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Failure to comply with information obligations in the consumer credit market – the reality of consumer protection

Niewypełnianie obowiązków informacyjnych na rynku kredytów konsumenckich – realia ochrony konsumenta

Abstract

The purpose of the article is to present, in the context of information asymmetry, irregularities related to consumer credit in terms of non-fulfillment of information obligations noted in the decisions of the President of the Office of Competition and Consumer Protection (OCCP) in the period of 2018–2021. While using the method of economic and legal analysis, the authors attempted to answer the question what irregularities, concerning the non-fulfillment of information obligations related to consumer credit, were identified in these decisions, and whether financial penalties were imposed on entities that did not fulfill these obligations. The analysis of irregularities presented in the paper shows that despite the legislation in force, the consumer is not sufficiently protected from information asymmetry.

Keywords: consumer credit, consumer protection, information obligations, irregularities

JEL: D18, K29, G21

Introduction

Financial services are in general very important for households. The financial services market is developing and its importance is continuously increasing for consumers (households). In 2020, for example, the share of expenditures allocated to financial services accounted for 2.3% of all household expenditures in the EU countries (EU-27), while in Poland the level of such expenditures

Streszczenie

Celem artykułu jest przedstawienie – w kontekście asymetrii informacji – nieprawidłowości związanych z kredytami konsumenckimi w zakresie niewypełniania obowiązków informacyjnych, odnotowanych w decyzjach Prezesa Urzędu Ochrony Konkurencji i Konsumentów (UOKiK) w latach 2018–2021. Autorzy, wykorzystując metodę analizy ekonomicznej i prawnej, poszukiwali odpowiedzi na pytanie, jakie nieprawidłowości dotyczące niewypełniania obowiązków informacyjnych związanych z kredytami konsumenckimi zidentyfikowano w tych decyzjach oraz czy na podmioty, które obowiązków tych nie wypełniały, nałożono kary finansowe. Z przedstawionej analizy nieprawidłowości wynika, że konsument nie jest dostatecznie chroniony przed asymetrią informacji pomimo obowiązującego ustawodawstwa.

Słowa kluczowe: kredyt konsumencki, ochrona konsumenta, obowiązki informacyjne, nieprawidłowości

was even higher (3.4%). The highest level of this type of spending was observed in Hungary, i.e. 3.6% (Eurostat, 2022). Alas, with the development of this market, problems and irregularities have emerged (Czechowska & Zaton, 2018). Problematic events, which are the subject of consumer protection in Poland, are monitored by many institutions related to the financial market, such as the Office of Competition and Consumer Protection (UOKiK, 2012), the Office of the Financial Supervision Commission

(Górniewicz et al., 2014; Pachucki, 2016), the Financial Ombudsman (Doradczy Komitet Naukowy przy Rzeczniku Finansowym, 2019) and the Bank Consumer Arbitration (BAK, 2020; 2021). Additionally, the same is conducted in industry organizations, e.g. the Conference of Financial Enterprises together with EY consulting firm (2020) and other companies, e.g. PwC. Due to the importance of the issue, which is consumer protection, the Supreme Audit Office has also developed several reports dedicated to this topic (NIK, 2017; 2018; 2020). Among numerous problems evident in the relationship between consumers and financial service providers, it is necessary to point out problems related to information. The source of these problems includes information asymmetry, presented in economic studies (Löfgren et al., 2002; Goldstein & Yang, 2017). Information asymmetry is a constant in the relationship between consumers and financial institutions (Benston, 2000; Campbell et al., 2011; Ardic et al., 2011; Ibrahim & Alagidede, 2017; Jakubowska, 2017; Boateng, 2018, Tsindelian & Mikheeva, 2021). Information asymmetry between consumers and their financial service providers is a very important issue of consumer protection (Rutledge, 2010).

The essence of the concept of information asymmetry is that one party to a transaction has greater knowledge of the subject matter of the transaction than the other party (Pawlowska-Szawara, 2020). Most often, the weaker party to the transaction is the consumer, who either does not have certain information resources about the service or does not understand their content, which affects the contract for the acquisition and use of a particular service. The occurrence of information asymmetry is due to the inequality of the parties, the complexity of financial services and also the cost of obtaining information. Financial institutions have information, and experience regarding the services they sell. A consumer may notice hidden negative features of a service only at the time of using the purchase (Pasiouras, 2018). According to J. Sovern (2006), service providers include some information in the following cases: only after the contract has been agreed upon, attaching it to other, more interesting information items, using fine print, or finally omitting some information such as fees. Failure to provide consumers with the information they need in order to make a right decision can result in e.g. the purchase of a service that does not meet their needs, the purchase of additional, unnecessary services, the conclusion of a contract on unfavorable terms. The consequences of information asymmetry can occur both at the contracting stage and after the conclusion of the contract (Tsindelian & Mikheeva, 2021). Adequate disclosure of information refers to the provision of upfront information that is made available before contracts are signed (at the pre-contract stage) but also information regarding activities during the contract, such as informing customers of changes in prices or other contract terms (Pasiouras, 2018). Policies to protect consumers of financial services through information are important because they lead to consumers making the right decisions,

