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New rules on the protection of consumer credit users

Nova pravila o zaštiti korisnika potrošačkog kredita

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Abstract

The article analyzes the rules cotained in the EU Directive 2023/2225 on consumer credit agreements, which in comparison to the previous ones (contained in Directive 87/102, which was modified by Directives 90/88 and 98/7, and Directive 2008/48), are significant step forward towards creating the conditions for achieving long-established goals: a high level of consumer protection and the development of a single credit market. These rules refer to those that regulate for the first time some issues related to the advertising of credit agreements and consumer information, rules that determine the position of creditors and consumers regarding the provision of certain services, rules on the conduct of business obligations of creditors (credit intermediaries), as well as rules on restrictive and educational measures for the purpose of consumer protection.
Keywords: *consumer, creditor, credit, protection, service*

Sažetak

U članku su analizirana pravila sadržana u Direktivi EU 2023/2225 o ugovorima o potrošačkim kreditima koja predstavljaju iskorak u odnosu na ranija (sadržana u Direktivi 87/102, koja je modifikovana direktivma 90/88 i 98/7, i Direktivi 2008/48), a značajna su jer se uz pomoć tih pravila stvaraju uslovi da se ostvare davno zacrtani ciljevi: visok nivo zaštite potrošača i razvoj jedinstvenog tržišta kredita. U grupu tih pravila spadaju ona kojima se po prvi put regulišu neka pitanja vezana za oglašavanje ugovora o kreditu i informisanje potrošača, pravila kojima se određuje položaj poverilaca i potrošača povodom pružanja određenih usluga, pravila o načinu i organizaciji poslovanja poverilaca (kreditnih posrednika), kao i pravila o ograničavajućim i obrazovnim merama koje se preduzimaju u funkciji zaštite potrošača.
Ključne reči: *potrošač, poverilac, kredit, zaštita, usluga*

1. Introduction

Since the emergence of consumer credit, awareness has gradually been formed that consumers, as credit users and a vulnerable social group. Vulnerable consumers are those who cannot, or can no longer, cope with the requirements of the modern consumer society due to their age, health, addictions, migration, etc. These consumers run the risk of being isolated from social and economic life, as a result of their over-indebtedness, illness or a lack of possibilities to communicate (Reich et al., 2014, p. 46). Due to their vulnerability, consumers need to be provided with special protection. Such protection is justified by the fact that consumers often easily get into debt, without a proper assessment of the credit arrangement, which can lead to their over-indebtedness. According to the available data, about 340 million citizens of the EU have bank account deficits (Greguric-Bajza, 2024, p. 380). Furthermore, creditors often take advantage of their dominant position in relation to consumers to impose unclear, ambiguous and unfair contractual provisions (Dudaš, 2018; Mićović, 2004). In order to eliminate the difficulties that consumers may encounter when concluding a credit agreement, the process of adopting special rules regulating consumer credit was initiated at the EU level at the end of the 20th century. This ongoing process seeks to achieve two goals: a high level of consumer protection and to encourage the development of a single credit market, which is still lacking because of different consumer protection mechanisms used in EU Member States, which

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contributes to the distortion of competition among creditors in the EU (Recital 4 of EU Directive 2008/48 and recital 3 of EU Directive 2023/2225).

In order to achieve the above requirements, the EU has adopted: 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 (subsequently amended by Directives 90/88/EEC and 98/7/EC), Directive 2008/48/EC and Directive 2023/2225/EU on consumer credit agreements. A summary review of the above directives shows that they differ: in terms of scope (the first had 18 articles, the second 32, and the third has 50 articles), in terms of the number of definitions and explanations of basic terms, whereby both the scope and number of definitions of basic terms (the first provided definitions for five terms, the second for fourteen, and the third for twenty-two terms) show that the adoption of Directive 2023/2225 seeks to achieve the following goal, which is to replace the principle of minimum harmonisation with the principle of maximum harmonisation of consumer credit rules, as well as to raise the level of consumer protection. In this regard, it is determined that full harmonisation is necessary to ensure that all consumers in the EU enjoy a high and equivalent level of protection of their interests and to create a well-functioning internal market. Member States should therefore not be allowed to maintain existing or introduce new national provisions that deviate from those laid down in the Directive, unless otherwise provided for in the Directive (Recital 13 of Directive 2023/2225/EU).

The article will present and analyze those provisions of the newly adopted Directive 2023/2225/EU that regulate for the first time: certain issues related to consumer information and advertising of credit agreements, rules determining the position of creditors and consumers regarding the provision of certain services, rules on the manner and organization of the business of creditors (credit intermediaries), as well as rules on restrictive and educational measures taken in the function of consumer protection.

