factors' influence on credit assessments, considering them more effective for presenting analytical details and ensuring transparency, while still taking the level of indicators into account in the institution's credit rating. In parallel, sectoral and thematic reports are made available, focusing on the identification of ESG-related risks (S&P Global 2025).

Moody's employs the ESG Issuer Profile Scores (IPS) and ESG Credit Impact Scores (CIS) (Moody's Investors Service 2021), enabling the evaluation of the extent to which environmental factors positively, neutrally, or negatively affect a credit rating. This means that ESG-supporting activities can, under certain conditions, contribute either to an upgrade or a downgrade of the rating. Moreover, ESG factors are not treated as a separate rating component but are integrated into the credit analysis, focusing on the institution's risk profile and overall credit strength.

Similarly, Fitch Ratings uses the ESG Relevance Scores System[2], which indicates the extent to which individual ESG factors influence an entity's overall credit rating. The score, assigned on a scale from 1 to 5, reflects the significance of a given factor for the rating: a value of 1 indicates no relevance, while 5 denotes a critical impact. ESG Relevance Scores are not treated as an independent determinant of the rating but rather highlight factors that strongly affect credit assessments in practice. For example, if a corporate governance-related factor receives the highest score due to insufficient oversight or ineffective risk management, it can significantly lower the bank's credit rating.

A reduction in a bank's credit rating by a rating agency entails significant implications. Among these are higher financing costs, resulting from increased risk premiums demanded by counterparties and investors through higher bond yields. Another consequence is more expensive interbank borrowing, which reflects the market's perception of the bank as a higher-risk institution. These factors, together with reduced access to wholesale funding due to lower demand for issued debt, where credit quality may have declined, can over time lead to liquidity pressures. As a result of a reduced credit rating, the perception of the bank changes not only among counterparties but also among clients, who may regard the institution as less stable and, as a result, decide to transfer their funds elsewhere. A downgrade therefore represents an important signal of deteriorating conditions, interpreted by the media, analysts, and the market as a warning. In parallel, Al Hashfi, Hanafi, and Setiyono (2025) indicate that moderate engagement in ESG practices can reduce

[2] (Source:) https://www.sustainablefitch.com/products/esg-relevance-scores (accessed: 31.08.2025).

credit risk and improve financial stability. However, excessive focus on ESG aspects, without considering other risk factors, may produce adverse outcomes such as increased credit risk and lower profitability.

The consequences outlined above lead to the conclusion that the contemporary banking sector faces the need to adapt financial management models to emerging climate, regulatory, and reputational challenges. The fund transfer pricing mechanism, as an internal settlement system, serves as a key instrument in shaping the bank's pricing policy. From a balance sheet perspective, the green component of the FTP rate functions as a guide for allocating resources toward assets with a lower carbon footprint. Consequently, preferentially priced assets become more attractive in terms of internal margin, which ultimately results in an increased share of such assets in the loan portfolio. However, this redistribution may alter the risk profile of the balance sheet, particularly when assets classified as green lack a sufficiently long credit history or are subject to unstable environmental regulations. For this reason, it is crucial to link FTP policy with ESG risk management processes, particularly with respect to climate-related risk, both at the credit and operational levels.

5. Implications for liquidity and interest rate risk management

The implementation of internal transfer pricing that prioritizes investments aligned with sustainable development principles generates potential benefits as well as associated risks. Consequently, a key challenge lies in the effective integration of climate-related factors into banking operations in a manner that enhances both competitiveness and financial stability.

Considering the implications for interest rate risk, a reduced FTP rate may provide a misleading signal to business units, as it does not fully reflect the actual costs incurred by the bank in financing a particular product. Such a practice, over the long term, can lead to an erosion of net interest margin and a diminished capacity to generate net profit, thereby limiting the accumulation of capital necessary for capital and liquidity buffers. Furthermore, a lower internal cost encourages business units to increase exposure to the respective product. Regarding renewable energy investments, which are predominantly long-term in nature, financing these projects with short-term deposits introduces a risk of maturity mismatch. With fixed interest rates, this creates a duration gap, which is particularly unfavorable in a rising interest rate environment, as the increasing cost of short-term funding will not be adequately offset by revenues from long-term loans. As a result, funding costs grow faster than income, leading to a reduction in net interest margin. In this context, to maintain stability, a recommended practice is the issuance of green bonds, which allows for better alignment of asset maturities with liability obligations, thereby mitigating interest rate risk and improving liquidity ratios.

The solutions described above support the enhancement of funding stability by attracting a new segment of investors interested in sustainable instruments.

Moreover, diversification of the liability base through the inclusion of green issuances reduces dependence on traditional funding sources and mitigates the risk of sudden liquidity disruptions. Danisman and Tarazi (2024) demonstrate that banks with higher ESG performance are more likely to maintain or expand their lending activities during financial crises, thereby contributing to overall economic stability. The authors emphasize that the integration of environmental, social, and governance principles into a bank's strategy can act as a stabilizing factor under adverse market conditions.

Furthermore, improvements in ESG reputation, coupled with potential rating upgrades, can enhance access to wholesale funding under more favorable terms. It is noteworthy that increased investor demand may allow for lower issuance costs due to investors' willingness to accept lower yields on the securities offered (Agnese, Giacomini 2023). Simultaneously, this approach entails certain risks. An excessive concentration in green funding sources may increase a bank's exposure to shifts in investor sentiment toward ESG instruments. In a scenario of a sudden decline in interest in green issuances, referred to as an ESG risk-off event, significant disruptions to liquidity stability could occur.

With regard to asset and liability management, the implementation of a green standard within fund transfer pricing requires consistent integration with liquidity and interest rate risk management policies. FTP models should be regularly updated to ensure that ESG preferences do not lead to deterioration of key regulatory metrics, such as the LCR or NSFR, nor result in excessive increases in the duration gap. Equally important is the incorporation of climate-related stress scenarios into extreme condition testing, which allows for the assessment of the bank's resilience to potential disruptions in the segment of green financial instruments.

The FTP mechanism, enhanced with a component reflecting climate-related risk, may serve not only as a tool supporting the implementation of a sustainable development strategy but also as an instrument reinforcing the resilience of financial institutions to liquidity and interest rate risk. Its effectiveness, however, depends on the proper calibration of the transfer pricing system, avoidance of excessive concentration in green funding sources, and close alignment with ALM policies. In this regard, the green component of FTP is not solely a mechanism for facilitating the energy transition but also a risk management instrument that requires deliberate and cautious implementation.

Given ongoing social and climate-related changes, the integration of sustainable development principles into banking structures, although still at an early stage, appears to be an inevitable process. Within this framework, the study aims to explore potential applications of the fund transfer pricing (FTP) mechanism in guiding the allocation of capital toward low-carbon assets. The analysis demonstrated that, beyond its traditional role in managing interest rate and liquidity risk, the FTP model can serve as an effective instrument for supporting a bank's pricing policy, capital allocation, and long-term balance sheet structure in accordance with sustainable development objectives.

A necessary condition for the effective integration of the environmental component into the fund transfer pricing (FTP) mechanism is the establishment of clear and consistent regulations. These rules allow climate-related factors to be operationalized within standard banking risk categories while limiting opportunities for regulatory arbitrage. A properly designed FTP mechanism can serve as a strong incentive to expand green asset offerings, reinforcing banks' commitment to financing the energy transition and shaping client investment decisions as well as real economic outcomes. In addition, it may improve the reputation of financial institutions and their perception among investors, potentially lowering financing costs and enhancing the stability of capital sources.

Furthermore, an examination of current practice highlights several challenges in incorporating environmental standards into Fund Transfer Pricing (FTP) mechanisms. The most prominent issues include difficulties in clearly classifying green assets, the risk of greenwashing due to imperfect certification processes, and the limited availability of historical data and reliable risk metrics for low-carbon investments. According to the author, banks remain at an early stage in integrating ESG factors into key decision-making processes. Consequently, the transformation of business models should proceed gradually and iteratively, aiming to advance sustainable development objectives while maintaining the financial stability of the banking sector.

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Bibliometric Analysis of Phishing

Abstract

Purpose: This article presents a comprehensive bibliometric analysis of scientific literature on phishing with particular emphasis on the banking and financial sector, aiming to identify key research trends, influential authors, and prospective development directions in the period 2003–2024.

Methodology: The study employs the bibliometrix tool and Web of Science database data comprising 4,245 documents from 2,355 sources. The analysis is characterized by an annual publication growth rate of 16.35% with an average of 13.73 citations per document. The corpus contains publications by 11,755 authors with 91,018 references, reflecting the multidisciplinary nature of the research field.

Results: IEEE Access dominates with 135 publications, while Computers & Security ranks second with 104 publications. Carnegie Mellon University leads among institutions with 75 publications. The analysis reveals evolution from traditional defense methods (2006–2015) toward artificial intelligence and blockchain technologies (2020–2024). The most frequently cited publications are works by Jagatic et al. (2007) – 540 citations and Anderson (2006) – 385 citations. Identification of two main thematic clusters indicates a dichotomy between security research and detection methods based on modeling.

Conclusions: Phishing research in the financial sector is characterized by intensive development with a paradigm shift toward personalized detection systems utilizing machine learning. Future directions include interdisciplinary research combining technical with behavioral aspects and application of blockchain technology in identity verification systems.

Keywords: phishing, cybersecurity, banking sector, bibliometric analysis, machine learning, learningblockchain, financial security

JEL Codes: G21, G28, O33, C80

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Introduction

Phishing, as a form of cybercrime, poses one of the most serious threats to the modern digital economy, including the financial sector and especially the banking sector (Zhuo et al. 2023). Phishing attacks, which use social engineering techniques to obtain confidential information such as credentials or financial information, are becoming increasingly sophisticated and pose a significant challenge to the security of financial institutions (Yuspin et al. 2024; Mwavali 2024).

In recent years, there has been a sharp increase in both the number of phishing attacks and their technological sophistication, which has prompted countermeasures by institutions responsible for electronic commerce security and researchers investigating this issue (Do et al. 2022). According to Villanueva et al. (2024), phishing attacks have increased by 46% since 2018, and the financial sector suffers an average annual loss of $3.66 million (Villanueva, Sebastian, Dextre 2024). Statistics indicate that approximately 1.2% of all emails received are phishing attempts, which translates to 3.4 billion phishing emails per day, with an estimated one in 4,200 emails constituting a phishing attempt (Bhatt et al. 2024).

Due to the high value of electronic transactions, the financial sector is particularly vulnerable to the effects of phishing attacks (Nwafor et al. 2024). Financial institutions must contend not only with traditional forms of phishing, but also with new forms such as spear phishing, vishing and attacks using artificial intelligence (Król 2024). The growth of electronic communication since the COVID-19 pandemic has further intensified these threats, contributing to an almost twofold increase in cyberattacks against financial institutions (Abdajabar and Idbeaa 2024).