choosing better service providers that adhere to quality standards, increasing trust in the system, more competition in the market (Benston, 2000; EBA, 2012). It should also be borne in mind that providing consumers with too much, incomprehensible information can cause problems with making rational decisions (Gaganis et al., 2020). As noted by E. Rutkowska-Tomaszewska, M. Więckowska and K. Borowski it is necessary not only that the information provided by financial institutions to consumers is reliable, true, up-to-date and relevant to investment decisions, but also that financial institutions act in an appropriate, professional manner, in the best interest of the consumer (Rutkowska-Tomaszewska, 2019; Więckowska & Borowski, 2020). In addition, it seems necessary, as D. Kubacki notes, the effectiveness of the information provided by the sender should be considered from the perspective of receipt and understanding by the recipient of the message (2019).

The proper implementation of information obligations by financial institutions in contractual relations with consumers is an extremely important issue. It reduces the level of information asymmetry, and thus provides real protection for consumers in the financial services market (Rutkowska-Tomaszewska, 2019). One aspect of consumer protection is protection through an established catalog of clear and understandable information (Rutkowska-Tomaszewska, 2016; Paleczna, 2019). When assessing the conduct of financial institutions as honest or dishonest service providers, it is necessary to evaluate the fulfillment of their information obligations from the perspective of compliance or non-compliance with the law (Tereszkiewicz, 2015). Regulators, as part of their monitoring, reduce misinformation through the cost of imposed penalties (Köster & Pelster, 2018).¹

The purpose of this article is to present and evaluate, in the context of information asymmetry, the irregularities related to consumer credit, in terms of non-fulfillment of information obligations, recorded in the decisions of the President of the Office of Competition and Consumer Protection (OCCP) in the period of 2018–2021. The authors, using the method of economic and legal analysis, attempted to answer the question what irregularities, regarding the non-fulfillment of information obligations related to consumer credit, were identified in these decisions, and whether financial penalties were imposed on entities that did not comply with information obligations.

Analysis of irregularities related to consumer loans

The subject of the analysis will be a review of the identified irregularities and abuses in the consumer credit market, in terms of non-fulfillment of information obligations, described in 23 decisions issued by the President of the OCCP², in the period of 2018–2021. These will be the irregularities that occurred at the stage before the conclusion of the credit agreement (when advertising

financial services), at the stage of offering the product (in the so-called information form), at the stage of concluding the target credit agreement. The irregularities investigated in the President's decisions were related to the following regulations (see Figure 1):

- The Act of 12 May, 2011 on consumer credit (u.k.k.)³;
- The Act of 23 August, 2007 on counteracting unfair market practices (u.p.n.p.r.)⁴;
- The Act of 16 February, 2007 on competition and consumer protection (u.o.k.k.)⁵;
- The Act of 5 August, 2015 on the consideration of complaints by financial market entities and on the Financial Ombudsman (u.o.r.r.RF)⁶;
- The Act of 23 April 1964 Civil Code (k.c.)⁷.

This type of irregularity usually exhausts the elements of an unfair market practice referred to in Art. 4 and 5 of the Act on counteracting unfair market practices (u.p.n.p.r.) and violates the collective interests of consumers in accordance with the Art. 24 of the Act on competition and consumer protection (u.o.k.k.).

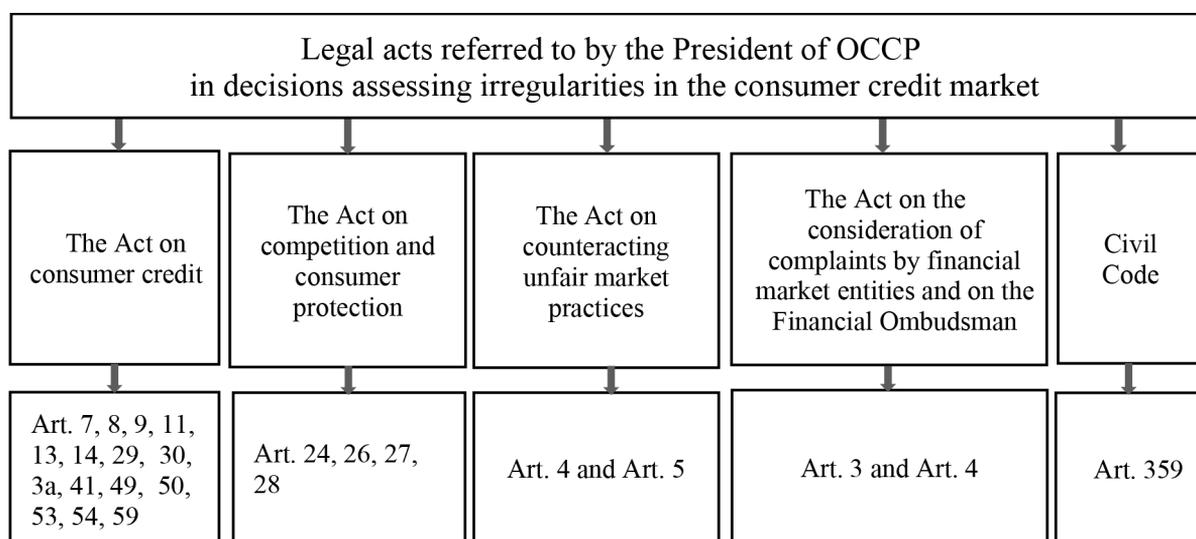
Law on consumer credit. Their detailed guidelines are contained in Art. 7 and Art. 8 of the aforementioned Act.