2. Advertising of credit agreements and information requirements

Providing information about an assortment of financial services, conditions under which they can be obtained and their impact on users is of great importance (Vojinović, 2021, p. 142). This information is often provided to consumers through promotional activities, i.e. advertising of financial prodicts and services. Regarding the advertising of credit agreements, new Directive reinforces consumer protection against unfair or misleading practices in line with Directive 2005/29/EC. The Directive lays down revised requirements for creditors in terms of the information to be included in any advertising and marketing communications, to warn consumers of the commitment resulting from a credit agreement (Fournier et al., 2023). In comparison to former Directive 2008/48, newly adopted Directive 2023/2225/EU elaborates specific provisions on advertising of credit agreements in more detail, by stipulating the following:

1. Any advertising and marketing communications concerning credit agreements are fair, clear and not misleading. In specific and justified cases, in order to improve consumer understanding of information disclosed in advertising of credit agreements where the medium used does not allow that information to be visually displayed, such as in radio advertising, the amount of information disclosed should be reduced (Recital 33 of Directive 2023/2225/EU). It is prohibited to use wording in advertisements or marketing communications that could create false expectations among consumers regarding the availability or cost of credit or the total amount payable by the consumer (Art. 7).
2. Advertising concerning credit agreements include a clear and prominent warning to make consumers aware that borrowing costs money, using the wording ‘Caution! Borrowing money costs money’ or an equivalent wording (Art. 8, para. 1).
3. Prohibition of advertising for credit products which: a) encourages consumers to seek credit by suggesting that credit would improve the financial situation of those consumers; b) specifies that outstanding credit agreements or registered credit in databases have little or no influence on the assessment of a credit application; c) falsely suggests that credit leads to an increase in financial resources, constitutes a substitute for savings or can raise a consumer’s living standards. (Art. 8, para. 7).

Advertising can only be carried out within the limits set by regulations and good business practices, and the advertising message must be truthful (it must not be vulgar, mislead consumers, or abuse their trust) (Mićović & Mićović, 2022). Otherwise, advertising may be prohibited, inter alia, for credit products which: a) highlights the ease or speed with which credit can be obtained; b) states that a discount is conditional upon taking up credit; c) offers ‘grace periods’ of more than three months for the repayment of credit instalments (Art. 8, para. 8). The reasoning behind this rule is to prevent unfair commercial practice. Namely, the phrase "easy to reach the goal" is often used in advertising credit products, which leads consumers into trouble, because they are encouraged to conclude a credit agreement frivolously, without a proper assessment of the credit arrangement and their own capabilities, which can be the source of their over-indebtedness (Mićović, 2009).

When it comes to information requirements, the new Directive introduced revised rules on pre-contractual duty to inform (such as new definition and obligations, as well as revised Standard European Consumer Credit Information form), one basic principle related to the manner in which information has to be provided to consumer, as well as rules on a new group of information, the so-called general information, on the basis of which a new pillar of consumer information is established. In addition, Directive introduced specific information requirements for personalized offers.

According to the Directive, pre-contractual information is defined as the information which is provided before the consumer is bound by a credit agreement or, where applicable, by the submission of a binding offer and which the consumer needs in order to be able to compare different credit offers and take an informed decision on whether to conclude the credit agreement (Art. 3, para. 1, point 13).

Directive sets new obligation to creditors in the event that pre-contractual information is provided to the consumer less than one day before the agreement. In that case creditors must send a reminder to consumer. That reminder needs to be provided on paper or on another durable medium chosen by the consumer and specified in the credit agreement, between one and seven days after the conclusion of the credit agreement or, where applicable, the submission of the binding credit offer by the consumer (Art. 10, para 2).

Similar to the former Directive, Art. 10 of the new Directive require creditors to provide consumers with the key information about the credit (para. 3) in a prominent way through the Standard European Consumer Credit Information form. However, if key information cannot be displayed in a prominent way on the first page of the form, new Directive differentiates: 1) the infirmation which always needs to be placed on the first page of the form (creditor identity, total amount of credit, duration of credit, borrowing rate, annual percetage rate, total amount to be paid, costs for late payments); 2) the information which also needs to be included on the first page, or always on the second page if cannot be displayed on the first page (instalments, consequences of late payments, withdrawal, early repayment, other creditor details); 3) additional information which needs to be displayed after and noticeably separated from the key information (description of main features, costs of the credit, other legal aspects, such as information on individualised pricing based on automated data processing, distance marketing information). In addition, Recital 37 of Directive requires that such information should be clear, clearly legible and adapted to the technical constraints of certain media such as mobile phone screens.

