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ABSTRACT

This work gives a picture of consumer credit and its regulation in both Europe and United States. Firstly, topic of consumer credit is generally described. The second chapter is focused on consumer credit and credit reporting in Europe, its regulation and concept of responsible lending. As an example of implementation of the European framework in a Member State is given Poland, which since 2004 is a part of European Union. The third chapter takes into consideration American legal approach towards consumer credit, credit reporting and the description of predatory lending practices and FICO Score, which is a leading provider of credit scores in United States.

1. INTRODUCTION TO CONSUMER CREDIT

1.1. What is Consumer Credit?

The concept of credit originally comes from the Latin word *credere* which in English is translated as “to believe” or “to entrust”[1]. Dictionary of Economic Terms defines credit as a loan or deferred form of payment, which lets an individual to take advantage from goods and services in advance to pay for them. The consumers are described as household members, who purchase goods and services for their own use[2]. Routledge Dictionary of Economics explains the notion of consumer credit as a loan provided by banks, finance houses and other financial institutions, which volume can be controlled for instance by fluctuating interest rates or the minimum size of initial deposits[3].

According to European law, the Directive 2008/48/EC[4] of the European Parliament and of the Council on credit agreements for consumers defines in Art.3 a consumer as “*a natural person, who, in transactions covered by this Directive, is acting for purposes which are outside his trade, business or profession*”. The creditor[5] is described as “*a natural or legal person who grants or promises to grant credit in the course of his trade, business or profession*”. As specified in the Directive[6], credit agreement is “*An agreement whereby a creditor grants or promises to grant to a consumer credit in the form of a deferred payment, loan or other similar financial accommodation, except for agreements for the provision on a continuing basis of services or for the supply of goods of the same kind, where the consumer pays for such services or goods for the duration of their provision by means of instalments”.*

American Consumer Credit Protection Act[7] defines the notion of credit as “*the right granted by a creditor to a debtor to defer payment of debt or to incur debt and defer its payment*”. As stated in this document, creditor[8] “*refers only to creditors who regularly extend, or arrange for the extension of, credit for which the payment of a finance charge is required, whether in connection with loans, sales of property or services, or otherwise*”. Consumer[9] is *“used with reference to a credit transaction, characterizes the transaction as one in which the party to whom credit is offered or extended is a natural person, and the money, property, or*

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[1] Golin, J., & Delhaise, P. (2013). *The bank credit analysis handbook: a guide for analysts, bankers and investors*. John Wiley & Sons.
[2] Raupp, E. R., & Raupp, D. V. (2018). *Dictionary of Economic Terms*.
[3] Rutherford, D. (2002). *Routledge dictionary of Economics.*-2-nd edition. *Ldn, NY-2002*.
[4] Article 3(a) Directive 2008/48/EC
[5] Article 3(b) Directive 2008/48/EC
[6] Article 3(c) Directive 2008/48/EC
[7] Consumer Credit Protection Act of 1968 Title I Chapter I(sec. 103)(e)
[8] Consumer Credit Protection Act of 1968 Title I Chapter I(sec. 103)(f)
[9] Consumer Credit Protection Act of 1968 Title I Chapter I(sec. 103)(h)

services which are the subject of the transaction are primarily for personal, family, household, or agricultural purposes". The legal definition of consumer credit according to European and American law will be disclosed in following chapters.

In the household sector there are two types of credit: consumer credit and mortgage credit. Consumer credit is used by private households for any purchase different than property and this kind of credit is not guaranteed. In a mortgage type of credit, the property is used as collateral[10]. Consumer credit includes all variety of installment credit and non-installment credit excluding mortgage debt, apart from home equity loans since they are used for different purposes than real estate but are secured by a lien on a property[11].

1.2. History of Consumer Credit and Credit Scoring

History of credit is very long and has already started in prehistoric times. Till the end of sixteenth century, lending on interest was called usury. One of the first credit legislation was created in Mesopotamia – The Code of Hammurabi, which defined various kinds of loan, types of repayment, interest rates and legal framework. Big impact on credit development had also Ancient Greece and Rome[12]. For Greek it was common to take credits which were guaranteed by property. The punishments for failing to repay the loan were very strict and may have resulted in slavery and poverty of the borrower. In 594 B.C. a philosopher Solon proposed new legislation which reformed the relations between creditor and debtor. Improved law system protected people from enslavement, let to grow merchant empire and developed use of commercial credit[13]. In the Roman World most of elite members, particularly senators, were lending money and it was a huge part of their income [14]. The fundamental role in the history of consumer credit had Church, which approach to usury affected European lending for almost thousand years. For a long time, money-lending on interest was forbidden by the Church, consequently in Catholic nations[15]. From twelfth century it started to be more common to use loans with interest and it was important move for growth of economic life in Europe[16]. In the sixteenth century granting credits on interest had become permitted, legalized, regulated and exercised in England and Europe. During the reign of Henry VIII in 1545, the interest rate on loan was of 10%. It is worth to mention the impact of a philosopher Jeremy Bentham in

[10] Guardia, N. D. (2002). Consumer credit in the European Union. *ECRI Research Report*, *1*, 1-39.
[11] Kamleitner, B., & Kirchler, E. (2007). Consumer credit use: A process model and literature review. *European Review of Applied Psychology*, *57*(4), 267-283.
[12] Gelpi, R., & Julien-Labruyère, F. (2000). *The history of consumer credit: doctrines and practices*. Springer.
[13] Finlay, S. (2009). *Consumer credit fundamentals*. Springer.
[14] Andreau, J. (1999). *Banking and business in the Roman world*. Cambridge University Press.
[15] Finlay, S. (2009). Cit. 13
[16] Gelpi, R., & Julien-Labruyère, F. (2000). Cit. 12

eighteenth century. He published an essay "Defence of Usury", where he argued that its person's duty to contract the credit on the best possible terms[17]. Consumer credit has originated from nineteenth century and started to develop from twentieth. It firstly emerged in France, England and following United States[18]. Approach towards credit in the nineteenth century was different from the one which is nowadays. In the beginning credit was known as a way for customers to borrow against their land and let them to afford growing of their plantation. Thanks to various factors such as industrialization, growth of agriculture, city migration and transformation of people from cultivators into laborers the phenomenon of credit started to arise in the twentieth century[19].

1.2.1. United States

In the United States firstly consumer credit was related to retail sales and had developed together with transport across the America after the conquest of the West and South part of the country. Huge credit growth and diversification took place between 1800 and American Civil War[20]. The credit reporting agency was invented in New York, in 1830s and its aim was to respond for the need of Americans, to let them achieve more information about individuals. In 1841 was founded a commercial reporting agency - R.G. Dun & Company[21]. With the growing urbanisation, industrialisation and development of customer goods and services, also raised credit market. In the 1930s, despite of the period of Great Depression, the leading lender in area of instalment financing was General Motors[22]. The period of WWII caused that consumer credit has fallen drastically, because of imposed credit restrictions. In the following years between 1945 and 1956, loan has developed enormously by 400 percent, comparing to an average of 11 percent yearly[23]. In 1949 Diners' Club invented a charge card, which revolutionized the credit products market. In the following years companies such as American Express, Carte Blanche, VISA and MasterCard entered in the market[24]. First law considering protection of customers, created in 1968, was the Consumer Credit Protection Act (CCPA) containing as the first title Truth in Lending Act (TILA). Since then had been created another acts, regulating consumer credit market: the Fair Credit Reporting Act and Credit Card Amendments to Truth in Lending,

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[17] Finlay, S. (2009). Cit. 13
[18] Gelpi, R., & Julien-Labruyère, F. (2000). Cit. 12
[19] Watkins, J. P. (2000). Corporate power and the evolution of consumer credit. *Journal of Economic Issues*, *34*(4), 909-932.
[20] Gelpi, R., & Julien-Labruyère, F. (2000). Cit. 12
[21] Olegario, R. (2003). Credit reporting agencies: A historical perspective. *Credit Reporting Systems and the International Economy*, 118-131.
[22] Ferretti, F. (2008). *The law and consumer credit information in the European Community: the regulation of credit information systems*. Routledge.
[23] Watkins, J. P. (2000). Cit. 19
[24] Finlay, S. (2009). Cit. 13

both in 1970, The Fair Credit Billing Act and the Equal Credit Opportunity Act in 1974, Consumer Leasing Acts in 1976, The Fair Debt Collection Practices Act in 1977, the Electronic Fund Transfer Act in 1978 and amended and revised in 1984 Bankruptcy Act. America was the first country, which created its legislation about consumer credit that early[25]. In 1956 was founded Fair, Isaac & Company Inc. by two inventors – William R. Fair and Earl J. Isaac. The aim of invented credit scoring system was to let people to understand it without knowledge of statistics and without using of calculators. Application scorecard was the basic product offered by Fair, Isaac, which was responsible for evaluation and selection of customers who applied for a credit. In 1970s the company switched from ordinary scorecards market and started cooperation with credit bureaus, known today as TransUnion, Equifax, and Experian. As long as business was growing, the company has developed and created FICO score[26]. Since 1989 creditors started to use FICO scores and up to date it is important instrument, which help lenders to operate in informed way towards the borrowers[27].

1.2.2. Europe

Europe was strongly affected by historical events such as bans by Church on consumer credit and considering this as a taboo in comparison to United States. The precursor of consumer credit was pawnbroking in France by monts-de-piétés, firstly established in 1577, just after legalisation of credit sale in 1572. However, lending was strongly controlled by government. In 1804 was established a law, which had given permission of pawnbroking only to authorized by state institutions. There was big discrepancy with approach to lending between Catholic countries and Protestant ones, mostly North European, which were more willing to conduct free market practice. In Great Britain was growing capitalism and economic liberalism, which let consumer credit market to develop[28]. Till 1920s in England pawn loan market was the most common credit among working class of people[29]. Established by Citroën, the SOVAC Company, operating in automobiles market, with cooperation with Lazard Bank were offering car consumer credit. Following this example had also started Renault and Peugeot. In consequence, by 1939 one-fourth of all sold cars were purchased on credit. One of the oldest French credit institutions, which has followed an American pattern was Cetelem, founded in

[25] Gelpi, R., & Julien-Labruyère, F. (2000). Cit. 12
[26] Poon, M. (2007). Scorecards as devices for consumer credit: the case of Fair, Isaac & Company Incorporated. *The sociological review*, *55*(2_suppl), 284-306.
[27] myFico. (2020). *Fico Scores Versions*. Retrieved from https://www.myfico.com/credit-education/credit-scores/fico-score-versions
[28] Gelpi, R., & Julien-Labruyère, F. (2000). Cit. 12
[29] Ferretti, F. (2008). Cit. 22

1953[30]. In comparison to example given from United States, in Europe there did not exist laws correspondent to Fair Credit Reporting Act or Equal Opportunity Credit Act. England has established in 1974 Consumer Credit Act, which comprised regulation of the credit reporting market without legislation considering consumers' privacy rights and discrimination[31]. In Germany emerged first savings banks, conducted by wealthier individuals, which later spread around the Europe. The purpose of these kind of institutions was to arrange safe environment for people to allocate their money. Developed already consumer credit market in United States spread also among Europe with modern products such as marketing system and credit cards[32]. In the end of 1980s consumer credit in Europe started to develop very fast, because of low interest rates, rising competition and deregulation[33]. First Consumer Credit Directive (Directive 87/102/EEC) was adopted in December 1986 with the aim of reforming, harmonising the consumer credit laws and composing a single market in the European countries. The Directive was twice amended, firstly in 1990 and afterward in 1998. Further development of consumer credit and its products made it necessary to update previous legislation and create in 2008 new Consumer Credit Directive (Directive 2008/48/EC)[34]. Since the new legislation left very important issue, which was mortgage lending outside of its interest, there was strong need to establish in February 2014 the Mortgage Credit Directive. This is the first document comprising rules for mortgage lending in the countries of European Union, which purpose is to protect customers from irresponsible lending[35].

1.3. The Economic Background of Consumer Credit

In the consumer credit it is possible to observe the classical demand-supply dynamics, where on the demand side are found households while on the supply one lenders. In the early 1950s Franco Modigliani and Richard Brumberg had developed the life-cycle hypothesis (LCH), which highlights savings as the leading implication of consumption-smoothing behaviour for elderly individuals. The borrowing among young customers, can be explained by their expectations about growing labor incomes. Friedman's Permanent Income Hypothesis shows that expectations about future income determine the difference between income and

[30] Gelpi, R., & Julien-Labruyère, F. (2000). Cit. 12
[31] Ferretti, F. (2008). Cit. 22
[32] Gelpi, R., & Julien-Labruyère, F. (2000). Cit. 12
[33] Jentzsch, N., & Riestra, A. S. J. (2006). Consumer Credit Markets in the US and Europe. *Bertola, Disney and Grant*.
[34] Vandone, D. (2009). *Consumer credit in Europe: Risks and opportunities of a dynamic industry*. Springer Science & Business Media.
[35] Zunzunegui, F. (2018). Mortgage credit. Mis-selling of financial products. *Directorate-General for Internal Policies of the European Commission. Available at: https://www.europarl.europa.eu/RegData/etudes/STUD/2018/618995/IPOL_STU(2018)618995_EN.pdf*

consumption. Households are responsible for choosing their optimal level of consumption so as to maximize their lifetime utility, which is a discounted sum of period utility functions. According to the model, utility is maximized subject to future assets, which are given by the present assets plus the saving. The optimal solution will satisfy Euler equation, where marginal utility is a decreasing function of consumption. When marginal utility is linear, there exists possibility to blend the optimality condition and the intertemporal budget constraint, which lets to obtain connection between saving, income and consumption as well as among savings and over time change of income. It is optimal for savings to be negative, whenever the present value of income is predicted to increase, such situation will make households diminish their assets or if it is impossible, they will have to borrow. Because of hump-shaped distribution of earnings, which are lower for young individuals, the concept states that the young households should borrow more. Consumer credit supply, represented by lenders, is affected by moral hazard and adverse selection problems[36]. The adverse selection problem was introduced by George Akerlof in his famous work "The Market for "Lemons"[37]. According to Akerlof some participants of a market are better informed than others, in the case of his article, sellers have private information, while buyers remain uninformed[38]. The problem was extended by Joseph Stiglitz and Andrew Weiss, whose aim was to show that in equilibrium a loan market could be defined by credit rationing. Main concerns of a banks are the interest rates received on the loan and its riskiness. Existing adverse selection of interest rates in a credit market is the effect of different types of borrowers, who are characterized by different probabilities of repayment of the loan. The main aim of the bank is ability of identifying the debtors who will be the most probable to repay the debt, also called as "good borrowers". As a result, lenders are obliged to use diversity of screening devices, which let them to better assess their customers. One of them is the interest rate that an individual is willing to pay in order to get a loan: the higher interest rate, the higher riskiness of those who borrow, which in a consequence leads to lower bank's profit level. The customers who agree to pay high interest rates are considered as higher risks, since they recognize their low probability of repaying the credit[39]. Moral hazard can arise when debtor may have impact on the probability of repayment. An entrepreneur is willing to take up riskier projects if the large portion of expenses is funded by debts. When the investment turns out to

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[36] Bertola, G., Disney, R., & Grant, C. (2006). The economics of consumer credit demand and supply. *The economics of consumer credit*, 347-371.

[37] Akerlof, G. A. (1978). The market for "lemons": Quality uncertainty and the market mechanism. In *Uncertainty in economics* (pp. 235-251). Academic Press.
As an example, Akerlof used the Automobiles Market, where there are good cars and bad cars (In America known as "lemons"). The buyer does not know if he buys a good car or a lemon, the only thing he knows is a probability distribution, which takes values (1-q) if it is a lemon and q if the car is good.

[38] Levin, J. (2001). Information and the Market for Lemons. *RAND Journal of Economics*, 657-666.

[39] Stiglitz, J. E., & Weiss, A. (1981). Credit rationing in markets with imperfect information. *The American economic review*, *71*(3), 393-410.

be a failure, creditor may suffer losses. In order to avoid this problem, the developed credit markets established complicated scoring methods, which allow to define risk of repayment of all kinds of customers[40].

1.4. The Features and types of Consumer Credit

Each credit has its own features, which in particular can be described as:

- Secured or unsecured credit: credit can be secured by an asset, which is written under a contract. In case of not fulfilling the agreement by a customer, this asset can be possessed by the creditor. Unsecured credit is the one which is not secured against a particular asset.
- Fixed sum or running account: when an amount which is borrowed is specified for a determined period of time, this kind of contract is called a fixed sum agreement and is finished as long as the repayment is completed. Running account is also known as revolving credit agreement or open-ended credit agreement, which takes place when the borrowed quantity is unknown. As long as repayments are made the amount of the debt is let to fluctuate.
- Unrestricted or restricted: when debtor can decide how the credit will be spent, this kind of agreement is called unrestricted. The contrary is restricted credit, when borrower can use taken amount only for a purchase of services or goods.
- Restricted credit agreements can have characteristics such as credit sale, conditional sale or hire-purchase. On a credit sale, borrower buys goods which become his property immediately. When customer fails to fulfil his agreement and is not paying for goods, seller cannot reclaim or seize them. On a conditional sale, customer becomes an owner, as long as he satisfied terms of agreement. In this case creditor can reclaim the goods if the contract is broken. Alike to conditional sale is hire-purchase in which the borrower leases the goods and has possibility to buy them at the end of the contract. However, he can always withdraw from the agreement but may face penalty charges.
- Two party or three-party agreement: when there is agreement only between debtor and creditor, this is two party contract, which can be named as Debtor-Creditor or DC agreement. When a consumer buys goods or services from a seller on credit, this is a three-party agreement, called also a Debtor-Creditor-Supplier or DCS agreement.

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[40] Bertola, G., Disney, R., & Grant, C. (2006). Cit. 36

- Amortized or balloon: when the debt is repaid continuously over time, it means that credit is amortized. Balloon contract specifies a loan which has determined period of time and is later repaid in full. Interest can be compensated as a unique payment at the end of the contract or paid at systematic periods.

Another important feature of credit is its cost, which is a premium amount of money that the debtor must pay to the lender in order to take a loan. This additional quantity includes interest, arrangement fees and other charges[41]. According to Truth in Lending Act (TILA)[42] the Finance Charge is a measure of the cost of consumer credit described in dollars and cents. It is also called Dollar Cost of Consumer Credit. Finance Charge consists any charge payable directly or indirectly by the consumer and introduced directly or indirectly by the creditor. Depending on the quantity of the credit, interest rate, repayment schedule, timing, other charges and amounts of advances the costs of credit might fluctuate. The Annual Percentage Rate (APR), indicated as a nominal yearly rate, measures the cost of credit, and takes under consideration all important factors. Directive 2008/48/EC of the European Parliament and of the Council on credit agreements for consumers describes total cost of the credit[43] as all connected costs such as interest, taxes, commissions and other fees, which are known to consumer and that he is obliged to pay while taking a credit. From these payments are excluded notarial costs, but costs of ancillary services that are connected to credit agreement, for instance insurance premiums are included when the conclusion of a service contract is obligatory. The total annual percentage rate of charge[44] determines "*the total cost of the credit to the consumer, expressed as an annual percentage of the total amount of credit*. A further explanation will be provided in the following chapters.

There are three main types of consumer credit: non-installment consumer credit, nonrevolving ("closed-end") installment credit and revolving ("open-end") installment credit. Non-installment credit is expected to be repaid in one lump sum and is made of three units: charge accounts at merchants and dealers, service credit and single-payment loans. First one is owed to retail stores and purchase outlets. These credit arrangements have to be paid in full at once, generally in thirty days or at the end of the month. Service credit considers amounts that consumers are obliged to repay to service providers, for instance to lawyers, doctors, dentists, or other specialists. Single-payments loans are provided straight to customers by institutions such as banks, stock brokerage firms or insurance companies. These kinds of loans include

[41] Finlay, S. (2009). Cit. 13
[42] Truth in Lending Act of 1968 section 1026.4(b)
[43] Article 3(g) Directive 2008/48/EC
[44] Article 3(i) Directive 2008/48/EC

pawn loans, tax refund anticipation loans and payday loans. They are characterised by high interest rate, short terms to maturity and in general are quite small. A credit agreement which is repaid in a stream of payments is called installment consumer credit and its amounts are often paid back monthly and are known as installments. Nonrevolving installment credit can be taken for a determined period of time and the number of installments is predefined. Once this contract is concluded mostly there are no changes in costs, contractual amounts, or volumes of payment, that is why it is named also closed end installment credit. The examples of this debt could be student loans or automobile credit offers. There exist two kinds of closed end installment credit: direct and indirect agreement. The first one is made between the consumer and its financial institution. Customer takes a loan at his bank. Indirect arrangement happens when the consumer is a client of a merchant, who represents its own financial institution, for instance automobile dealer or furniture store. The open-end installment credit allows the customer to arbitrary choose both the amount used and the monthly repayments, provided that it will not exceed the credit line and the repayments satisfy at least some minimum monthly payment required by the contract. This kind of agreement is flexible. The example of this type of credit are credit cards[45].

1.5. Consumer Credit Lenders

There exist four main types of consumer credit granting institutions: banks, credit unions, finance companies and saving and loan associations. In the past banks had been divided between merchant and retail banks. Merchant ones mostly occupied in corporate and international finance, while retail type of banks was focusing on small and medium enterprises providing them with current account and consumer credit products. Nowadays a lot of big banks are combination of two kinds (merchant and retail) and are called universal banks[46]. Credit unions are financial cooperatives conducted by its members and created around groups which are sharing common bond – company employees, members of the same community[47]. These institutions provide various credit products such as mortgages, credit cards and personal loans. Finance companies known also as finance houses offer either secured or unsecured personal loans, card accounts and hire-purchase contracts. Saving and loan associations are profit-oriented, mutually owned institutions. They originally offered mortgages, but today they provide various services[48]. Apart from these four examples there exist also credit providers such

[45] Durkin, T. A., Elliehausen, G., Staten, M. E., & Zywicki, T. J. (2014). *Consumer credit and the American economy*. Oxford University Press.
[46] Finlay, S. (2010). *The management of consumer credit: theory and practice*. Springer.
[47] Goddard, J., McKillop, D., & Wilson, J. O. (2008). The diversification and financial performance of US credit unions. *Journal of Banking & Finance*, *32*(9), 1836-1849.
[48] Finlay, S. (2010). Cit. 46

as pawnbrokers or doorstep lenders, who offer short-term credits with high borrowing costs. Individuals using their services are characterised by low income, high risk and low credit rating[49].

1.6. Consumer Credit Reporting and Credit Bureaus

Information sharing about debtors is very relevant for credit markets. It lets banks to have better knowledge about borrowers and avoid the risk of over-indebtedness[50]. There exists information asymmetry in the banking sector. Since creditors cannot properly observe some of important features and activity of borrowers, the existence of credit bureaus makes them more aware about action of new clients[51]. Moreover, it diminishes the informational rents, which lenders can take from their customers. Informational rent happens when bank has better information with respect to its competitor about the debtor and can lead to different charges among interest rates. Bank's interest rate will be lower than the one proposed by competitive creditor and in consequence will take advantage by earning a rent[52].

Credit bureaus, known also as credit information registries are source of knowledge about consumer to lender, because they gather borrower's past credit history and other data such as its address, date of birth or other important information which can have impact on creditworthiness of a debtor. Credit registries can be managed by governments (public credit registries – PCRs) or privately (private credit registries or private reporting firms). Consumer reporting industry in the United States is mostly managed by private credit registries such as Equifax, Experian and TransUnion which are dominating credit bureaus in America. In Europe most active is Experian[53]. Majority of European credit registries are also private reporting firms that are autonomous profit-seeking enterprises such as banks or other financial firms[54]. They gather data about debtors through lenders, who in exchange for supplying private information have access to database. The arranged document from the bureau about credit consumer is called credit report. Creditor can face sanctions for providing misleading data or for failing to supply them and suffer from penalties such as fines or loss of access to bureau's credit reports. The agreement made between credit bureau and lender is based on the principle of reciprocity[55]. Credit reports may contain negative and positive information. Negative one is comprised of

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[49] Vandone, D. (2009). Cit. 34

[50] Jappelli, T., & Pagano, M. (2006). The Role and Effects of Credit Information Sharing. *The economics of consumer credit*, 347.