Bibliometric analysis has recently become a popular tool for analysing the scope and structure of scientific research in a given field (Donthu et al. 2021). In the context of phishing research, this type of analysis allows for systematic mapping of research, identification of emerging trends, popular authors and institutions. Methodological analysis of such results allows for the identification of gaps in existing knowledge (Mutlutürk et al. 2024). Such bibliometric analyses are also used to study phishing in the financial sector. The results of these analyses make it easier to determine both what has already been researched and to identify challenges related to phishing in this sector.

Previous bibliometric studies in the field of cybersecurity have focused mainly on general aspects of threats (Perwej et al. 2021). However, relatively little attention has been paid to a detailed analysis of the literature on phishing in the financial sector. Recent analyses indicate a growing interest among researchers in the psychological factors influencing vulnerability to phishing, aspects of electronic communication security, and the integration of technological solutions with human behaviour (Mutluturk and Metin 2023). In addition, the use of artificial intelligence in detecting and counteracting phishing attacks is becoming increasingly important (Olowu et al. 2024).

The aim of this article is to conduct a bibliometric analysis of scientific literature on phishing, with a particular focus on the financial sector. The analysis includes identifying key research trends, mapping international and inter-institutional cooperation, determining the most popular publications and authors, and indicating promising directions for future research. The use of advanced bibliometric techniques allows for the development of a comprehensive picture of the state of knowledge in this field and the identification of areas requiring further scientific research. The originality of the study lies in focusing the literature analysis on the financial sector, whereas previous bibliometric analyses of phishing have mostly concentrated on general aspects of cybersecurity.

Research methodology and quantitative characteristics of the analysed publications

The study used the bibliometrix (Aria and Cuccurullo 2017) and data from the Web of Science Core Collection database, covering 4,245 documents from 2003–2024, originating from 2,355 sources. The search phrase was "phishing". This allowed for an interdisciplinary cross-section of studies on the subject to be included. The most frequently cited publications on economics and finance are discussed in a separate section. The database created reflects the dynamic growth of publications with an annual rate of 16.35%, which indicates the intensive development of the discipline under study. The average age of the publications studied is 6.45 years, with a total number of references of 91,018 and an average number of citations per document of 13.73, which can be interpreted as a significant impact of the publications on the scientific community.

An analysis of the content of the documents reveals a wealth of scientific terminology, with 1,349 keywords (Keywords Plus) and 7,975 author's keywords (Author's Keywords) identified. This terminological diversity reflects, among other things, the multidisciplinary nature of the publications studied and, indirectly, the complexity of the issues addressed.

The analysis covered publications by 11,755 authors, of whom only 284 were single authors, which indicates a high level of collaboration between authors. The average number of co-authors per document is 3.71. The level of internationalisation of collaboration in the analysed documents reaches approximately 21%.

The analysed collection of publications is dominated by conference materials (2,252 documents, i.e. 53.1% of all documents), followed by scientific articles (1,735, i.e. 40.9% of all records) (corpus). Other publications include literature reviews (94 documents), book reviews (17), editorial materials (26) and a few other items. The structure of the analysed collection of documents reflects the general structure of publications in contemporary science, with conference communication playing a key role in the popularisation of research results.

Results of the publication analysis

Table 1 illustrates the number of scientific publications on phishing according to ten scientific journals on phishing, constituting a key element of bibliometric analysis in this research area.

Table 1. Scientific journals with the highest number of publications on phishing indexed in the WoS database

No.	Journal	Number of publications
1	IEEE Access	135
2.	Computers and Security	104
3.	International Journal of Advanced Computer Science and Applications	51
4.	Electronics	41
5.	Applied Sciences-Basel	34
6.	Expert Systems with Applications	30
7.	International Journal of Computer Science and Network Security	27
8.	Information and Computer Security	22
9.	Security and Communication Networks	22
10.	CMC-Computers Materials and Continua	21

Source: own study, based on data from the WoS database, prepared using the Bibliometrix tool.

Table 2 presents a list of the most active authors of scientific publications on phishing, taking into account the total number of scientific papers. The data allows us to identify key scientists shaping the landscape of phishing research and the scale of their scientific contribution.

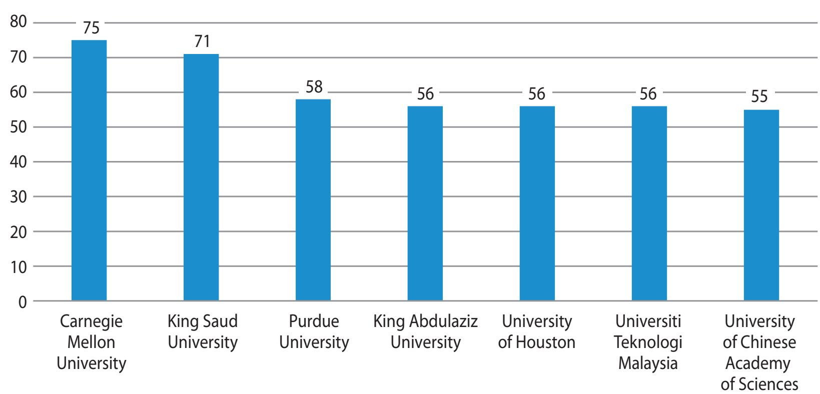
Chart 1 shows the number of scientific publications on phishing by author affiliation in seven academic institutions. Carnegie Melon University is in the lead, ahead of King Saud University by four publications. The other five institutions have a similar number of publications, ranging from 58 to 55. It is worth noting that the University of the Chinese Academy of Sciences has 55 publications. The data in Chart 1 indicate the global nature of research and publications on phishing.

Table 2. Authors with the highest number of publications on phishing indexed in the WoS database

No.	Author	Number of articles
1	Jain Ankit Kumar	17
2	Thabtah Fadi	17
3	Rao Routhu Srinivasa	15
4	Volkamer Melanie	15
5	Moore Tyler	14
6	Varshney Gaurav	14
7	Allodi Luca	13
8	Chiba Daiki	13
9	Chiew Kang Leng	13
10	Jourdan Guy-Vincent	13
11	Verma Rakesh M	13
12	Vishwanath Arun	13
13	Wu Jiajing	13

Source: own study, based on data from the WoS database, prepared using the Bibliometrix tool.

Figure 1. Author affiliations by number of publications on phishing indexed in the WoS database



Source: own work, based on data from the WoS database, compiled using the Bibliometrix tool.

An analysis of the most frequently cited publications in the field of phishing research reveals key works that have shaped the contemporary understanding of this phenomenon. Table 3 presents the 10 most frequently cited publications in the general collection of literature on phishing, without distinction by subject category.

Table 3. Authors with the most frequently cited publications on phishing indexed in the WoS database

Author and year of publication	Journal/Conference	Citations Total	Citations per year	Normalised citations[a)]
Jagatic et al. (2007)	Communications of the ACM	540	28.42	16.63
Anderson and Moore (2006)	Science	385	19.25	17.25
Sheng et al. (2010)	CHI Conference Proceedings	366	22.88	10.67
Xiang et al. (2011)	ACM Transactions on Information and System Security	321	21.40	11.05
Sahingoz et al. (2019)	Expert Systems with Applications	319	45.57	17.67
Krombholz et al. (2015)	Journal of Information Security and Applications	291	26.45	19.54
Khonji et al. (2013)	IEEE Communications Surveys and Tutorials	266	20.46	16.64
Hong (2012)	Communications of the ACM	264	18.86	12.33
Grier et al. (2010)	ACM Conference on Computer and Communications Security	261	16.31	7.61
Egelman et al. (2008)	CHI Conference Proceedings	259	14.39	17.13

[a)] Normalised citations are a measure that takes into account the age of a publication and the average number of citations in a given year, calculated as the number of citations divided by the average number of citations for publications from the same year. A value above 1 indicates an above-average impact of the publication.

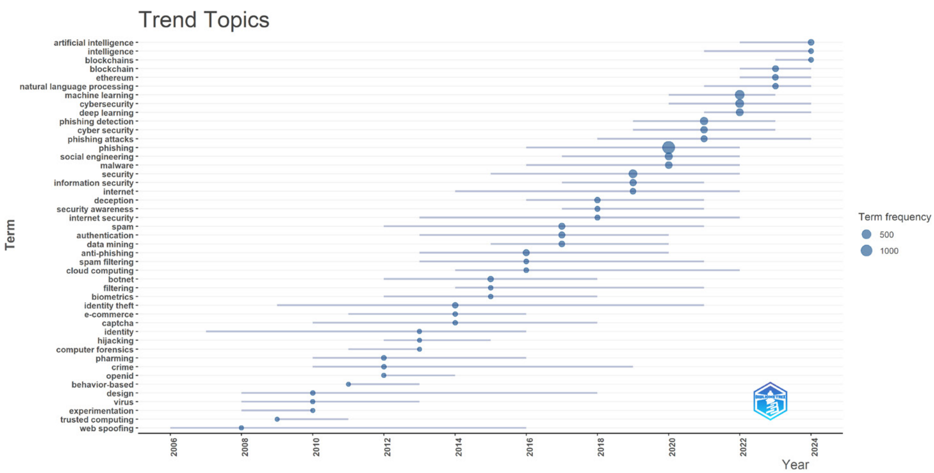
Source: own study, based on data from the WoS database, prepared using the Bibliometrix tool.

Jagatic et al. (2007) initiated research on social phishing in their groundbreaking article published in *Communications of the ACM*. It concerned the concept of using social networks in phishing attacks and laid the foundations for determining the role of social factors in the vulnerability of people using these networks to attacks. Anderson and Moore (2006) presented fundamental analyses of security economics in the prestigious journal *Science*, which became the basis for subsequent research on the economic aspects of cybercrime. This work, with 385 citations in WoS and over 1,100 citations in Google Scholar, influenced the development of an interdisciplinary approach to phishing research, combining technical and economic aspects. Sheng et al. (2010) presented significant research on the factors influencing users' vulnerability to phishing in the CHI conference proceedings, achieving 366 citations. Their research contributed to a better understanding of the psychological patterns exploited by cybercriminals. Xiang et al. (2011) presented an innovative approach to phishing detection in *ACM Transactions on Information and System Security*, which has 321 citations. Their methodology became the basis for many subsequent phishing attack detection systems. Also significant is the work of Sahingoz et al. (2019) published in *Expert Systems with Applications*, which has already reached 319 citations and the highest number of citations per year (45.57). This publication focuses on the use of artificial intelligence in phishing detection. Krombholz et al. (2015) in *the Journal of Information Security and Applications* conducted a comprehensive analysis of social engineering attacks, which has been cited 291 times. Their research has contributed to a better understanding of both the psychological aspects of phishing and the manipulation mechanisms used by attackers. Khonji et al. (2013) published an important literature review on phishing in *IEEE Communications Surveys and Tutorials*, which has been cited 266 times, systematising previous research and identifying directions for future research.

