

A few words on current problems and challenges of consumer protection in the financial services market (from the volume editor)

ARTICLES

Magdalena Fedorowicz, The importance of soft law issued by the European Banking Authority for establishing the normative consumer protection standard on the financial market

Table of contents

- I. Introduction
- II. Legal fundamentals for establishing the normative consumer protection standard on the financial market
- III. Consumer protection standard on the financial market and its elements – theoretical approach
- IV. Analysis of soft law issued by the EBA regarding consumer protection – chosen issues, practical approach
- V. Conclusions

Summary: In financial market legal acts, the normative accent lately underlines supervision issues, with particular emphasis of consumer protection issues, which is common for EU and domestic lawmakers. It is important to adopt a regulatory philosophy that properly supports the protection of the legal interests of consumers on the financial market. The main aim of this paper is to analyze the consumer protection standard, the normative consumer protection pattern on the financial market, reconstructed and specified from and by EBA soft law acts, within the legal space of the European System of Financial Supervision, having regard to EU and domestic binding acts relevant to the financial market.

Key words: financial market, consumer protection on the financial market, banking supervision.

JEL: K22, K23, K29

Paweł Czaplicki, The phenomenon of misselling on the Polish bond market – what did the GetBack S.A. case teach us?

Table of contents

- I. Introduction
- II. What is *misselling*?
- III. *Misselling* on the bond market on the example of bonds issued by GetBack S.A.
- IV. *De lege ferenda* postulates aimed at increasing the level of protection of bondholders against *misselling*
- V. Final remarks

Summary: The article presents the phenomenon of *misselling* on the Polish bond market on the example of bonds issued by GetBack S.A. Presented are also *de lege ferenda* postulates aimed at increasing the level of protection of bondholders against *misselling*. The article uses the dogmatic and legal research method as well as the analysis of existing data. The key research problem

presented in the article is how to clarify the legal regulations regarding consumer protection in the bond market, so that bondholders do not become victims of *misselling*. In accordance with the hypothesis put forward by the author, the legal provisions in this area require tightening up by imposing additional obligations on entities offering the purchase of bonds to consumers, and, on the other hand, more severe penalties for using unfair selling practices.

Key words: misselling, bonds, Office of Competition and Consumer Protection, Supreme Chamber of Control.

JEL: K22

Bartosz Wyżykowski, Liability for the execution of a payment transaction with the use of an incorrect unique identifier under the Payment Services Act

Table of contents

- I. Introductory remarks
- II. Exclusion of a payment service provider's liability for the execution of a payment transaction with the use of an incorrect unique identifier
 1. Lack of the obligation for payment service providers to verify the cohesion of the unique identifier with other data of the payee
 2. Providing an incorrect unique identifier versus the possibility of the payer to refer to an error as to the content of the legal action
- III. A payment service provider's liability under a contract or specific regulations
- IV. Practical aspects of pursuing claims by the payer
 1. Claim to return funds under the provisions on unjust enrichment
 2. Entities obliged to return funds
- V. Interpretation of Article 64 of the Banking Law Act in conformity with EU law
- VI. Final remarks

Summary: The article concerns certain aspects of pursuing claims by the payer in order to retrieve the amount of a payment transaction executed with the use of an incorrect unique identifier. For this purpose, an analysis is carried out of the provisions of the Payment Services Act, which was amended in 2018 as a result of the implementation of the Second Payment Services Directive into the Polish legal system. Reviewed in the paper are also judgments of courts issued in cases where a transaction was executed with the use of an incorrect unique identifier.

Key words: payment transaction, incorrect unique identifier, user, payment service provider, unjust enrichment, error as to the content of the legal action.