As the President of the OCCP notes, in spite of the regulations in force, there are situations in which false and misleading information about the terms and conditions of lending appears in advertisements. Advertising irregularities (unfair market practice violating the collective interests of consumers and generally misleading) identified by the OCCP include:

- Suggesting the unconditional granting of consumer credit, regardless of the outcome of the creditworthiness assessment (decision of the President of the OCCP, ref. RWR 9/2019). This was so-called "bait advertising," included in the catalog of prohibited practices in all circumstances.
- Suggesting that the proposed loan is the best on the market without indicating the offer to which the comparison referred (DOZIK 11/2019).
- Lack of information regarding the loan: interest rate (fixed rate, variable rate or both), fees included in the total

Figure 1

Violations of legal acts in the examined decisions of the President of the OCCP, 2018–2021



Source: own study.

Irregularities in consumer credit advertising

Financial products and services require advertising, the premise of which is to stimulate sales (Grzegorzczuk, 2003). According to the principles of advertising activities in the banking sector, the advertising message should be characterized by reliability in the dissemination of information, attention to the interests of bank customers and respect for generally applicable laws. In addition, it must not mislead or create opportunities for misrepresentation (KNF, 2008). Specific information obligations are imposed on financial institutions by the

cost of the loan, annual percentage rate of charge (APR), contract term, total amount to be paid, installment amounts determined on the basis of a representative example (RWR 9/2019).

- Lack of information about: the scope of authorization to perform factual or legal acts, cooperation with lenders, and the names of lenders (RWR 9/2019).
- Proposing an agreement on terms that do not correspond to the needs and repayment capacity indicated by consumers (RWR 10/2020), Art. 24 par.1 and par. 2, p. 4 u.o.k.k.
- Posting false information on websites, indicating that it was possible to conclude a loan agreement through the

website. This was not possible in practice (RWR 10/2020), Art. 24 par.1 and par.2, p.3 u.o.k.k.

- Misleading consumers about the possibility of concluding a consumer credit agreement on the terms described in individual written proposals, while the final evaluation of creditworthiness and matching of the offer took place during a visit to the outlet. In a number of cases, credit was denied or granted on terms different from those in the letters addressed to consumers (DOZIK 17/2021), Art. 5 par. 1 and par. 3 p. 1 related to the Art. 4 par. 2 u.p.n.p.r. and Art. 24 par. 2 p. 3 o.p.c.c.

Irregularities on the information form

The u.k.k. requires that the consumer should be adequately informed about the product offered in the form of certain obligations of the creditor and credit intermediary. Any consumer seeking credit under Article 9 is required, upon request of the creditor, to provide documents and information necessary to assess creditworthiness. If the creditor is a bank, or other institution authorized to grant credit, the assessment of creditworthiness is carried out in accordance with Art. 70 of the Act on banking law (1997). A lender that negatively assesses creditworthiness assumes that the consumer is not creditworthy at the time, and in this situation credit cannot be extended.

According to Art. 10 u.k.k., if a creditor refuses to grant consumer credit to a consumer on the basis of information contained in the creditor's database or dataset, it should immediately provide the consumer with the above information, indicating the reason for the refusal. Irregularities were pointed out in the decision RŁO 7/2018. Other allegations of violations of this law were also raised in the same decision, which concerned:

1. Failure to provide the consumer with explanations, prior to the conclusion of the agreement, to enable the consumer to decide whether to enter into a loan agreement, Art. 11 u.k.k.

2. Failure of the creditor to provide the consumer with the data on the information form, regarding consumer credit, Art. 13 u.k.k.

In Art. 13 u.k.k., the legislator indicated the information obligations of the creditor and credit intermediary before the conclusion of a consumer credit agreement. The purpose of the information provided on the information form is to present to the consumer the basic conditions under which consumer credit is offered. An analysis of the provisions issued by the President of the OCCP shows that Art. 13 u.k.k. was violated by depriving the consumer of reliable, true and complete information about:

- the total amount of the loan, in which the lending institution has included the amount of credited credit costs in the form of a brokerage fee and commission (RKR 7/2020), Art. 13 u.k.k., par.1 p. 5;
- the principles and terms of credit repayment, and where applicable, the order in which consumer credit

installments are credited to the creditor's receivables; if different interest rates are applied under the credit, for different receivables of the creditor, the order in which consumer credit installments are credited to the different balances due, for which different interest rates are applied, must be stated (RWR 1/2021, RWR 8/2020), Art. 13 u.k.k., par.1 p. 8;

- required collateral for consumer credit (RWR 8/2020), Art. 13 u.k.k., par.1 p. 14.