Chart 2 contains a set of concepts used in phishing research between 2006 and 2024, illustrating the transition from early technical issues such as web spoofing and trusted computing (2006–2009), through the development of detection methods based on Bayesian classification and behavioural analysis (2010–2015), to the application of machine learning, artificial intelligence, and blockchain technology (2020–2024). The most frequently occurring term is „phishing" (1326 occurrences), followed by „machine learning" (495 occurrences) and „security" (436 occurrences). Figure 2 symbolically illustrates the transformation of the research paradigm from traditional rule-based and filter-based defence methods (spam filtering, anti-phishing) in 2013–2016 towards advanced methods of artificial intelligence, natural language processing and deep learning in recent years (2021–2024), which means, among other things, the growing importance of automation and intelligent systems in the fight against phishing. Particularly noticeable is the increase in interest in blockchain and Ethereum technologies since 2022, suggesting the adaptation of new approaches to cyber security in the context of decentralised financial systems.

It is worth noting that the most productive authors (Table 2) do not coincide with the authors of the most cited publications (Table 3). There may be several reasons for this phenomenon. First, the authors of the most frequently cited works often published during the pioneering period of research (2006–2015), laying the foundations of the field, while the most productive authors are active in later years, developing existing concepts. Second, groundbreaking publications may have a greater impact than many incremental works. Third, this difference may reflect thematic specialisation – the most productive authors may focus on narrow technical aspects, while the most cited works are interdisciplinary or review-oriented.

Figure 2. Thematic trends in phishing research, 2006–2024, by keyword

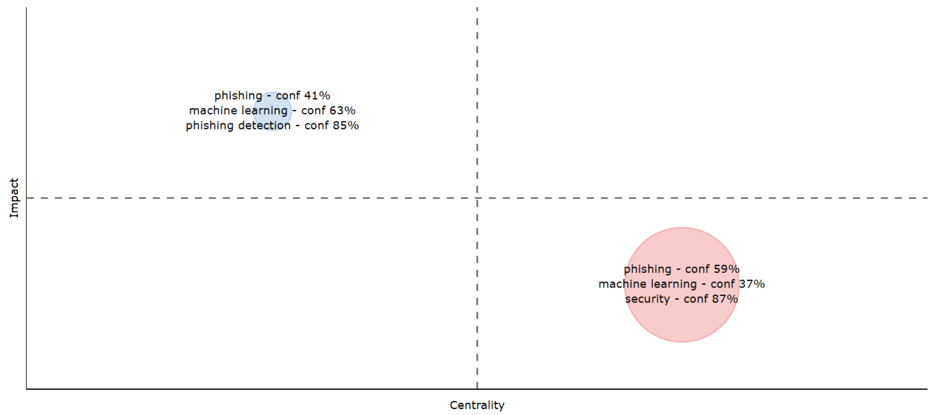


Legend: The size of the circles reflects the number of publications containing a given keyword in a given year, and the horizontal lines show the period of occurrence of the topic in the analysed literature.

Source: own study, based on data from the WoS database, prepared using the Bibliometrix tool.

Chart 3 contains thematic clusters (according to Keywords Plus) created on the basis of an analysis of literature on phishing and their interconnection through common citations. This resulted in two research clusters with different levels of centrality and influence. Cluster 1 (pink), created on the basis of 137 documents, focuses on the issues of „security", „attacks" and „classification" with confidence levels of 79.2%, 62.5% and 59.1%, respectively, achieving a centrality of 0.401 and a local impact of 7.542. These parameters indicate its fundamental role in research on security and the classification of phishing attacks. Cluster 2 (blue), created on the basis of 113 documents, focuses research on „features," „model" and „websites" with higher confidence levels (88.9%, 57.1%, 86.7%) and slightly higher centrality (0.399) as well as greater local influence (8.411). This indicates a focus on modelling and analysing the technical features of websites. The division of the studied documents into two clusters indicates a dichotomy in phishing research. Namely, an approach focused on the analysis of security threats and an approach focused on technical detection methods based on features and modelling. The second cluster has a stronger influence on the development of research in this area, despite the smaller number of publications. This is most likely due to the higher level of innovation and citations in research on phishing detection algorithms.

Figure 3. Thematic clusters related to phishing



Source: own study, based on data from the WoS database, prepared using the Bibliometrix tool.

Characteristics of the most frequently cited publications on phishing in economics and finance

Phishing, as a form of cybercrime, has a significant impact on financial security and even the stability of the banking sector. This thesis is justified primarily by the estimated losses amounting to billions of dollars annually, as well as the undermining of consumer confidence in financial services and trading in electronic distribution channels. Unlike the publications in Table 3, the following overview includes the 10 most frequently cited publications from the WoS database in the „Economy & Business Finance" category only, which allows for an in-depth analysis of the economic and financial consequences of phishing for the banking sector.

Herley and Florêncio (2010) in their paper „Nobody Sells Gold for the Price of Silver: Dishonesty, Uncertainty and the Underground Economy" analysed the illegal cyber economy, focusing in particular on IRC markets[1] offering stolen identities,

[1] The IRC market does not exist as a financial or commercial market in the classical sense. IRC is primarily a communication technology (Internet Relay Chat), i.e. a network of online chat channels. There are various IRC networks in Poland, e.g. PIRC.PL, which can be called a "market" in the social sense as a place and means of exchanging information, contacts and services. It operates in a client-server architecture: the user connects to the IRC server using a client programme, and conversations take place on thematic channels. Channels can be public (open to everyone) or private (for invited users only).

phishing kits, botnets[2] and cybercrime-related services. The authors demonstrated the existence of sophisticated ‘underground’ markets characterised by a high level of specialisation and maturity, with a comprehensive division of labour and range of services, which revolutionised the understanding of the economic aspects of cybercrime. This work has been cited 62 times and has been instrumental in understanding the economic mechanisms driving phishing attacks. Hornuf et al. (2022), in their study “Initial coin offerings, information disclosure, and fraud” published in *Small Business Economics*, conducted a comprehensive analysis of fraud in Initial Coin Offerings (ICOs), documenting various types of fraud and showing that fraudulent ICOs are on average significantly larger than the average for other types of fraud. The authors discovered a paradox whereby issuers who disclose their code on GitHub[3] are more vulnerable to phishing and hacking attacks, pointing to the risks of transparency. This publication, cited 54 times, has made a key contribution to understanding the relationship between information disclosure and vulnerability to cybercrime in the financial sector.

Shkarlet et al. (2018) in their paper „Determinants of the Financial Services Market Functioning in the Era of the Informational Economy Development” published in *the Baltic Journal of Economic Studies* identified the determinants of the functioning of the financial services market in the era of the development of the information economy. The authors demonstrated objective links between financial systems and the national economy, emphasising the transformative impact of information technology on the functioning of financial institutions. This publication, cited 17 times, provided a theoretical framework for understanding the impact of digitalisation on the security of the financial sector.

Bayl-Smith et al. (2020), in their study „Cue Utilisation, Phishing Feature and Phishing Email Detection” presented *at the 24th International Conference on Financial Cryptography and Data Security*, developed the concept of cues as a unique predictor of phishing feature detection. The study, conducted on 127 psychology students, demonstrated the importance of cognitive processes in identifying phishing emails. This work, cited 12 times, contributed to a better understanding of the psychological mechanisms of phishing vulnerability in a financial context.

O’Leary (2019), in his article „What Phishing Emails Reveal: An Exploratory Analysis of Phishing Attempts Using Text Analysis” published in *the Journal of Information Systems*, conducted a textual analysis of phishing emails targeting accountants and auditing firms. By comparing a database of phishing messages with Enron emails, the author demonstrated statistically significant differences in many categories of text variables. This publication, cited 11 times, generated a phishing model as

[2] Botnets are networks of devices (computers, smartphones, servers or IoT equipment) infected with malware that are remotely controlled by cybercriminals. Each device in such a network acts as a “bot” and executes the operator’s commands without the owner’s knowledge.

[3] GitHub is the world’s largest platform for code collaboration, based on the Git version control system. It allows developers to store projects, track changes, collaborate as a team, and publish software in an open source or private model.

"power" based on the variables: friend, achievement, money, and work, which became the basis for subsequent research on text analysis in a financial context.

Bakarich and Baranek (2020) in their case study „Something Phish-y is Going On Here: A Teaching Case on Business Email Compromise" published in *Current Issues in Auditing* analysed the case of a US public company that fell victim to a scam called Business Email Compromise (BEC), as a result of which an employee unintentionally transferred millions of dollars to fraudulent accounts. This publication, cited 8 times, provided valuable educational insights for the auditing and financial sectors on the growing prevalence and scale of this type of corporate fraud.

Das et al. (2020) in their paper „User-Centered Risk Communication for Safer Browsing" presented at *the 24th International Conference on Financial Cryptography and Data Security* developed a risk management tool combining personalised blocking, filtering and alerts into a single holistic system. The authors used simple metaphorical illustrations that functioned both as risk communication and browser settings controls. This publication, cited 7 times, made a significant contribution to the development of a user-centred approach to online financial security.

Taylor-Jackson et al. (2020), in their paper „Incorporating Psychology into Cyber Security Education: A Pedagogical Approach" presented at *the 24th International Conference on Financial Cryptography and Data Security*, emphasised the role of the human factor in cyber security. The authors demonstrated that many cybersecurity incidents involve persuading deliberately selected individuals to perform specific behaviours or actions, such as opening a link in a phishing email. This publication, cited 7 times, contributed to the development of pedagogical approaches that incorporate psychology into financial cybersecurity education.

Basu (2018), in his paper „Markets and Manipulation: Time for a Paradigm Shift?" published in *the Journal of Economic Literature*, presented an overview of the growing importance in economics of human emotional weaknesses, attachment to social norms, and systematic irrationalities that influence market decision-making. The author emphasised that human beings are susceptible to manipulation by unscrupulous agents marketing their services or goods. This publication, cited six times, provided a cognitive framework for understanding the psychological basis of vulnerability to financial fraud.

Olifer et al. (2017), in their study „Controls-Based Approach for Evaluation of Information Security Standards Implementation Costs" published in *Technological and Economic Development of Economy*, analysed the costs of implementing information security standards. The authors showed that, according to a PricewaterhouseCoopers analysis, the average cost of a single information security and data protection breach doubled in 2015, and the number of organisations reporting serious breaches increased from 9% in 2015 to 17% in 2016. This publication, cited 6 times, provided fundamental economic data on the costs of cybercrime to the financial sector.

Conclusion

A bibliometric analysis of scientific literature on phishing, with particular emphasis on the financial sector, characterises the state of research on this phenomenon and indicates the main trends and directions of development. The dynamics of research interest in phishing, reflected in an annual publication growth rate of 16.35%, confirms the growing threat it poses to the cyber security of financial institutions and the urgent need for systematic scientific research (Donthu et al. 2021).

The evolution of phishing research paradigms between 2003 and 2024 indicates a shift from traditional approaches based on technical analysis and rules towards advanced methods using artificial intelligence, machine learning and natural language processing. Since 2022, there has been a noticeable surge of interest in blockchain and Ethereum technologies, signalling the exploration of new security mechanisms in the context of decentralised financial systems (Sahingoz et al. 2019; Das et al. 2020). The publication of numerous articles in this field in prestigious journals such as IEEE Access (135 publications) and Computers & Security (104 publications) indicates the existence of recognised publishing platforms in the field of phishing research. The dominance of open access publications reflects the trend in disseminating cybersecurity research results. At the same time, the global nature of research collaboration represented by leading institutions in North America, Asia and the Middle East highlights the universal nature of phishing threats and the need for international coordination of research activities.