[51] Pagano, M., & Jappelli, T. (1993). Information sharing in credit markets. *The Journal of Finance*, *48*(5), 1693-1718.

[52] Jappelli, T., & Pagano, M. (2003). Public credit information: A European perspective. *credit reporting systems and the International Economy*, 81-114.

[53] Miller, M. J. (Ed.). (2003). *Credit reporting systems and the international economy*. Mit Press.

[54] Ferretti, F. (2008). Cit. 22

[55] Jappelli, T., & Pagano, M. (2006). Cit. 50

data about possible defaults on payments, delays, or bankruptcies, while positive information is more detailed statement about credit limits, payments, age and type of account and its balance. What is more, credit reports may contain data about employment and assets of debtor[56]. Negative and positive data can be called also black and white, respectively[57]. Private bureaus may supply also additional services, for instance credit scoring (scorecards), marketing services, consulting, market, and customer research. Scorecards are mathematical algorithms or statistical programmes, which compute particular score for each borrower to assess probability of debt repayment and accompanying risks. In general, the higher score, the less probability of default. It is worth to mention that credit reporting can have positive impact on fighting against frauds, identity thefts or money laundering[58]. Public credit registries, firstly introduced in Western Europe, are mostly conducted by the central bank or bank supervisor and are regulated by law[59]. Access to PCRs can have only licensed employees of central banks and reporting financial institutions. Data to the public credit registries are provided by engaged institutions, regularly. Afterwards PCR builds up all obtained information about the borrower to supply lenders with all data about total indebtedness of the debtor. Since public credit registries are regulated by law, participation in them is obligatory for all financial institutions supervised by central bank, which makes main difference between private credit bureaus and PCRs[60]. Public credit registries gather data on loans which are greater than certain threshold. In comparison to private credit bureaus, PCRs in general do not focus on borrower's credit history, but on its actual credit status[61].

According to survey conducted by Miller[62] about Credit Reporting Systems worldwide there are three principal consumer data gathered by public and private registries such as name of the debtor, type and size of their debts. Private credit reporting firms collected more information about the address of the borrowers and their taxpayer identification number regarding public ones. The research showed that private credit registries gather higher levels of data in comparison to public registries. In accordance with the fact that credit bureaus are collecting private data about borrowers, their activity is strongly regulated to protect customers from abuse of privacy[63].

[56] Durkin, T. A., Elliehausen, G., Staten, M. E., & Zywicki, T. J. (2014). Cit. 45
[57] Jappelli, T., & Pagano, M. (2000). *Information sharing in credit markets: a survey* (Vol. 36). CSEF working paper.
[58] Ferretti, F. (2008). Cit. 22
[59] Miller, M. J. (Ed.). (2003). Cit. 53
[60] Jappelli, T., & Pagano, M. (2000). Cit. 57
[61] Love, I., & Mylenko, N. (2003). *Credit reporting and financing constraints*. The World Bank.
[62] Miller, M. J. (Ed.). (2003). Cit. 53
[63] Jappelli, T., & Pagano, M. (2000). Cit. 57

2. CONSUMER CREDIT IN EUROPE

2.1. Legal Framework of Consumer Credit

Consumer credit in Europe is regulated by Consumer Credit Directive. First such document came in place on 22nd of December 1986 with the purpose of harmonisation of conditions related to consumer credit and their regulation among the Member States in order to strengthen the protection of consumers. The construction of this regulation was a long process, which has started in 1965 when Commission initiated preparing articles on the obligations related to installment credit sales. The Council Directive[64] contains adequate information that consumers should be aware of, for instance annual percentage rate of charge and the total amount that consumer is obliged to pay for a loan. There are two main aims of the Directive: protection of borrowers against unfair credit terms and encouraging of cross-border credit and free movement of goods and services among European countries[65]. The Directive permits Member States to keep and impose more strict rules concerning consumers protection[66]. In Article 1[67] the document provides definitions of relevant notions such as consumer, creditor, credit agreement, total cost of the credit to the customer and annual percentage rate of charge. The Directive does not apply to:

- credit agreements for the aim of acquiring or retaining property rights in land or building as well as credit contracts for the purpose of renovating or improving a building;
- hiring agreements excluding these when the title will pass only to the hirer;
- credit concede without interest and other charges;
- credit agreements charged without any interest that borrower is obliged to repay in a single payment;
- credit in the form of advances on a current account concede by a credit or financial institution different than on credit card accounts[68];
- credit agreements for the amounts lower than 200 ECU and higher than 20 000 ECU;

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[64] Council Directive 87/102/EEC of 22 December 1986 for the approximation of the laws, regulations and administrative provisions of the Member States concerning consumer credit

[65] Guardia, N. D. (2002). Cit. 10

[66] Buffalo, William S. Hein & Co., Inc. (1997). Consumer protection policy. *European Union White Paper*.

[67] Article 1(2) Directive 87/102/EEC

[68] Article 6(1) Directive 87/102/EEC applies to such credits that the consumer should be informed at the moment or before the agreement is achieved about the limit of a credit, its annual rate of interest and applicable charges as well as the procedure for terminating the agreement. All information should be written. Moreover Article 6(2) states that consumer should be informed about any change considering the annual rate of interest or other charges during the duration of the agreement.

- credit agreements under which consumer is obliged to repay the debt within three months or by a maximum number of four payments within a period of 12 months[69].

Member States are permitted, in consultation with the Commission to exclude credits which are granted at rates of charge under the ones which prevail in the market and credits which are not publicly offered. According to the principles and rules applied for misleading advertising, every individual advertising a credit that indicates a rate of interest or any other information related to cost of the credit should include a statement of the annual percentage rate of charge[70]. All the credit agreements should be written, and the consumer should be provided with a copy of the written agreement[71]. Such contract should combine a statement of the annual percentage rate of charge, statement of the conditions under which such rate can be amended[72] and other important terms of the agreement[73]. When the credit is granted for the acquisition of goods, Member States should define the conditions of the repossession of the goods in order to avoid any extra enrichment[74]. The consumer should be allowed to discharge obligations under a credit agreement before the period, which is fixed by the contract, with the right to adequate reduction it the total cost of the credit[75]. Whenever the rights of the creditor under the credit agreement are allocated to a third person, customer is entitled to defend against this person[76]. The credit contract should not have any impact on the rights of the customer against the supplier of goods or services and the customer may have a privilege to pursue remedies against the lender when the client accomplishes conditions such as:

- consumer enters into credit contract with a different person than the supplier;
- there exists an agreement between the creditor and the supplier of the goods;
- the goods or services purchased under the agreement are not supplied, supplied partially or do not meet previously agreed terms in the contract;
- the customer after pursuing his remedies against the supplier is not satisfied[77].

Under the Article 12[78] of this directive Member States should ensure that individuals responsible for granting credit or the one who offer to arrange credit agreements shall be

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69 Article 2(1) Directive 87/102/EEC
70 Article 3 Directive 87/102/EEC
71 Article 4(1) Directive 87/102/EEC
72 Article 4(2) Directive 87/102/EEC
73 Appendix I List of terms referred to in Article 4(3) Directive 87/102/EEC
74 Article 7 Directive 87/102/EEC
75 Article 8 Directive 87/102/EEC
76 Article 9 Directive 87/102/EEC
77 Article 11 Directive 87/102/EEC
78 Article 12 Directive 87/102/EEC

officially authorized to do so[79]. What is more such individuals should be subject to inspection or their activities should be monitored by official institution, which establishment should be promoted by Member States in order to receive objections towards credit agreements, its conditions and to support the customers with important information and advices. These rules give protection to consumers by ensuring them that they will conclude credit agreement with licensed lenders who are controlled by appropriate authorities.

The Directive 87/102/EEC was firstly amended by document of 22 February 1990[80]. The purpose of the Directive 90/88/EEC was the introduction of a single method of calculating the annual percentage rate of charge (APR), which should be used among the European Community, in order to support functioning of the internal market and make sure that consumers are strongly protected. The directive has announced a single mathematical formula for calculating the annual percentage rate of charge and to determine which credit cost items should be used in the calculation[81]. First amendment has been made towards Article 1(2) of points (d) and (e), which contain the definitions of total cost of credit to the customer and annual percentage rate of charge, respectively. As states the document of 22 December 1986, total cost of the credit to the consumer is defined as *"all the costs of the credit including interest and other charges directly connected with the credit agreement, determined in accordance with the provisions or practices existing in, or to be established by, the Member States"*[82] and annual percentage rate of charge means *"total cost of the credit to the consumer expressed as annual percentage of the amount of the credit granted and calculated according to existing methods of the Member States"*[83]. Amending Directive[84] provides changes of these definitions such as both of them are not anymore determined or calculated in accordance with the practices existing in the Member States and inserts a new article – Article 1a[85], with respect to which annual percentage rate of charge should be calculated in order to ensure that APR is completely reliable and useful among the European Community[86]. Point 1 in added article[87] implement mentioned before mathematical formula[88], in accordance to which such rate must be calculated with four

[79] According to Article 12(2) Directive 87/102/EEC such authorization may not be required if persons which offer to conclude or arrange credit agreements satisfy the definition provided in Article 1 of the First Council Directive of 12 December 1977
[80] Council Directive 90/88/EEC of 22 February 1990 amending Directive 87/102/EEC for the approximation of the laws, regulations and administrative provisions of the Member States concerning consumer credit.
[81] OJ L 61, 10.3.1990, p. 14. Directive 90/88/EEC
[82] Article 1(2)-point (d) Directive 87/102/EEC
[83] Article 1(2)-point (e) Directive 87/102/EEC
[84] Article 1(1)-point (d) and point (e) Directive 90/88/EEC
[85] Article 1(2) Directive 90/88/EEC
[86] Proposal 2002/0222 (COD) for a Directive of the European Parliament and of the Council on the harmonization of the laws, regulations and administrative provisions of the Member States concerning credit for consumers
[87] Article 1(2)- point 1points (a) and (b) Directive 90/88/EEC
[88] Appendix II The basic equation expressing the equivalence of loans on the one hand, and repayments and charges on the other

examples of the method of calculation. The total cost of the credit should be determined by excluding charges like:

- charges payable by the borrower for not meeting his obligations stated under credit agreement;
- charges different from the purchase price in purchases of goods or services, that the consumer is obliged to pay;
- charges for the transfer of funds and charges for keeping an account aimed to receive payments towards the reimbursement of the credit, the payment of interest and other fees excluding wherever consumer has not a freedom of choice and such charges are very high;
- membership subscriptions to associations or groups which arise from contracts different than the contract agreement;
- fees for insurance or guarantees, including charges invented to ensure creditor, in the situations of death, invalidity, illness or unemployment of a borrower[89].

According to new article the annual percentage rate of charge should be calculated at the day of the conclusion of the contract and such calculation should be made assuming that the credit agreement is in force for the agreed period of time and both creditor and the borrower meet their obligations[90]. In the situation when credit agreements involve the clauses which let rate of interest, amount or level of other fees included in the annual percentage rate of charge to variate, the APR should be determined supposing that interest and other charges stay fixed[91]. Moreover, when needed, some additional assumptions can be made while assessing the annual percentage rate:

- if the credit agreement does not specify a credit limit, the amount of granted credit should be equivalent to the amount established by Member State and should not exceed amount equal to ECU 2 000;
- when there is no stable schedule for repayment, and it cannot be deducted from the terms of credit agreement, the duration of the credit should be assumed to be one year;
- if not specified differently, where the agreement provides for more than one repayment date, credit is granted, and repayments are made in the earliest period to the one in the contract[92].

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[89] Article 1(2)-point 2 Directive 90/88/EEC
[90] Article 1(2)-point 4 Directive 90/88/EEC
[91] Article 1(2)-point 6 Directive 90/88/EEC
[92] Article 1(2)-point 7 Directive 90/88/EEC

The modifications have been made also towards the Article 4(2) of the Directive 87/102/EEC. With respect to Directive 90/88/EEC there should be added two subparagraphs to the Article 4(2): (c) and (d)[93], stating that written agreement shall include also a statement of the amount, number and frequency or dates of the payments, that the consumer has to make in order to repay the credit, as well as a statement of the payments for interest and other fees and a statement of the cost items referred to in article 1a(2). What is more the list of terms referred to in article 4(3)[94] should contain one more point in the paragraph one – "credit agreement for financing the supply of particular goods or services", which claims that: "the obligation on the consumer to save a certain amount of money which must be placed in the special account"[95].

Directive 98/7/EC of 16 February 1998[96] amending Directive 87/102/EEC brought some new modifications such that Article 1(a)(1)(a) should be completed by an information about annual percentage rate of charge translated also into Greek language[97] and the articles 1a(3)[98] and 1a(5)[99] should be deleted. What is more the document is applying the accuracy to at least one decimal place and assumed year to have 365 days or 365,25 or 366 days, 52 weeks and 12 equal months.

Since the Council Directive 87/102 came out to be ineffective, there was a need to create new document regulating consumer credit market. The aim of providing the minimal-harmonization approach turned out in fragmentation and segmentation of the markets in different bodies. The document from 1986 excluded from its scope regulations concerning sharing of information and scoring[100]. In 2008 came in place Consumer Credit Directive 2008/48/EC[101] (CCD), which in contrast to previous regulations involves fully harmonised provisions. Because of full harmonisation, Member States cannot impose national provisions, which are different from those contained in the Consumer Credit Directive. The document includes five full harmonisation provisions:

- pre-contractual information obligations comprised in articles 5 and 6;
- information that should be included in credit contracts in the article 10;
- the right of withdrawal in article 14;

[93] Article 1(4) points (c) and (d) Directive 90/88/EEC
[94] Appendix I
[95] Article 1(6) Directive 90/88/EEC
[96] Directive 98/7/EC amending Directive 87/102/EEC for the approximation of the laws, regulations and administrative provisions of the Member States concerning consumer credit
[97] Article 1(a) Directive 98/7/EC
[98] Article 1(b) Directive 98/7/EC
[99] Article 1(c) Directive 98/7/EC
[100] Ferretti, F. (2013). The legal framework of consumer credit bureaus and credit scoring in the European Union: pitfalls and challenges-overindebtedness, responsible lending, market integration, and fundamental rights. *Suffolk UL Rev.*, *46*, 791.
[101] Directive 2008/48/EC on credit agreements for consumers and repealing Council Directive 87/102/EEC

- the right of early repayment in article 16;
- method of calculation of the annual percentage rate of charge in article 19[102].

The aim of the Directive is to encourage the integrated and transparent credit market as well as consumer protection improvement. The document imposes for the first time regulations, which aim to promote among the Member States responsible lending practices, for instance obligation of the assessment of consumer's creditworthiness by creditor or the right of withdrawal[103].

The directive does not apply to credit agreements such as:

- credit agreements guaranteed by a mortgage or a similar security used in Member State on immovable property or guaranteed by the right connected to immovable property;
- contracts intended to acquire or retain property rights in land;
- credit agreements for less than 200 EUR or more than 75 000 EUR;
- hiring or leasing agreements;
- credit contracts in the form of an overdraft facility;
- agreements on interest-free credits;
- contracts where employer is grantor of a credit;
- agreements made with investment firms;
- credit agreements which are the result of a settlement achieved in a court;
- contracts related to deferred payment;
- credit agreements upon the conclusion of which, the consumer is obliged to deposit an item as security;
- contracts related to loans granted to restricted amount of people under a statutory provision, comprising lower interest rates than the one prevailing in the market or free of interest[104].

The only solution to achieve a compromise among European Countries on the enactment of the Consumer Credit Directive as a measure of maximum harmonization, came out to be narrowing down the target of the CCD. As a result, the document covers only certain amount of credit

[102] European Parliament. (2012). Implementation of the Consumer Credit Directive. Brussels: Directorate General for Internal Policies, Policy Department A: Economic and Scientific Policy (Report No. IP/A/IMCO/ST/2011-15 PE475.083). Retrieved from https://www.europarl.europa.eu/cmsdata/60180/att_20140604ATT84966-7086136726155317669.pdf

[103] Benohr, I. (2018). Private autonomy and protection of the weaker party in financial consumer contracts: An EU and international law perspective. *European law review*.

[104] Article 2(2) Directive 2008/48/EC

agreements[105]. What is more, since the Directive does not cover credit agreements for less than EUR 200, the way of dealing with high-cost credit, for instance payday loans is due to decision of the Member Countries[106].

With respect to Directive 87/102/EEC, the document provides modifications of the already mentioned definitions[107] related to the topic of consumer credit as well as the new ones for instance: overdraft facility[108], overrunning[109], credit intermediary[110], borrowing and fixed borrowing rate or linked credit agreements[111]. Second chapter of the directive provides relevant pre-conclusion information and practices of the credit agreement.

Consumer Credit Directive is made on a basis of information model of consumer protection, that is displayed in the broad information requirements, that the creditor or credit intermediary should satisfy, in particular in advertising, pre-contractual information, information that should be introduced in credit contract and information that should be provided to consumer throughout the period of credit agreement[112]. According to Article 4 standard information that should be comprised in advertising, shall specify in a clear, brief and transparent way:

- the borrowing rate together with any charges, that are included in the total cost of the credit to the borrower;
- the credit amount;
- the annual percentage rate of charge;
- if applicable, the total period of the contract;
- whenever credit was granted in the form of deferred payment for a good or service, the cash price and the amount of advance payment;
- if applicable, the total amount that the customer is obliged to pay and the amount of the instalments[113];

[105] Cherednychenko, O. O. (2010). Full Harmonisation of Retail Financial Services Contract Law in Europe: A Success or a Failure? *Financial Services, Financial Crisis and General European Contract Law: Failure and Challenges of Contracting*, 221-258.
[106] Cherednychenko, O. O., & Meindertsma, J. M. (2018). Mis-selling of Financial Products: Consumer Credit. Study for the European Parliament Committee on Economic and Monetary Affairs (ECON). *Directorate-General for Internal Policies*.
[107] Article 3 Directive 2008/48/EC
[108] According to Article 3(d) Directive 2008/48/EC overdraft facility means a credit agreement in which creditor lets customer to dispose funds which exceed the current balance in the consumer's current account.
[109] According to Article 3(e) Directive 2008/48/EC overrunning is possible overdraft, whereby creditor lets consumer to dispose funds which exceed the current balance in the consumer's current account of the agreed overdraft facility.
[110] According to Article 3(f) Directive 2008/48/EC credit intermediary can be natural or a legal person who is not acting as a creditor, and who within his trade, business or profession, for a fee or another financial benefit presents of offers credit contracts to consumers; provides help to consumer by undertaking preparatory work connected to such contracts and concludes credit agreements with consumers on behalf of the creditor.
[111] According to Article 3(f) Directive 2008/48/EC linked credit agreements are contracts where the credit is used with the aim of finance and agreement for the supply of goods or services.
[112] Cherednychenko, O. O., & Meindertsma, J. M. (2018). Cit. 106
[113] Article 4(2) Directive 2008/48/EC

- fees related to the insurance or other ancillary service, when such service is obligatory in order to obtain the credit[114].

Presented above information should not be spread in a small and hard to read by the consumer print. It should be text that is easy for the borrower to understand and will not confuse him. Moreover, information given in the advertisements should be comparable between Member States, in order to let consumers, make comparison and facilitate cross-border lending.

The creditor as well as the credit intermediary, whenever it is applicable, should provide the consumer with all relevant information in order to let the client to compare between the variety of offers and decide whether to enter into credit agreement. Pre-contractual information should be in standard[115] form that is the pattern for collection of information for all Member States, provided on paper or equivalent durable medium and shall specify:

- type of credit, its total amount and duration;
- the identity and address of the creditor or credit intermediary;
- cash price and good or service, in the situation when granted credit is in the form of deferred payment or linked credit agreements;
- the borrowing rate and terms applicable to this rate;
- the annual percentage rate of charge and the total amount that the consumer is obliged to pay;
- the amount, number and frequency of payments;
- the interest rate, applicable in the case of late payments;
- where applicable, the costs that consumer is obligated to pay to a notary, when the credit contract is concluded;
- when the consumer is obliged to enter an ancillary service contract (for instance insurance policy) in order to obtain the credit;
- where applicable, charges for keeping one or more accounts, for both payment transactions and drawdowns, and when opening of an account is not optional;
- information about the consequences of not realized payments;
- the existence or absence of a right of withdrawal;
- the right of early repayment, if such right exists;
- where applicable, the sureties required;

[114] Article 4(3) Directive 2008/48/EC
[115] Appendix III Standardised European Consumer Credit Information

- the right of a consumer to have an immediate and free information about the database result of his creditworthiness;
- the consumer's right to be provided with a copy of the credit agreement, whenever requested and free of charge.