The practice of creating an obligation to provide the consumer with information on the information form contingent on the performance of certain actions (DOZIK 5/2021) was doubtful to the President of the OCCP, also violating Art. 13 u.k.k. According to Art. 28 par. 1, prior to the conclusion of a credit agreement, the credit intermediary is required to provide the consumer, on a durable medium, with information regarding the scope of the authorization to perform factual or legal acts and whether the credit intermediary cooperates with creditors. The consumer should be informed about the amount of possible costs for factual or legal actions related to the preparation, offering conclusion of the credit agreement. The credit intermediary shall also provide the consumer with information, about receiving remuneration from the creditor. It is impermissible to mislead consumers about the cost of credit and the nature of the fees requested from consumers, by concealing the obligation to pay remuneration for the performance of credit intermediation activities, ordering the payment of part of the money from the amount of credit made available, without explaining the meaning of such action, suggesting that the payments made by consumers on the instructions of the intermediary are intended for the repayment of the loan and, consequently, charging or demanding remuneration from consumers under credit intermediation agreements (RWR 9/2019).

Irregularities related to the conclusion of a consumer credit agreement

The u.k.k. specifies the elements that a consumer credit agreement should contain. Art. 29 par. 1 u.k.k. indicates that the agreement should be concluded in writing, unless separate regulations provide for a different, specific form. The legislator did not specify the legal consequences of failing to comply with the written form, so it can be assumed that it was reserved on pain of evidentiary difficulties. The contract should be formulated in an unambiguous and understandable manner. According to the OCCP, as reflected in the President's decisions, the following violations of this provision occurred:

- Drafting of the loan agreement in an illegible graphic form, in a very small font (RPZ 12/2019 and RŁO 6/2021).
- Lack of information in the content of the information form indicated in u.k.k. Art. 30 (RPZ 12/2019).
- Lack of information about the total amount of the loan (RGD 4/2019, RŁO 10/2020).

- Providing false information that the commission and preparation fee are included in the total cost of the loan (RKR 7/2020). According to Art. 5 p. 7 u.k.k., the information on the total amount of credit should include only those monies that the creditor makes available through cash in hand or payment into a bank account to the consumer under a single credit agreement. Assigning the aforementioned credit costs to the total amount of the credit distorts the proportion between the total amount of the credit and the total amount of the credit costs, which may mislead the borrower as to the basic parameters of the credit agreement, and thus constitutes a violation of Art. 30 par. 1, p. 4 in conjunction with Art. 5 p. 7 u.k.k. and Art. 30 par. 1, p. 7 in conjunction with Art. 5 p. 8 u.k.k.

- Presenting in contractual terms/information forms, information about the total amount of the loan in the form of credited loan costs (fee or insurance premium), which may have been misleading as to the proportion between the total cost of the loan and the total amount of the loan and constituted an unfair market practice within the meaning of Art. 5 par. 1 in connection with z par. 2, p. 1 and with Art. 4 par. 2 u.p.n.p.r. (DOZIK 17/2021, RŁO 4/2021).

- Failure to provide information in contracts about the duration of the contract (RWR 1/2021), Art. 30 par. 1, p. 3.

- Failure to include in contracts information about the term of the loan (RWR 3/2021, RWR 1/2021), Art. 30 par. 1, p. 5.

- Failure to provide information in credit/loan agreements about the order in which consumer loan installments are credited to the creditor (RWR 8/2020), Art. 30 par. 1, p. 8.

- Depriving the consumer of fair and complete information in loan/credit agreements on the period, procedures and conditions for changing the loan rate (RWR 1/2021, RGD 9/2019, RGD 4/2019), Art. 30 par. 1, p. 6.

- Depriving consumers of information on other costs they are required to pay in connection with a consumer credit agreement (RKR 3/2021, RWR 1/2021, RGD 4/2019), Art. 30 par. 1, p. 10.

- Failure to provide information in loan/credit agreements about the cost of a GIRO check, information about the annual interest rate on past-due debt, the conditions for its change and any other overdue fees (RKR 6/2021, RWR 3/2021, RWR 9/2020, RWR 2/2020, RWR 8/2020, RGD 9/2019, RGD 4/2019), Art. 30 par. 1, p. 11.

- Depriving the consumer of full and fair information in the loan/credit agreement on the consequences of non-payment (RGD 9/2019), Art. 30 par. 1, p. 12.

- Failure to provide information in consumer loan/credit agreements on the method of securing loan repayment (RWR 8/2020), Art. 30 par. 1, p. 14.

- Failure to provide information on the terms of termination (RWR 1/2021), Art. 30 par. 1, p. 19.

- Failure to provide correct information on the supervisory authority that is competent for consumer protection in the loan/credit agreement (RWR 1/2021, RWR 2/2020, RGD 9/2019, RŁO 7/2018), Art. 30 par. 1, p. 21.