An analysis of thematic clusters reveals a clear dichotomy between research focused on security threat analysis and technical detection methods based on features and modelling, with the latter cluster having a stronger influence on the development of the field, suggesting greater innovation in the area of phishing detection algorithms.

A review of the most frequently cited publications on phishing from an economic and financial perspective points to the fundamental importance of Herley and Florêncio's (2010) work on the economics of the underground cyber economy and the growing importance of research on ICOs and cryptocurrencies in the context of financial fraud (Hornuf et al. 2022). The identification of research gaps points to the need to intensify research in several key areas. First, interdisciplinary research combining technical and behavioural aspects is needed, taking into account the specific characteristics of financial service users and the cultural determinants of vulnerability to phishing. Second, there is a need for more in-depth analysis of the long-term economic effects of phishing attacks on the stability of the banking sector and the effectiveness of various cybersecurity investment strategies. Third, research is needed on the ethics of using artificial intelligence in phishing detection, particularly in the context of protecting the privacy of financial institution customers.

Future research should focus on the development of personalised phishing detection systems using advanced machine learning algorithms tailored to the specific risk profiles of banking service users. Research on the use of blockchain technology in the creation of decentralised identity verification systems and the use of natural language processing for real-time semantic analysis of phishing communications seems particularly promising. The practical implications of the analysis indicate the need for an integrated approach to cybersecurity in financial institutions, combining advanced technological solutions with systematic user education and regular organisational vulnerability assessments. Recommendations for practitioners include investing in multi-layered defence systems, developing organisational security cultures, and creating mechanisms for international cooperation in the exchange of threat information.

This bibliometric analysis confirms that research on phishing in the financial sector is undergoing rapid development, characterised by increasing methodological sophistication and the integration of various scientific disciplines. The future of this field is likely to be shaped by advances in artificial intelligence, the development of blockchain technology, and the growing importance of behavioural factors in the design of cybersecurity systems, which requires continued systematic research and close cooperation between academia and financial sector practitioners.

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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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Administrative Financial Penalty for Failure by The Investor to Fulfil Its Investment Obligations

(Commentary on the judgment of the Provincial Administrative Court in Warsaw of 22 August 2023, VI SA/Wa 8176/22)

Abstract

The commentary analyses the provisions of the Banking Law Act which constitute the legal basis for the Financial Supervision Authority to impose an administrative fine on an investor who has committed an administrative offence in the form of failure to comply with investor obligations. The issue is of significant importance for domestic entities which act as so-called reference shareholders of domestic banks. The Financial Supervision Authority is aware that investor obligations incurred before 21 April 2018 are in fact unenforceable. However, this supervisory authority often expects shareholders of domestic banks to enter into new investor commitments. In particular, an investor may be required to enter into an investment agreement with a domestic bank, under which it undertakes to recapitalise the bank in the event of a threat to its liquidity or solvency.

These considerations are discussed and analysed in the judgment of the Provincial Administrative Court in Warsaw of 22 August 2023 (reference number: VI SA/Wa 8176/22). In the author's opinion, this judgment accelerated the amendment of substantive law, especially with regard to the above-mentioned expectations of the Polish Financial Supervision Authority. One of the consequences of this judgment is the confirmation of the Polish Financial Supervision Authority's awareness that the investor commitments made by investors until 21 April 2018 are currently unenforceable. In addition, the normative solutions concerning the administrative fine imposed by the KNF on an investor in the event of failure to comply with investor obligations were analysed.

Keywords: administrative fine, investor obligation, Polish Financial Supervision Authority, KNF, reference shareholder, administrative sanction, supervision.

JEL Codes: K23, K22, K10

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Introduction

The case law of administrative courts in cases concerning administrative decisions of the Polish Financial Supervision Authority (KNF)[1] is very important for its activities and, at the same time, stimulates normative changes. In this context, an analysis of administrative court judgments in recent months in administrative court cases leads to important conclusions. This applies in particular to cases related to administrative liability and the imposition of administrative sanctions by the KNF. Against this background, one of the most interesting judgments is the judgment of the Provincial Administrative Court in Warsaw of 22 August 2023 (reference number: VI SA/Wa 8176/22[2]). This judgment, which is final[3], had a significant impact on the amendment of the provisions of the Banking Law Act of 29 August 1997[4].

The judgment in question concerned a complaint by a shareholder of a domestic bank against a decision of the Polish Financial Supervision Authority (KNF) of 28 September 2022. Pursuant to this administrative act, the KNF imposed a financial penalty of PLN 20 million on the shareholder in question. The sanction was imposed for what the KNF considered to be the investor's failure to comply with the obligation referred to in Article 25h(3) of the Banking Law since 15 February 2021. The obligation was made on 11 August 2011 and accompanied the notification of the intention to acquire, in particular by this investor, shares in a domestic bank in a number exceeding 50% of the total number of votes at the bank's general meeting and 50% of its share capital.

It is worth noting here that the aforementioned judgment of the Provincial Administrative Court in Warsaw is of significant importance for entities that are so-called reference shareholders. These are shareholders who exceed the 10% threshold in the number of votes at the general meeting or share in the share capital of a domestic bank and, under the procedure set out in Article 25a et seq. of the Banking Law, have incurred so-called investor commitments[5].

In the relations between the supervisor and financial market entities, there is a phenomenon of the Polish Financial Supervision Authority (KNF) asking shareholders who incurred so-called investor commitments before 21 April 2018 to submit – not to the KNF but to the domestic bank – an appropriate investor commitment in the content of the investment agreement. However, for the reason described above, this is not a "refreshment" of investor commitments or

1 Hereinafter: "**KNF**".
2 See also: Judgment of the Voivodship Administrative Court in Warsaw of 22 August 2023; reference number: VI SA/Wa 8176/22; Legalis.
3 See also: Judgment of the Supreme Administrative Court of 13 June 2025, reference number: II GSK 103/24, CBOSA.
4 Consolidated text: Journal of Laws of 2024, item 1646, as amended; hereinafter: "**p.b**.".
5 For more details, see, for example: M. Torończak, *Zobowiązania inwestorskie*, Monitor Prawa Bankowego 2019, No. 9, pp. 46–59.

a "confirmation of their validity". Literally, the point is for the reference shareholder of a domestic bank to commit to recapitalising that bank in the event of a liquidity or solvency problem.

Administrative financial penalty for breach of investor commitments incurred before 21 April 2018

The judgment of the Provincial Administrative Court in Warsaw of 22 August 2023 (reference number: VI SA/Wa 8176/22) concerned an investor's complaint against the decision of the Polish Financial Supervision Authority (KNF) of 28 September 2022, pursuant to which the KNF imposed a financial penalty of PLN 20 million on the shareholder in question, as it found that the shareholder had failed to comply with an investor commitment made on 11 August 2011. Since 15 February 2021, the Commission had been trying, unsuccessfully, to enforce this commitment. The investor refused to fulfil the commitment, probably on the grounds that it was unenforceable, and also pointed out that the KNF did not have the power to compel the investor to fulfil this commitment.

In fact, the KNF imposed an administrative fine on the investor on the basis of the provision of Article 25n(5a) of the Banking Law, which was only introduced into the legal system on 21 April 2018. (pursuant to the provisions of Article 5(5) of the Act of 1 March 2018 amending the Act on Trading in Financial Instruments and certain other acts[6]). The imposition of an administrative fine on the investor by the Polish Financial Supervision Authority was therefore based on the legal basis of Article 25n(5a) of the Securities Act, which was not in force at the time when the investor incurred the obligation in question. There was also no other provision that could constitute a basis for enforcing administrative liability for breach of an investor obligation.

Pursuant to Article 25n(5a) of the Banking Law, in the wording in force on the date of the Commission's decision in question: *If an entity referred to in Article 25(1) or the founder of a domestic bank has acquired or taken up shares or rights attached to shares referred to in Article 25(1) and fails to comply with the obligation referred to in Article 25h(3) or Article 30(1b), the Financial Supervision Authority may, by way of a decision, impose a financial penalty on that entity or founder of a domestic bank up to an amount corresponding to the value of those shares or rights attached to shares. The value of the shares or rights attached to the shares shall be determined on the date of their acquisition or subscription at fair value, as referred to in the Accounting Act of 29 September 1994.* This provision was introduced into the legal system pursuant to the provisions of the Act of 1 March 2018 amending the Act on Trading in Financial Instruments[7]. As a consequence, the rule sanctioning an investor's failure to comply

6 Journal of Laws of 2018, item 685.
7 *Ibidem*.

with the so-called investor obligation was introduced into the legal system only on 21 April 2018.

Analysing the content of Article 25n(5a) of the Act on Public Trading in Financial Instruments, and taking into account the absence of other provisions in this Act indicating the retroactive application of this provision, it should be concluded that it is *strictly* prospective and does not apply retroactively. Therefore, it can be argued that the Provincial Administrative Court in Warsaw correctly pointed out in its justification that *since the submission of the investor commitment referred to in Article 25h(3) of the Banking Law Act of 29 August 1997 resulted in the creation of a legal relationship "in progress" which began under the old law and continued after the amended provisions of the Banking Law came into force, i.e. on 21 April 2018, then for this reason the principle of direct application of the new law should be waived, since there was no important public interest in applying the currently applicable provisions. The principle of continued application of the old law (the old act) should be applied – the intertemporal rule, which requires the application of the existing law to legal relationships that continue after the change in the law. As a consequence, the above rule leads to the continued application of the legal provisions in force on the date of the establishment of the legal relationship, and not to events occurring after that date, which are closely related to it. There is no doubt as to the application of the principle of existing law to a situation where the old provisions remain in force, but in an amended version, and introduce a new legal regulation, previously not in force, after the date of the establishment of the legal relationship. Considering that the act amending the provisions of the Act of 29 August 1997 Banking Law as of 21 April 2018 does not contain transitional provisions concerning the application of sanctioned provisions, the intertemporal rule should be applied, according to which the provisions in force at the time when the party assumed the obligation referred to in Article 25h(3) of the Banking Law will apply in the case. Consequently, the imposition of a financial penalty on the basis of Article 25n(5a) of the Banking Law, which was not in force at the time the party assumed the obligation referred to in Article 25h(3) of the Banking Law, is unfounded*[8].

The position of the Provincial Administrative Court in Warsaw deserves approval, as the Court correctly stated that the provision of Article 25n(5a) of the Public Procurement Law was only introduced into the legal system in 2018. Thus, in accordance with the provision of Article 25n(5a) of the Public Procurement Law the administrative offence triggering the application of the provision in question is the investor's failure to comply with the investor's obligation referred to in Article 25h(3) or Article 30(1b) of the Public Procurement Law. However, this provision is only applicable prospectively. Thus, this provision may only apply to administrative offences which amounted to the investor's failure to comply with the investor's obligation in accordance with the provisions of the Act of 1 March 2018.

[8] For more details, see: Judgment of the Voivodship Administrative Court in Warsaw of 22 August 2023; reference number: VI SA/Wa 8176/22; Legalis.