Any other important information is given to the consumer in a different document, that can be jointed to the Standard European Consumer Credit Information (SECCI) form[116]. However, CCD does not apply any protection against tremendously high interest rates or other dangers related to high-cost credit products[117]. Whenever the information is given in a way of voice telephony, description should consist at least the total amount of credit, its duration, the borrowing rate and terms applicable to this rate, the amount, number and frequency of payments as well as good or service and its cash price in the case when the credit is in the form of deferred payment or linked credit agreements[118]. In the situation, in which the customer requested to conclude the agreement by means of distance communication, the creditor is obliged to provide the consumer with the information using Standard European Consumer Credit Information form urgently after the contract is concluded[119]. Moreover, the creditors and credit intermediaries, where it is applicable should give consumer adequate explanations, to let him assess the adaptability of the credit agreement to his needs[120]. In the case of credit agreements in the form of an overdraft facility or other particular credit agreements the information that the consumer should be provided with shall specify the type, amount and duration of a credit, the identity and the address of the creditor, annual percentage rate of charge, conditions and the procedures under which the credit contract can be terminated, borrowing rate, interest rate in the case of late payments as well as the consumer's right to achieve urgent and free information about its creditworthiness[121]. From the pre-contractual information requirements are excluded suppliers of goods or services, who are credit intermediaries in an ancillary capacity[122]. As a consequence of a reached compromise between the countries, considering the rule of responsible lending, the Directive imposes, that the creditor, before the conclusion of the credit contract, determines the consumer's creditworthiness on a basis of plentiful information, so the one considering all important data about the consumer[123]. Such information should be gathered from the customer or if necessary proper database and can be updated by the creditor if the parties agree to change

[116] Article 5(1) Directive 2008/48/EC
[117] Cherednychenko, O. O., & Meindertsma, J. M. (2018). Cit. 106
[118] Article 5(2) Directive 2008/48/EC
[119] Article 5(3) Directive 2008/48/EC
[120] Article 5(6) Directive 2008/48/EC
[121] Article 6(1) Directive 2008/48/EC
[122] Article 7 Directive 2008/48/EC
[123] Cherednychenko, O. O. (2010). Cit. 105

the amount of debt after the conclusion of credit contract[124]. This provision requires from lenders to investigate consumers' credit capability, which can be used to protect low-income borrowers. However, there is lack of regulation towards the consequences of individual's absence of creditworthiness[125]. The third chapter contains the rules of database access. In the case of cross-border credit, each Member State should provide the access for credit grantors from other Member States in order to define consumers' creditworthiness, applying non-discriminatory conditions[126]. In order to prevent any bias of competition between creditors, they should be provided with access to public or private databases[127]. Whenever the credit application is denied after the consultation of the database, the consumer should be informed about this fact without paying fees and immediately by the creditor, unless the provision of this kind of information is constrained by other Community legislation or is against with aims of public policy or public security[128]. What is more, this Article shall be without prejudice to the application of Directive 95/46/EC[129] on the protection of individuals with regard to the processing of personal data on the free movement of such data[130]. Fourth chapter gathers information and rights of the credit agreements. The information that should be comprised in the credit agreement shall exist on paper or other durable medium and all the parties should receive a copy of such agreement. The contract has to determine in a clear and brief way:

- the type, duration and total amount of credit;
- the identities and addresses of the parties;
- cash price and good or service, in the situation when granted credit is in the form of deferred payment or linked credit agreements;
- the borrowing rate and terms applicable to this rate;
- the annual percentage rate of charge and the total amount that the consumer is obliged to pay;
- the amount, number and frequency of payments;
- in case where capital amortisation of a credit contract with fixed duration takes place, the possibility for a consumer to receive, whenever requested and free of charge a statement of account in the form of amortisation table. The amortisation table should demonstrate the owed payments, periods and conditions related to them, moreover, shall

[124] Article 8 points 1 and 2 Directive 2008/48/EC
[125] Mak, V., & Braspenning, J. (2012). Errare humanum est: Financial literacy in European consumer credit law. *Journal of consumer policy*, *35*(3), 307-332.
[126] Article 9(1) Directive 2008/48/EC
[127] OJ L 133, 22.5.2008, p. 69. Directive 2008/48/EC
[128] Article 9 points 2 and 3 Directive 2008/48/EC
[129] Directive 95/46/EC on the protection of individuals with regard to the processing of personal data and on the free movement of such data
[130] Article 9(4) Directive 2008/48/EC

contain a breakdown of every repayment presenting capital amortisation, the interest assessed using the borrowing rate and where applicable the additional costs;

- when charges and interest have to be paid without the capital amortisation, there should be a statement that shows the periods and conditions for the payment of the interest and charges;
- where applicable, charges for keeping one or more accounts, for both payment transactions and drawdowns, and when opening of an account is not optional;
- the interest rate, applicable in the case of late payments;
- information about the consequences of not realized payments;
- if the notarial fees occur, the statement that they will have to be paid;
- demanded sureties or insurance;
- the existence or absence of a right of withdrawal;
- information concerning the rights and conditions belonging to linked credit agreements[131];
- the right of early repayment;
- the procedure that has to be followed while exercising the right of termination the credit contract;
- existence or not of an out-of-court complaint and redress mechanism for the consumer and possible ways to have access to it;
- other contractual terms and conditions;
- name and address of the supervisory authority[132].

In the case of the credit agreements in the form of overdraft facilities, such agreement should specify: the type, duration, total amount of a credit, the borrowing rate, the annual percentage rate of charge and the total cost of the credit to the consumer, conditions considering the exercise of the right of withdrawal, information about applicable charges, an information that the borrower may be asked to repay the full amount of credit at any price as well as the identities and the address of the transaction parties[133]. What is more, the customer should be regularly updated by means of statement of account, either on paper or another durable medium, which contains components such as: the period that the statement is related to, amounts and dates of drawdowns, balance from the historic statement as well as the new one, the applied borrowing

[131] Article 15 Directive 2008/48/EC
[132] Article 10(2) Directive 2008/48/EC
[133] Article 10(5) Directive 2008/48/EC

rate, additional charges, the minimum amount that has to be paid and the dates and amounts of payments that has been made by a consumer[134].

As explained in the directive, consumer should be informed about any change considering the borrowing rate either on paper or another durable medium[135].

The Article 13 of the document refers to open-end credit agreements, according to which the termination of such contracts could be effected by the consumer without any charges and at any time, unless the parties agreed on a period of notice, that cannot be longer than one month. Whenever agreed in the credit contract, the creditor has the possibility to terminate an open-end credit agreement with at least two months' notice drawn up on paper or another durable medium[136]. What is more, the creditor upon informing the consumer about the termination and its reasons may decide to constraint the consumer's right to draw down on the credit contract[137]. This situation may occur only for justified reasons such as suspicion of an unauthorised or fraudulent use of the credit or increase of the risk that the borrower will face problems to meet his obligations to repay the loan[138].

The consumer is entitled to have a period of 14 calendar days to withdraw, without any reason from the credit agreement. Such period begins either from the day when the contract is concluded or from the day that a consumer receives the conditions and terms of the agreement[139]. The borrower has to pay any interest due for the term which credit was drawn, and these interests should be counted on the basis of the APR[140]. When the consumer decides to exercise his right of withdrawal, is obliged to inform the creditor on paper or another durable medium about the withdrawal before expiration of the deadline and pay to the creditor no later than 30 calendar days the capital and interest accrued from the date that the credit was drawn down until the date the capital is repaid[141]. According to European Union Court of Justice in order to provide high level of protection, the credit agreements for consumers must contain clear and transparent information about the method of calculation of the period of withdrawal – "The effectiveness of the right to withdraw would otherwise be seriously undermined"[142]. Moreover, together with the exercise of the right of withdrawal by the consumer, and in the situation when there exists an ancillary service connected with credit agreement, the borrower

[134] Article 12(1) Directive 2008/48/EC
[135] Article 11(1) Directive 2008/48/EC
[136] Article 13(1) Directive 2008/48/EC
[137] Article 13(2) Directive 2008/48/EC
[138] OJ L 133, 22.5.2008, p. 69. Directive 2008/48/EC
[139] Article 14(1) Directive 2008/48/EC
[140] Long, I. (2008). Has Consumer Credit Finally Come of Age. *IBLQ*, *3*, 22.
[141] Article 14(3) points a and b 2008/48/EC
[142] Court of Justice of the European Union. (2020). Press release 36/20. Retrieved from https://curia.europa.eu/jcms/upload/docs/application/pdf/2020-03/cp200036en.pdf

is not anymore bound by such service contract[143]. In the case of linked credit agreements, the consumer is not anymore constraint by such contract if he has exercised a right of withdrawal from a contract for the supply of goods or services and in the situation where the goods or services are not supplied or delivered only partly, he has a right to pursue remedies against the supplier and the debtor[144].

The borrower always has a privilege to repay in part or fully the granted amount of money under a credit agreement and his total cost of the credit should be reduced[145]. In this case the creditor is entitled to get a compensation for possible expenditures, which occurred directly from the early repayment of debt, provided that it falls for the period in which the borrowing rate is stable[146]. The creditor should not claim the compensation for early repayment:

- if the repayment has been made by use of the insurance contract which has been concluded to provide the guarantee for credit repayment;
- in case of a credit agreement in the form of overdraft facility;
- whenever the repayment falls within a period for which the borrowing rate is fluctuating[147].

Member States can grant that the compensation can be asked by the credit grantor only in the situation when the amount of the early repayment is higher than the threshold which falls under national law[148] and the creditor can ask for higher compensation if he is able to show that the loss he has suffered from early repayment is bigger[149].

In the event when the agreement to open a current account with the chance of an overrun and when such overrun is longer than a period of one month, the creditor has to give information to the debtor either on paper or another durable medium about overrunning, amount involved, borrowing rate and any penalties, fees, interest or arrears[150].

Chapter five of the directive presents the regulations about the annual percentage rate of charge and its calculation. The annual percentage rate, which is the present value of all commitments, which are agreed between both parties (creditor and consumer), shall be calculated with respect

[143] Article 14(4) Directive 2008/48/EC
[144] Article 15 points 1 and 2 Directive 2008/48/EC
[145] Article 16(1) Directive 2008/48/EC
[146] According to Article 16(2) of the Directive 2008/48/EC such compensation should not exceed 1% of the amount of the credit, earlier repaid, it the period of time between the early repayment and the agreed termination of the contract is more than one year. In the case when the period is not longer than one year, the compensation cannot be larger than 0,5% of the amount of the credit earlier repaid.
[147] Article 16(3) Directive 2008/48/EC
[148] According to Article 16(4) point a such threshold should not exceed EUR 10 000 within any period of 12 months.
[149] Article 16(4) points a and b
[150] Article 18 points 1 and 2 Directive 2008/48/EC

to the mathematical formula set[151]which differs from the one introduced in the Directive 90/88/EEC amending Directive 87/102/EEC[152]. In order to assess the annual percentage rate of charge it is necessary to determine the total cost of the credit to the consumer, excluding charges that the consumer has to pay for not meeting his commitments and fees different from the purchase price. The total cost of the credit should include (unless the opening of the account is optional):

- the costs of keeping an account (both for payment transactions and drawdowns);
- the costs of using a means of payment (both for payment transactions and drawdowns);
- other costs related to payment transactions[153].

CCD demands Member States to include the same costs and charges. The unique manner of calculating APR assures that consumers can make comparisons between offers existing in the credit market and see the real cost of credit[154].

Member States should be responsible for ensuring that:

- creditors are supervised by independent from financial institutions authority[155];
- credit intermediary provides in advertising and documentation aimed to customers the information about its permissions, especially whether he collaborate with one or more creditors or as a single broker;
- the fee that has to be paid by the consumer to credit intermediary for using of his services is disclosed to the customer;
- the creditor is informed about the fee that has to be paid by the consumer to credit intermediary for his services, in order to calculate the annual percentage rate of charge[156].

Since the Directive comprises harmonised rules, Member States cannot introduce or maintain provisions in their national law that are not corresponding with the European Union document[157] and they have to put the effective, proportionate and dissuasive penalties for any infringements[158]. However, the countries are not excluded from taking different actions in response to responsible lending[159].

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[151] Appendix IV Mathematical formula for calculation of the annual percentage rate of charge
[152] Article 19(1) Directive 2008/48/EC
[153] Article 19(2) Directive 2008/48/EC
[154] Long, I. (2008). Cit. 140
[155] Article 20 Directive 2008/48/EC
[156] Article 21 points a, b and c Directive 2008/48/EC
[157] Article 22(1) Directive 2008/48/EC
[158] Article 23 Directive 2008/48/EC
[159] Cherednychenko, O. O. (2010). Cit. 105

In 2011 was introduced Directive 2011/90/EU[160] amending an annex with the aim of clarifying the rules of calculating the annual percentage rate of charge to be more suitable to the commercial situation at the market and to let calculation be more uniform[161].

The European Union Directive 2014/17/EU[162] on credit agreements for consumers relating to residential immovable property, known also as a Mortgage Credit Directive (MCD) was introduced on 4th February 2014. This document amends previously published Consumer Credit Directive[163], Directive 2013/36/EU on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms and the Regulation No 1093/2010 establishing a European Supervisory Authority (European Banking Authority). The major aims of the Directive are to strengthen consumer protection from risks of defaults and foreclosures and creation of unique internal market for mortgage credits[164]. Moreover, law differences among the Member States, that can provoke restriction of the cross-border transactions and reduce competition, there was a need in creation of more transparent and efficient credit market. After the 2008 financial crisis it was necessary to introduce adequate standards in relation with residential immovable property, that are robust and consistent with the international rules and protect households from over-indebtedness. This event has highlighted how the irresponsible actions of individuals participating in the market can weaken the financial system by provoking lack of confidence between the parties and lead to social as well as the economic problems[165]. In 2009 Commission of the European Communities has issued the document "Driving European Recovery"[166] with the purpose of setting steps to deal with the financial crisis and deliver reliable and responsible framework for credit agreements relating to residential immovable property. More information about responsible lending practices will be found in the following subchapters. Directive 2014/17/EU took into its scope also credits denominated in a foreign currency, in order to avoid problems in lack of information and understanding of the exchange risk involved in such transactions by the consumers. The document puts also new regulations to prevent low financial literacy, that can cause serious insolvency problems for borrowers. Mortgage Credit Directive meets the need of ensuring higher level of consumer protection, through monitoring the credit institutions to act in a

[160] Directive 2011/90/EU of 14 November 2011 amending Part II of Annex I to Directive 2008/48/EC of the European Parliament and of the Council providing additional assumptions for the calculation of the annual percentage rate of charge
[161] OJ L 296, 15.11.2011, p. 35. Directive 2011/90/EU
[162] Directive 2014/17/EU on credit agreements for consumers relating to residential immovable property and amending Directives 2008/48/EC and 2013/36/EU and Regulation No 1093/2010
[163] Directive 2008/48/EC
[164] Josipović, T. (2014). Consumer protection in EU residential mortgage markets: Common EU rules on mortgage credit in the mortgage credit directive. *Cambridge Yearbook of European Legal Studies*, *16*, 223-253.
[165] OJ L 60, 28.2.2014, p. 34. Directive 2014/17/EU
[166] EU Commission. (2009). Driving European recovery. *Communication for the Spring European Council, Brussels, COM (2009)*, *114*.

professional and responsible way as well as promotion of good practices. Furthermore, there is introduced the European Standardised Information Sheet (ESIS) and standardised form of calculation of annual percentage rate of charge (APRC) that enable maximum level of harmonisation[167]. This document does not prevent Member States from maintaining or introducing more strict regulations aimed to prevent the consumers (apart from model of ESIS and standard calculation of APRC), as long as they are consistent with the one provided by this Directive[168]. In order to provide coherent framework for consumers and creditors in area of credit, the main framework of the Mortgage Credit Directive, whenever it is possible, follows the structure of Directive 2008/48/EC[169].

The main targets of the Mortgage Credit Directive can be outlined as:

- creation of a high level of consumer protection;
- prevention of irresponsible lending practices;
- encouragement of financial stability on the market;
- creation of competitive unique market;
- promotion of professional approach among creditors and credit intermediary.

The CCD does not apply to credit contracts secured by mortgage. Mortgage Credit Directive aims to harmonise the consumer mortgage residential credit agreements among the Member States[170]. The Directive 2014/17/EU applies to:

- credit agreements backed by a mortgage or another similar security, which is used in a Member State on residential immovable property or backed by a right connected to such property;
- credit contracts aimed to purchase or maintain property rights in land or building[171];

The Mortgage Credit Directive does not apply to:

- credit agreements that release equity[172];
- credit agreements under which an employer grants the credit to his employees as his additional activity;
- interest-free credit agreements;

[167] OJ L 60, 28.2.2014, p. 35. Directive 2014/17/EU
[168] Article 2 points 1 and 2 Directive 2014/17/EU
[169] OJ L 60, 28.2.2014, p. 37. Directive 2014/17/EU
[170] Josipović, T. (2014). 164
[171] Article 3(1) points a and b Directive 2014/17/EU
[172] According to Article 2(2) point a such agreements are not applied under the Directive 2014/17/EU where creditor contributes a lump sum, periodic payments or another forms of credit disbursement in return for a sum coming from expected sale of a residential immovable property as well as where the creditor will not look for repaying the credit until the occurrence of a specific event in the life of the consumer, which is defined by a particular Member State.

- credit contracts in the form of overdraft facility and in the situations where the debt has to be repaid within the period of one month;
- credit agreements resulted from a settlement reached in court or another statutory body;
- credit agreements related to deferred payments, that are charge free and do not fall under the equity release credit contracts[173].

In order to avoid the existing gap between the Consumer Credit Directive and the Mortgage Credit Directive, unsecured credit agreements aimed to renovate a residential immovable property, which involve a total amount of credit above 75 000 EUR should fall under the scope of the Directive 2008/48/EC[174].

According to Article 3 point 3 of this Directive[175], Member States does not have to apply:

- articles considering standard information to be included in advertising[176] and the pre-contractual information[177] as well as the annex comprising European Standardised Information Sheet to credit contracts that are backed by a mortgage or another similar security used in a Member Country on residential immovable property or backed by a right connected to such property not aimed to purchase or maintain the right to residential immovable property[178].
- this Directive to credit contracts considering immovable property, where such agreement ensure that the immovable property cannot be occupied as an apartment or a house by consumer as well as the members of his family, but can be occupied only on a basis of a rental agreement;
- this Directive to credit agreements considering credits granted to specific group of people aimed for general interest, free of interest or at lower borrowing rates or on better terms than those prevailing on the market;
- this Directive to bridging loans[179].

[173] Article 2(2) Directive 2014/17/EU
[174] OJ L 60, 28.2.2014, p. 37. Directive 2014/17/E
[175] Article 3(3) Directive 2014/17/EU
[176] Article 11 Directive 2014/17/EU
[177] Article 14 Directive 2014/17/EU
[178] Member States have to apply to such credit contracts articles 4 and 5, considering standard information to be included in advertising and pre-contractual information respectively of the Directive 2008/48/EC as well as the annexes comprising Standard European Consumer Credit Information
[179] As defined in the Article 4(23) of the Directive 2014/17/EU bridging loan is a credit agreement which has to be repaid either within 12 months or has not fixed duration, used as a temporary financing solution for a consumer.

The new document provides some modifications and new definitions with respect to the Directive 2008/48/EC, for instance bridging loan, tying[180] and bundling[181] practice, foreign currency loan[182], tied credit intermediary[183], appointed representative[184], shared equity agreement[185]as well as contingent liability or guarantee[186]. The notion of the total cost of the credit to the consumer with respect to the Consumer Credit Directive includes also the cost of valuation of property but excludes registration fees for the ownership transfer and the charges that the consumer has to pay for not meeting his obligations[187]. Some definitions remain the same as in the Consumer Credit Directive (such as "consumer", "durable medium", "total amount payable by the consumer" and "borrowing rate") in order to keep the legal certainty and use the same terminology despite whether it is consumer credit or credit relating to residential immovable property[188].

Member States should be responsible for nominating competent authorities, that are public bodies recognised by national law, monitoring implementation of the rules contained in this Directive[189].

In order to let individuals make informed decisions, financial literacy among the credit consumers should be developed, in particular when it comes to mortgage credit agreements. Borrowers shall be guided, especially those who take the mortgage credit for the first time[190]. Financial literacy measures individual's level of crucial financial concepts knowledge and his capability to manage personal finances[191]. Lack of financial literacy among the consumers was

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[180] As defined in the Article 4(26) of the Directive 2014/17/EU tying practice means offering or selling of the credit contract in a package with other financial products or services and such contract is not available to the consumer separately.
[181] As defined in Article 4(27) of the Directive 2014/17/EU bundling practice means offering or selling of the credit agreement in a package with other financial products or services, such agreement is also available to the consumer separately, but might consider different terms and conditions.
[182] As defined in Article 4(28) of the Directive 2014/17/EU foreign currency loan is a credit agreement where the credit is denominated in a different currency than the one of the consumer's income or denominated in a currency different than the one of the Member State in which the consumer is resident.
[183] As defined in Article 4(7) of the Directive 2014/17/EU tied credit intermediary is an intermediary that acts on behalf and under responsibility of either only one creditor; one group of creditors or a number of creditors or groups.
[184] As defined in Article 4(8) of the Directive 2014/17/EU appointed representative is a natural or legal individual that provides same activities as credit intermediary such as presenting and offering of a credit agreement; assisting consumers in pre-contractual work; concluding credit contracts on behalf of a creditor. Appointed representative works on behalf or under responsibility of credit intermediary.
[185] As defined in Article 4(25) of the Directive 2014/17/EU shared equity credit agreement is a credit contract where the capital that has to be repaid is based on a set in a contract percentage of the value of the immovable property at the time when the repayment has to occur.
[186] As defined in Article 4(24) of the Directive 2014/17/EU contingent liability or guarantee is a credit agreement acting as a guarantee to another transaction, the capital that is backed against an immovable property is drawn down whenever an event that is specified in the contract takes place.
[187] Article 4(13) Directive 2014/17/EU
[188] OJ L 60, 28.2.2014, p. 37. Directive 2014/17/EU
[189] Article 5(1) Directive 2014/17/EU
[190] Article 6(1) Directive 2014/17/EU
[191] Remund, D. L. (2010). Financial literacy explicated: The case for a clearer definition in an increasingly complex economy. *Journal of consumer affairs*, *44*(2), 276-295.

one of the drivers of financial crisis, that is why improving of their awareness and knowledge is crucial.

When providing credit to consumers creditors, credit intermediaries as well as appointed representatives should act in honest, fair and professional way by taking into consideration the rights and interests of the consumers. The remuneration policy of their staff should not encourage risk-taking exceeding the level of accepted risk by the creditor, be dependent to number or proportion of accepted applications and sales target, but employees should act in the best interest for the consumers[192]. All information that are included in the Mortgage Credit Directive should be given without any charge to the consumers[193]. Staff working for creditors, credit intermediaries and appointed representatives must possess updated and appropriate knowledge related to manufacturing, granting and offering of credit agreements, that can be monitored by competent authorities. Such knowledge should be coherent with the Minimum Knowledge and Competence Requirements, provided by this document, unless the services are provided within the territory of one or more Member States[194].

Advertising of the credit products should be made in clear, fair and not misleading way, without creating of distorted expectations for a consumer[195]. The standard information that must be included in advertising should specify in a transparent, brief and noticeable way:

- the identity of the creditor, the credit intermediary or appointed representative;
- the borrowing rate;
- the total amount and duration of the credit;
- where applicable the total amount that the consumer is obliged to pay;
- where applicable, the amount and number of instalments;
- the annual percentage rate of charge;
- where applicable, information that the credit contract will be backed by a mortgage or another similar security that is used in a Member State on residential immovable property or by a right to such property;
- where applicable, information about the possible fluctuations of the exchange rate that may have an impact on the amount that the consumer has to pay[196].

[192] Article 7 points 1, 3 and 4 Directive 2014/17/EU
[193] Article 8 Directive 2014/17/EU
[194] Article 9 points 1, 2 and 4 Directive 2014/17/EU
[195] Article 10 Directive 2014/17/EU
[196] Article 11 points 1 and 2 Directive 2014/17/EU

Mortgage Credit Directive extends the information that should be included in advertising by the one concerning creditors and credit intermediaries and the warning regarding fluctuations of the exchange rate. These obligations provide consumer with higher level of protection and awareness about the possible effects of the credit contract.

As well as stated under the Consumer Credit Directive, when in order to get a credit it is necessary to conclude a contract regarding ancillary service (in particular insurance), there should be given an information considering the obligation to enter in such contract and APRC[197]. In comparison to CCD, the Mortgage Credit Directive implies regulations made to limit some cross-selling practices[198]. Bundling practices should be allowed, while the tying one must be prohibited[199]. Member States can provide that creditors can ask the consumer or a member of his family or his close relative to:

- open or keep a payment or a savings account, aimed to accumulate capital needed to repay, service the credit, to pool resources in order to get a credit or to ensure creditor with additional security in case of default;
- acquire or maintain an investment product or a private pension product, that can also provide additional security for the creditor in case of default;
- conclude a separate credit contract that is connected to shared-equity credit agreement to obtain the credit[200].

General information about credit agreements should be given to consumer in an understandable way on paper, in electronic form or another durable medium. Such information shall be consisted of:

- identity and address of the creditor;
- the objectives on which the credit will be used;
- the forms of security;
- types of borrowing rate;
- duration of the credit contract;
- if the credit is a foreign currency loan it is necessary to provide an indication of the foreign currency with an information about the consequences of denomination in a foreign currency;

[197] Article 11(4) Directive 2014/17/EU
[198] Cherednychenko, O. O., & Meindertsma, J. M. (2018). Cit. 106
[199] According to Article 12(3) Directive 2014/17/EU tying practices may be allowed by a Member States, only when the creditor can prove to its competent authority, that such practices result clearly in benefit to the consumers, this paragraph applies only to products that are marketed after 20 March 2014.
[200] Article 12 points 1 and 2 Directive 2014/17/EU

- the total amount of credit, the APRC, the total cost of the credit and the total amount payable by the consumer;
- an information about other possible charges, that are not included in the total cost of th credit;
- the variety of possible options for repayment of the credit;
- all conditions of early repayment;
- an information about the necessity of valuation of the property;
- indication of ancillary services that the consumer should purchase in order to obtain the loan;
- warning concerning consequences of not meeting the obligations falling under credit agreement[201].