JEL: K12, K15, K23, K24, K41, K42

Piotr Gałązka, Pre-contractual information obligations in the new Draft Consumer Credit Directive in the light of existing EU regulations

Table of contents

- I. Introduction
- II. Origin of the new provisions on consumer credit
- III. Existing provisions of the Directive regarding information obligations

- IV. Proposed pre-contractual information provisions in the Draft
 1. Obligation to provide information free of charge
 2. Advertising and marketing information
 3. General information
 4. Pre-contractual information
 5. Clarification information for the consumer

V. Summary

Summary: The European Commission, responding to calls for amendments, presented in June 2021 the Draft of a new Consumer Credit Directive. One of the issues that was announced as part of the amendment process was the issue of pre-contractual consumer information provided by the creditor. The article analyses the content of the Draft with respect of pre-contractual consumer information, comparing the proposed provisions with existing ones, assessing them in terms of validity and effectiveness in achieving the objectives of the new Draft Directive and the earlier announcements of the European Commission as a drafter.

Key words: consumer credit, financial services, European Union, information obligation.

JEL: G51, G40, G23, G21, K22

Michał Rafał Walczak, Pre-contractual information obligations of the lender towards the borrower in the Act on Reverse Mortgage

Table of contents

- I. Introduction
- II. General characteristics of a reverse mortgage
- III. The problem of adjusting pre-contractual information obligations to the specifics of the borrower
- IV. Pre-contractual statutory information obligation that precede the conclusion of a reverse mortgage contract
- V. Summary

Summary: The article raises the issue of the information obligation that precedes the conclusion of a reverse mortgage contract. This service is addressed, by definition, to the elderly who are looking for a way to increase their income from the funds obtained from a pension. The study analyzes statutory regulations concerning pre-contractual information obligations of the lender towards the potential borrowers, which are basically limited to the passing of the information form. The analysis leads to the conclusion that the statutory information obligation is not adjusted to the specifics of the borrowers.

Key words: reverse mortgage, protection through information, equity release services, consumer protection.

JEL: K12, K15, K23

Krzysztof Waliszewski, Consumer protection on the non-bank loan market in Poland during the COVID-19 pandemic

Table of contents

- I. Introduction
- II. The non-bank loan market in Poland during the COVID-19 pandemic

- III. Solutions introduced on the loan market in the field of consumer protection during the COVID-19 pandemic
- IV. Proposals for further regulation of the loan sector in Poland
- V. Ending

Summary: The article analyzes activities aimed at consumer protection on the non-bank loan market during the COVID-19 pandemic in Poland. It also presents how the tightening of anti-usury regulations regarding consumer credit, made at the request of the Polish Competition Authority (the President of the Office of Competition and Consumer), had a negative impact on the loan market. At the same time, a dynamic increase in the interest to use the services of pawnshops was observed. The question is whether consumers were in fact protected from financial depletion during the COVID-19 pandemic? The last part of the article presents proposals for further regulations of the loan sector in Poland, with an attempt to assess their impact on this sector.

Key words: consumer credit, non-bank loan, anti-usury regulations, consumer protection, COVID-19 pandemic.

JEL: K36, D18, E51

Edyta Rutkowska-Tomaszewska, Artur Zwaliński, Contractual and statutory solutions concerning 'credit holidays' during the COVID-19 pandemic. Law – practice – and the actual protection of the consumer as a borrower

Table of contents

- I. Introduction
- II. Situation of Poles on the threshold of the COVID-19 pandemic and in its course
- III. Proposals of banks for consumers in connection with the outbreak of the pandemic – the so-called commercial 'credit holidays' and their evaluation
- IV. 'Credit holidays' offered by lenders during the COVID-19 pandemic in the context of actions taken by the Polish Competition Authority and the Financial Ombudsman
- V. Statutory suspension of credit agreements as a response to the abusive practices of creditors and a form of assistance for consumers affected by the consequences of the COVID-19 pandemic
- VI. Summary and conclusions