Consequently, the provision of Article 25n(5a) of the Public Procurement Law cannot apply to legal relationships that arose before the entry into force of the regulation contained therein. There is no legal basis for such action. Therefore, the position of the Provincial Administrative Court in Warsaw should be shared, according to which *the principle of a democratic state ruled by law implies that public authorities should act with care for citizens' trust in the state and protect their interests in the course of their activities, and thus, in justified situations, depart from the principle of direct application of a new act, which is the case here. Consequently, the authority [KNF] applied a provision of law which entered into force on 21 April 2018, i.e. after the Party had undertaken the obligation referred to in Article 25h(3) of the Banking Law on 11 August 2011. Since the provision of Article 25n(5a) of the Banking Law was not in force at that time, the breach of the obligations referred to in Article 25h(3) of the Banking Law before 21 April 2018 was not subject to the penalty specified in that provision*[9]*.*

The principle of trust in public authorities is based on constitutional norms. It should be noted that the principle of a democratic state ruled by law, established in Article 2 of the Constitution of the Republic of Poland, gives rise to the rule of citizens' trust in the state and the law enacted by that state. This principle gives rise to specific obligations in all spheres of state activity. The protection of trust is implemented directly in two fundamental areas of administrative activity. Firstly, in the area of stabilising relations established by an official statement of an administrative body, and in particular by a final administrative decision. Furthermore, the protection of trust is materialised in the sphere of compensation for losses incurred in a citizen's property as a result of the revocation or amendment of such statements[10]. From the principle of protection of trust[11], it is therefore possible to derive a standard of certainty in the sphere of law

9 *Ibidem.*

10 See more: Judgment of the Supreme Administrative Court of 6 June 2023, reference number: I GSK 883/22; Legalis; see also: Judgment of the Supreme Administrative Court of 6 October 2021, reference number: I FSK 1797/18; Legalis.

11 The Supreme Court's case law aptly points out that: *One of the principles derived from the principle of a democratic state ruled by law (Article 2 of the Constitution of the Republic of Poland) is the principle of citizens' trust in the state. This principle is related to the legal security of the individual. It is expressed, inter alia, in the application of the law in such a way that it does not become a trap for citizens and that they can conduct their affairs in the confidence that they will not be exposed to legal consequences that they could not have foreseen at the time of making decisions and taking actions, and in the belief that their actions taken in accordance with the applicable law will also be recognised by the legal order in the future. The legal security of individuals associated with legal certainty enables the predictability of the actions of state authorities and the forecasting of one's own actions. Therefore, one of the components of the principle of a democratic state ruled by law is the principle of citizens' trust in the state, which is also expressed in the possibility for citizens to expect state authorities to correctly apply the applicable provisions of law, since, pursuant to Article 7 of the Constitution of the Republic of Poland, public authorities act on the basis of and within the limits of the law;* see also: Supreme Court Judgment of 18 July 2024, reference number: II NSNc 389/23; LEX; Supreme Court judgment of 5 October 2023, reference number: II NSNc 140/23; LEX; see also: Judgment of the Voivodship Administrative Court in Wrocław of 12 January 2023, reference number: III SAB/Wr 581/22; Legalis; Judgment of the Supreme Administrative Court of 30 September 2021, reference number: I FSK 1461/17; Legalis.

enforcement[12], which can be formulated as a requirement for state authorities to act in such a way that all their actions, including decisions issued in individual cases[13] in the field of public administration, are a logical and natural result of the processes of governance in an efficiently administered state[14]. The legal confirmation of the above is the position, according to, that: *the above rules of conduct for administrative bodies are supplemented by the principle of citizens' trust in state authorities, expressed in Article 8 of the Code of Administrative Procedure, according to which public administration bodies are obliged to conduct proceedings in a manner that inspires the trust of its participants in public authorities. This principle is extremely important from the point of view of so-called social justice in procedural terms, as it means that the authority conducting the proceedings is obliged to justify its actions and explain their basis*[15]. One of the foundations of the principle of a democratic state ruled by law is therefore that legal entities should act in trust of public authorities and should not be burdened with the negative consequences of actions that are inconsistent with the provisions of[16], taken by public administration entities, such as the Polish Financial Supervision Authority (KNF)[17]. The principle of protecting trust in the state, including trust in public administration entities, derived from Article 2 of the Polish Constitution, indicates that the state should not derive financial benefits from erroneous, unlawful actions of an authority[18]. In the latter context, it should be noted that, in accordance with the established case law of the Constitutional Tribunal (TK)[19]: *as an essential component of the constitutional principle of a democratic state ruled by law, the principle of citizens' trust in the state and the law it enacts is based on legal*

[12] See also: Judgment of the Supreme Administrative Court of 12 December 2022, reference number: II GSK 468/22; Legalis.

[13] See also: Judgment of the Voivodship Administrative Court in Białystok of 19 July 2017, reference number: I SA/Bk 506/17; Legalis.

[14] See also: Judgment of the Voivodship Administrative Court in Warsaw of 17 June 2020, reference number: VI SA/Wa 1/20; Legalis.

[15] See also: Judgment of the Voivodship Administrative Court in Warsaw of 27 October 2020, reference number: VI SA/Wa 42/20; CBOSA; Judgment of the Supreme Administrative Court of 8 February 2023, reference number: I GSK 1796/22; Legalis; Judgment of the Supreme Administrative Court of 31 October 2022, reference number: I GSK 565/22; Legalis; Judgment of the Supreme Administrative Court of 20 September 2022, reference number: I GSK 1758/21; Legalis; Judgment of the Supreme Administrative Court of 10 December 2021, reference number: I GSK 1083/21; Legalis; Judgment of the Supreme Administrative Court of 23 August 2023, reference number: II OSK 2964/20; Legalis.

[16] *Argumentum ex* Article 7 of the Constitution of the Republic of Poland.

[17] See also: Judgment of the Voivodship Administrative Court in Gliwice of 4 September 2009, reference number: III SA/Gl 404/09; Legalis; Judgment of the Supreme Court – Civil Chamber of 20 March 2009, reference number: II CSK 602/08; Legalis.

[18] See also: Judgment of the Supreme Administrative Court of 17 November 2023, reference number: I GSK 20/20; CBOSA; see also: Judgment of the Supreme Court – Extraordinary Control and Public Affairs Chamber of 28 March 2023, reference number: II NSNc 85/23; Legalis; see also: Judgment of the Voivodship Administrative Court in Olsztyn of 16 February 2023, ref. no. II SA/Ol 49/23; Legalis.

[19] See also: Constitutional Tribunal Judgment of 14 June 2000, reference number: P. 3/00; the judgment is available at: http://www.trybunal.gov.pl/OTK/teksty/otkpdf/2000/p_03_00.pdf; Constitutional Tribunal judgment of 25 June 2002, reference number: K. 45/01; the judgment is available at:http://www.trybunal.gov.pl/OTK/teksty/otkpdf/2002/K_45_01.pdf

certainty[20]. The above is also confirmed by the established case law of the Supreme Court[21], according to which: *the principle of citizens' trust in the state, resulting from the principle of a democratic state governed by the rule of law that implements the principles of social justice, is expressed, inter alia, in the possibility for citizens to expect state authorities to correctly apply the applicable legal provisions.* […] *According to the understanding of the principle of citizens' trust in the state and the law it enacts, as adopted in the case law of the Constitutional Tribunal, constitutional protection must be afforded not only to citizens' trust in the letter of the law, but above all to the manner in which it is interpreted in the practice of law enforcement by state authorities.*

Furthermore, the case law of the Supreme Administrative Court (NSA) emphasises the principle of non-retroactivity of the law (*lex retro non agit*) as one of the fundamental principles of interim law, from which it is possible to deviate only in exceptional situations, if this is justified by the need to protect important constitutional values. The NSA stated that *[in] a democratic legal order, the law should, in principle, apply prospectively and not retroactively, in the sense that it should link the legal effects specified therein to events occurring after its entry into force. The lex retro non agit principle is addressed primarily to the legislator and prohibits it from enacting legal norms that would apply to events and situations that took place and were completed before the entry into force of those norms*[22]. *This principle is not absolute and may be waived, but only in exceptional cases where it is necessary to protect constitutional values other than legal certainty and citizens' trust in the state, which are threatened by a deterioration in their legal situation as a result of the imposition of certain obligations on them with retroactive effect*. *Even if we assume that the general principle is the direct effect of the law, this principle alone does not give rise to a presumption that, in the absence of a specific statement by the legislator, a provision, especially a substantive law provision, may be applied retroactively*[23]. Hence, the limits of its application in time are determined by the principle *of lex retro non agit*[24]. The Supreme Administrative Court also stated that *in the event of a conflict as to whether the existing or the new provision applies to a case, it is assumed that the existing provision applies if the legal relationship whose content was directly determined by that provision arose (changed or expired) under its rule*[25].

20 See also: A. Kluczewska-Rupka, *Zasada pewności prawa w działaniu administracji Unii Europejskiej oraz jako zasada ogólna prawa Unii Europejskiej*, Studia Prawa Publicznego 1(5)/2014, p. 161; M. Baran, *Zasada pewności prawa a zasada legalizmu unijnego – uwagi na tle orzecznictwa TS*, European Judicial Review 5/2011, p. 13; cf. also: Judgment of the Supreme Administrative Court of 13 May 2021, reference number: I FSK 1841/19; Legalis.

21 See also: Judgment of the Supreme Court of 24 May 2023, reference number: II NSNc 160/23; LEX.

22 See also: Judgment of the Supreme Administrative Court of 26 October 2017, reference number: II GSK 24/16; CBOSA; see also: Judgment of the Supreme Administrative Court of 24 November 2024; reference number: III OSK 2836/21; CBOSA; Judgment of the Supreme Administrative Court of 13 June 2025, reference number: II GSK 103/24; CBOSA.

23 See also: judgments of the Constitutional Tribunal of 9 June 2003, reference number: SK 12/03, OTK No. 6/A/2003, item 51, and of 23 July 2013, reference number: P 36/12, OTK No. 6/2013, item 82.

24 See also: Constitutional Tribunal judgment of 12 May 2009, reference number: P 66/07, OTK no. 5/A/2009, item 65.

25 *Ibidem*.

It should be recalled that on 11 August 2011 the provision of Article 25n of the Banking Law did not contain a sanctioning norm (similarly, on that date, there was no such norm in the systematics of the Banking Law) which could constitute the basis for the substantive right of the Polish Financial Supervision Authority to impose an administrative financial penalty on an investor due to the investor's failure to fulfil its so-called investor obligations. The provision of Article 25n of the Banking Law was therefore a classic example of a *lex imperfectae* norm, i.e. a norm whose observance was not secured by a sanction of administrative liability and an administrative financial penalty.