Before conclusion of a credit agreement, creditor should provide the consumer with personalised pre-contractual information[202]. This obligation gives consumer possibility to compare between different credit offers existing on the market and encourage individual to make informed decision[203]. Such information should be given by means of European Standardised Information Sheet (ESIS) that is included in the annex of the Mortgage Credit Directive[204]. Any other information that can be considered as useful should be made in a separate document that can be jointed to ESIS. What is more, the countries should be free to create such documents in national language but without changing its contents[205]. The consumer can be granted time of at least seven days in order to consider the credit agreement. Period of reflection should not exceed 10 days[206]. This rule is subject to minimal harmonisation, since gives Member States room for manoeuvre about determination of period for making an informed decision[207]. In the situation when the possibility of withdrawal does not exist, the consumer should be provided with a copy of the draft credit agreement at the same time when the offer is given[208]. This right allows consumers to have access to concluded contract and to extend his awareness about the obligations that are written under it, whenever needed.

New Directive develops more obligations concerning the creditworthiness of the consumers with respect to Credit Consumer Directive. Unlike CCD it leaves less possibility for Member

[201] Article 13(1) Directive 2014/17/EU
[202] Article 14(1) Directive 2014/17/EU
[203] Josipović, T. (2014). Cit. 164
[204] Article 14(2) Directive 2014/17/EU
[205] OJ L 60, 28.2.2014, p. 41. Directive 2014/17/EU
[206] Article 14(6) Directive 2014/17/EU
[207] Josipović, T. (2014). Cit. 164
[208] Article 14(11) Directive 2014/17/EU

States to impose their national regulations[209]. As previously mentioned, the creditor before conclusion of credit agreement should assess consumer's creditworthiness[210]. Such documents must be established, documented and kept[211]. The estimation of the creditworthiness cannot be based on assumption that the value of the residential immovable property exceeds amount of the credit or that such property will have higher value, unless the credit is aimed to construct or renovate[212]. The subprime crisis has shown the misleading effect of the linking the market value of home to the amount of credit extended for its purchase[213]. The creditor should in advance inform future borrower that the assessment will be made and conclude the credit agreement only if it indicates that the consumer will be able to meet the obligations falling under the contract, otherwise if the credit application is rejected lender should immediately contact the consumer about occurring such situation[214]. The creditworthiness must be properly verified on a basis of consumer's income, expenses and other financial and economic conditions[215]. Information concerning database access under the Mortgage Credit Directive is equivalent to the one provided by previously released document[216]as well as the one considering early repayment.

All advisory services should be provided only by creditors, credit intermediaries or appointed representatives and such individuals have to perform by taking into account the best interest of their consumers[217]. In order to provide full transparency and protection against abuses, the Directive highlights which information should be disclosed by credit intermediaries[218] as well as provides requirements for establishment and supervision of the latter, appointed representatives and for non-credit institutions. Competent authorities of Member Countries are obliged to cooperate with each other in order to exchange information[219]. Furthermore, Mortgage Credit Directive creates an EU passport regime for credit intermediaries, which signifies that once authorized in one of Member States, a bank, financial institution or credit intermediary is permitted to offer services across the European Union[220].

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209 Cherednychenko, O. O., & Meindertsma, J. M. (2018). Cit. 106
210 Article 18(1) Directive 2014/17/EU
211 Article 18(2) Directive 2014/17/EU
212 Article 18(3) Directive 2014/17/EU
213 Reifner, U. (2018). Responsible Credit in European Law. *Italian LJ*, *4*, 421.
214 Article 18(5) Directive 2014/17/EU
215 Article 20(1) Directive 2014/17/EU
216 Directive 2008/48/EC
217 Article 22 points 3(d) and 6 Directive 2014/17/EU
218 OJ L 60, 28.2.2014, p. 42. Directive 2014/17/EU
219 Article 36(1) Directive 2014/17/EU
220 Mendez-Pinedo, M. E. (2018). Will the Directive 2014/17/EU on mortgage credit protect consumers in the next economic and/or financial crisis?. *Tribuna Juridică*, *8*(16), 564-584.

The Regulation (EU) 2016/1011[221] introduces a framework in order to provide completeness of indices which are used as benchmarks[222] in financial contracts and instruments. Moreover, document's aim is to ensure higher level of consumer protection as well as accurate activity of the market[223]. In the Regulation are provided the amendments to Directive 2008/48/EC and to the Mortgage Credit Directive. To the Article 5 of the Consumer Credit Directive considering pre-contractual information as well as to the Article 13 of the Mortgage Credit Directive comprising general information available to the consumers, should be added a subparagraph stating that the name of the benchmark and of its administrator as well as the possible consequences for the consumer should be provided by the creditor or credit intermediary to the borrower in a separate document[224].

2.2. Responsible Lending

As mentioned before the financial crisis highlighted how big impact on the market can have irresponsible lending practices. Since the belief in the banking industry was very low, it was necessary to rebuild confidence and lending by implementation of proper rules[225]. According to European Banking Authority Consumer Trends Report[226] mortgages represent in excess of 77% of loans to households in European Union, which shows how huge effect on consumers' finance they have. Mortgage Credit Directive regulates this kind of credits and promotes responsible lending practices for both creditors and consumers. The relevant issues for consumers related to mortgages are the level of household's indebtedness, level of fees and charges, challenges for early repayment and loan refinancing. When it comes to consumer credit, in the period between 2013-2017, it has been quite stable with the small increase in credit for consumption, which between 2016 and 2017 has increased by 5,1% (Figure 1).

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[221] Regulation (EU) 2016/1011 of 8 June 2016 on indices used as benchmarks in financial instruments and financial contracts or to measure the performance of investment funds and amending Directives 2008/48/EC and 2014/17/EU and Regulation (EU) No 596/2014

[222] According to Article 3(1) point 3 Regulation (EU) 2016/2011 benchmark is an index to which the amount that has to be paid under of a financial contract, instrument or the value of this instrument is determined; or an index used in order to assess the profitability of an investment fund aimed to track the return or to determine the asset allocation of a portfolio or to compute the fees.

[223] Article 1 Regulation (EU) 2016/1011

[224] Article 57(1) and Article 58(1) Regulation (EU) 2016/1011

[225] EU Commission. (2009). Cit. 166

[226] European Banking Authority. (2019). EBA Consumer Trends Report 2018/19. Retrieved from https://eba.europa.eu/sites/default/documents/files/documents/10180/2551996/75e73a19-d313-44c9-8430-fc6eca025e8b/Consumer%20Trends%20Report%202018-19.pdf

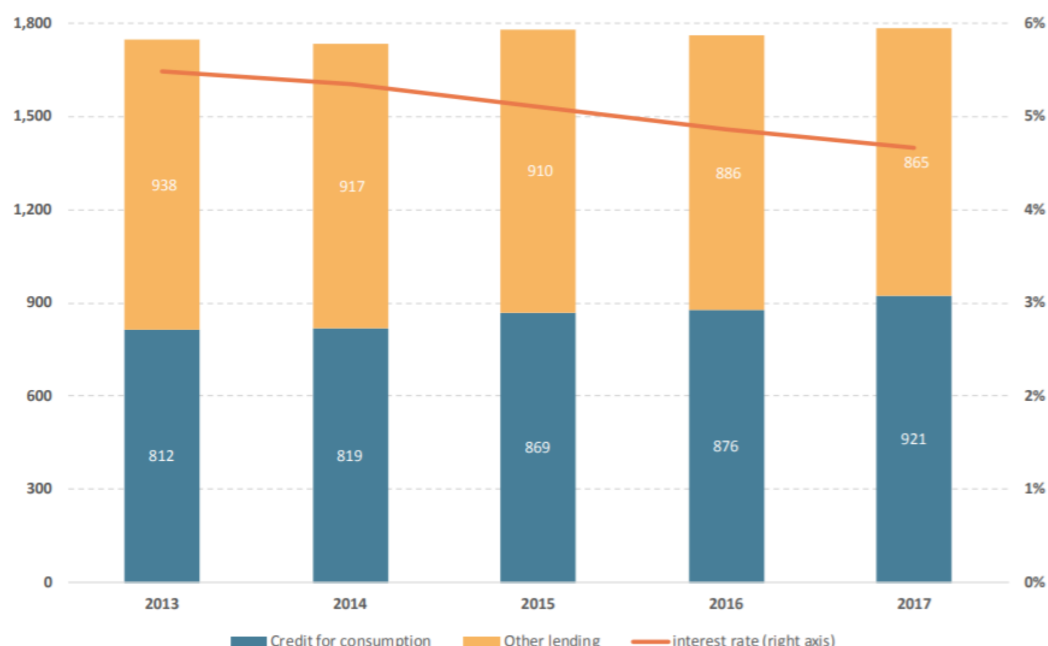

Figure 1 Consumer Credit, 2013-2017, source: EBA Consumer Trends Report 2018/19

According to information reported by Credit Authorities consumers meet issues connected to consumer credit such as high cost of short-term consumer credit, mistreatment of consumer credit, over-indebtedness and arrears, incomplete contractual and pre-contractual information as well as insufficient creditworthiness assessment practices[227]. It is very important to provide a proper and responsible functioning of European Union consumer credit market in order to avoid debt burden, deterioration of consumer's economic, social and psychological health[228]. Responsible lending is a preventive measure that includes transparency related to the cost of credit and the creditors that verify credit and its repayment capacity[229]. Creditors while offering credit should take care of the interests of their borrowers, instead of caring only about their own profits. What is more, consumer credit products should be made in a responsible way. The lenders as well as credit intermediaries are obliged to assess the consumer's creditworthiness, estimate if the credit and connected products are appropriate to the needs of customers and treat their borrowers in a fair approach whenever difficulties with payment occur. Creditworthiness assessment should be focused on borrower in order to protect him from repayment problems that can lead to over-indebtedness. Estimation of appropriateness of credit products means that credit providers or intermediaries should provide borrower with the most suitable option, by considering his interests, objectives and characteristics. Creditors are obliged to notice as fast

[227] European Banking Authority. (2019). Cit. 226

[228] BEUC. (2019). *Review of the consumer credit directive.* Retrieved from https://www.beuc.eu/publications/beuc-x-2019-019_review_of_the_consumer_credit_directive.pdf

[229] Alleweldt, F., Kara, S., Graham, R., Kempson, E., Collard, S., Stamp, S., & Nahtigal, N. (2013). The over-indebtedness of European households: Updated mapping of the situation, nature and causes, effects and initiatives for alleviating its impact. *DG Health and Consumers of the European Commission. Available online at: www. civic-consulting. de.*

as possible that the debtors face payment difficulties and take action to help the borrower and determine the reasons of such problems. There are few main drivers of irresponsible consumer lending: product design, unsolicited consumer credit, risks accompanying online distribution, creditworthiness assessment, product cross-selling, sales incentives and targets as well as lack of supervision and enforcement. While designing a credit product, manufacturers should take care of borrower's interests and responsible behaviour has to be followed even in the post-contractual phase. There exist products, for instance payday loans or revolving credit (credit cards) that are charging very high and hard to understand for consumers fees, penalties for late or missed repayment, which approach mostly low-income borrowers. Payday loan which is described also as high-cost short-term credit exists in many European Union Countries, for instance in Finland, Netherlands, Czech Republic or Poland. This type of credit is in general small and may not be a subject of Consumer Credit Directive provisions, since the loans which are less than 200 EUR fall outside the scope of this document. Unsolicited credit can be offered by a bank, credit card company, credit intermediary who is calling or visiting future borrowers in order to provide them with instalment or revolving credit or retailer shop. Such offers can take also form of an instalment credit tied with the credit card, sent by post non-requested by consumer credit card, intensive marketing of a payday loans or increase of a limit on credit card or overdraft without the knowledge of the consumer. These methods incentivise borrowers to excess their spending and take more loans, which can lead to over-indebtedness of the individuals. The Consumer Credit Directive is lacking the regulations for unsolicited practices, but some of the Member States has developed restrictions and bans. Together with the digitalisation, consumer credit market started to change. Nowadays credit providers distribute their products through smartphone apps and internet, which lets borrowers to make comparisons between existing products, search for them and purchase online. What is more there arose new form of a credit, such as crowdfunding called also peer-to-peer lending, that links lenders, investors and givers with the individuals who are looking for financing. These improvements can bring a lot of benefits but also may create a lot of risks such as violation of responsible lending practices, unsolicited marketing that will push customers to take a loan and as result problems with repayment of debt. Crowdfunding platforms are not regulated by the European Union and the legal frameworks established by single countries are very fragmented. When it comes to creditworthiness assessment there may arise concerns connected to the types and sources of data that are used by credit providers and the way they are analysed by algorithms. Cross-selling are either tying or bundling practices, for instance debt sold together with payment protection insurance, that lets borrowers to insure repayment of the loan when accidents such as death, illness or disability occur. The insurances might be not valuable for a consumer,

expensive or hard to understand for a consumer. Staff working for credit lenders and intermediaries can be incentivised by both financial and non-financial bonuses for example sales competition, promotions or vouchers and gifts. Use of these methods is regulated under the Mortgage Credit Directive that bans these practices, in contrast with Consumer Credit Directive[230]. There exist gaps in the European Union legislative framework when considering supervision and enforcement. The authorities should be provided by competent staff and advanced monitoring, investigation and sanctioning powers in order to ensure protection[231]

2.3. Credit Bureaus and Credit Reporting in Europe

Credit Bureaus are public or private entities which provide lenders with information about borrowers, they exist in all European Union Member Countries except Luxembourg. Public ones are in general part of supervisory authority or national central bank aimed to guarantee the financial system's stability and to control the level of indebtedness in the households. Private bureaus afford credit consumer market with risk-management and specialistic tools in order to extend effectiveness and benefits of financial institutions. The characteristics of both private and public bureaus are presented in the table below[232].

[230] BEUC. (2019). Cit. 228

[231] FSUG. (2019). *Responsible consumer credit lending, FSUG opinion and recommendations for the review of the Consumer Credit Directive*. Retrieved from https://ec.europa.eu/info/sites/info/files/business_economy_euro/banking_and_finance/documents/fsug-opinions-190408-responsible-consumer-credit-lending_en.pdf

[232] Ferretti, F. (2014). *EU competition law, the consumer interest and data protection: The exchange of consumer information in the retail financial sector*. Springer.

	Credit bureau	Public credit register
Ownership structure	Private/commercial entity	Central Bank or Supervisory Authority
Clients structure	Mainly creditors but sometimes also other services providers	Financial institutions authorised to grant credit
Scope	Credit assessment and monitoring	Banking supervision, building statistics, financial stability studies
		Monitoring and preventing over-indebtedness
		Credit assessment
		Fostering credit institutions prudent management
Creditors' participation	Generally voluntary	Mandatory by law
Principle of reciprocity/Non discriminatory access	Yes	Yes
Type of data stored	Full credit data (positive and negative data)	Credit data from financial institutions authorised to grant credit (including both positive and negative data in a majority of cases)
	Often also non-credit data	Data on bankruptcy of natural and legal persons
Additional services provided to creditors	Mainly:	None
	Credit scoring based on the whole CB dataset	
	Software applications	
	Portfolio management services	
	Fraud prevention systems	
	Authentication products…	
Use of thresholds	Yes, but generally low	Yes
Degree of detail of the information provided[17]	Detailed information on each individual loan. In some countries, credit information merged with other data (e.g. from public sources)	Information sometimes in a consolidated form (giving the total loan exposure of each borrower). In some PCRs, (Belgium, Italy, Portugal or Spain), the information is also given in a detailed form
Coverage	Depends on the legislation, length of service provided, financial culture, etc.	Universal coverage

Figure 2 Characteristics of Credit bureau and Public Credit Register, source: Ferretti, 2014

In 2017 there was run a survey provided by the Association of Consumer Credit Information Suppliers (ACCIS) based on responses of 32 members of the credit reporting market from 23 European countries[233]. According to the research most of Credit Referencing Agencies are profit-seeking (81% of all respondents). The data includes both negative and positive information that are collected on individuals, SMEs, larger entities as well as on legal entities, while main sources are banks, companies providing leasing, credit card and credit retail suppliers, utilities providers, such as energy or water providers and even telecommunication companies. Among all the countries, the ones that contain the most sources of gathering data are United Kingdom, Germany, Denmark and Poland. For 69% of consumers the data are available to access free of charge, otherwise they have to pay from 2 to 19 EUR. Borrowers can

[233] Appendix V Table of respondents to the survey provided by ACCIS

always have the access to their data and are given a right to dispute, ask for rectification and removal of faulty information. The principle of reciprocity incentivizes credit providers to share data, that limits over-indebtedness, fraud, money laundering, bad debt as well as supports debt recovery and responsible lending practices. In the European countries 72% of respondents share their data according with the principle of reciprocity[234].

2.4. Polish Scenario

2.4.1. Regulation of Consumer Credit in Polish law

Consumer Credit in Poland is regulated by Act on Consumer Credit, firstly adopted on 20th July 2001, amended by Act from 22nd May 2003, and replaced by new Act from 12th May 2011.

The Act from 2001 aimed to bring closer and harmonize Polish law with the European Union requirements presented in the Directive 87/102/EEC[235]. The act regulates the rules and terms of entering into consumer credit agreements, rules for consumer protection as well as obligations of the lender towards consumer[236]. Consumer is determined as a natural person, that enters a contract for purposes that are not directly related to his economic activity[237]. With respect to definition of the consumer provided in this act, despite of aims of credit agreement, legal persons cannot fall under this meaning[238]. Credit agreement according to this document is an agreement, that is made by entrepreneur, called as creditor, who grants or promises to grant a credit in any form[239]. Such credit agreements are:

- loan agreements;
- credit agreements falling under the regulations of Polish bank law;
- agreements on deferment of the date of performance of monetary obligation;
- agreements that consumer's monetary obligation monetary obligation shall be met later than creditor's obligation;

[234] ACCIS. (2017). *ACCIS 2017 Survey of Members. Analysis of Credit Reporting in Europe*. Retrieved from https://accis.eu/wp-content/uploads/2018/11/AUG18_ACCIS-Survey-of-Members-2017_FINAL.pdf
[235] Maliszewska-Nienartowicz, J. (2006). Regulation of Consumer Credit in Polish Law. *Interdisciplinary Management Research*, *2*, 373-384.
[236] Article 1 Ustawa o kredycie konsumenckim Dz. U. 2001, no 100, position 1081
[237] Article 2(4) Ustawa o kredycie konsumenckim Dz. U. 2001, no 100, position 1081
[238] Maliszewska-Nienartowicz, J. (2006). Cit. 235
[239] Article 2(1) Ustawa o kredycie konsumenckim Dz. U. 2001, no 100, position 1081

- agreements that creditor is compelled to undertake an obligation from the third person and consumer has a duty to give back this performance to creditor[240].

This document is also considering agreements according to which credit union under its activity grants or promises to grant to its member a credit that is not directly connected to his economic activity[241].

Polish Act on Consumer Credit excludes from its scope agreements:

- involving amounts less than 500 PLN or more than 80 000 PLN or amounts equivalent in a different currency than the polish one;
- under which the consumer is obliged to repay the credit within a period that do not exceed three months;
- granted without obligation to pay interests or any other charges;
- hiring agreements, unless the title will pass to the hirer;
- intended for the purpose of acquiring property or retaining property rights in land, an existing or projected building, renovating or improving a building;
- in the form of deferred payments for non-pecuniary performance such as continuous delivery of electric energy, heating, water and others, if the consumer is obliged to pay for the performance at fixed intervals[242].

The legislator excluded the credit agreements that are made for more than 80 000 PLN, since they in general are not taken with the aim of consumption. The list of exceptions is very similar to the one provided by Council Directive 87/102/EEC, which shows that the European Union document had strong impact on Polish Act on Consumer Credit[243].

Credit Agreements shall be made in writing, unless there exist rules that predicts different form. Creditor is obliged to provide consumer with a copy of the written agreement, that should include following information:

- name, surname and the address of a consumer as well as identity and address of the creditor[244];
- the amount of credit;
- the obligations and terms of repayment;

[240] Maliszewska-Nienartowicz, J. (2006). Cit. 235
[241] Article 2(3) Ustawa o kredycie konsumenckim Dz. U. 2001, no 100, position 1081
[242] Article 3 points 1 and 2 Ustawa o kredycie konsumenckim Dz. U. 2001, no 100, position 1081
[243] Maliszewska-Nienartowicz, J. (2006). Cit. 235
[244] As stated in the Article 4 of Polish Act on Consumer Credit - Ustawa o kredycie konsumenckim Dz. U. 2001, no 100, position 1081, whenever creditor is a legal person, there should be included also information on the number in the register.

- the annual percentage rate of charge as well as the conditions under which it is possible to change this rate;
- payments, provisions and other charges related to entering into credit agreement;
- information about total cost of the credit and real annual percentage rate;
- the form of insurance, if is predicted by agreement, and the fees that have to be paid to the creditor;
- information about other charges, that consumer is obliged to pay and information about all existing charges paid by consumer;
- information about possibility and consequences of early repayment;
- information about the time, way and effects of the exercising of the right to withdraw from the contract by the consumer;
- information about the consequences of violation of the agreements written under the contract[245].

As stated in article 19, creditor that violates the requirements falling under the contract or omits to provide consumer with copy of the credit agreements is subject to the financial penalty[246]. Provision of the copy of the document is a valuable right for consumer, since it lets him to read and analyze agreement again and is important tool whenever borrower wants to exercise right to withdraw from the contract[247]. While considering the form and information that should be given in the credit contract, Polish Act on Consumer Credit is compatible with the Directive 87/102/EEC. The Article 5[248] considers the information that credit agreements for financing the supply of particular goods or services should contain, and such information is very similar to the one provided under the Annex of the European Union document[249].

The total cost of the credit to the consumer[250], stated in Article 7 means all costs, including interest and other charges, that the consumer is obliged to pay for the credit. The Act implies also the list of exceptions that should be excluded from this definitions, for instance: charges for non-compliance with the commitments written under the credit contract; charges for insurance or guarantees, charges resulting from changes in exchange rate and others, that are analogous to the Directive 90/88/EEC amending Directive 87/102/EEC. The formula for calculation of the annual percentage rate of charge and the examples[251] are written under the

[245] Article 4 points 1 and 2 Ustawa o kredycie konsumenckim Dz. U. 2001, no 100, position 1081
[246] Article 19 Ustawa o kredycie konsumenckim Dz. U. 2001, no 100, position 1081
[247] Maliszewska-Nienartowicz, J. (2006). Cit. 235
[248] Article 5 Ustawa o kredycie konsumenckim Dz. U. 2001, no 100, position 1081
[249] Council Directive 87/102/EEC
[250] Article 7(1) Ustawa o kredycie konsumenckim Dz. U. 2001, no 100, position 1081
[251] Article 7(2) Ustawa o kredycie konsumenckim Dz. U. 2001, no 100, position 1081

Annex of Act and are coherent with both amendments of Council Directive 87/102/EEC – Directive 90/88/EEC and Directive 98/7/EC.