Furthermore, Directive 2023/2225/EU introduced the basic principle concerning the obligation to provide information to consumers free of charge. In this regard, Directive stipulates that information (such as appropriate explanations, pre-contractual information, general information, information on access to databases) shall be provided to consumers free of charge, regardless of the media used to provide it (Art. 5).

Regarding general information, creditors or credit intermediaries are obliged to meet requirements in terms of availability, manner and form in which information has to be provided and content of the information. Namely, general information needs to be made available to consumer at all times, in a clear and comprehensible manner, on paper or another durable medium chosen by consumer. General information about credit agreements which is made available by creditors or, where applicable, by credit intermediaries at their premises shall be made available to consumers at least on paper (Art. 9, para. 1). In addition, general information shall include at least the following content: a) the identity, geographical address, telephone number and email address of the issuer of the information; b) the purposes for which the credit may be used; c) the possible duration of the credit agreement; d) types of available borrowing rate, indicating whether fixed or variable or both, with a short description of the characteristics of a fixed and variable rate, including related implications for the consumer; e) a representative example of the total amount of credit, the total cost of the credit to the consumer, the total amount payable by the consumer and the annual percentage rate of charge; f) an indication of possible further costs, not included in the total cost of the credit to the consumer, to be paid in connection with a credit agreement; g) the range of different options available for reimbursing the credit to the creditor, including the number, frequency and amount of the regular repayment instalments; h) a description of the conditions directly relating to early repayment; i) a description of the right of withdrawal; j) indication of ancillary services the consumer is obliged to acquire in order to obtain the credit or to obtain it on the terms and conditions marketed and, where applicable, a clarification that the ancillary services may be purchased from a provider that is not the creditor; k) a general warning concerning possible consequences of non-compliance with the commitments linked to the credit agreement (Art. 9, para. 2).

The obligation to inform is based on the idea that each contracting party should inform its counterparty of all facts that are important for making a reasonable decision. The general information rules finally confirm this idea and at the same time challenge the position, present in theory, according to which the imposition of an information obligation is justified only if there is a proportion between the protection of the user, which is achieved by informing, and the administrative costs, which arise from imposing an information obligation (Đurđević, 2008; Baretić, 2009; Jovanić, 2004). General information plays an important role in educating consumers about the wide range of products and services available and their key features. Consumers should therefore be given free access to general information about available credit products (justification for providing general information to consumers is given in Recital 35).

The Directive also contains a new provision on personalized offers (today, such offers, which are adapted to the needs and preferences of consumers, are increasingly present in the trade and service sector) based on automated processing of consumer data (Art. 13), in connection with which it is determined that creditors or credit intermediaries are obliged to inform consumers in a clear manner, before concluding a contract, about the source of personal data used for the personalization of the offer (Amayuelas, A. E., 2024, p. 7-8).

3. Position of creditors and consumers regarding the provision of certain services

Directive 2023/2225/EU lists a) two types of practices (tied and bundled) regarding services and b) two types of services (ancillary and advisory) which may be either allowed, under certain conditions, or prohibited.

a) *Tying and bundling practices*. – The practice of tied selling could be classified as so-called tied trade in a broader sense, which implies the sale, or offering, of two products exclusively in a package, and not separately (Domazet, 2011, p. 359). Otherwise, in relation to the definition of tied trade, it can be seen that there is no single definition of this term that would apply in all circumstances and to all business relationships. Thus, the Treaty on the Functioning of the EU stipulates that tied trade is prohibited if one person abuses a dominant position by making the conclusion of a contract subject to acceptance by the other parties of supplementary obligations which, by their nature or according to commercial usage, have no connection with the subject of such contracts (Art. 102, para. 2, item d). Or, tied trade is considered to encompass a series of foreign trade transactions whose common characteristic is that the export of goods or services to a certain market is conditional on the import of goods or services from that same market (Marijanović, 1994, p. 55). The Law on the Suppression of Unfair Trade, Illicit Speculation and Economic Sabotage (Official Gazette of the FNRY, no. 56/46, 74/46 – correction) stipulated that chain trade, as part of illicit speculation, means multiple resale by introducing unnecessary intermediaries in the trade of foodstuffs and consumer goods (Art. 3, para. 2, point 2).