In addition to the violations mentioned above, it is also worth mentioning provisions that should not be included in

the content of contracts. It is about the provision that reads: "The agreement is not subject to the Act on consumer credit." The application of the aforementioned practice, according to the President of the OCCP, would result in consumers being deprived of protection (entitlements), while the creditor would reduce its obligations, which are provided by the u.k.k. (RŁO 7/2018). The OCCP's authority concluded that the company which applied them violated the provisions of the u.o.k.k. in terms of unfair market practices within the meaning of Art. 5 par. 1 and 2 in conjunction with Art. 4 par. 2 u.p.n.p.r.

A frequently recurring irregularity in violation of Art. 30 u.k.k. par. 1, p. 20, which the President of the OCCP noticed in contracts, was incomplete information, or lack of correct and complete information, regarding out-of-court dispute resolution (RGD 9/2019, RGD 4/2019, RGD 7/2018, RGD 5/2018). A dispute between a customer and a financial market entity may be handled through out-of-court dispute resolution proceedings between the customer and the financial market entity, which shall be initiated at the request of the customer of the financial market entity, and shall be mandatory for the financial market entity in accordance with Art. 35, 37 u.o.r.r.RF. What proved equally worrisome was the lack of information in customer contracts regarding procedures for filing and processing complaints (RKR 5/2019, RPZ 12/2019). Even when they were written down, consumers were sometimes prevented from submitting them in writing by mail addressed to any unit of the lender (RWR 3/2019) which may have violated Art. 3 par. 2 p. 1 in conjunction with par. 1 u.o.r.r.RF.

Another example of violation of the provisions set forth in Art. 24 par. 1 and 2 p. 3 u.o.k.k. was information about the necessity of incurring possible future costs of court and enforcement proceedings although the lender did not yet have a final court judgment, nor had legal proceedings been initiated for non-payment of the loan amount (RGD 9/2019, RGD 4/2019). According to the President of the OCCP (RGD 4/2019), this action may give the borrower the mistaken belief that he or she will be absolutely obliged to bear the costs of court and enforcement proceedings in any situation. Meanwhile, according to the wording of Articles 100–102 of the Law on court costs in civil cases (The Act of 2005), the court may exempt a party, at its request, from court costs in whole or in part if the party is unable to bear such costs.

In another proceeding, the President of the OCCP drew attention to the irregularity of submitting a document to consumers for signature (immediately after the conclusion of a contract and before a dispute arises as to the claims arising therefrom) containing a statement of acknowledgment of debt by the consumer, to secure a claim for payment of remuneration under that contract, which is contrary to the essence and purpose of proper acknowledgment of debt (RWR 9/2019).

Further concerns of the President of the OCCP were raised by practices related to the conclusion of a surety agreement together with loan agreements. In the RWR 6/2019 decision, reservations were raised about making the

conclusion of a loan agreement conditional on the conclusion of a debt surety agreement. Fees were not included in the contracts resulting from the debt surety service agreement. This could have misled consumers about: APR of the loan, the total amount to be paid and other fees for defaulting on the loan. On the other hand, in the decision RŁO 5/2019, the OCCP authority pointed out the problem of the concluded loan agreement, which stipulated the obligation to establish collateral in the form of a surety agreement within three days after the conclusion of the agreement. No consideration was given to making the disbursement of the loan or continuation of the agreement conditional on the timely establishment of the aforementioned collateral. This resulted in granting loans to consumers in spite of the lack of the required collateral, which hindered the correct assessment of the proposed terms of the loan, and thus could lead to a distortion of their financial decisions (RŁO 5/2019).

The period under review (2018–2021) also included the decision of RŁO 7/2018, in which the loan provider, using an informational advantage over the consumer, used an unfair market practice within the meaning of Art. 5 par. 1 and 2 in connection with Art. 4 par. 2 u.p.n.p.r., requiring the consumer to obtain the indicated loan collateral within a short period of time. In practice, this was impossible to do. The consumer's misrepresentation resulted in the failure to fulfill these contractual obligations, terminating the contract and being charged a contractual penalty.

Irregularities were also related to the loan security in the form of a promissory note. According to Art. 41 u.k.k., a consumer's promissory note or check given to a creditor for the purpose of fulfilling or securing a performance should contain a "not for hire" or equivalent clause. The use of the aforementioned clause protects the borrower, against the will of the consumer, from transferring the assignment of rights to another person. Therefore, par. 2, Art. 41 stipulates that if the creditor assigns the promissory note or check to another person, the creditor is obliged to compensate the consumer for the loss suffered in connection with the payment to the holder of the note or check. In the decisions issued by the President of the OCCP, it was noted that this obligation was not fulfilled (RGD 9/2019, RWR 9/2019, RPZ 12/2019, RŁO 7/2018, RGD 5/2018).