The consequence of the above is that the hypothetical application by the KNF of the sanctioning norm of Article 25n(5a) of the Banking Law to an investor in a domestic bank who incurred a so-called investor obligation before 21 April 2018 would lead to the retroactive application of this norm. Such action would violate the principles of a democratic state governed by the rule of law. It would violate the fundamental principle of interim law, i.e. the principle of non-retroactivity (*lex retro non agit*)[26]. In this context, the Provincial Administrative Court in Warsaw rightly pointed out that: *in administrative court judgments, it is rightly and consistently pointed out that the lack of a clear position on the part of the legislator as to which provisions should apply to events that took place before the new provisions came into force* […] *does not mean that there is a "normative gap", as it should be filled by interpretation by the authorities applying the law, but the rule in this respect cannot be the automatic application of the provisions of the new Act to legal situations (events) that took place before the date of entry into force of the new Act. The question of whether priority should be given to the principle of continued application of the existing provisions or to the principle of direct application of the new Act must be decided on a case-by-case basis, depending on the specific case and the nature of the provisions subject to change; the effects that the adoption of one or the other principle may have must also be taken into account (cf. resolution of the seven-judge panel of the Supreme Administrative Court of 10 April 2006, ref. no. I OPS 1/06, ONSAiWSA of 2006, no. 3, item 71)*[27].

In the case examined by the Provincial Administrative Court in Warsaw, the shareholder incurred the so-called investor obligation on 11 August 2011. This obligation was still in force when the provisions amending the Banking Law came into force, i.e. on 21 April 2018. On the date of the creation of this obligation, the provision of Article 25n of the Banking Law did not include sanctions in the form of an administrative fine, and paragraph 1 provided only for a follow-up supervisory measure in the form of a prohibition on exercising voting rights/an order to sell shares in a domestic bank[28]. The legal basis

[26] See also: Judgment of the Voivodship Administrative Court in Warsaw of 22 August 2023; reference number: VI SA/Wa 8176/22; Legalis; see also: Judgment of the Voivodship Administrative Court in Warsaw of 4 January 2022, reference number: VI SA/Wa 2129/21; CBOSA; Judgment of the Voivodship Administrative Court in Warsaw of 15 July 2021, reference number: VI SA/Wa 179/21; CBOSA.

[27] For more details, see: Judgment of the Voivodship Administrative Court in Warsaw of 22 August 2023; reference number: VI SA/Wa 8176/22; Legalis.

[28] See, for example: M. Torończak, *Decyzja z art. 25n ust. 1 ustawy – Prawo bankowe*, Monitor Prawa Bankowego 2015, No. 4, pp. 62–75; R. Woźniak, *Pozycja prawa akcjonariusza banku krajowego w związku*

for the application of a financial penalty was only introduced on 21 April 2018. Therefore, in the light of the above analysis of the provisions and rules, the Polish Financial Supervision Authority could not apply a sanction in the form of an administrative financial penalty for an administrative offence[29].

Similarly, the position of the Provincial Administrative Court in Warsaw should be shared, according to which: *the submission of an investment commitment by the Complainant resulted in the creation of a legal relationship "in progress", which began under the old law and continued after the amended provisions of the Banking Law came into force. For this reason, it was necessary to depart from the principle of direct application of the new law in this case, as the Authority did not demonstrate in any way that there was an important public interest in applying the currently applicable provisions.* [...] *The principle of the continued application of the old law is the opposite of the principle of the direct application of the new law, where the immediate application of the new Act gives rise to an obligation to use the new provisions to assess the effects of events that began before they came into force*[30].

When issuing the administrative decision in question, the Polish Financial Supervision Authority did not take into account the fact that we are dealing here with an administrative financial penalty, and therefore a form of administrative sanction. This implies that the Polish Financial Supervision Authority must fully respect the standards developed in case law regarding the application of administrative sanctions. In this latter context, it is worth noting that case law rightly assumes that the *strictly* punitive nature of the provisions predetermines the manner of their interpretation[31]. The interpretation of administrative law provisions constituting the legal basis for imposing administrative sanctions should be similar to the interpretation of provisions classified as criminal law, with priority given to linguistic

z wydaniem przez KNF decyzji na podstawie art. 25n prawa bankowego, Monitor Prawa Bankowego 2015, No. 2, pp. 86–93.

29 See also: Judgment of the Voivodship Administrative Court in Warsaw of 22 August 2023; reference number: VI SA/Wa 8176/22; Legalis.

30 See also: Judgment of the Voivodship Administrative Court in Warsaw of 22 August 2023; reference number: VI SA/Wa 8176/22; Legalis.

31 The interpretation of law in its application in cases concerning administrative penalties should be carried out in a "restrictive" manner based on a preference for linguistic interpretation (see: Supreme Court judgment of 6 October 2016, reference number: III SK 51/15, Legalis No. 1537675; Supreme Administrative Court Judgment of 1 June 2004, reference number: GSK 30/04, Legalis no. 63945; Supreme Administrative Court Judgment of 27 May 2009, reference number: II GSK 972/08, Legalis no. 326345; Supreme Court judgment of 4 December 2009, reference number: III SK 30/09, Legalis no. 1875710; Supreme Court judgment of 21 September 2010, reference number: III SK 8/10, Legalis no. 412622; Supreme Court judgment of 26 October 2016, reference number: III SK 75/15, Legalis no. 1526381; Resolution of seven judges of the Supreme Administrative Court of 16 May 2016, reference number: II GPS 1/16, Legalis 1445596; P. Wajda, *Przesłanki (dyrektywy) wymiaru administracyjnych kar pieniężnych nakładanych na krajowy zakład ubezpieczeń (część II)*, Wiadomości Ubezpieczeniowe 2020, no. 2, p. 21).

interpretation[32] over any other types of interpretation[33]. As a result, a provision subject to administrative sanctions must be interpreted in accordance with its literal wording. Therefore, when interpreting a sanctioning norm, it is not permissible to use other types of interpretation (e.g. purposive, systemic) to obtain a meaning of the norm that differs from that resulting from linguistic interpretation[34,35]. In the case law of administrative courts, it is correctly assumed that in the category of cases under analysis, the results of linguistic interpretation can only be overruled in exceptional cases (e.g. in the event of a gross contradiction with the assumption of a rational legislator)[36]. Similarly, the use of broad interpretation[37], analogy[38] or presumptions[39] is excluded here. The Supreme Administrative Court points out that: *norms for which an administrative sanction is provided for must be unambiguous in their content and cannot be subject to interpretative measures leading to an extension*

32 See also: M. Zirk-Sadowski [in:] *System Prawa Administracyjnego. Wykładnia w prawie administracyjnym*, *Volume 4*, ed. R. Hauser, Warsaw 2015, 2nd edition, pp. 223–226; W. Morawski, *Glosa do wyroku NSA z 4 października 1994 r., SA/WR 929/94*, Przegląd Orzecznictwa Podatkowego 1/1998, p. 93; B. Brzeziński, *Wykładnia celowościowa w prawie podatkowym*, Kwartalnik Prawa Podatkowego 1/2002, p. 18.

33 See also: Judgment of the Supreme Administrative Court of 1 June 2004, reference number: GSK 30/04; CBOSA; see also: judgment of the Supreme Administrative Court of 30 March 2004, GSK 31/04; CBOSA. Furthermore, the need to use linguistic interpretation is also indicated by the opinion expressed by the Constitutional Tribunal, which emphasised that: *the principle in question [clarity and precision of provisions] is particularly important in the sphere of rights and freedoms. Especially in tax regulations, the legislator cannot, through unclear wording of the provisions, leave the authorities applying them with excessive freedom in determining their subjective and objective scope, and create uncertainty for taxpayers as to their obligations; see:* Constitutional Tribunal Judgment of 9 October 2007, reference number: SK 70/06, Legalis; Constitutional Tribunal judgment of 18 July 2013, reference number: SK 18/09, Legalis; see also: Voivodship Administrative Court in Olsztyn judgment of 9 July 2020, reference number: II SA/Ol 293/20; CBOSA.

34 See, for example: Judgment of the Supreme Administrative Court of 6 March 2014, reference number: I OSK 653/13; Legalis.

35 For more details, see: Judgment of the Constitutional Tribunal of 5 May 2004, reference number: P 2/03; LEX; see also: Judgment of the Supreme Administrative Court of 27 May 2005, reference number: II GSK 972/08; CBOSA; see also: Ł. Gajek, *Kary pieniężne w ustawie o radiofonii i telewizji – analiza krytyczna*, Internetowy Kwartalnik Antymonopolowy i Regulacyjny 2019, No. 3 (8), p. 16;

36 See also: Supreme Court resolution of 21 January 2016, reference number: III SZP 4/15, Legalis no. 1398242; Supreme Court judgment of 6 October 2016, reference number: III SK 51/15, Legalis no. 1537675; Supreme Court decision of 26 October 2016, reference number: III SK 75/15, Legalis no. 1526381.

37 See, for example: Judgment of the Supreme Administrative Court of 18 April 2019, reference number: I OSK 1750/17; Legalis.

38 See, for example: Judgment of the Voivodship Administrative Court in Łódź of 23 July 2021, reference number: II SA/Łd 203/21; LEX; Judgment of the Voivodship Administrative Court in Warsaw of 28 November 2019, reference number: IV SA/Wa 1668/19; LEX.

39 For more details, see: Judgment of the Supreme Court of 24 September 2014, reference number: III SK 59/13, Legalis no. 1079955; Judgment of the Court of Competition and Consumer Protection of 15 April 2019, XVII AmE 92/17, Legalis no. 2252765; Judgment of the Supreme Administrative Court of 22 November 2019, reference number: II GSK 1019/19; CBOSA; see also A. Krawczyk [in:] W. Chróścielewski (ed.), Z. Kmieciak (ed.), *Kodeks postępowania administracyjnego. Komentarz*, Warsaw 2019, Lex/el., commentary on Article 189b, point 3.

of liability[40]. The case law emphasises the inadmissibility of retroactive application of regulations introducing liability for administrative offences[41]. Therefore, the position developed in the case law of the Constitutional Tribunal should be shared, according to which the guarantees contained in Chapter II of the Constitution *apply to all repressive proceedings, i.e. proceedings whose purpose is to subject a citizen to some form of punishment or sanction*. Consequently, Article 42(1), first sentence, of the Constitution of the Republic of Poland, according to which: *Only a person who has committed an act prohibited under penalty of law in force at the time of its commission shall be subject to criminal liability*, should be applied here accordingly (i.e. taking into account its specific nature). The Constitutional Tribunal derives two more specific directives from this. Firstly, the prohibition of sanctioning acts which, at the time of their commission, did not constitute administrative offences (which should be seen as the equivalent of the criminal law principle *of nullum crimen sine lege anteriori*). Secondly, the prohibition of applying sanctions which were not provided for at the time of the commission of the offences (which in turn is equivalent to the criminal law principle *of nullum poena sine lege*)[42]. However, in the case in question, the KNF has, in a sense, disregarded the obligation to apply the principle of *lex mitior retro agit* (the more lenient law applies retroactively) to administrative sanctions, which requires the retroactive application of the provision that is more lenient for the entity violating the regulations. This obligation arises from Article 15(1) of the International Covenant on Civil and Political Rights of 19 December 1966[43]. It is therefore clear that the legal situation in force since 21 April 2018 is not more favourable to an investor who has breached the so-called investor's obligation[44]. On the contrary, the legal situation in force since 21 April 2018 is definitely less favourable to such an investor than the legal situation in force until that date. *De lege derogata refers to* a situation in which a breach of investor obligations incurred before 21 April 2018 was not linked to the KNF's power to impose an administrative fine.