As well as under European legislation, the consumer is entitled to discharge his obligation under a credit agreement before the time fixed by the agreement, but the time of repayment should be compatible with the period of payment of the installments, specified in the contract[252]. The creditor is obliged to inform the creditor about his willingness to exercise right of early repayment at the latest of three days before doing it[253]. When the consumer repays the loan before the agreed term, he is not obliged to pay interests for the period after the repayment of the credit. In the case of interest-free credit, consumer has a right to the reduction of the provisions and charges, proportionally to the period, by which the credit was shortened[254]. Consumer has also right to withdraw from the agreement, that he can exercise in three days after conclusion of a contract, without explaining his withdrawal[255]. This Article is amended by Act on Consumer Credit from 2003, that extends period of exercising of the mentioned before right to ten days, and such withdrawal cannot take place later than within period of three months since the conclusion of the agreement[256]. Creditor is obliged to give to consumer the model of the declaration of withdrawal from the contract, comprising his identity and the address[257]. In the situation of resigning from the sale agreement, because of non-performance or inappropriate performance, withdrawal from the contract is effective also towards credit agreement if there exists the agreement between seller and the creditor under which credit for financing goods or services is possible only from this creditor. Creditor is committed to give back to consumer the costs of the credit, excluding fee for preparing the contract and security charges[258]. In the case of delayed payment of the borrower for two full installments, creditor has a right to terminate the contract, by previously informing the consumer. The period of termination of the agreement cannot be shorter than 30 days[259].

According to Article 16 of the Polish Act in the announcements and advertisements concerning consumer credit, the creditor is obliged to include into statement the annual percentage rate of charge, resulted from computation of the total cost of the credit[260]. Such rule is compatible with

[252] Article 8(1) Ustawa o kredycie konsumenckim Dz. U. 2001, no 100, position 1081
[253] Article 1(6) Ustawa o zmianie ustawy o kredycie konsumenckim Dz. U. 2003, no 109, position 103
[254] Article 8(2) Ustawa o kredycie konsumenckim Dz. U. 2001, no 100, position 1081
[255] Article 11(1) Ustawa o kredycie konsumenckim Dz. U. 2001, no 100, position 1081
[256] Article 1(8) Ustawa o zmianie ustawy o kredycie konsumenckim Dz. U. 2003, no 109, position 1030
[257] Article 11(2) Ustawa o kredycie konsumenckim Dz. U. 2001, no 100, position 1081
[258] Article 13 points 1 and 3 Ustawa o kredycie konsumenckim Dz. U. 2001, no 100, position 1081
[259] Article 14 Ustawa o kredycie konsumenckim Dz. U. 2001, no 100, position 1081
[260] Article 16 Ustawa o kredycie konsumenckim Dz. U. 2001, no 100, position 1081

the Article 3 of the Directive 87/102/EEC and its aim is to protect consumer from misleading and unfair advertising.

In 12th May of 2011 was announced new Act on Consumer Credit[261] because of the need of implementation of the European Union Directive 2008/48/EC into Polish legislation. It was necessary to provide consumers with sufficient protection, since the importance, experience and wisdom of creditors is constantly growing[262]. Since 2011 the document was also few times amended, with respect to the European Union legislation. New document describes the rules and terms of credit agreements, the obligations of creditor, credit intermediary and consumer as well as consequences of failure to fulfill obligations by the lender[263]. Credit contract that is falling under this legislation is a credit, which amount is not exceeding 255 550 PLN (that is the effect of conversion 75 000 EUR) or equivalent amount in different than polish currency and that is not secured by a mortgage and is used for renovation of the house or apartment[264]. The list of agreements that fall under this document is equivalent to the Act from 2001[265]. The document takes out from its scope:

- agreements in which consumer is not obliged to pay interest and other charges connected to repayment of the loan;
- leasing agreements;
- agreements, which are the outcome of a settlement reached in court;
- agreements where the credit is granted by an employer to his employees as a secondary activity, free of interest or at annual percentage rates of charge lower than the one prevailing on the market;
- reverse mortgage agreements[266].

The Act provides also definitions, that are analogous to the European Directives 2008/48/EC and 2014/17/EU, such as consumer, creditor, credit intermediary, total cost of the credit to the consumer, total amount of the credit, borrowing rate, linked credit agreement, annual percentage rate of charge, creditworthiness assessment as well as durable medium.

In Poland, consumer credits can be granted by the institutions that are authorized to give a credit (banks as well as credit unions), loan institutions, producers and service providers[267].

[261] Ustawa z dnia 12 maja 2011 o kredycie konsumenckim, Dz. U. 2011, no 126, position 715
[262] Sowińska-Kobelak, D., & Gryber, M. (2018). *Przewodnik po kredycie konsumenckim*. Komisja Nadzoru Finansowego. (Guide on consumer credit. Financial Supervision Committee.)
[263] Article 1 Ustawa o kredycie konsumenckim Dz. U. 2011, no 126, position 715
[264] Article 3 points 1 and 1a Ustawa o kredycie konsumenckim Dz. U. 2011, no 126, position 715
[265] Ustawa z dnia 20 lipca 2001 o kredycie konsumenckim Dz. U. 2001, no 100, position 1081
[266] Article 4 Ustawa o kredycie konsumenckim Dz. U. 2011, no 126, position 715
[267] Sowińska-Kobelak, D., & Gryber, M. (2018). Cit. 262

Article 7 presents obligations of the creditors and credit intermediaries concerning advertising of credit products, that was implemented by Polish legislator as an effect of the Directive 2008/48/EC. The standard information included in advertising shall specify in a clear concise and prominent way the borrowing rate, the total amount of credit and the annual percentage rate of charge. Only if applicable, lender adds to the knowledge of consumer the duration of the credit agreement, total amount payable by the consumer and the amount of the instalments and the cash price and amount of any advance payment. The article is extended according to the new obligations, concerning credit providers and credit intermediaries provided by Mortgage Credit Directive[268]. What is more Article 8 of the Act puts on the lenders obligation on giving to the consumer above mentioned information on the basis of the representative example, that is made by hypothetical conditions, based on which the creditor intends to conclude at least 2/3 of the credit agreements[269]. In order to protect consumer from over-indebtedness, credit provider is obliged to assess creditworthiness of the future borrower before conclusion of the contract and such assessment should be based on the information gathered from consumer and database that creditor has access to[270]. Legislator puts the obligation of conducting creditworthiness assessment by creditor, so the credit intermediary is not entitled to do it. When grantor refuse to give a loan to the consumer, he is obliged to inform him immediately about the results of the assessment[271] and such information can be conduct in any form. Before conclusion of the credit agreement, the contract should be explained to the future borrower, to make him aware and well-informed[272]. Moreover, consumer may use the right to receive, free of charge project of the credit agreement[273]. It is very important privilege for the borrower, since it gives him opportunity to once again rethink and analyze the contract and act in the responsible way. As well as under Consumer Credit Directive and the Mortgage Credit Directive, the creditor has to provide consumer with the pre-contractual information, that is adequate with the ones presented in the European Union documents and should be made on a durable medium[274]. In the Annex I of the Polish Act on Consumer Credit is attached the Standard European Consumer Credit Information, equivalently translated into national language, which is the pattern of the form in which the creditor or credit intermediary should give the information to the consumer[275]. Polish legislator ads that the term of validity of this

[268] Article 7 Ustawa o kredycie konsumenckim Dz. U. 2011, no 126, position 715
[269] Stanisławska, M. (2018). Ustawa o kredycie konsumenckim. *Komentarz, wyd, 1*.
[270] Article 9 points 1 and 2 Ustawa o kredycie konsumenckim Dz. U. 2011, no 126, position 715
[271] Article 10 Ustawa o kredycie konsumenckim Dz. U. 2011, no 126, position 715
[272] Article 11 Ustawa o kredycie konsumenckim Dz. U. 2011, no 126, position 715
[273] Article 12 Ustawa o kredycie konsumenckim Dz. U. 2011, no 126, position 715
[274] Article 13 Ustawa o kredycie konsumenckim Dz. U. 2011, no 126, position 715
[275] Article 14(1) Ustawa o kredycie konsumenckim Dz. U. 2011, no 126, position 715

form is at least one working day[276]. The creditor or credit intermediary based on the consumer's credit preferences, assign the annual percentage rate of charge and the total amount payable by the consumer[277]. If the consumer will not provide grantor with information, he can use to assign previously mentioned components using representative example[278]. When estimating the annual percentage rate of charge, creditor and credit intermediary should consider the total cost of the credit to the consumer, with the exception of any charges resulting from non-compliance with his commitments and different charges than the purchase price and the cost of maintaining an account[279]. The formula of the calculation of the annual percentage rate of charge is attached to the document as Annex 4[280] and is comparable with the one attached in the Consumer Credit Directive.

The credit agreement should be made on paper, unless regulations predict different form and should comprise similar information as the one presented under Consumer Credit Directive and written in transparent and understandable for borrower way[281]. Linked credit agreement or the one in the form of deferred payment should comprise also description of good or service and their purchase price[282]. In the situation when the level of borrowing rate during the term of the contract is changing, before it happens consumer should be given an information about it, on durable medium, from the credit provider[283]. The Act comprise also the formula for calculation of the maximum amount of non-interest loan costs, and constraints them to be lower than the total amount of credit[284]. This term does not exist under the Directive 2008/48/EC. Non-interest loan costs should mean all the charges which are not interests related to credit agreement, and which paying is necessary in order to obtain a credit. Such costs may include all fees, provisions, costs of insurance and notarial charges[285]. In the case of determined contract for whole period of its duration, consumer has a right to ask for payment schedule, that should comprise the term, amounts of instalments and the information that data under this timetable apply till the time of change of the borrowing rate[286]. Consumer has a right to terminate the contract for revolving credit at any time, without extra charges, but sometimes there might happen that parts defined notice period, that cannot be longer than one month[287]. Creditor has

[276] Article 14(2) Ustawa o kredycie konsumenckim Dz. U. 2011, no 126, position 715
[277] Article 24(1) Ustawa o kredycie konsumenckim Dz. U. 2011, no 126, position 71
[278] Article 24(2) Ustawa o kredycie konsumenckim Dz. U. 2011, no 126, position 71
[279] Article 25(1) Ustawa o kredycie konsumenckim Dz. U. 2011, no 126, position 71
[280] Article 25(3) Ustawa o kredycie konsumenckim Dz. U. 2011, no 126, position 71
[281] Articles 29-30 Ustawa o kredycie konsumenckim Dz. U. 2011, no 126, position 71
[282] Article 31 Ustawa o kredycie konsumenckim Dz. U. 2011, no 126, position 71
[283] Article 36(1) Ustawa o kredycie konsumenckim Dz. U. 2011, no 126, position 71
[284] Article 36a points 1 and 2 Ustawa o kredycie konsumenckim Dz. U. 2011, no 126, position 71
[285] Stanisławska, M. (2018). Cit. 269
[286] Article 37 points 1 and 2 Ustawa o kredycie konsumenckim Dz. U. 2011, no 126, position 71
[287] Article 42(1) Ustawa o kredycie konsumenckim Dz. U. 2011, no 126, position 71

also right to terminate contract with consumer, if the credit agreement is stating it and is obliged to inform the borrower about termination and its reasons[288]. Polish legislator by the term "revolving credit" meant "open-end credit" and the Articles 42 and 43 of document are in accordance with Article 13 of Consumer Credit Directive[289].

In accordance with Article 23 of Directive 2008/48/EC that prescribes to Member States to apply rules and penalties applicable to infringements of the national provisions, Article 45 of the Polish Act on Consumer Credit implies the sanctions on creditor for his violations such as the consumer after making appropriate statement, repays the credit without interests and other costs in the term written under the contract[290].

Consumer is entitled at any time to discharge fully or partially his obligations under a credit agreement with the reduction in the total cost of the credit of charges which are related to the period which has been shortened the credit agreement. Moreover, the creditor should be allowed to obtain fair and justified compensation for occurring costs directly linked to early repayment. The compensation should not be claimed if the repayment has been made under an insurance or in the case of credit in savings and checking account. Creditor is also obliged to account the credit with the consumer in the period of 14 days since the early repayment of the credit[291]. These obligations are coherent with the rules falling under the Article 16 of the Consumer Credit Directive.

The Polish Act implements the European Union rules considering consumer's right of withdrawal[292], that should take place in a period of 14 days without the need of giving explanation. It is important and principal tool to protect the consumer. With respect to previously established Act from 2001, the new one extended the period of withdrawal from 10 to 14 days. What is more creditor or credit intermediary are obliged to provide consumer on a durable medium the statement template necessary to exercise this privilege[293]. The withdrawal from the contract is for consumer free of charge, apart from the interest for a period from the day of payment until the day of repayment, that should be no later than 30 days from submission of a statement for termination of a contract[294]. According to Article 55 the withdrawal from the contract is also effective towards an ancillary service[295]. It is also possible to withdraw from

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288 Article 43 Ustawa o kredycie konsumenckim Dz. U. 2011, no 126, position 71
289 Chruściak, M., Kopeć, A., Kłoda, M., Kott, G., Ostrowski, T., & Szakun, M. (2012). Ustawa o kredycie konsumenckim. Rekomendacje interpretacyjne podstawowych regulacji. Komentarz.
290 Chruściak, M., Kopeć, A., Kłoda, M., Kott, G., Ostrowski, T., & Szakun, M. (2012). Cit. 289
291 Articles 48-52 Ustawa o kredycie konsumenckim Dz. U. 2011, no 126, position 71
292 Article 53 Ustawa o kredycie konsumenckim Dz. U. 2011, no 126, position 71
293 Stanisławska, M. (2018). Cit. 269
294 Article 54 Ustawa o kredycie konsumenckim Dz. U. 2011, no 126, position 71
295 Article 55 Ustawa o kredycie konsumenckim Dz. U. 2011, no 126, position 71

linked credit agreement. In this case consumer has to as well submit a statement to the creditor or credit intermediary about the willingness to terminate the contract[296]. Where the goods or services covered by a linked credit agreement are not supplied, or partially supplied or if the seller or service provider did not comply its commitments, consumer has a right to pursue remedies against the creditor[297]. This rule is implementation of the Consumer Credit Directive obligations considering linked credit agreements.

Activity of lending institutions and credit intermediaries is strongly regulated by Polish legislator. The Act comprises rules and requirements towards creditors[298]. Lending institution can start its activity after being entered into appropriate registry, that is run by Financial Supervision Committee (Komisja Nadzoru Finansowego). The Committee makes the entry into the register after 14 days from supplying the application with all necessary information by the creditor[299]. Lending institution after written permission of the consumer can share information that are necessary for creditworthiness assessment[300]. Under the Act is written also obligation of keeping secret information that constitutes banking secrecy by lending institutions both from Poland and European Union as well as Switzerland, Iceland, Liechtenstein and Norway[301]. Legislator imposes various penalties on creditors and credit intermediaries for not compliance of their responsibilities. These punishments are fines or deprivation of liberty or both[302].

2.4.2. Polish Credit Bureaus – Biuro Informacji Kredytowej (BIK) and Biuro Informacji Gospodarczej (BIG)

Polish system of exchange information considering financial liabilities has its beginning since last decade of 20th century. Biuro Informacji Kredytowej S.A. (in English Bureau of Credit Information) is the biggest register in Poland, that was created in 1997. Its first reports started to be sold in 2001[303]. BIK's principal task is to gather, keep and share the consumers' credit history. These data concern actual and previously taken credits in banks as well as credit unions[304]. Included information can be both positive (repaid on time credits, creating positive credit history) and negative (not repaid on time credits or repaid credits with delays). According

[296] Article 56(1) Ustawa o kredycie konsumenckim Dz. U. 2011, no 126, position 71
[297] Article 59(1) Ustawa o kredycie konsumenckim Dz. U. 2011, no 126, position 71
[298] Article 59a Ustawa o kredycie konsumenckim Dz. U. 2011, no 126, position 71
[299] Articles 59aa-59ac Ustawa o kredycie konsumenckim Dz. U. 2011, no 126, position 71
[300] Article 59b Ustawa o kredycie konsumenckim Dz. U. 2011, no 126, position 71
[301] Article 59c Ustawa o kredycie konsumenckim Dz. U. 2011, no 126, position 71
[302] Articles 59e-59i Ustawa o kredycie konsumenckim Dz. U. 2011, no 126, position 71
[303] Nowak, P. (2018). Udział biur informacji gospodarczej w systemie wymiany informacji o zobowiązaniach finansowych dłużników. *Przedsiębiorczość-Edukacja*, *14*, 234-242.
[304] Olechnowicz, M. (2012). Systemy wymiany informacji kredytowej i gospodarczej w Polsce. *Zeszyty Naukowe Politechniki Poznańskiej. Organizacja i Zarządzanie*.

to the website of the institution, data gathered by BIK are in 90% positive[305]. Another worth to mention bureau is Biuro Informacji Gospodarczej (Bureau of Economic Information). First such institution started its activity in 2003 with the aim of gathering, keeping and sharing the economic information about entrepreneurs and consumers. The positive information is the one that consumer is not figuring under database of BIG, while negative means that the consumer is a debtor and has a problem with unpaid debts. Based on this research lender is able to understand if the credit agreement with previously checked consumer is worth to be concluded[306]. There are couple of Bureaus of Economic Information in Poland such as ERIF Biuro Informacji Gospodarczej, Krajowy Rejestr Długów (KRD) BIG S.A. (in English: National Debt Registry), BIG InfoMonitor S.A. and Krajowe Biuro Informacji Gospodarczej S.A. Moreover, there exist also register created by telecom companies for instance Krajowa Informacja Długów Telekomunikacyjnych (KIDT) BIG S.A. (National Telecommunication Debt Information). ERIF process the information about debtors, KRD created system of exchange information that lets to connect every branch of the economy and BIG InfoMonitor allows as the only one in Poland access to databases of BIK[307]. BIK and BIG differ between each other because of different regulation and objectives. BIK facilitates and lowers the costs of processes of gathering information about consumers, while BIG's role is to motivate debtors to repay debts in order to not figure under the database[308].

[305] Biuro Informacji Kredytowej. (2020). *Jak działamy*. Retrieved from https://www.bik.pl/jak-dzialamy
[306] Olechnowicz, M. (2012). Cit. 304
[307] Nowak, P. (2018). Cit. 303
[308] Olechnowicz, M. (2012). Cit. 304

3. CONSUMER CREDIT IN UNITED STATES

This chapter takes under its scope the Consumer Credit in United States. Firstly, it focuses on important notion of predatory lending, secondly on the American regulation on Consumer Credit, its reporting and Credit Bureaus and on the method of defining the consumer's creditworthiness – F.I.C.O. Score.

3.1. Predatory Lending

Predatory lending is a variety of excessive lending practices, which aims in the vulnerable group of society causing bankruptcy, poverty, foreclosure as well as personal problems. Such populations are in general unsophisticated people, who are affected by credit rationing, discrimination and other social and economic issues, that make them weak towards predatory lenders. This kind of credits are group of subprime loans, that are charged higher interest rates aimed to borrowers which should not be qualified to achieve them[309]. This phenomenon is a complex of abusive loan terms and practices that remunerate lenders, mortgage brokers and securitizers including problems such as:

- Loans structured results in uneven treatment of borrowers harming them, for instance asset-based lending, that is comprised of loans, which are not affordable for the borrower and it is known to lender. Moreover, asset-based lending often is the first step to "loan flipping", that is abusive practice used by lenders in order to manipulate borrowers to refinance their mortgages repeatedly at short intervals – from three to four times throughout a year;
- Harmful rent seeking: a lot of subprime loans charge fees and interest rates which are drastically higher than the risk presented by the borrowers[310];
- Loans comprising fraud or misleading practice: such as fraudulent disclosures, not disclosing of information as is stated under legal regulations and misleading advertising, which are directed to borrowers and the one aimed at capital sources, for instance falsifying of loan applications and overestimation of the real estate;

[309] Engel, K. C., & McCoy, P. A. (2001). A tale of three markets: The law and economics of predatory lending. *Tex. L. Rev.*, *80*, 1255.
[310] Engel, K. C., & McCoy, P. A. (2006). Turning a blind eye: Wall Street finance of predatory lending. *Fordham L. Rev.*, *75*, 2039.

- Different forms of absence of transparency in loans which are not defined as fraud, that are resulting from the loopholes found under legal regulation, for instance significant costs that are excluded by legislator;
- Loans that oblige borrowers to withdraw from legal redress: mandatory - arbitration clauses which forbid borrowers to seek redress, clauses that constraints borrowers from joining plaintiffs against lenders and clauses that make the borrower responsible for lenders' attorneys' fees[311];
- discrimination in lending: imposing demanding terms on members of some groups of society;
- servicing abuses: after securitization[312] of the loan, a servicer takes responsibility for gathering loan payments, however some servicers may engage in abusive servicing practices such as excessive, unjustified fees, causing default of the borrowers[313].

As previously mentioned, predatory lending is a group of subprime loans however, there exists the crucial difference between these two. Subprime lending provides loans to households with low level of creditworthiness, poor credit histories, that are not able to manage credit and for this reason is known as the credit source of last resort. According to report published by the U.S. Department of Housing and Urban Development (HUD) based on 1998 Home Mortgage Disclosure Act, these kinds of loans are three times more likely to be taken in lower-income minority communities than the high-income ones and are five times more probable among black neighborhoods than the white ones, which shows the racial discrepancies in the subprime market. Such loans charge higher interest rates in comparison to prime loans, by explaining that borrowers bearing higher risks should pay more, because of greater level of risk that has to be perceived by a lender[314].

Predatory lending mostly takes place in the subprime mortgage market, where debtors collateralize their debt for its consolidation or different reasons related with consumer credit. This phenomenon may happen also in the prime market but is generally disturbed due to the competition among lenders, greater homogeneity in loan terms and better financial literacy among borrowers. What is more, unlike the subprime lenders, prime lenders such as banks, credit unions or thrifts are under supervision and strong control of the state. Subprime mortgage lending is both part of the mortgage market as well as consumer credit market and may take

[311] Engel, K. C., & McCoy, P. A. (2001). Cit. 309
[312] Securitization is defined as a process of converting packages of home loans into securities that are backed by collateral in the form of loans (Engel, K. C., & McCoy, P. A. (2001). Cit. 309)
[313] Engel, K. C., & McCoy, P. A. (2006). Cit. 310
[314] Carr, J. H., & Kolluri, L. (2001). Predatory lending: An overview. *Fannie Mae Foundation*, 1-17.

form of first mortgage, second mortgage or a home equity line of credit. Since subprime mortgages may be a source of home-collateralized consumer credit it can be considered also as a part of the subprime consumer credit market[315]. Subprime borrowers are characterized by several factors such as:

- Bankruptcy in the period of last 5 years;
- FICO score of 660 or below;
- Two or more 30-day overdue payments in the last 12 months, or one or more 60-day overdue payments in the last 24 months;
- Debt service-to-income ratio of 50% or higher or problems with covering expenses connected to family living after deduction of total monthly debt-service requirements from monthly income[316].

Predatory lending has destructive effect on the society and individuals, by causing their default and foreclosure. Lenders by using of high fees and charges impoverish the households. Individuals when losing their home to predatory lenders are not only suffering the financial loss but it also puts in danger their mental health[317].

According to Financial Crisis Inquiry Report[318] the predatory lending took its part in creating the housing bubble, that had not got its effect only on national economy but impacted the whole international financial world. Subprime lending was encouraged and facilitated in growth by major financial institutions such as Citigroup or Lehman Brothers. Regulators failed on imposing proper mortgage lending standards and did not take enough action in order to protect individuals and whole society from predatory lending practices. The American government by loosening up laws and deregulation of banking, securities, insurance and mortgage industries let lenders to grow and in consequence destroyed low-income communities as well as US economy with predatory lending leading to 2008 financial crisis. In order to prevent housing, financial and credit markets Dodd-Frank[319] and the Consumer Financial Protection Bureau were created[320].