With another form of collateral for receivables, transfer of ownership for collateral, in the opinion of the President of the OCCP, the use of this collateral was inadequate to the terms of the loans granted. It violated good practice, understood as the observance of the principle of proportionality in the use of means of securing receivables, Art. 4 par. 1 u.p.n.p.r., Art. 24 par. 1 and 2, p. 3 u.o.k.k. (RŁO 10/2020). In addition, in the course of the proceedings, the President of the OCCP determined that it was an unfair market practice not to provide information in loan agreements concluded with consumers about the amount of costs that the borrower was obliged to pay in the event that the lender had to satisfy the collateral object, or

information about the method of determining the amount of such costs.

Under the u.k.k., a consumer has the right to withdraw from a consumer credit agreement without giving any reason, within 14 days from the date of conclusion of the agreement. Paragraph 2 indicates that if the consumer credit agreement does not contain the elements specified in Art. 30, the consumer may exercise this right by counting the start of the term from the date of delivery of all information. Granting the consumer the right to withdraw from the agreement within a certain period of time without having to justify the reason is an instrument of consumer protection⁸. In addition, in accordance with Art. 54 u.k.k., the consumer shall not bear the costs associated with withdrawal from a consumer credit agreement, except for interest for the period from the date of disbursement to the date of repayment of the loan. At the same time, the consumer, when entering into a loan agreement, should receive full and reliable information about the possibility of exercising the right to withdraw from the consumer credit agreement. According to the President of the OCCP, violations of these provisions can be found in the decisions RKT 6/2020, RŁO 7/2018, RGD 9/2019, RGD 4/2019, which lacked information on the conditions for withdrawal from the loan agreement (deadline, method and consequences). In addition, the agreements were negligent in failing to provide any or incomplete information about the amount of interest due per day upon withdrawal⁹ (RWR 1/2021, RWR 2/2020, RGD 9/2019, RGD 4/2019, RŁO 7/2018).

Another important problem occurring in the consumer loan market is the violation of Art. 5, p. 12 u.k.k., which regulates information on the actual annual interest rate (RRSO). According to the President of the Office of Competition and Consumer Protection, irregularities concerning the provision of false and unreliable information about this rate resulted in the consumer being unable to choose the most favorable loan/credit offer. The above-described practices were identified in four decisions (RŁO 10/2020, RKR 7/2020, RGD 9/2019, RŁO 7/2018), in the examined period of 2018–2021. The President of the OCCP established that in cash credit agreements concluded with consumers, the total amount of the loan included a brokerage fee, which is indicated only in the "borrower's instruction to start the loan", not in the "Cash Credit Agreement". Due to this, the value of the APR (RRSO) is misrepresented in the indicated agreements, as the said fee should be included on the side of credit costs, and not included in the amount of credit disbursed, which ultimately affected its amount (RKR 7/2020). Another practice violating the collective interests of consumers, referred to in Art. 24 par. 1 and 2 p. 3 u.o.k.k., was the failure to include in the amount of the APR (RRSO) the one-time amount of the commission calculated on the amount disbursed to the consumer (RŁO 7/2018).

A summary of the 23 decisions of the President of the OCCP analyzed in the study, which identified irregularities in the failure lenders to fulfill their disclosure obligations, is presented in Table 1.

Table 1

Decisions of the President of the OCCP concerning non-compliance with disclosure obligations by lenders, 2018–2021