The above considerations lead to the conclusion that the administrative sanction under Article 25n(5a) of the Banking Law cannot be applied in the case of an administrative offence in the form of a breach of so-called investor obligations incurred before 21 April 2018.

[40] See more broadly: Judgment of the Supreme Administrative Court of 27 May 2009, reference number: II GSK 972/08, Legalis no. 326345.

[41] See also: Constitutional Tribunal judgment of 12 May 2009, reference number: P 66/07, Legalis; see also: Supreme Administrative Court judgment of 21 October 2009, reference number: II GSK 487/09; Legalis.

[42] See also: Constitutional Tribunal judgment of 12 May 2009, reference number: P 66/07, Legalis; see also: Supreme Administrative Court judgment of 21 October 2009, reference number: II GSK 487/09; Legalis.

[43] Journal of Laws of 1977, No. 38, item 167.

[44] See also: Judgment of the Supreme Administrative Court of 13 May 2008, reference number: II GSK 104/08; Legalis.

Amendment to Article 25n(5a) et seq. of the Banking Law

The provisions of Article 25n(5a) et seq. of the Banking Law were amended by the Act of 16 August 2023 amending certain acts in connection with ensuring the development of the financial market and the protection of investors in that market[45]. This regulation came into force on 29 September 2023 and changed the model for imposing administrative fines, as well as introducing numerous formal and legal solutions concerning decisions of the Polish Financial Supervision Authority.

When interpreting these provisions, the first step is to point out that their amendment implies the need to assess the application or non-application of their current content to investor obligations incurred between 21 April 2018 and 29 September 2023. Therefore, it is necessary to verify whether the legislator has regulated this issue in the provisions of the Act of 16 August 2023 amending certain acts in connection with ensuring the development of the financial market and the protection of investors in that market. An analysis of the provisions of this Act leads to the conclusion that this issue has not been regulated. Thus, it is necessary to assess the application of the *lex mitior retro agit* principle to the above-mentioned situation. When making this assessment, it should be noted that *de lege derogata* (i.e. until 29 September 2023), the administrative offence referred to in Article 25n(5a) of the Banking Law was punishable by an administrative fine corresponding to the value of these shares or rights attached to shares, with the value of shares or rights attached to shares being determined as at the date of their acquisition or subscription at fair value, as referred to in the Accounting Act of 29 September 1994. The amount of the penalty was determined on the date of their acquisition or subscription at fair value, as referred to in the Accounting Act of 29 September 1994. *De lege lata*, this administrative offence is punishable by an administrative fine of up to 10% of the revenue disclosed in the last approved financial statements, and in the absence of such statements, up to 10% of the projected revenue determined on the basis of the economic and financial situation of the legal person. In the case of natural persons, the penalty may amount to PLN 21,312,000. Bearing in mind that domestic banks operate using financial leverage, it can be assumed that in the case of investors as legal persons, the "old" wording of Article 25n(5a) of the Banking Law will be more lenient. In the case of natural persons, however, the "new" wording of this provision will be more favorable. However, this assessment must be made on a case-by-case basis, i.e. on the basis of the specific facts of the case.

De lege lata, failure by an investor to fulfil an investment obligation which, it should be emphasized, was incurred on or after 21 April 2018, triggers the KNF's powers to impose an administrative financial penalty on the investor in question. When determining the amount (severity) of the administrative fine, the criteria set out in Article 189d of the Code of Administrative Procedure will apply, as well as the principles of proportionality.

[45] Journal of Laws of 2023, item 1723.

The proceedings in the case will be initiated by the KNF, which acts ex officio in this matter. The party to the proceedings will be the investor who incurred an investment obligation on or after 21 April 2018 and subsequently failed to fulfil it, and the competent public administration authority in this case will be the KNF. The subject of these proceedings will be to determine whether the investor failed to fulfil its investment commitment and to impose an administrative financial penalty on it, together with determining the level of its severity. It should be noted here – *argumentum ex* Article 7 in conjunction with Article 77 § 1 of the Code of Administrative Procedure that the burden of proof in this case will rest entirely with the Polish Financial Supervision Authority[46]. This means that the Polish Financial Supervision Authority will be obliged to establish the facts of the case in accordance with the material truth and to collect and assess all the evidence in the case, thereby proving that the investor failed to comply with the investor commitment[47].

The KNF will resolve the administrative case in question by way of an administrative decision, which will be immediately enforceable *ex lege*[48]. This decision will be based on the concept of administrative discretion[49]. This is determined by the

[46] The case law has expressed the position that: *in accordance with the principle of objective truth standardized in Article 7 of the Code of Administrative Procedure, public administration bodies shall take all steps necessary to thoroughly clarify the facts and resolve the case. The authority conducting the proceedings is obliged to collect and examine the evidence in order to establish the facts of the case in accordance with reality. Factual findings that are confirmed by evidence but are incomplete or not fully considered should be treated as arbitrary. The allegation of arbitrariness can only be ruled out by findings made on the basis of all the evidence collected and examined in an exhaustive manner, i.e. when all steps necessary for a thorough clarification of the facts have been taken, as a prerequisite for issuing a convincing decision* (see: Judgment of the Supreme Administrative Court of 23 February 2017, reference number: I OSK 790/15; CBOSA; Judgment of the Supreme Administrative Court of 2 April 2019, reference number: II OSK 3473/18; Legalis; Judgment of the Supreme Administrative Court of 9 October 2018, reference number: II OSK 2505/18; Legalis; Judgment of the Voivodship Administrative Court in Gliwice of 7 November 2019, reference number: I SA/Gl 954/19; Legalis.

[47] Agreeing with the views expressed in case law (see more broadly: Judgment of the Supreme Administrative Court of 27 August 2010, reference number: II OSK 1131/10, Legalis; Judgment of the Voivodship Administrative Court in Warsaw of 29 June 2009, reference number: I SA/Wa 474/09, Legalis) and doctrine (see more broadly: P. Wajda, M.A. Śliwa, *Zasada prawdy obiektywnej (art. 7 k.p.a.) i ciężar dowodu w postępowaniach administracyjnych prowadzonych przez KNF*, Monitor Prawa Bankowego 5/2014, pp. 58–59), it should be concluded that two basic obligations arise for the KNF from the general principle of objective truth. The first obligation concerns determining what evidence is necessary to establish the facts. On this basis, the KNF should, ex officio and on the basis of the relevant substantive law, indicate which circumstances are relevant to the facts of the case from the point of view of those standards.

[48] *Argumentum ex* Article 25n(5b) of the Banking Law.

[49] See, for example: Judgment of the Voivodship Administrative Court in Warsaw of 22 June 2007, reference number: VI SA/Wa 2198/06; Legalis; Judgment of the Supreme Administrative Court of 14 June 2007, reference number: II GSK 35/07, Legalis; Judgment of the Voivodship Administrative Court in Warsaw of 5 September 2019, reference number: VI SA/Wa 964/18, CBOSA; Judgment of the Voivodship Administrative Court in Warsaw of 19 November 2020, reference number: VI SA/Wa 148/20, CBOSA; Judgment of the Voivodship Administrative Court in Warsaw of 27 February 2020, reference number: VI SA/Wa 884/19, CBOSA; Judgment of the Supreme Administrative Court of 16 May 2019, reference number: II GSK 2054/17, CBOSA; see also: Judgment of the Constitutional Tribunal of 20 June 2017, reference number: P 124/15; Legalis.

legislator's use of the phrase "*the Financial Supervision Authority may*" in the wording of Article 25n(5a) of the Banking Law. As a result, the KNF is entitled to refrain from imposing an administrative fine on the investor and to discontinue the proceedings in question[50], even if it is found that the investor has failed to comply with its investment obligation.

An optional element of this decision is the determination by the KNF that the financial penalty referred to in Article 25n(5a) of the Public Offering Act will be payable in monthly instalments[51] and according to the repayment schedule and amounts determined by the Commission[52].

The administrative decision under Article 25n(5d) of the Capital Market Act is a related decision. It is not based on administrative discretion, therefore, in each case where the investor obligation is fulfilled, in the meantime, the KNF will be obliged to issue a decision under Article 25n(5d) of the Capital Market Act.

In a situation where the investor fulfils its investor obligations after the administrative decision under Article 25n(5a) of the Public Offering Act has been issued, but before the deadline for payment of the administrative fine, this will trigger the KNF's obligation to issue an administrative decision under Article 25n(5d) of the Public Offering Act. In such a situation, the KNF will initiate, *ex officio*, the administrative proceedings referred to in Article 25n(5d) of the Banking Law, the purpose of which will be to determine whether the investor's obligation has been fulfilled in the meantime. If so, this fact should be taken into account when cancelling the administrative fine under Article 25n(5a) of the Banking Law. In such a case, the KNF is entitled to cancel the administrative fine in full if it has been paid in a single instalment. The KNF may also remit it in part corresponding to unpaid future instalments if the payment of the administrative fine was spread out in instalments. The burden of proof (i.e. the burden of demonstrating that the investor's obligation has been fulfilled in the meantime) will rest entirely with the KNF.

In the event of non-payment of the administrative fine referred to in Article 25n(5a) of the Banking Law, the KNF is entitled to order a domestic bank, whose shareholder is the investor referred to in Article 25a(5n) of the Banking Law, to transfer to the arrears, together with interest, all payments made by the bank to that shareholder, in an amount corresponding to that penalty together with interest.

De lege lata, we are dealing with a situation in which the investor's performance of its investment obligations – incurred from 21 April 2018 – has been secured by an administrative liability sanction. However, this sanction may only apply to those investment obligations that were incurred from 21 April 2018 onwards, but not earlier. On the other hand, in the case of investor obligations incurred before

[50] *Argumentum ex* Article 105 § 1 of the Code of Administrative Procedure.

[51] See also: P. Wajda [in:] *Prawo bankowe. Komentarz*, ed. A. Mikos-Sitek, P. Zapadka, LEX/el. 2025, Article 25(n); see also: W. Srokosz [in:] J. Dybiński (ed.), *Tom XA. Prawo rynku finansowego. Prawo bankowe. Komentarz*, 1st edition, 2025.

[52] *Argumentum ex* Art. 25n(5c) of the Banking Law.

that date, failure to fulfil them does not result in administrative liability under Article 25n(5a) of the Public Procurement Law.

The legal situation described above means that the Polish Financial Supervision Authority cannot require an investor who entered into an investment commitment before 21 April 2018 to confirm that the commitment is still valid or to resubmit it. This is because there is no proper legal basis in the legal system for submitting such confirmation of the validity of an investment commitment or for resubmitting it. At the same time, the KNF is bound by the constitutional principle of the rule of law/legalism[53]. However, under the current legal situation, the investment commitment of reference investors of domestic banks may only be submitted in the course of the administrative proceedings referred to in Article 25 et seq. of the Banking Law[54]. In this context, and in a situation where the liquidity or solvency of a domestic bank is at risk, as part of the amendment to the investment agreement, the KNF often expects such investors to submit a commitment to recapitalise the bank.