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[315] US Department of Housing and Urban Development. (2000). *Curbing predatory home mortgage lending*. Retrieved from https://www.huduser.gov/portal//Publications/pdf/treasrpt.pdf

[316] Aleo, M., & Svirsky, P. (2008). Foreclosure fallout: The banking industry's attack on disparate impact race discrimination claims under the fair housing act and the equal credit opportunity act. *BU Pub. Int. LJ*, *18*, 1.

[317] Wilson Jr, L. T. (2004). Effecting Responsibility in the Mortgage Broker-Borrower Relationship: A Role for Agency Principles in Predatory Lending Regulation. *U. Cin. L. Rev.*, *73*, 1471.

[318] Financial Crisis Inquiry Commission. (2011). *The financial crisis inquiry report: The final report of the National Commission on the causes of the financial and economic crisis in the United States including dissenting views*. Cosimo, Inc..

[319] Dodd-Frank Wall Street Reform and Consumer Protection Act, 2010

[320] Stojkovic, M. (2016). The Threat of Predatory Lending. *Pub. Int. L. Rep.*, *22*, 40.

3.2. Legal Framework of Consumer Credit in United States

Consumer credit in United States is regulated by several acts and its legal situation is very complex. There exist variety of state and federal law and a lot of states have established their own laws, however if Federal legislation occurs, it takes priority over the state one. Consumer credit is regulated within The Consumer Credit Protection Act[321] that was established in 1968. This document comprises subchapters such as:

- The Truth in Lending Ac of 1968;
- Garnishment Restrictions;
- The Fair Credit Reporting Act of 1970;
- The Equal Credit Opportunity Act of 1974;
- The Fair Debt Collection Practices Act of 1977;
- The Electronic Funds Transfer Act (Finlay, 2009).

Truth in Lending Act (TILA) was enacted in 1968, as a title I of the Consumer Credit Protection Act. First amendment to this document was made in 1970 with the aim of prohibition of unsolicited credit cards. Afterwards there were created additional amendments, for instance by the Fair Credit Billing Act of 1974, the Consumer Leasing Act of 1976, the Fair Credit and Charge Card Disclosure Act of 1988, Home Ownership and the Equity Protection Act of 1994 (HOEPA) or the Dodd-Frank Act[322]. The TILA and Regulation Z purpose is to make consumers, who are using credit products, more informed about their terms. Consumers should be able to compare between various credit terms that are available to them as well as be protected from unfair practices. Moreover, the document's aim is to assure disclosure of the terms of leases of personal property for family, household and personal uses, in order to let the lessee differentiate between lease terms and credit terms, limitation of balloon payments in consumer leasing and make sure of meaningful and detailed disclosures of terms in advertisements[323]. What is more, lenders are obliged to use identical credit terminology and rates explanation. The Truth in Lending Act:

- Gives consumers protection against unfair and inaccurate credit billing and credit card practices;
- Restricts unfair and misleading mortgage lending practices;

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[321] FDIC. (2020). *The Consumer Credit Protection Act of 1968*. Retrieved from https://www.fdic.gov/regulations/laws/rules/6000-200.html#fdictail

[322] FDIC. (2020). *Truth in Lending Act, V-1.1 updated at 04/2020 in Consumer compliance examination manual.* Retrieved from https://www.fdic.gov/regulations/compliance/manual/index.html

[323] FDIC. (2020). *The Consumer Credit Protection Act of 1968*. Section 102 of title I of the Act. Retrieved from https://www.fdic.gov/regulations/laws/rules/6000-200.html#fdictail

- Gives rescission rights to consumers;
- Makes available to repay obligations that are applied to credit cards;
- Limits home equity lines of credit and some closed-end home mortgages;
- Provides for rate caps on some dwelling[324]-secured loans;
- Provides standards for most dwelling-secured loans.

Regulation Z puts on lender obligation to disclose along with annual percentage rate (APR), finance charge that is a measure of the cost of the credit to consumer, represented in dollars and cents[325]. The finance charge is determined as the sum of all charges imposed by creditor, that has to be paid directly or indirectly by the credit consumer. These charges include interest and other charges such as service or carrying charge, loan fee, borrower-paid mortgage broker fees and premium or other charge for guarantee or insurance that protects lender from default of borrower[326]. The finance charge does not take into account charges payable in a comparable cash transaction such as taxes, title, license fees or registration fees connected to automobile purchase. The Annual Percentage Rate is a measure of the total cost of credit, shown in nominal yearly rate and expressed as a percentage. It takes into account all factors that have impact on cost of the credit transaction[327]. Before the introduction of TILA, lenders had possibility to advertise identical interest rate calculated in a different way. The annual percentage rate gives to consumers benchmark pattern about real costs of credit for a loan and lets to differentiate between different credit offers[328]. The Act underlines the regulations that should be disclosed to consumer before conclusion of credit agreements. Such disclosures apply to credit cards, refinancing, home equity loans and home equity lines of credit. The consumer is also given the rescission right, which can be exercised three business days after conclusion of the contract or the delivery of the information and rescission forms. However, in situations, when the rescission forms or disclosures are not provided by creditor to consumer, this three day right can be extended up to three years[329].

On the 2008 economic crisis had also impact the legislator failure of the Truth in Lending Act. Instead of letting consumers to borrow in informed and wise manner, the document was

[324] According to section 103(w) of title I of the Act of Consumer Credit Protection Act of 1968 retrieved from https://www.fdic.gov/regulations/laws/rules/6000-200.html#fdictail
Dwelling is defined as residential structure or mobile home which contains one to four family housing units, or individual units of condominiums or cooperatives.
[325] FDIC. (2020). *Truth in Lending Act, V-1.1.* Cit. 322
[326] FDIC. (2020). The Consumer Credit Protection Act of 1968. Section 106 of title I of the Act. Retrieved from https://www.fdic.gov/regulations/laws/rules/6000-200.html#fdictail
[327] FDIC. (2020). *Truth in Lending Act, V-1.1.* Cit. 322
[328] US Department of Housing and Urban Development. (2000). Cit. 315
[329] Himert, N. G. (2015). A Truth in Lending Act Victory for Consumers: Jesinoski v. Countrywide Home Loans, Inc. *Reporter*, *42*, 49.

understood by lenders as the need to disclose misleading information, that made borrowers taking the obligations that they could not afford and resulting in their default. Numerous borrowers did not understand and underestimated the obligations of the credit contracts that they have concluded. TILA did not help the subprime borrowers to follow the terms of the loans and their consequences. According to survey conducted by Jeff Sovern in 2009 with unanimous brokers, borrowers did not spend sufficient time with the disclosures and what is more borrowers never withdrew from contracts at their conclusion, despite of the fact that many of them previously read the final disclosures Truth in Lending Act[330].

In 2008 Federal Reserve Board took in place amendments to Regulation Z that implements TILA and the Home Ownership Equity Protection Act (HOEPA) with the purpose of protecting consumers from predatory lending practices. There were imposed restrictions on higher-priced mortgage loans[331] such as:

- Prohibition to lender to make a higher-priced mortgage loan without taking into account the ability of borrower to repay the loan;
- Forbiddance to lenders to grant a loan by relying on assets or income, that were not previously verified;
- Prohibition of prepayment penalties, when the payment can fluctuate in the first four years of the loan.

There were put in place also restrictions on all closed-end consumer loans secured by a principal dwelling such as:

- Obligation to disclose estimation of the loan costs with schedule of payments in three days from credit application;
- Prohibition to encourage an appraiser by a lender or broker to distort the value of a home.

And finally, new advertising conditions for both open-end and closed-end residential mortgage loans such as:

- Prohibition of misleading advertisement practices for closed-end mortgages, along with use of the term “fixed” for a rate or payment that can fluctuate;

[330] Sovern, J. (2010). Preventing future economic crises through consumer protection law or how the truth in lending act failed the subprime borrowers. *Ohio St. LJ*, *71*, 761.

[331] As explained in the article of Caggiano, J. R., Franzén, T. G., & Dozier, J. L. (2009). Mortgage and Predatory Lending Law Developments. *The Business Lawyer*, 517-531. Higher-priced mortgage loans are closed-end loans secured by the consumer’s principal dwelling where annual percentage rate (APR) that is applied to the loan is higher than average prime offer rate.

- Obligation of additional information about rates, monthly payments and other important loan characteristics[332].

The Home Ownership and Equity Protection Act (HOEPA) enacted in 1994, amends Truth in Lending Act with the aim of providing protection to consumers for high-cost home loans[333]. This Act was created as a response to the growing problem of predatory lending. HOEPA bans unfair terms and forbids lenders to make high-cost loans without taking into account the ability of a borrower to repay. The creditor is obliged to provide the borrower with information about APR, amount of the periodic payments in dollars, volume of any balloon payments, the amount that was borrowed and any other charges considering optional credit insurance coverage for debt-cancellation[334]. HOEPA takes out from its scope purchase money mortgages, that are loans aimed to buy or construct a property, open-end credit and reverse mortgages. Legislator covers closed-end loans aimed to refinance existing mortgages and closed-end home equity loans, which charge an APR that exceeds given by the Act threshold. Under this Act the lender has to disclose that even though the contract has been concluded, the borrower is not obliged to complete agreement and, in the situation, when the debt is not paid, consumer is losing the home with its equity[335]. The scope of the document is narrow, it excludes previously mentioned three types of credit and applies only to mortgages that are charged interest or total points that exceeds certain percentage, which makes possible to lenders to circumvent HOEPA[336].

The Fair Credit Billing Act (FCBA), amending TILA was enacted in 1974 aimed to provide protection to consumers and help them to resolve problems with creditors. The Act considers rights of a consumer, goods and services purchased by a credit card, pursuing claims and defenses against card issuer, that arise because of the sale of nonconforming or defective goods or services[337]. The document takes under its scope billing errors and applies to open-end credit accounts for instance credit cards and revolving charge accounts. Billing errors include for example: unauthorized charges, charges for goods and services that are not accepted by the consumer or were not delivered, mathematical errors, charges listing wrong date or amount, failures in sending bills to consumer's address[338].

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[332] Caggiano, J. R., Franzén, T. G., & Dozier, J. L. (2009). Cit. 331
[333] US Department of Housing and Urban Development. (2000). Cit. 315
[334] Ament, H. (2009). Predatory lending: What will stop it. *J. Bus. & Tech. L.*, *4*, 371.
[335] US Department of Housing and Urban Development. (2000). Cit. 315
[336] Ament, H. (2009). Cit. 334
[337] Factor III, M. (1975). The Credit Cardholder's Rights to Assert Claims and Preserve Defenses Under the Fair Credit Billing Act. *U. San Fernando Valley L. Rev.*, *4*, 215.
[338] Federal Trade Commission. (1999). *Facts for Consumer - Fair Credit Billing*.
Retrieved from https://www.ncrainc.org/cmss_files/attachmentlibrary/Fair-Credit-Billing.pdf

The Consumer Leasing Act (CLA) was enacted in 1976 with the purpose to provide disclosure of lease terms to consumers, that they can get familiar with before entering the credit contract. Lease is an agreement between a lessor, that is the owner of the property and a lessee, which after concluding the contract will be its user. The CLA considers consumer leases of personal property and imposes regulations on advertising and limits balloon payments[339].

The Fair Credit and Charge Card Disclosure Act (FCCDA), amending TILA, was enacted in 1988. This document is directed to issuers of credit or charge card accounts[340]. The FCCDA imposes the obligation to disclose the necessary information when applications and solicitations for credit and charge card account occur. Disclosures and format differ depending on a type of a card and the form in which application or solicitation is made, for instance by direct email, by telephone or by other means such as application that is included in catalogs or magazines[341].

The Dodd-Frank Wall Street Reform and Consumer Protection Act, called as Dodd-Frank Act was signed by President Barack Obama in 2010. The main purpose of this document is to provide protection to consumers from abusive practices[342]. Moreover, Dodd-Frank Act by developing transparency in the financial system, ending 'too big to fail', protection of the taxpayers and consumers, encourages the financial stability of United States. The document, enacted in response to systemic failure that resulted in the 2008 Global Financial Crisis, modifies laws connected to banking and securities and has impact on the actions of many institutions and persons, for instance banks, mortgage businesses, hedge funds, insurance companies, broker dealers or credit rating agencies[343]. Dodd-Frank Act's scope is huge and it takes into account a lot of aspects of financial reforms, which are addressed to causes of crisis related to securitisation, derivatives markets, credit rating agencies and unfair practices towards consumers of mortgage as well as other credit products, that led to home foreclosures and their indebtedness[344]. Composed of sixteen titles document puts regulations among others to address systemic risk of the economic system, develop transparency and report obligations for investment advisors, differ between banking and other kinds of financial services, establish programs promoting microloans and financial education, protect consumers with lending and mortgages and regulate mortgage lenders as well as creates an independent Bureau of Consumer

[339] FDIC. (2020). *Consumer Leasing Act, V-10.1 updated at 04/2020 in Consumer compliance examination manual*. Retrieved from https://www.fdic.gov/regulations/compliance/manual/index.html
[340] Goodall, L. M., & Murray, J. V. (1990). Complying with the Fair Credit and Charge Card Disclosure Act of 1988. *Banking LJ*, *107*, 110.
[341] Gelb, J. W., & Cubita, P. N. (1988). The Fair Credit and Charge Card Disclosure Act of 1988: Federal Alternative to the Rate Ceiling Approach. *Bus. Law.*, *44*, 941.
[342] Wilmarth Jr, A. E. (2010). The Dodd-Frank act's expansion of state authority to protect consumers of financial services. *J. Corp. L.*, *36*, 893.
[343] Anand, S. (2011). *Essentials of the Dodd-Frank Act* (Vol. 63). John Wiley & Sons.
[344] North, G., & Buckley, R. (2011). The Dodd-Frank Wall Street Reform and Consumer Protection Act: Unresolved Issues of Regulatory Culture and Mindset. *Melb. UL Rev.*, *35*, 479.

Financial Protection[345]. Bureau of Consumer Financial Protection (CFPB) is aimed to implement and apply new legislations for consumers, interacting with the financial system[346]. The CFPB monitors federal financial regulations intended to protect wealth of consumers in banks and credit unions, when consumers purchase items with their credit cards and when they decide to take loans. What is more, Bureau creates for customers possibility to compare between the products existing on the market in order to let them choose the best option[347]. The main functions of Consumer Financial Protection Bureau include:

- Elimination of unfair, abusive and deceptive practices;
- Strengthening laws and banning discrimination in consumer finance;
- Gathering complaints of the consumers;
- Increasing financial education;
- Supervising financial markets[348].

Title fourteen of Dodd-Frank Act is cited as the "Mortgage Reform and Anti-Predatory Lending Act" and imposes obligations on mortgage lenders such us new mortgage underwriting standards, forbids and restricts mortgage lending practices as well as controls payments to brokers. Credit providers are obliged to verify a creditor's ability to repay the debt by taking into account its credit history, status of employment, income and debt-to-income ratio. Moreover, lender cannot suggest to consumers unaffordable and high-cost loans[349]. Establishment of Dodd-Frank Act and CFPB let to solve the problem of predatory lending, that has damaged minority and low-income communities and was one of the leading causes of 2008 financial crises[350].

Credit Card Accountability Responsibility and Disclosure Act, known also as Credit CARD Act, amending Truth in Lending Act was established in 2009 with the aim of providing fair and transparent practices in the connection to extension of credit under an open-end consumer credit plan[351]. This reform was motivated by the fact that consumers are often tempted by the credit contracts offering low short-term prices, which later impose high long-term prices, for instance penalty charges or default interest rates. The Act puts limitations on high long-term prices, without forbidding lenders the possibility to establish low short-term prices, reduces interest

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345 Anand, S. (2011). Cit. 343
346 Wilmarth Jr, A. E. (2010). Cit. 342
347 Stojkovic, M. (2016). The Dodd-Frank Solution to Predatory Lending. *Pub. Int. L. Rep.*, *22*, 106.
348 Consumer Financial Protection Bureau. (2020). *About us*. Retrieved from https://www.consumerfinance.gov/about-us/the-bureau/
349 North, G., & Buckley, R. (2011). Cit. 344
350 Stojkovic, M. (2016). Cit. 320
351 Credit Card Accountability Responsibility and Disclosure Act. (2009). Pub. L. No. 111-24, 123 Stat. 1734

rate increases, restricts imposing of penalty fees and bans inactivity charges. Moreover, issuers are obliged to keep interest rate stable for the first year since opening of the credit card account[352]. According to CARD Act, the consumer has to be informed by the credit card issuer in a way of written notice at least 45 days before the change of interest rate. To this information has to be jointed a notice about the cardholder's privilege to cancel account. Previously Truth in Lending Act required 15-days' notice about the rate increase. Under CARD ACT the consumer is forbidden from using the credit card to pay any fee, if the total charges in a first year of holding the card are higher than 25 percent of the card's limit. The document also takes care of payment practices considered as dishonest toward the consumer, for instance it obliges credit card's issuer to send the periodic statement at least 21 days before the payment's due date. Furthermore, CARD Act regulates some abusive marketing practices, provides protection to young consumers who holds or wants to be holders of a credit card and establishes reforms created to develop consumer's knowledge about credit products through better disclosure of information[353].

Garnishment restrictions are part of Consumer Credit Protection Act, contained in Title III and enacted in 1970. Title III is subject to federal restrictions on employees' incomes. The document constraints the wages which can be garnisheed and restricts the discharge of an employee from his work because of garnishment. The Congress before enaction of the document observed correlation between the wage garnishment and bankruptcies of individuals[354]. As stated under Title III the unrestricted garnishment supports the predatory extensions of credit, which can inhibit the production and flow of goods. What is more, they can result in creditor's loss of employment as well as distortion of employment, production and consumption[355]. The document provides that in some situations US courts can give permission to deduct money from someone's income, in order to meet debt repayments. The Title III states that such deduction is limited to 25 percent of net earnings[356].

The Fair Credit Reporting Act (FCRA) was enacted in 1970 with the purpose of managing the collection and use of consumer report information as well as regulation of the American credit reporting system. The FCRA was amended by two important Acts such as the Consumer Credit

[352] Bar-Gill, O., & Bubb, R. (2011). Credit card pricing: The card act and beyond. *Cornell L. Rev.*, *97*, 967.
[353] Schorer, J. U. (2010). The credit card act of 2009: Credit card reform and the uneasy case for disclosure. *Banking LJ*, *127*, 924.
[354] Moran, R. D. (1970). Garnishment Restrictions Under Federal Law. *ABAJ*, *56*, 678.
[355] Consumer Credit Protection Act, Title III, *The Federal Wage Garnishment Law* (15 U.S.C. 1671, et seq.)
[356] Finlay, S. (2009). Cit. 13

Reporting Reform Act of 1996 and the Fair and Accurate Credit Transactions Act of 2003. The document was established to:

- Avoid the mistreat of consumer information;
- Develop completeness and accuracy of consumer reports;
- Encourage productivity of American consumer credit and banking systems[357].

The FCRA ensures consumers that their consumer report information is spread by credit reporting agencies in a fair, accurate and confidential way. There are imposed regulations on the form of credit reports, their dissemination and given possibility to the consumer to obtain access to the information gathered in the report. What is more, under the Act, consumer has a right to prepare a statement that lets him to rebut information contained in his credit file[358]. The regulations comprised in the FCRA apply to:

- Procurers and users of information, for instance credit grantors;
- Disseminators and furnishers of information, in a way of reporting information to consumer reporting agencies or other third parties;
- Employers;
- Sellers of credit and insurance products.

Under FCRA consumer report is defined as any written, oral or different way of spreading the information by a consumer reporting agency, that considers the creditworthiness of a consumer, credit ability, reputation, credit standing, personal features or consumer's mode of living. Report helps in determining the consumer's acceptability for credit, insurance or employment purposes[359]. There exist numerous situations in which consumers will be requested by the organizations that they collaborate with for a consumer reports, for instance opening credit card accounts, asking for a mortgage or maintaining new mobile phone. The information comprised in consumers' reports includes credit score[360], biographical information as well as sensitive and private ones such as bankruptcy records, tax liens, limits of credit, balances and monthly payments under credit card accounts, employers, social security number, phone number or

[357] Federal Trade Commission. (2011). *40 years of experience with the Fair Credit Reporting Act*. Retrieved from https://www.ftc.gov/sites/default/files/documents/reports/40-years-experience-fair-credit-reporting-act-ftc-staff-report-summary-interpretations/110720fcrareport.pdf
[358] Koon, R. M. (1971). Translating the Fair Credit Reporting Act. *Denv. LJ*, *48*, 51.
[359] FDIC. (2020). *Fair Credit Reporting Act, VIII-6.1 updated at 09/2015 in Consumer compliance examination manual.* Retrieved from https://www.fdic.gov/regulations/compliance/manual/index.html
[360] As defined under CFPB. (2012). *Consumer Laws and Regulations, Fair Credit Reporting Act*. Retrieved from https://files.consumerfinance.gov/f/documents/102012_cfpb_fair-credit-reporting-act-fcra_procedures.pdf,
credit score means a numerical value, or a categorization derived from statistical tool or modelling system used in order to make or arrange a loan to predict the probability of certain credit behaviors, including default.

address of the consumer[361]. The Act contains also the notion of "investigative consumer report", that is report including the information assembled from interviews with neighbors, friends or associates, for instance about consumer's marital status, private life of habits. This kind of information is mostly used by insurance companies[362]. Consumer Reporting Agency (CRA) is determined as any person, that engages in collecting or assessment of consumer credit information in order to provide consumer reports to third parties, for monetary fees, dues or on a nonprofit basis[363]. The FCRA regulates consumer reporting agencies to act in a confidential and accurate way towards consumers. The agencies can provide reports only for the reasons, that are specified in section 604 of the Act[364]. Among all these circumstances are:

- In response to a court order or Federal Grand Jury subpoena;
- According the written indications of the consumer;
- To a person, including financial institution that intends to use the report in connection with a credit transaction or underwriting of insurance, for employment purposes and others[365].

What is more, reporting agencies are responsible to provide procedures, ensuring authorized consumers to obtain them and are obliged to afford maximum level of accuracy, that protects recipients from spreading outdated information. The FCRA states that receiver of report must be informed, whenever adverse action[366] takes place. In the situation of noncompliance with the regulations under Fair Credit Reporting Act by the agency, the consumer has a right to sue it. Moreover, the document predicts criminal punishments on any individual receiving information from credit bureau under false claim as well as on employees or officers of a bureau who disclosed information without authorization[367].

The Consumer Credit Reporting Reform was first amendment of the Fair Credit Reporting Act and was enacted in 1996. The main reforms that this document brought consider treating of identity theft, updating dispute resolving procedure as well as providing consumer trust in the reporting system[368]. For the first time there came in place regulations on information furnishers such as norms for reporting accurate information or reporting whenever consumer closes its

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[361] Gallagher, K. (2005). Rethinking the Fair Credit Reporting Act: When requesting credit reports for employment purposes goes too far. *Iowa L. Rev.*, *91*, 1593.
[362] Colombani, J. (1979). The Fair Credit Reporting Act. *Suffolk UL Rev.*, *13*, 63.
[363] FDIC. (2020). *Fair Credit Reporting Act, VIII-6.1.* Cit. 359
[364] Colombani, J. (1979). Cit. 362
[365] FDIC. (2020). *Fair Credit Reporting Act, VIII-6.1.* Cit. 359
[366] As explained under FDIC. (2020). *Fair Credit Reporting Act, VIII-6.1.* Cit. 359, adverse action is defined as a refusal or cancellation of credit, a change in the terms of an existing credit agreement or denial to allocate a credit in the same amount or under similar terms to the one previously requested.
[367] Colombani, J. (1979). Cit. 362
[368] Vanderwoude, N. (2009). The Fair Credit Reporting Act: Fair for Consumers, Fair for Credit Reporting Agencies. *Sw. L. Rev.*, *39*, 395.

credit account. Furthermore the amendment solved the problem of "affiliate sharing", by establishing that affiliates can share information considering their transactions with consumers without the need of becoming consumer reporting agencies and extending the type of these information to application information and consumer reports after previously mentioning this to consumer[369].