Summary: The authors of this paper start with the presentation of the situation of Poles on the threshold of the COVID-19 pandemic and during its course, as they are affected by its economic consequences. Next, they consider the institution of the so-called 'credit holidays', both commercial ones (proposed by creditors) and those proposed by consumers, with the aim to present the conditions of taking advantage of these instruments. The authors also assess them from the perspective of the practice of the Polish Competition Authority (the President Office of Competition and Consumer Protection) and the Financial Ombudsman, through the prism of consumer complaints and notifications, as well as actions taken by these institutions in connection with irregularities found by creditors, which violate consumer interests. It is said that the conditions offered by the market did not meet the real needs of providing reliable and actual help to consumers affected by the negative consequences of the pandemic (as a result of losing their jobs or main source of income). As a result, it was necessary to introduce a statutory

regulation on the suspension of the execution of credit agreements (statutory holidays) under the Act amending the COVID-19 Act.

Key words: 'credit holidays', credit agreements, 'statutory and non-statutory (contractual) holidays', prohibited market practices of lenders, abuse of borrowers.

JEL: G20, G21, G28, G29, G51

Magdalena Paleczna, Specific solutions introduced in the 'anti-crisis package' on non-interest costs of consumer loans

Table of contents

- I. Introduction
- II. New – temporary – limits to non-interest costs for consumer credit and the rules for their application
- III. Limitation of costs of subsequent consumer credit
- IV. Infringement of the new limits on non-interest credit costs
- V. Duration of the reduced limits on non-interest credit costs
- VI. Reduced limits – state after their introduction and the position of the lending industry
- VII. Controversy over the extension of the reduced limits on non-interest expenses for consumer credit
- VIII. Summary and conclusions

Summary: Due to the COVID-19 pandemic in Poland, and the need to introduce numerous restrictions in the public and private spheres, the liquidity of Polish consumers was disrupted and many lost their source of income. There was therefore a justified fear, in particular on the part of the Polish Government and the Polish Competition Authority, that consumers would turn to consumer credit providers, in particular lending institutions, to maintain their liquidity. New – temporary – limits for non-interest credit costs were established in March 2020. The limits were set up separately for loans with a repayment period of up to 30 days and those with a repayment period of more than 30 days. The aim of introducing this particular solution was to protect consumer borrowers from over-indebtedness caused by the COVID-19 pandemic in Poland. In this paper, the author analyses the temporary limits of non-interest costs of consumer credit and presents the positions of the Polish legislator and the loan industry.

Key words: limit on non-interest credit costs, consumer credit, creditor, consumer, COVID-19.

JEL: G20, G28, G51

Wanesa Choptiany, The amendment to the provisions on consumer bankruptcy in the time of the crisis caused by COVID-19

Table of contents

- I. Introduction
- II. Consumer bankruptcy and the protection of consumer rights – a dogmatic aspect
 1. Amendment of the provisions on consumer bankruptcy
 2. Changes in consumer bankruptcy regulations in connection with the COVID-19 pandemic and planned changes

III. Institution of consumer bankruptcy in the time of the crisis caused by COVID-19 in Poland – an empirical aspect

IV. Conclusions

Summary: The article focuses on the analysis of the amended Polish provisions on the procedure for declaring consumer bankruptcy and the beginning of their operation, which coincided with the pandemic crisis and significant economic constraints. Numerous restrictions and announced blockades led to the deterioration of the economic situation of many companies, entrepreneurs and natural persons, therefore the new regulations were immediately put through a special test. The article consists of two parts: dogmatic and empirical. The former presents the new as well as the planned bankruptcy regulations. On the other hand, in the empirical part, statistics and reports on the functioning of the new regulations will be analyzed to verify their effectiveness. The aim of the article is to ascertain whether the introduced provisions have made consumer bankruptcy a more available and efficient institution that enables debtors in a critical financial situations to ensure their protection.

Key words: a consumer bankruptcy; the Bankruptcy law; a consumer protection; COVID-19.

JEL: K15

BOOK REVIEWS

Grażyna Szustak, Witold Gradoń and Łukasz Szewczyk, Protection of a non-professional financial market participant, EU Katowice Publishing House 2021 (Iwona Dorota Czechowska)