Summary

De lege lata, the enforceability of investor commitments made by reference investors of domestic banks before 21 April 2018 is not secured by an administrative fine, and the KNF cannot enforce these commitments. This situation generates significant systemic risk. It is obvious, as confirmed by practical experience, that an investor will limit or fail to perform its obligations if a domestic bank experiences problems threatening its solvency. This is indirectly confirmed by the administrative decision of the Polish Financial Supervision Authority and the judgment of the Provincial Administrative Court in Warsaw analysed in this study.

In these circumstances, it is reasonable to expect the KNF to intensify its actions against reference shareholders of domestic banks seeking to incur liabilities under investment agreements. In particular, this will apply to cases of trading in shares of a domestic bank, which requires the consent of the KNF pursuant to Article 25 et seq. of the Banking Law.

[53] In accordance with the constitutional principle of the rule of law, public administration bodies may act only to the extent and only using legal forms of action that are based on a specifically indicated provision of law. (For more details, see: Judgment of the Supreme Administrative Court of 27 October 1987, reference number: IV SA 292/87; CBOSA). Public administration bodies may therefore act only within the scope resulting from the authorization clearly specified in the provisions of law (see: M. Wierzbowski, *Charakter prawny stosunków w organizacjach społecznych,* Warsaw 1976, p. 24; S. Fundowicz, *Aksjologia prawa administracyjnego używania* [in:] *Koncepcja systemu prawa administracyjnego. Zjazd Katedr Prawa Administracyjnego i Postępowania Administracyjnego. Zakopane 24–27 września 2006 r.*, (ed.) J. Zimmermann, Warsaw 2007, p. 635; see also: K. Działocha, *Konstytucyjne założenia systemu naczelnych organów państwa,* Państwo i Prawo 10/1987, pp. 99–100; K. Opałek, *Spór o pojęcie praworządności,* Państwo i Prawo 10/1959, pp. 519–520; M. Zieliński, *Obiektywność ustalenia faktów jako element praworządności stosowania prawa*, Ruch Prawniczy, Ekonomiczny i Socjologiczny 1/1979, pp. 31–32).

[54] *Argumentum ex* Article 25h(3) of the Banking Law.

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Miscellanea

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Banking Crisis Management and Customer Protection in the Debate of the 11th Congress of Polish Economists

About the 11th Congress of Polish Economists

The 11th Congress of Polish Economists ("Congress") took place in Poznań on December 4–5, 2025, coinciding with the celebration of the 80th anniversary of the Association of Polish Economists ("Association"). The organizers developed and published 11 rationales for organizing the Congress, which included issues related to tradition, education, inspiring and creating foundations for further economic development, and improving the quality of life of citizens. The Congress was attended by 648 people, who participated in 3 plenary sessions, 28 panel sessions, and 26 research sessions. The special guest and keynote speaker of the Congress was Prof. Dani Rodrik (Harvard University), who offered an insightful perspective on the problem of "*Shared Prosperity in a Fractured World*"[1]. Another

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[1] The basis for the presentation was the Speaker's publication: "*Shared Prosperity in a Fractured World. A New Economy for the Middle Class, the Global Poor and our Climate*" Princeton University 2025.

keynote speaker was Prof. Beata Javorcik (Oxford University, EBRD, and CEPR), who discussed "*Globalization in Times of Turmoil*". At the end of the Congress, a concluding document entitled "The Poznań Declaration" was published[2].

Bank Guarantee Fund Session: Banking crisis management and customer protection – between system stability and moral hazard

As part of the 30th anniversary celebrations of the Bank Guarantee Fund ("Fund"), the Congress program included a thematic session devoted to banking crisis management and the protection of credit institutions' customers. Managing a crisis in the banking sector is a challenge for all stakeholders, both direct – such as the bank in crisis and its customers – and indirect, such as safety net institutions and other credit institutions. This stems primarily from the extraordinary situation of the threatened bank, the nature of the actions taken, and their potential impact on financial stability. Experiences with banking crises following the global financial crisis led to the structuring and development of regulations related to public authority interventions in the face of a banking crisis. Legislative initiatives aimed to create a crisis management framework focused on maintaining financial stability and reducing moral hazard, particularly in the context of ultimately using taxpayer funds to bail out banks. However, these regulations are subject to systematic review and appropriate modifications following their evaluation.

It is worth emphasizing that the issues discussed in this panel session were closely aligned with the 11 rationales for organizing the Congress, specifically the rationale: "*Because we want to diagnose what is not working and look for effective solutions together*."

The session was moderated by Dr. Magdalena Kozińska, Assistant Professor at the Warsaw School of Economics and Deputy Director of the Financial System Projects Department at the Fund. The session's guests included:

1) Prof. Ryszard Kokoszczyński, University of Warsaw,
2) Prof. Monika Marcinkowska, University of Lodz,
3) Prof. Jan Szambelańczyk, WSB-Merito Poznań.

In the introduction to the debate, the moderator briefly outlined the key problems of crisis management in the banking sector based on experiences from the global financial crisis and the remedial measures implemented afterward. She also briefly described the current crisis management system, which consists primarily of bank resolution processes as well as liquidation processes, in which the payment of guaranteed deposits usually plays an important role. She highlighted the key rules that should be followed in

2 PTE, Kongres Ekonomistów Polskich, *Deklaracja Poznańska na zakończenie XI Kongresu Ekonomistów Polskich*, 2025, https://pte.pl/uploads/Deklaracja_Poznanska_88e583fc89.pdf?updated_at=2025-12-05T13:24:03.527Z (accessed 06.01.2026).

a bank crisis, emphasizing the EU financing principles aimed at maximizing the financial responsibility of owners and uninsured creditors of a bank and minimizing the financial responsibility of governments (state budgets). Reference was also made to the latest changes to the crisis management system established during the Polish Presidency of the EU Council in the form of the so-called CMDI Package (Crisis Management and Deposit Insurance Package), in which the Fund actively participated. This package amends the directives governing the resolution process and the principles of operation of deposit guarantee schemes. Its introduction was inspired by the experience of EU authorities in crisis management in the banking sector in recent years (including the Polish experience with the resolution of Podkarpacki Bank Spółdzielczy in Sanok, Bank Spółdzielczy in Przemków, Idea Bank, and Getin Noble Bank). The CMDI includes numerous technical changes but also introduces modifications to the fundamental rules governing the actions of authorities during a crisis. In practice, these changes expand the scope of the resolution procedure (instead of liquidating the entity under bankruptcy proceedings) and increase the role of deposit guarantee schemes in crisis management, for example, by extending deposit guarantees to local government units (LGUs) or by expanding the use of deposit guarantee fund resources in resolution, especially in the case of smaller entities that did not meet the conditions for accessing the resolution fund (due to insufficient participation of owners and unsecured creditors in covering bank losses during the crisis). These changes respond to situations in which covering bank capital shortfalls required burdening losses, for example, on depositors (to an extent exceeding deposit guarantees). The allocation of the costs of a banking crisis among various stakeholders remains a subject of much debate and assessment. The CMDI Package changes the allocation of financial responsibility for a banking crisis, shifting the burden onto deposit guarantee schemes and reducing the risk for depositors (although only in the case of smaller banks). At the same time, it reduces pressure on owners and creditors of smaller banks, as their share in covering bank losses can be partially replaced by a deposit guarantee. However, the CMDI Package does not change the approach to using taxpayer funds to bail out banks, which should remain a last resort.

The introduction sparked a debate in which the effectiveness of resolution and changes within the CMDI Package were assessed in different ways.

In particular, it was pointed out that in practice, the resolution procedure has not been the primary method for addressing the problems of a bank at risk of bankruptcy, although decision-makers intended it to be. It was also argued that modifications were being introduced based on experience, while emphasizing that dynamic changes in socio-economic systems (business, political, macroeconomic, regulatory, and technological environments) alter the systemic context and require appropriate normative and instrumental responses. For this reason, as indicated during the debate, revisions resulting from practical experience should not be viewed negatively, given the dynamic changes occurring in the economy and the banking sector. Particular attention was paid to the issue of so-called burden sharing (i.e., dividing the costs of the crisis between the private and public sectors). In this regard, the introduction of the MREL requirement is a good solution, although it essentially involves transferring risk to other domestic or foreign entities. The panelists noted the case of Getin Noble

Bank's resolution, where the banking sector – through the established Commercial Bank Protection System (pol. System Ochrony Banków Komercyjnych, SOBK) – financially supported the crisis management process at this bank. This is an example of the private sector's real involvement in crisis management. It was also recalled that a similar, somewhat original solution was implemented in Poland in 2005–2006 in relation to the crisis-hit Wschodni Bank Cukrownictwa. The panelists also addressed the issue of adequate accountability for actions taken to obtain benefits, both by the private and public sectors. It was recognized that the lack of recourse against behavior motivated by greed is an accelerator of moral hazard (safe gambling). The unbearable pace of regulatory growth and its complexity was also emphasized – complexity that the average stakeholder in the banking system is unable to analyze on an ongoing basis, and sometimes even understand.

Reflections on the effectiveness of crisis management principles led the panelists to discuss the role of depositors and their protection in crisis situations. Reference was made to the American experiences in 2023, where a bank run caused the collapse of several banks. It was emphasized that a key factor in the Silicon Valley Bank crisis was the mass withdrawal of deposits using electronic banking, as well as the large share of uninsured deposits. The issue of proper communication between safety-net institutions and bank customers was also addressed. As indicated, the deposit guarantee system itself, as well as the level of protection, creates moral hazard, as deposit guarantee principles essentially remove responsibility from depositors for prudent allocation of funds. In this context, reference was made to the previously applicable EU deposit guarantee principles, which assumed a depositor's share in losses resulting from a bank crisis (i.e., the guarantor protected a high share, but not the entire deposit). Deposit guarantee rules, as well as the related tendency of depositors to withdraw funds from banks, provoked comments on bank liquidity and ways to preserve it. One of the available tools is emergency liquidity assistance (ELA) obtained from the central bank as part of its role as lender of last resort (LoLR). However, it was pointed out that this mechanism is neither unconditional nor unlimited. The EU has specific rules for granting ELA (reflecting the principles outlined by Bagehot), according to which, among other things, the bank receiving support should be solvent and should submit appropriate collateral. Liquidity from the central bank should be treated as a short-term support mechanism in emergency situations of liquidity outflow.

The discussion concluded with proposals for further development of the crisis management system. The panelists pointed out that the key issues include strong oversight of banks (by audit committees, supervisors, and customers), the development of market mechanisms and private sector participation (e.g., in the form of MREL) in crisis management, and consideration of changes to deposit insurance to reduce moral hazard.

The conclusions from the panel session organized by the Fund are consistent with the first postulate of the Poznań Declaration, which identifies the need to build trust in institutions and strengthen the social market economy, as well as (in relation to the second postulate of the Declaration) to create a longterm strategy for Poland's economic development.