The Fair and Accurate Credit Transactions Act (FACTA) was signed by President Bush in 2003, with the aim to improve the accuracy of consumer credit information and develop access to credit services. Under amendment consumer reporting agencies are obliged to comply consumer files with fraud alerts[370]. The consumer that finds out that may be harmed by the identity theft has a right to contact reporting agency and ask for initial fraud alert, that has to stay in the recipient's file for at least ninety days and be given to individuals that receives a copy of report. When a customer was already a victim of identity theft, may comprise under his file the extended fraud alert, that has to stay in his file for at least seven years on his consumer report[371]. FACTA establishes also the Disposal Rule, created to diminish the risk of consumer fraud and inappropriate disposal of personal information as well as reinforces Privacy Rule designed to fight against identity theft by providing special obligations. The rule takes under its scope personal data, for example name, address or credit card information[372]. The consumer can ask and receive a free credit report, which extends the recipient's access to credit information and gives him opportunity to revise the report in order to find inaccuracies or inconsistencies and react on time for identity theft. To bring more protection credit reporting agencies cannot include first five digits of a consumer's social security number and it is forbidden for businesses to print more than the last five digits of a credit card or debit card number on receipts[373]. FACTA imposes on federal banking agencies, the National Credit Union Administration (NCUA) and the Federal Trade Commission (FTC) the obligation of creating the guidelines for financial institutions and lenders to facilitate identifying patterns, practices, activities, known as "red flags" to signify occurrence of identity theft[374].

The FCRA was also reformed by the Dodd-Frank Act, that amended two rules of the Act. The amending document imposes the requirement to disclose credit score and related to it

[369] McEneney, M. F., & Kaufmann, K. F. (2004). Fair Credit Reporting Act Developments. *The Business Lawyer*, 1215-1225.
[370] Holt, T. J. (2004). The fair and accurate credit transactions act: New tool to fight identity theft. *Business Horizons*, *47(5),* 3-6.
[371] McEneney, M. F., & Kaufmann, K. F. (2004). Cit. 369
[372] Moye, S. (2006). Fair and Accurate Credit Transactions Act: More Protection for Consumers. *Information Management*, *40*(3), 62.
[373] Holt, T. J. (2004). Cit. 370
[374] McEneney, M. F., & Kaufmann, K. F. (2004). 369

information, whenever credit score is used in taking an adverse action or in risk-based practice. Risk-based pricing notice is created to develop the accuracy of consumer reports. It alerts consumers about existence of negative information in their reports and gives them the possibility to correct inaccurate data. Moreover, Dodd-Frank Act gave rule-making authority under FCRA to the Consumer Financial Protection Bureau[375].

In order to stop predatory lenders from offering loans to consumers looking for low-cost financing, the Congress decided to enact the Fair Housing Act (FHA) and the Equal Credit Opportunity Act (ECOA). The FHA was created to forbid discrimination in home mortgage lending based on race, color, religion or nationality. While ECOA responded to a problem of women facing more difficulties with getting credit than men, despite of the same financial conditions. Married women, which wanted to apply for credit, were asked by creditors to reapply in their husbands' name. Moreover, credit histories were only recorded in husbands' name[376].

The Fair Housing Act was signed in 1968 with the aim of assuring fair housing among the US. First version of the act forbade discrimination in the financing of residential real estate based on race, color, religion or nationality. In 1974 the document was amended in order to joint into the categories, that were banned sex and in the amendment from 1988 added handicap and familial status[377]. Fair Housing Act confronts predatory practices, such as reverse redlining, that is the extension of a credit on unfair terms to individuals, that were previously denied from obtaining the credit, mostly on the grounds of their race, on unfair terms[378]. The Act bans discrimination in all transactions related to residential real estate, including but not limited to:

- making loans to purchase, construct, repair or improve a dwelling;
- buying real estate loans;
- selling, brokering or appraising residential real estate; or
- renting or selling a dwelling[379].

The document is enforced mostly by the secretary of the Department of Housing and Urban Development (HUD), that is obliged to examine claims related to discrimination in lending[380].

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[375] CFPB. (2012). *Consumer Laws and Regulations, Fair Credit Reporting Act*. Cit. 360
[376] Peterson, C. L. (2005). Federalism and predatory lending: unmasking the deregulatory agenda. *Temp. L. Rev.*, *78*, 1.
[377] Dane, S. M. (1992). Eliminating the Labyrinth: A Proposal to Simplify Federal Mortgage Lending Discrimination Laws. *U. Mich. JL Reform*, *26*, 527.
[378] Nier III, C. L., & St Cyr, M. R. (2010). A racial financial crisis: rethinking the theory of reverse redlining to combat predatory lending under the Fair Housing Act. *Temp. L. Rev.*, *83*, 941.
[379] FDIC. (2020). *Fair Lending Laws and Regulations, IV-1.1 updated at 09/2015 in Consumer compliance examination manual*. Retrieved from https://www.fdic.gov/regulations/compliance/manual/index.html
[380] Dane, S. M. (1992). Cit. 377

The Equal Credit Opportunity Act was enacted in 1974 in order to ban discrimination in credit transactions based on sex or marital status of applicants. In 1976 the amendment to ECOA extended the number of the categories, prohibited to discriminate[381]. The current legislation takes into scope the categories such as: race or color of the applicant, his religion, nationality, sex, marital status, age (provided the consumer has the ability to meet the credit agreement), the applicant's receipt of income received from any public assistance program, the consumer's exercise of any right on the basis of the Consumer Credit Protection Act. ECOA is implemented by Consumer Financial Protection Bureau's Regulation B that characterizes lending acts and practices, which are forbidden, allowed or required[382]. Creditor has a right to ask for any information considering credit transaction, as long as he avoids inquiring for prohibited information. There are three exceptions, when lender can ask for previously mentioned data such as: in connection with a self-test that is conducted by the lender, for monitoring reasons connected to credit secured by real estate and to assess applicant's eligibility for special-purpose credit programs[383].

The Fair Debt Collection Practices Act was enacted in 1977. As the reasons of document's enaction, the Congress determined:

- The evidence of abusive and unfair debt collection practices, that lead to personal bankruptcies, loss of the jobs and violations of individual privacy;
- Laws imperfection, due to which consumers remain unprotected;
- Existence of non-abusive collection practices;
- Impact of debt collection practices on interstate commerce.

Elimination of abusive practices conducted is major purpose of the Act, but at the same time debt collectors who do not use these methods are insured to not be in competitively disadvantaged situation. The debt collector is defined as any individual:

- Who uses any instrumentality of interstate commerce or the mails in any company, that its main purpose is debt collection, or
- Who systematically collects or tries to collect, either in direct or indirect way debts owed or due or asserted to be owed or due another, or

[381] Rohner, R. J. (1978). Equal Credit Opportunity Act. *Bus. Law.*, *34*, 1423.
[382] FDIC. (2020). *Equal Credit Opportunity Act, V-7.1 updated at 09/2015 in Consumer compliance examination manual*. Retrieved from https://www.fdic.gov/regulations/compliance/manual/index.html
[383] CFPB. (2013). *Consumer Laws and Regulations, Equal Credit Opportunity Act*. Retrieved from https://files.consumerfinance.gov/f/201306_cfpb_laws-and-regulations_ecoa-combined-june-2013.pdf

- Who uses any instrumentality of interstate commerce or the mails in any company, which major purpose is the enforcement of security interests.

This term takes into scope any creditor, who while the process of debt collection, uses different name than his own, which may be seen as the third person collecting or trying to collect these debts. Among all, the definition excludes, for instance: any officer or employee of a creditor while in the name of the creditor, collecting debts for such creditor; any person who collects debt for a person that is related to or affiliated and if the main company of such person is not connected to collection of debts. Debt collectors are forbidden to harass, oppress or abuse the consumer in relation with the collection of a debt. The Act provides the types of activities of collectors that are banned such as:

- Threatening or abusive behavior, which can result in physical, reputation or property harm of a consumer;
- Use of inappropriate and abusive language;
- The disclosure of a list of persons who deny of paying debts, except to a consumer reporting agency;
- Contacting with a consumer at inconvenient time or place;
- Advertising for sale any debt in order to force its payment[384].

Debt collector should not contact with a consumer in a misleading way and at the moment of initial communication he must disclose his purpose of a debt collection. Collector has maximum five days from first connection with a debtor to provide him with a written notice, containing all important information related to execution of a debt[385]. The consumer has 30 days to dispute the validity of the debt and collectors are obliged to inform him previously about this possibility. Whenever customer submit a dispute in writing, collector is required to stop collecting the debt, until dispute will be verified[386].

Electronic Fund Transfer Act (EFTA), enacted in 1978, was established in order to provide protection to the consumers, that are engaged in electronic fund transfers (EFTs)[387] and remittance transfers, for instance transfers through automated teller machines (ATMs), point-

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[384] Federal Trade Commission. (2015). *Fair Debt Collection Practices Act*. Retrieved from https://www.ftc.gov/system/files/documents/plain-language/fair-debt-collection-practices-act.pdf

[385] Smith, S. (2007). *Comply with the Fair Debt Collection Practices Act (FDCPA).*

[386] Griffith, E. (2004). Identifying Some Trouble Spots in the Fair Debt Collection Practices Act: A Framework for Improvement. *Neb. L. Rev.*, *83*, 762.

[387] As defined under FDIC. (2020). *Electronic Fund Transfer Act, VI-2.1 updated at 03/2019 in Consumer compliance examination manual*. Retrieved from https://www.fdic.gov/regulations/compliance/manual/index.html Electronic fund transfer (EFT) is a fund transfer, which starts through telephone, computer, electronic terminal or magnetic tape with the aim of ordering, instructing and authorizing a financial institution to debit or credit a consumer's account

of-sale (POS) terminals or automated clearinghouse (ACH) systems[388]. The EFTA comprises the steps needed to solve the problem of incorrect transfers and requires financial institutions to take actions needed to find out the error. Moreover, the Act gives protection to consumers affected by unauthorized transfers and reduces their liability for them[389].

Another worth mentioning Acts are the Real Estate Settlement Procedures Act (RESPA) of 1974, the Home Mortgage Disclosure Act (HMDA) of 1975 and the Community Reinvestment Act (CRA) of 1977.

RESPA was enacted in order to provide consumers with protection against high settlement charges and abusive practices. The Act imposes regulations requiring disclosures to consumers, elimination of referral fees and kickbacks, which result in higher cost of settlement, limiting the amount of money, that consumers have to keep in escrow accounts and changes the way of keeping the documentation[390]. Lender is obliged to provide a borrower with good faith estimate (GFE) form, which permits customers to compare settlement costs and loan terms. GFE comprise statements summarizing loan terms and settlement charges[391]. RESPA aids customers to act in informed manner while deciding about buying the property and protects borrowers in some situations, for instance:

- Incorrect calculation of payments;
- Occurrence of inaccurate mortgage statement;
- Failure in providing all existing loss mitigation options;
- Misinformation about missing documents;
- Initiation of foreclosure or sale even if consumer participates in the process of loan modification review.

Under the section 8 of the document, the practices such as kickbacks, unearned fees and fee splitting are banned and the lenders violating this regulation are subject to criminal punishment. Furthermore, the mortgage sellers are forbidden to promote, advertise or force consumers to take a loan from specific insurance company[392].

The Home Mortgage Disclosure Act was established to prevent the redlining problem. In the context of HMDA, redlining means that creditors deny granting a credit or lend on unfair terms

[388] FDIC. (2020). *Electronic Fund Transfer Act, VI-2.1.* Cit. 387
[389] Cohen, A. M. (2010). Protecting the underserved: Extending the Electronic Fund Transfer Act and Regulation E to prepaid debit cards. *Brook. J. Corp. Fin. & Com. L.*, *5*, 215.
[390] Bock, G. S. (2005). RESPA, HUD, and Mortgage Markups: HUD and Several Courts' Attempts to Broaden RESPA to Prohibit Mortgage Markups Goes Beyond Congress's Purpose. *U. Cin. L. Rev.*, *74*, 1415.
[391] FDIC. (2020). *Real Estate Settlement Procedures Act, V-3.1 updated at 05/2018 in Consumer compliance examination manual*. Retrieved from https://www.fdic.gov/regulations/compliance/manual/index.html
[392] Cause of action under real estate settlement procedure act. (2020). *Court Uncourt, 7(3),* 18-20.

in low-income, older, minority neighborhoods, without basing on analysis of consumer's credit eligibility. In contrast to Fair Housing Act and Equal Credit Opportunity Act, which ban and establish regulations to eliminate redlining, HMDA requires creditors to disclose information about their lending activity. In 2002 there were introduced amendments to HMDA aiming to develop its effectiveness as an instrument for fair lending and to collect and describe information related to home mortgage market and subprime home loan market in more precise and accurate manner. HMDA under its scope, needed to include the methods to prevent new form of lending discrimination such as reverse redlining. Low-income, minority communities, from previously receiving limited amount of loans, started to be granted too many of them. Due to this problem, Federal Reserve System decided to impose several regulations on annual percentage rates, that provided more information about subprime lending and let indicating existence of reverse-redlining in mortgage market[393]. Under the current legislation HMDA covers depository financial institutions (banks, savings associations, credit unions) and non-depository financial institutions (for-profit mortgage-lending institutions other than banks, savings associations or credit unions). The document requires financial institutions to gather, record and report data connected to originations and purchases of loans covered in the Act. Moreover, HMDA demands from financial institutions to provide data considering applications, loan originations, loan purchases as well as customers' demographic data[394].

The Community Reinvestment Act supports financial institutions to extend mortgage and other kind of credit as well as arranges investments and services to low-and moderate-income neighborhoods[395]. Similarly, to HMDA, CRA does not forbid discrimination, but authorizes banks to satisfy the needs of the served society, including lower-income communities. CRA had two major aims, firstly to fight with redlining problem and secondly to cease capital export, that is practice of obtaining deposits from one community and investing funds in another one[396]. Between the mid-1990s and mid-2000s, the number of homeowners dramatically increased, mostly in minority and lower-income communities, which suggested that Community Reinvestment Act could have impact on credit supply. There exist opinions that the CRA could have encouraged the financial crisis by supporting banks to take too much risk[397]. However,

[393] Marsico, R. D. (2009). Looking back and looking ahead as the Home Mortgage Disclosure Act turns thirty-five: the role of public disclosure of lending data in a time of financial crisis. *Rev. Banking & Fin. L.*, *29*, 205.
[394] FDIC. (2020). *Home Mortgage Disclosure Act, V-9.1 updated at 04/2020 in Consumer compliance examination manual*. Retrieved from https://www.fdic.gov/regulations/compliance/manual/index.html
[395] Kroszner, R. S. (2008). The community reinvestment act and the recent mortgage crisis. *Board of Governors of the Federal Reserve System*.
[396] Brescia, R. H. (2009). Part of the Disease or Part of the Cure: The Financial Crisis and the Community Reinvestment Act. *University of South Carolina Law Review*, *60*, 617.
[397] Bhutta, N. (2011). The community reinvestment act and mortgage lending to lower income borrowers and neighborhoods. *The Journal of Law and Economics*, *54*(4), 953-983.

according to the article written by Raymond H. Brescia the main role that the Community Reinvestment Act could have acted in the financial crisis was its failure to protect low- and moderate-income groups from predatory lending[398].

3.3. FICO Score

As previously mentioned, credit report contains all principal information about a consumer, specific data about the number and type of his accounts, his payment history, outstanding debts and overdue bills[399]. Credit score is defined as a numerical value or a categorization derived from statistical tool or modelling system used in order to make or arrange a loan to predict the probability of certain credit behaviors, including default[400]. In another words, credit score is a way for a creditor to assess and predict the creditworthiness of future borrower[401]. The major provider of credit scores in United States is Fair Isaac Corporation (FICO), created in 1956 by William R. Fair and Earl J. Isaac. The FICO Score succeeded in 1980s and since then became a leader in credit-scoring market[402]. Its main purpose is to facilitate lenders' decision about who they should grant a credit to and to help consumers to have easy access to loan on fair terms[403]. Creditors can report information about consumer in an easy way, by using only name and the address. The major businesses, which report data to credit bureaus are credit card companies, banks and lenders, student loans, collection agencies, local, state and federal governments, insurance companies, landlords as well as utility companies[404]. FICO provides its formula to three leading in United States credit bureaus such as TransUnion, Experian and Equifax. The algorithm used by the company is a mystery but is believed to be based on the ratio of debt to available credit[405]. However, main factors impacting FICO Score are disclosed by the company[406].

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398 Brescia, R. H. (2014). The community reinvestment act: Guilty, but not as charged. *John's L. Rev.*, *88*, 1.
399 Harris, K. K., & Ritacca, S. (2010). Alternative Credit Data: To Report or Not to Report, that is the Question. *Clearinghouse Rev.*, *44*, 391.
400 CFPB. (2012). *Consumer Laws and Regulations, Fair Credit Reporting Act*. Cit 360
401 Wu, C. C., & Birnbaum, B. (2007). *Credit Scoring and Insurance: Costing Consumers Billions and Perpetuating the Economic Racial Divide*. National Consumer Law Center.
402 Cullerton, N. (2012). Behavioral credit scoring. *Geo. LJ*, *101*, 807.
403 myFico. (2020). Cit. 27
404 Rhodes, T. (2008). *American Credit Repair: Everything U Need to Know about Raising Your Credit Score*. McGraw Hill Professional.
405 Arya, S., Eckel, C., & Wichman, C. (2013). Anatomy of the credit score. *Journal of Economic Behavior & Organization*, *95*, 175-185.
406 Demyanyk, Y. (2010). Your credit score is a ranking, not a score. *Economic Commentary*, (2010-16).

3.3.1. How FICO Score is calculated?

FICO Score is a three-digit number, that ranges in general from 300 to 850. Higher number is considered as a better result in credit scoring[407]. Individuals, which possess higher results are offered better terms, rates and are given better deals, while the ones having lower number face high rates and large fees[408]. Scores can vary from very poor to exceptional result.

Credit Score	Rating	% of People	Impact
300-579	Very Poor	16%	Credit applicants may be required to pay a fee or deposit, and applicants with this rating may not be approved for credit at all.
580-669	Fair	17%	Applicants with scores in this range are considered to be subprime borrowers.
670-739	Good	21%	Only 8% of applicants in this score range are likely to become seriously delinquent in the future.
740-799	Very Good	25%	Applicants with scores here are likely to receive better than average rates from lenders.
800-850	Exceptional	21%	Applicants with scores in this range are at the top of the list for the best rates from lenders.

Figure 3 FICO Score ranges, source: Experian.com[409]

The figure presented above shows the ranges of the credit score with assigned to them rating (from very poor to exceptional). Third column shows the percentage of people belonging to each category, while the fourth one describes the impact of credit score on credit applicants.

Creditors are responsible for decision from which score they will accept consumer's credit application, based on their risk tolerance and profit-seeking reasons. There are lenders using 720 or 740 as the minimum amount to offer their best rates and terms. Some of credit providers use 660, 640 or 620 as the limit level. Financial institutions dealing with borrowers below these numbers are known as subprime lenders[410].

There are five main factors, that Fair Isaac company considers in evaluation of their credit scoring models such as:

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[407] Wu, C. C., & Birnbaum, B. (2007). Cit. 401
[408] Weston, L. P. (2011). *Your Credit Score: How to Improve the 3-digit Number that Shapes Your Financial Future*. FT Press.
[409] Experian. (2020). *What is a good credit score?* Retrieved from https://www.experian.com/blogs/ask-experian/credit-education/score-basics/what-is-a-good-credit-score/
[410] Weston, L. P. (2011). Cit. 408

- Payment history - main factor (35%) impacting credit score, thanks to which lenders can possess information whether consumer is meeting his credit obligation on time or not. Regarding negative information, for instance late payments, the score puts attention on three factors: recency (last time the consumer had problems with payments for his obligations; the more time passed since that situation, the less impact it has on a credit score), frequency (amount of late payments; larger amounts worsen credit score) and severity (the hierarchy of negative information: number of days, that the payment is late, collections, tax liens and bankruptcy);
- Amount owed – plays a large role (30%) in assessment of credit score. The score takes into account the total amount of debt on all accounts, for instance credit card, mortgages or loan for a car. In order to have a good score, individual should not come to close to credit limit while using a credit card, since it results in his higher rate of default. What is more, consumers, who repay mortgages or car loans over time, can improve their scores;
- Length of credit history – has less important role than payment history and amount owed, because makes up 15% of a total score. The longer is the history of credit, the better it is for borrower. The score takes into consideration the age of consumer's oldest account and the average age of all his accounts;
- Last credit application – this factor makes up 10% of the credit score, which focuses on: amount of accounts consumer recently applied, new opened accounts, time that passed since last credit application and time that passes since opening an account.
- Type of credit used – makes up 10% of overall score, the FICO Score algorithm expects a mix of different types of credit. In order to achieve high score, consumer should have both revolving debts, for instance credit cards and installment debts such as mortgage or auto loan. Moreover, also the kind of bankcards may have impact on credit score – Visa, MasterCard or American Express are better for score, than department store cards[411].

FICO Scores collect lots of information on consumers' credit reports, but they do not take into account data such as:

- race, religion, nationality, sex, marital status;
- age;
- salary, title, employer, employment history;

[411] Weston, L. P. (2011). Cit. 408

- place of living;
- child or family support obligations;
- any information that does not exist under consumer's credit report;
- any interest rate that has been charges on a credit card or different account;
- whether consumer participates in a credit counseling or not[412].

The scores are calculated in few stages. Firstly, previously gathered necessary information are analyzed by connecting them into a statistical model, which forecast the probability than consumer will be more than 90 days past due on credit obligation within the period of two years and creates an odds ratio for each consumer. Odds ratio is the sum of positive data related to behavior of the consumer divided by the sum of negative information about his activity. Secondly, individuals are categorized into groups, known as scorecards. In each group are consumers sharing similar experiences in their credit histories. Individuals presenting the most damaging proceedings to their creditworthiness are assigned to a scorecard with a lowest range of credit score, while consumers who shown best possible behaviors, join the highest ranges of scores[413]. The standard FICO model has 10 scorecards, where 2 are booked for individuals having debt problems. The updated version, called FICO 8 owns 12 scorecards with 4 created to consumers possessing bad credit information[414]. Finally, the odds ratio is mapped to a credit score for every individual, creating the score-odds relationship. In order to make decision whether to grant a credit or not, creditors need to know whole relationship between scores and odds ratios and explanation of the scores meaning in respect of riskiness of consumers. Furthermore, whenever occurs the change in individual's information, its probability of future default will modify as well[415]. Even though all three credit bureaus use the FICO scoring model, the results might be different among them, since the way bureaus gather, and report data is slightly distinct. Moreover, credit providers may possess their own scoring formulas, or they can use different versions of FICO[416].