| No. | Name of the financial/ loan institution covered by the decision of the OCCP | Legal basis | Monetary penalty for violation of the investigated regulations (PLN) |
|-----|--|---|--|
| 1 | Santander Consumer Bank SA (DOZIK 17/2021) | Art. 5, Art. 4 u.p.n.p.r. Art. 24 u.o.k.k. | 44,212,688 |
| 2 | Cash Service 4 Home Sp. z o.o. (RŁO 6/2021) | Art. 13, Art. 14, Art. 29, Art. 30, Art. 33a u.k.k. Art. 24 u.o.k.k. Art. 5 u.p.n.p.r. | 510,082 |
| 3 | Vivus Finance Sp. z o.o. (DOZIK 5/2021) | Art. 13, Art. 14 u.k.k. Art. 26 u.o.k.k. | None |
| 4 | Provident Polska SA (RWR 3/2021) | Art. 30, Art. 49 u.k.k. Art. 24 u.o.k.k. | None |
| 5 | EuCO Finanse SA (RŁO 4/2021) | Art. 4, Art. 5 u.p.n.p.r. Art. 24 u.o.k.k. Art. 9 u.k.k. | None |
| 6 | Aasa Polska SA (RKR 3/2021) | Art. 30 u.k.k. Art. 24, Art. 27, u.o.k.k. | None |
| 7 | Monedo Polska Sp. z o.o. (RWR 1/2021) | Art. 30, Art. 49, Art. 50, Art. 59 u.k.k. Art. 24, Art. 27, Art. 28 u.o.k.k. | None |
| 8 | Xulock Sp. z o.o. sp.k. (RWR 10/2020) | Art. 24 u.o.k.k. Art. 4, Art. 5 u.p.n.p.r. | 30,000 |
| 9 | Speed Cash Polska Sp. z o.o. (RŁO 10/2020) | Art. 30, Art. 33a, Art. 49 u.k.k. Art. 24 u.o.k.k. Art. 4 u.p.n.p.r. | 2,022,203 |
| 10 | TF Bank AB Sp. z o.o.* (RKR 7/2020) | Art. 4, Art. 5 u.p.n.p.r. Art. 24 u.o.k.k. Art. 13, Art. 14, Art. 30 u.k.k. | None |
| 11 | EVEREST FINANSE SA (RWR 8/2020) | Art. 13, Art. 14, Art. 30 u.k.k. Art. 24 u.o.k.k. | None |
| 12 | Capital System Sp. z o.o. (RWR 2/2020) | Art. 30 u.k.k. Art. 28 u.o.k.k. | None |
| 13 | BNP Paribas Bank Polska SA (DOZIK 11/2019) | Art. 24 u.o.k.k. Art. 4, Art. 5 u.p.n.p.r. | 2,881,070 |
| 14 | Ekspress Finanse Sp. z o.o. (RGD 9/2019) | Art. 30, Art. 41, Art. 53, Art. 54 u.k.k. Art. 24 u.o.k.k. Art. 5 u.p.n.p.r. | None |
| 15 | Expresspożyczki.pl Grupa Finansowa Sp. z o.o. (RKR 5/2019) | Art. 359 k.c. Art. 27 u.o.k.k. Art. 4 u.r.r.p.r.f. o RF | None |
| 16 | Piotr Paweł Koczyński Twoje Finanse (RWR 9/2019) | Art. 24 u.o.k.k. Art. 7, Art. 8 u.k.k. Art. 4, Art. 5 u.p.n.p.r. | 38,545 |
| 17 | Kredyty Partnerskie Sp. z o.o. (RPZ 12/2019) | Art. 29, Art. 33a, Art. 41, Art. 49 u.k.k. Art. 24 u.o.k.k. Art. 4 u.r.r.p.r.f i RF | 9,337 |
| 18 | iCredit Sp. z o.o. (RŁO 5/2019) | Art. 49 u.k.k., Art. 24 ust. 1 i 2 u.o.k.k. Art. 24 u.o.k.k. Art. 4 u.p.n.p.r. | 626,640 |
| 19 | Złotówka Bis Sp. z o.o.; Złotówka Duo Sp.z o.o.; Złotówka Three Sp. z o.o. (RGD 4/2019) | Art. 30, Art. 33a, Art. 36a, Art. 36c, Art. 49 u.k.k. Art. 24 u.o.k.k. Art. 359 k.c. Art. 4, Art. 5 u.p.n.p.r. | 33,000 |

Cont. Table 1

| No. | Name of the financial/ loan institution covered by the decision of the OCCP | Legal basis | Monetary penalty for violation of the investigated regulations (PLN) |
|-----|---|---|--|
| 20 | JMTS Group Sp. z o.o. oraz KADD Invest Stanisław Marciniak Sp.k. (RWR 6/2019) | Art. 4, Art. 5 u.p.n.p.r. Art. 24 u.o.k.k. | None |
| 21 | Euro Bank SA (RWR 3/2019) | Art. 3 u.o.r.r.RF Art. 24 u.o.k.k. | None |
| 22 | Ferratum Finanse Sp. z o.o. (RŁO 7/2018) | Art. 11, Art. 13, Art. 14, Art. 30, Art. 41, Art. 53 u.k.k. Art. 24 u.o.k.k. Art. 4, Art. 5, u.p.n.p.r. | 40,931 |
| 23 | Alibaba Sp. z o.o. (RGD 5/2018) | Art. 5, Art. 30, Art. 41, Art. 49 u.k.k. Art. 24 u.o.k.k. Art. 359 k.c. Art. 4 u.p.n.p.r. | 2,306 |

* Entrepreneur, branch of foreign entrepreneur, legal entity, performing business activity.

Source: compiled on the basis of issued decisions of the President of the OCCP, available at: <http://uokik.gov.pl/decyzje> (list of decisions is placed in the references).

Discussion

Based on the analysis of the information in Table 1, it can be noted that in the individual years of the period under review, the President of the OCCP issued a total of 23 decisions regarding the failure of lenders to fulfill their information obligations with regard to consumer loans, of which there were: two in 2018, nine in 2019, five in 2020, and seven in 2021. The fact that decisions were issued in all the years studied, as well as their number, means that information obligations, which are an important aspect of consumer protection, are still not being properly implemented and that their fulfilment should therefore be supervised. The entities named in the decisions were various institutions involved in granting loans and credits, which included three banks: BNP Paribas Bank Polska SA, Euro Bank SA, Santander Consumer Bank SA. The small number of banks identified with information irregularities related to consumer credit means that they may have committed irregularities falling into another category, such as those related to the settlement of consumer credit costs in the case of early repayment, or irregularities related to fees and commissions, and also use prohibited contractual provisions.