[412] myFico. (2020). Cit. 27
[413] Demyanyk, Y. (2010). Cit. 406
[414] Weston, L. P. (2011). Cit. 408
[415] Demyanyk, Y. (2010). Cit. 406
[416] Weston, L. P. (2011). Cit. 408

3.3.2. Credit Bureaus

Data furnishers are responsible for collection of information, needed to produce credit scores and reports, which later they pass to credit reporting agencies. The agencies arrange and file credit reports to afterwards produce their own credit score. The main three credit bureaus in United States are Equifax, Experian and TransUnion, knows as "Big Three"[417]. Equifax was founded in 1899, as Retail Credit Company (RCC). In 1970, the company started to develop rapidly. It acquired among all local and regional credit bureaus, personal reporting agencies and auditors. The RCC changed its name to Equifax in 1976. The company operates in two sectors: Equifax Credit Services and Equifax Marketing Services. First one serves banks, retailers, mortgage lenders, commercial credit grantors, financial services and government agencies, while the second one operates for direct-response marketers, manufacturers, advertising agencies, banks and insurance companies. Equifax provides its customers with access to its databases and with advanced technology such as global telecommunications network for acquiring and delivering reports[418]. TransUnion was formed in 1968 as a holding company for railroad leasing organization - Union Tank Car Company. In 1969 business decided to acquire Credit Bureau of Cook County (CBCC) and became first enterprise in the credit reporting industry, which exchanged accounts receivable data with automated tape-to-disc transfer[419]. Experian was formed in 1996 under the ownership of Great Universal Stores (GUS) that was home mail order company[420].

The information included in credit reports created by Big Three may differ between each other, but in general should comprise data such as:

- Personal information – name, address, date of birth, name of current and previous employers and Social Security number;
- Public record information – any details of court judgements and any statements of bankruptcy and of tax liens;
- History of credit account – account number, lender, date of opening the account, type of account, its credit limit, payments and information about late payments;
- Inquiries – names of credit providers, who asked for report[421].

There is put time limitation on the information comprised under credit report. Good information stays for indefinite period, while bad data, for instance late payments or collection actions have

[417] Harris, K. K., & Ritacca, S. (2010). Cit. 399
[418] Carroll, J. M. (2014). *Confidential information sources: Public and private*. Elsevier.
[419] TransUnion. (2020). *Company History*. Retrieved from https://www.transunion.com/about-us/company-history
[420] Experian UK. (2020). *Experian.* Retrieved from https://www.experian.co.uk/careers/our-history
[421] Thomas, L. C., Edelman, D. B., & Crook, J. N. (2002). Credit Scoring and Its Applications.

to be eliminated after seven years. Information on bankruptcies can stay under credit report for ten years, while inquiries should be removed after two[422].

As previously mentioned, the activity of credit bureaus is regulated under the Fair Credit Reporting Act (FCRA), the Fair and Accurate Credit Transactions Act (FACT Act). The FACT Act allows consumers to get once a year a free copy of credit report from each of Big Three. As a response to the Act from 2003, there was established a website: annualcreditreport.com[423]. Free credit report can be asked by consumer online, via phone or by mail. Moreover, credit report does not have to be requested from each of the three credit bureaus at the same moment but may be requested throughout all the year[424].

3.3.3. Different Types of Credit Scores

There exist more than one FICO Score and lenders are free to decide which version of FICO Score they want to use. FICO Score versions can be grouped into:

- Base FICO Scores – created to forecast the probability of not paying credit obligation, for instance mortgage, credit card or student loan.
- Industry-specific FICO Scores – let credit providers to assess the risk on credit obligation in more accurate manner. Are based on the same formula as base FICO Scores but are more advanced in order to provide lenders with developed risk assessment method. Instead of base FICO Score, creditors can use FICO Auto Score (used in the evaluations of auto loans) and FICO Bankcard Score (used by issuers of credit cards).

Among Big Three, there are 19[425] FICO Scores, that are usually used by credit providers. The versions of credit scores vary depending on the type of a loan, which a consumer is interested to. The table below reports different versions adopted for various types of credits in three credit bureaus (Experian, Equifax, TransUnion)[426].

[422] Weston, L. P. (2011). Cit. 408
[423] Rhodes, T. (2008). Cit. 404
[424] Annual Credit Report. (2020). *All about credit reports*. Retrieved from https://www.annualcreditreport.com/gettingReports.action
[425] In the booklet provided by myFico retrieved from https://www2.myfico.com/Downloads/Files/myFICO_UYFS_Booklet.pdf, there are reported 28 FICO Scores, that are commonly used by lenders
[426] Fico Score. (2020). *Education – FICO Score*. Retrieved from https://ficoscore.com/education/#CreditBureaus

Experian	Equifax	TransUnion
Most widely used version		
FICO® Score 8	FICO® Score 8	FICO® Score 8
Versions used in auto lending		
FICO® Auto Score 8 FICO® Auto Score 2	FICO® Auto Score 8 FICO® Auto Score 5	FICO® Auto Score 8 FICO® Auto Score 4
Versions used in credit card decisioning		
FICO® Bankcard Score 8 FICO® Score 3 FICO® Bankcard Score 2	FICO® Bankcard Score 8 FICO® Bankcard Score 5	FICO® Bankcard Score 8 FICO® Bankcard Score 4
Versions used in mortgage lending		
FICO® Score 2	FICO® Score 5	FICO® Score 4
Newly released version		
FICO® Score 9 FICO® Auto Score 9 FICO® Bankcard Score 9	FICO® Score 9 FICO® Auto Score 9 FICO® Bankcard Score 9	FICO® Score 9 FICO® Auto Score 9 FICO® Bankcard Score 9

Figure 4 FICO Score Versions, source: Ficoscore.com[427]

Moreover, FICO Score can exist at the three main credit bureaus under different names, for instance in Equifax it can be called BEACON, in Experian – Experian or FICO Risk Model and in TransUnion FICO Risk Score or Classic.

There exist a lot of different credit scores apart from FICO. Credit Bureaus may sell their own, proprietary scores, for instance developed by Big Three VantageScore or created by TransUnion TransRisk Score. Furthermore, there is a variety of free scores that consumers can find online, for example on Credit Karma website. These alternative scores, that are not FICO are known as FAKO scores[428]. The VantageScore was created in 2006 by Equifax, Experian and TransUnion in order to provide consistent, more predictive and easier to apply scoring model. Unlike to other credit scoring systems, it takes into consideration consumers who are new on the credit market and use credit occasionally. What is more, VantageScore provides consumers with reason codes, which explain to borrower why his score is not higher. Current version, Vantage Score 3.0 has a credit score range from 300 to 850, while the previous one – VantageScore 2.0 varied from 501 to 990[429]. The table below represents the ranges of

[427] Fico Score. (2020). Cit. 426
[428] Weston, L. P. (2011). Cit. 408
[429] Your VantageScore. (2020). *Why we were founded?* Retrieved from https://your.vantagescore.com/why-we-exist

VantageScore 3.0 model with given rating, percentage of people assigned to credit score and impact it has on the applicant.

Credit Score	Rating	% of People	Impact
300-499	Very Poor	5%	Applicants will not likely be approved for credit.
500-600	Poor	21%	Applicants may be approved for some credit, though rates may be unfavorable and with conditions such as larger down payment amounts.
601-660	Fair	13%	Applicants may be approved for credit but likely not at competitive rates.
661-780	Good	38%	Applicants likely to be approved for credit at competitive rates.
781-850	Excellent	23%	Applicants most likely to receive the best rates and most favorable terms on credit accounts.

Figure 5 VantageScore ranges, source: Experian.com[430]

VantageScores as well as the FICO scores in order to come with the result, use information from credit reports, however the influence of the factors slightly differ. The most important component of VantageScore is the same as for FICO score - payment history. The second most relevant is age and type of credit and percentage of used credit limit, while for FICO score it is the total amount owed. As moderately influential, VantageScore treats total balances and debt, and finally as the least crucial one considers available credit, recent credit behavior and inquiries. On FICO score, the least impact has length of credit history, last credit application and types of credit used[431].

Worth mentioning is the Insurance Score, developed by FICO in 1993, which is based on credit information. It is available from the three major credit bureaus and its aim is to let insurers to predict loss ratio relativity among the lifecycle of a customer. Furthermore, grace to Insurance Scores, insurers can make their decisions in fast and objective manner. The statistical models of FICO Insurance Scores use data on credit report and assess the relative risk of consumer's

[430] Experian. (2020). Cit. 409
[431] Experian. (2020). Cit. 409

insurance. As well as for FICO credit score, the higher it is the better. Higher result indicates lower risk presented by applicant[432].

[432] FICO. (2013). *FICO Insurance Scores*. Retrieved from https://www.fico.com/en/latest-thinking/product-sheet/fico-insurance-scores-credit-based-insurance-scores

4. Conclusion

The differences between European and American approach towards consumer credit are ingrained in the history. Catholic countries in Europe were affected by the Church, which for a long time prohibited money-lending on interest. Consumer credit in Europe considered as taboo, was perceived completely different in America. Growing urbanization, industrialization and development of customer goods and services let credit market increase. First law regulating consumer credit was created in 1968 in America in the form of Consumer Credit Protection Act, while in Europe legislation framework was established in the late 80s.

In Europe, apart from national regulations among the countries, was adopted in 1986 first Consumer Credit Directive[433] aimed to reform and harmonize consumer credit laws between Member States. Moreover, the Directive was a way to strengthen consumer protection and support of cross-border credit and free movement of goods and services among European Union Countries. The Council adopted in the document minimum level of harmonisation, that permitted Member States to impose their own more stringent rules for consumer protection. Creation in 1990 of a single method of calculating the annual percentage rate of charge (APR), developed protection of borrowers and functioning of the internal credit market.

Since the minimum harmonisation approach came out to be ineffective and resulted in fragmentation and segmentation of the market, European Union faced the need of creation new Consumer Credit Directive[434]. The document was established in 2008 and brought several innovations aimed to encourage integrated and transparent credit market as well as improve consumer protection. It created fully harmonised provisions by limiting the possibility for Member States to impose their own national regulations and has introduced rules for sharing of credit information and credit scoring. Furthermore, for the first time there appeared legislations concerning promotion of responsible lending practices among European Union Nations, for instance obligation of creditworthiness assessment or the right of withdrawal from credit agreement.

Financial crisis in 2008 made a necessity for introduction of consistent standards connected to residential immovable property in order to protect households from over-indebtedness. It has shown how tragic impact can have irresponsible activity of individuals participating in financial market. In 2014 European Authorities established Mortgage Credit

[433] Council Directive 87/102/EEC
[434] Directive 2008/48/EC

Directive, which was first document comprising rules for mortgage lending among the Member States. The major purposes of the Directive were strengthening of consumer protection from risks of defaults, foreclosures and creation of single internal market for mortgage credits. Furthermore, the document has brought the regulations to enhance responsible lending practices, for instance it put new obligations to prevent low financial literacy, to promote good practices among creditors and credit intermediaries and to limit some of cross-selling practices. In order to develop higher level of harmonisation, the Directive introduced the European Standardised Information Sheet (ESIS) and standardised form of calculation of APR.

American credit regulation is very complex. While European legislation focuses on supporting responsible lending practices, the American one takes into scope prevention of predatory lending and credit discrimination.

Predatory lending together with deregulation of banking, securities, insurance and mortgage industries played a crucial role in 2008 financial crisis. In order to solve the problem brought by this event, American Authorities enacted Dodd-Frank Act and created Consumer Financial Protection Bureau (CFPB). The aim of the Act is to provide protection to consumers from abusive practices, creation of transparent financial system and bringing financial stability in the United States. CFPB mainly supervises financial markets and lets customers to compare between the existing credit products.

While in United States there exists a leading provider of credit score – FICO Score, at European level there is a lack of such reference.

Obviously, there are also common aspects, in both regulations the protection of the consumers is the major point and purpose. Each legislator focuses on disclosure of credit information to consumers, right of withdrawal and prevention of unfair practices. Furthermore, they both intend in creation of transparent and effective market. The 2008 financial crises resulted in change of the laws concerning consumer credit. European Union as well as America took action in order to impose more stringent rules towards creditors and creditworthiness assessment of consumers.

APPENDICES

Appendix I: List of terms referred to in Article 4(3) Directive 87/102/EEC[435]

1. Credit agreements for financing the supply of particular goods or services:

(i) a description of the goods or services covered by the agreement;

(ii) the cash price and the price payable under the credit agreement;

(iii) the amount of the deposit, if any, the number and amount of instalments and the dates on which they fall due, or the method of ascertaining any of the same if unknown at the time the agreement is concluded;

(iv) an indication that the consumer will be entitled, as provided in Article 8, to a reduction if he repays early;

(v) who owns the goods (if ownership does not pass immediately to the consumer) and the terms on which the consumer becomes the owner of them;

(vi) a description of the security required, if any;

(vii) the cooling-off period, if any;

(viii) an indication of the insurance (s) required, if any, and, when the choice of insurer is not left to the consumer, an indication of the cost thereof.

2. Credit agreements operated by credit cards:

(i) the amount of the credit limit, if any;

(ii) the terms of repayment or the means of determining them;

(iii) the cooling-off period, if any.

3. Credit agreements operated by running account which are not otherwise covered by the Directive:

(i) the amount of the credit limit, if any, or the method of determining it;

(ii) the terms of use and repayment;

(iii) the cooling-off period, if any.

4. Other credit agreements covered by the Directive:

(i) the amount of the credit limit, if any;

(ii) an indication of the security required, if any;

(iii) the terms of repayment;

(iv) the cooling-off period, if any;

[435] Council Directive 87/102/EEC of 22 December 1986 for the approximation of the laws, regulations and administrative provisions of the Member States concerning consumer credit

(v) an indication that the consumer will be entitled, as provided in Article 8, to a reduction if he repays early.

Appendix II: The basic equation expressing the equivalence of loans on the one hand and repayments and charges on the other[436]

$$\sum_{K=1}^{K=m} \frac{A_K}{(1+i)^{t_K}} = \sum_{K'=1}^{K'=m'} \frac{A'_K}{(1+i)^{t_{K'}}}$$

Where:

K is the number of a loan,

K' is the number of a repayment or a payment of charges,

A_K is the amount of loan number K,

$A_{K'}$ is the amount of repayment number K',

$\sum$ represents a sum,

m is a number of the last loan,

m' is the number of the last repayment or payment of charges,

t_K is the interval, expressed in years and fractions of a year, between the date of loan No 1 and those of subsequent loans Nos 2 to m,

i is the percentage rate that can be calculated where the other terms in the equation are known from the contract or otherwise,

$t_{K'}$ is the interval, expressed in years and fractions of a year, between the date of loan No 1 and those of repayments or payments of charges Nos 2 to m',

Remarks:

(a) The amounts paid by both parties at different times shall not necessarily be equal and shall not necessarily be paid at equal intervals.
(b) The starting date shall be that of the first loan.
(c) Intervals between dates used in the calculations shall be expressed in years or in fraction of a year.[437]

[436] Council Directive 90/88/EEC of 22 February 1990 amending Directive 87/102/EEC for the approximation of the laws, regulations and administrative provisions of the Member States concerning consumer credit.
[437] Directive 98/7/EC amends the remarks by adding to point c: "A year is presumed to have 365 days or 365,25 days or (for leap years) 366 days, 52 weeks or 12 equal months. An equal month is presumed to have 30,41666 days (i.e. 365/12)". Moreover, there is added point d that states: (d) The result of the calculation shall be expressed with an accuracy of at least one decimal place. When rounding to a particular decimal place the following rule shall apply: If the figure at the decimal place

Appendix III Standardised European Consumer Credit Information[438]

1. Identity and contact details of the creditor/credit intermediary

Creditor Address Telephone number (*) E-mail address (*) Fax number (*) Web address (*)	[Identity] [Geographical address to be used by the consumer]
If applicable Credit intermediary Address Telephone number (*) E-mail address (*) Fax number (*) Web address (*)	[Identity] [Geographical address to be used by the consumer]

(*) This information is optional for the creditor.

2. Description of the main features of the credit product

The type of credit	
The total amount of credit *This means the ceiling or the total sums made available under the credit agreement.*	
The conditions governing the drawdown *This means how and when you will obtain the money.*	
The duration of the credit agreement	
Instalments and, where appropriate, the order in which instalments will be allocated	You will have to pay the following: [The amount, number and frequency of payments to be made by the consumer] Interest and/or charges will be payable in the following manner:
The total amount you will have to pay *This means the amount of borrowed capital plus interest and possible costs related to your credit.*	[Sum of total amount of credit and total cost of credit]
If applicable The credit is granted in the form of a deferred payment for a good or service or is linked to the supply of specific goods or the provision of a service Name of good/service Cash price	
If applicable Sureties required *This is a description of the security to be provided by you in relation to the credit agreement.*	[Kind of sureties]
If applicable *Repayments do not give rise to immediate amortisation of the capital.*	

following this particular decimal place is greater than or equal to 5, the figure at this particular decimal place shall be increased by one.

[438] Directive 2008/48/EC on credit agreements for consumers and repealing Council Directive 87/102/EEC

3. Costs of the credit

The borrowing rate or, if applicable, different borrowing rates which apply to the credit agreement	[% — fixed or, — variable (with the index or reference rate applicable to the initial borrowing rate), — periods],
Annual Percentage Rate of Charge (APR) *This is the total cost expressed as an annual percentage of the total amount of credit.* *The APR is there to help you compare different offers.*	[% A representative example mentioning all the assumptions used for calculating the rate to be set out here]
Is it compulsory, in order to obtain the credit or to obtain it on the terms and conditions marketed, to take out — an insurance policy securing the credit, or — another ancillary service contract, *If the costs of these services are not known by the creditor they are not included in the APR.*	 Yes/no [if yes, specify the kind of insurance] Yes/no [if yes, specify the kind of ancillary service]
Related costs	
If applicable Maintaining one or more accounts is required for recording both payment transactions and drawdowns	
If applicable Amount of costs for using a specific means of payment (e.g. a credit card)	
If applicable Any other costs deriving from the credit agreement	
If applicable Conditions under which the abovementioned costs related to the credit agreement can be changed	
If applicable Obligation to pay notarial fees	
Costs in the case of late payments *Missing payments could have severe consequences for you (e.g. forced sale) and make obtaining credit more difficult.*	You will be charged [...... (applicable interest rate and arrangements for its adjustment and, where applicable, default charges)] for missing payments.

4. Other important legal aspects

Right of withdrawal *You have the right to withdraw from the credit agreement within a period of 14 calendar days.*	Yes/no
Early repayment *You have the right to repay the credit early at any time in full or partially.*	
If applicable The creditor is entitled to compensation in the case of early repayment	[Determination of the compensation (calculation method) in accordance with the provisions implementing Article 16 of Directive 2008/48/EC]
Consultation of a database *The creditor must inform you immediately and without charge of the result of a consultation of a database, if a credit application is rejected on the basis of such a consultation. This does not apply if the provision of such information is prohibited by European Community law or is contrary to objectives of public policy or public security.*	
Right to a draft credit agreement *You have the right, upon request, to obtain a copy of the draft credit agreement free of charge. This provision does not apply if the creditor is at the time of the request unwilling to proceed to the conclusion of the credit agreement with you.*	
If applicable The period of time during which the creditor is bound by the pre-contractual information	This information is valid from … until …

5. Additional information in the case of distance marketing of financial services (If applicable)

(a) concerning the creditor	
If applicable Representative of the creditor in your Member State of residence Address Telephone number (*) E-mail address (*) Fax number (*) Web address (*)	[Identity] [Geographical address to be used by the consumer]
If applicable Registration	[The trade register in which the creditor is entered and his registration number or an equivalent means of identification in that register]
If applicable The supervisory authority	
(b) concerning the credit agreement	
If applicable Exercise of the right of withdrawal	[Practical instructions for exercising the right of withdrawal indicating, *inter alia*, the period for exercising the right, the address to which notification of exercise of the right of withdrawal should be sent and the consequences of non-exercise of that right]
If applicable The law taken by the creditor as a basis for the establishment of relations with you before the conclusion of the credit contract	
If applicable Clause stipulating the governing law applicable to the credit agreement and/or the competent court	[Relevant clause to be set out here]
If applicable Language regime	Information and contractual terms will be supplied in [specific language]. With your consent, we intend to communicate in [specific language/languages] during the duration of the credit agreement.
(c) concerning redress	
Existence of and access to out-of-court complaint and redress mechanism	[Whether or not there is an out-of-court complaint and redress mechanism for the consumer who is party to the distance contract and, if so, the methods of access to it]

(*) This information is optional for the creditor.

Appendix IV: Mathematical formula for calculation of the annual percentage rate of charge[439]

$$\sum_{k=1}^{m} C_k(1+X)^{-t_k} = \sum_{l=1}^{m'} D_l(1+X)^{-S_l}$$

Where:

X is the APR,

m is the number of the last drawdown,

k is a number of a drawdown, thus $1 \leq k \leq m$,

C_k is the amount of drawdown k,

t_k is the interval, expressed in years and fractions of a year, between the date of the first drawdown and the date of each subsequent drawdown, thus $t_1 = 0$,

m′ is the number of the last repayment or payment of charges,

l is the number of a repayment or payment of charges,

D_l is the amount of a repayment or payment of charges,

s_l is the interval, expressed in years and fractions of a year, between the date of the first drawdown and the date of each repayment or payment of charges.

Remarks[440]:

(e) This equation can be rewritten as: $S = \sum_{k=1}^{n} A_k(1+X)^{-t_k}$

A_k flows, that can be either positive or negative (either paid or received during periods *1* to *k*, expressed in years),

S present balance of flows

[439] Directive 2008/48/EC on credit agreements for consumers and repealing Council Directive 87/102/EEC

[440] Remarks from (a) to (d) remains the same as in the Directive 98/7/EC amending Directive 87/102/EEC

Appendix V: Table of respondents to the survey provided by ACCIS[441]

Country code	Country	Member	Member short name
AT	Austria	CRIF GmbH	CRIF AT
AT	Austria	KSV1870 Information GmbH	KSV 1870
BE	Belgium	Banque Nationale de Belgique	BNB
HR	Croatia	HROK d.o.o. Croatian Credit Information Registry	HROK
CY	Cyprus	Artemis Bank Information Systems Ltd	Artemis
CZ	Czech Republic	SOLUS	SOLUS
CZ	Czech Republic	CRIF – Czech Credit Bureau, a. s.	CRIF CZ
DK	Denmark	Experian Denmark	Experian DK
FI	Finland	Suomen Asiakastieto OY	Suomen
DE	Germany	Creditreform Boniversum GmbH	Creditreform DE
DE	Germany	SCHUFA Holding AG	SCHUFA
EL	Greece	Tiresias	Tiresias
HU	Hungary	BISZ Central Credit Information Plc	BISZ
IS	Iceland	CREDITINFO GROUP	CREDITINFO
IT	Italy	CRIF S.p.A.	CRIF IT
IT	Italy	Experian-Cerved Information Services S.p.A.	Experian IT
PL	Poland	Biuro Informacji Kredytowej S.A.	BIK
PL	Poland	ERIF Biuro Informacji Gospodarczej S.A.	ERIF
XK	Republic of Kosovo	Central Bank of the Republic of Kosovo	CBK
RO	Romania	S.C. Biroul de Credit S.A.	Biroul de Credit
RU	Russia	Closed Joint Stock Company "United Credit Bureau"	UCB
RS	Serbia	Association of Serbian Banks	Serbian CB
ES	Spain	Experian Bureau de Crédito S.A.	Experian ES
ES	Spain	Equifax Spain	Equifax ES
SK	Slovakia	CRIF SK	CRIF
SE	Sweden	UC AB	UC AB
SE	Sweden	Creditsafe i Sverige AB	CREDITSAFE
CH	Switzerland	CRIF AG	CRIF CH
NL	The Netherlands	BKR Stichting Bureau Krediet Registratie	BKR
GB	United Kingdom	Experian	Experian UK
GB	United Kingdom	Equifax Limited	Equifax UK
GB	United Kingdom	Callcredit Information Group Ltd	Callcredit

[441] ACCIS. (2017). *ACCIS 2017 Survey of Members. Analysis of Credit Reporting in Europe*. Retrieved from https://accis.eu/wp-content/uploads/2018/11/AUG18_ACCIS-Survey-of-Members-2017_FINAL.pdf

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