An analysis of the information contained in the decisions of the President of the OCCP also shows that financial penalties were not imposed in every case of irregularities. They appeared in 11 decisions. The highest penalty was imposed on Santander Consumer Bank SA, PLN 44,212,688, of which PLN 38,260,980 was the penalty for misleading consumers about the proportion between the total cost of the loan and the total amount of the loan on the assumption that it should take into account the credited loan costs (insurance premium).

In the regulated consumer credit market, institutions operating in Poland continue to commit abuses related to the non-fulfillment of information obligations. The abuses were of a financial service, presenting the offer in the information form, and at the stage of concluding the target credit agreement. The irregularities are evidenced by the analyzed decisions of the President of the OCCP, dating in the period of 2018–2021. (Due to the limited space of the study, it includes some of the irregularities indicated there). Based on the analysis of the 23 decisions (Figure 1 and Table 1), violations of several laws can be noted, most of which concerned the Law on Consumer Credit. As the reasons for the irregularities presented, practices that violate the interests of consumers, one can indicate existing loopholes and imprecise provisions of the law, or the desire of financial service providers to make above-average profits. An analysis of the decisions of the President of the OCCP shows that the scope of irregularities in question was wide. From the perspective of the consumer, their economic interest and the consequences of undertaken decisions, the most acute were irregularities concerning information on credit costs. It is not only the lack of this information but also its illegible graphic form or low clarity.

In conclusion, the occurrence of irregularities related to information is an important issue in the consumer credit market. Aiming to solve that problem, it should be noted that the effectiveness of the information provided is determined not only by its delivery but also by its quality, expressed in the understanding of the information by consumers, which is what all financial service providers should care about.

To summarize the presented problem of irregularities in the consumer credit market verified by the OCCP, it would be worthwhile to seek answers to some interesting research questions.

1. Why were the penalties not imposed in all cases of irregularities found?

2. What did the value of the penalty depend on? Does the value of the penalty result from the money earned by financial institutions in a "dishonest" way?

3. How effective are these penalties in discouraging financial providers from violating consumer protection laws? Is there any evidence that they work?

Answering the questions posed in this way, it should be noted that fines have not been imposed in all cases because some lenders have stopped (or removed) the way irregularities operate. In addition, lenders appealed the decision of the President of the OCCP, which means that it was a lengthy process and sometimes resolved in their favor. The amount of penalties varied and depended on the nature (severity) of the irregularities the size of the wrongs, and was also linked to the volume of turnover in the previous year. The effectiveness of penalties imposed by the OCCP in discouraging these institutions from violating consumer protection laws can be assessed by comparing specific statistics for the companies studied, that is, analyzing the number of these violations recorded by the President of the OCCP against specific institutions, examining whether the number of these cases has decreased in the financial system as a whole and also whether the entities on which penalties were imposed do not commit such violations in the subsequent period. Due to the limited volume of this text, the authors signal only

the answers while they encourage readers to think further and deeper on these problematic issues.

Conclusion

Summarizing the considerations undertaken in this article, it should be noted that there are irregularities in the consumer credit market in Poland in terms of failure to fulfill information obligations. Their cause is the existing asymmetry of information between lenders and consumers. The described phenomenon is now considered one of the main reasons for the regulation of the consumer credit market. This is because it is believed that the consumer credit market is not perfectly "transparent", which can be exploited by lenders with an information advantage. Undoubtedly, the reason for the occurrence of these irregularities is the desire of lenders to make above-average profits. Therefore, counteracting abuses against consumers as the weaker party, as well as effectively eliminating them and leveling their negative legal and economic effects, is not only an extremely important issue, but even a priority, not only for ensuring effective and real protection for consumers, but also for the functioning of the credit market (Paleczna, 2020). This is a challenge not only for legislators, consumer protection institutions, but also for supervisory authorities, which by their actions will increase the transparency of the financial market and the products and services offered in it. However, this supervision must be supported by an effective system of internal control and compliance¹⁰, covering contractual relations with customers, as well as market practices used in this regard (Rutkowska-Tomaszewska, 2020).

Notes/Przypisy

¹ The President of the OCCP may impose fines in cases involving violations of Art. 6 or Art. 9 u.o.k.k.

² Pursuant to Art. 26 u.o.k.k. the President of the OCCP shall issue a decision declaring a practice to be in violation of the collective interests of consumers and ordering its discontinuation.

³ Journal of Laws of 2022, item 246.

⁴ Journal of Laws of 2017, item 2070.

⁵ Journal of Laws of 2021, item 275.

⁶ Journal of Laws of 2022, item 187, 1488.

⁷ Journal of Laws of 2022, item 1360.

⁸ The decision of the President of the OCCP questioned the determination of the possibility of par. 1 u.k.k.

⁹ In accordance with Art. 30(1)(15) of the UCC, the creditor should state the date, manner and consequences of the consumer's withdrawal from the agreement, the consumer's obligation to return the credit made available by the creditor and interest in accordance with Chapter 5, and the amount of interest due on a daily basis.

¹⁰ In this context, the risk of non-compliance with consumer law (consumer protection law for banking services) is of particular importance. Read more: Rutecka-Góra & Rutkowska-Tomaszewska, 2021.

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