According to Directive 2023/2225/EU tying practices means the offering or the selling of a credit agreement in a package with other distinct financial products or services where the credit agreement is not made available to the consumer separately (Art. 3, para. 1, point 15), and the practice of bundling services is the offering or the selling of a credit agreement in a package with other distinct financial products or services where the credit agreement is also made available to the consumer separately but not necessarily on the same terms or conditions as when offered bundled with those other products or services (Art. 3, para. 1, point 16). The practice of bundling services is permitted, and the practice of tying services is prohibited (Art. 14, para. 1). The rationale for this rule can be found in the Recital 24 of the Mortgage Credit Directive and Recital 47 of the Directive 2023/2225/EU where the EU legislator emphasizes that "it is important to prevent practices such as tying of certain products which may induce consumers to enter into credit agreements which are not in their best interest, without however restricting product bundling which can be beneficial to consumers (EU Commission, 2023, p. 253). However, creditors may be allowed to request the consumer to open or maintain a payment or savings account, where the only purpose of such an account is one of the following: a) to accumulate capital to repay the credit; b) to service the credit; c) to pool resources to obtain the credit; d) to provide additional security for the creditor in the event of default (Art. 14, para. 2). Directive gives discretion to Member States to maintain or introduce national provisions prohibiting or allowing the so-called combined offers (requiring the consumer, in connection with the credit agreement, to open a bank account or conclude an agreement in respect of another ancillary service, or to pay the expenses or fees for such bank accounts or other ancillary services). In those Member States where such combined offers are allowed, consumers should be informed before the conclusion of the credit agreement about any ancillary services which are compulsory in order for the credit to be obtained in the first place or on the terms and conditions marketed. (Recital 41). According to Recital 47, tying practices should not be allowed unless the financial service or product offered together with the credit agreement could not be offered separately as it is a fully integrated part of the credit, for example in the case of an overdraft facility.

In connection with a credit agreement, certain services, such as insurance services, are provided to the consumer by third parties. In this regard, it is stipulated that creditors may require the consumer to have an appropriate insurance policy in connection with the credit agreement. In such cases, the creditor is required to accept the insurance policy from a supplier different to his preferred supplier (the consumer has the right to choose his own insurer) where such insurance policy has a level of guarantee equivalent to the one the creditor has proposed. In order for consumers to have additional time to compare insurance offers related to credit agreements before purchasing an insurance policy, consumers should be given at least three days to compare insurance offers related to credit agreements (Art. 14, paras. 3 and 5). The costs payable in respect of those ancillary services, in particular insurance premiums, should be included in the total cost of the credit. Alternatively, if the amount of such costs cannot be determined in advance, consumers should receive adequate information about the existence of costs at the pre-contractual stage. Creditors should be presumed to have knowledge of the costs of the ancillary services which they offer to the consumers themselves or on behalf of a third party, unless the price thereof depends on the specific characteristics or the situation of the consumers (Recital 41).

In order to provide consumers who have survived cancer with equal access to insurance related to credit agreements, insurance policies should not be based on personal data on the diagnosis of oncological diseases of consumers after a relevant period of time following the end of the medical treatment of those consumers. Such period should not exceed 15 years starting from the end of the medical treatment of the consumer (Art. 14, para. 4 and Recital 48).

b) *Ancillary and advisory services*. - Ancillary services are those offered to the consumer in conjunction with the credit agreement, and advisory services are defined as personal recommendations to a consumer in respect of one or more transactions relating to credit agreements and that constitute a separate activity from the granting of a credit

and from the credit intermediation activities (Art. 3, para. 1, items 4 and 17).

When it comes to the consumer and his position in relation to the conclusion of a consumer credit agreement, or the purchase of ancillary services, Directive follows the general offer and acceptance contract law rule (according to which the silence of the offeree does not mean acceptance of the offer), and therefore prohibits any granting of credit to consumers without their prior request and explicit agreement (Art. 17). Creditors and credit intermediaries cannot assume that the consumer has given consent to the conclusion of any credit agreement or to the purchase of additional services. The consumer's consent to the conclusion of any credit agreement or to the purchase of ancillary services shall be given by an unambiguous and clear affirmative act establishing a freely given, specific, informed and unambiguous indication of the consumer's approval (Art. 15). In this context, silence, inactivity or default option such as pre-ticked boxes should not be considered to constitute agreement by the consumer (Recital 49).

With regard to the later services, the creditor and, where applicable, the credit intermediary are obliged to explicitly inform the consumer, in the context of a given transaction, whether advisory services are being or can be provided to the consumer. If that is the case, before the provision of advisory services or the conclusion of a contract for the provision of such services, they have duty to provide the consumer with the specific information on paper or another durable medium chosen by the consumer: a) an indication of whether the recommendation will be based on only their own product range or on a wide range of products from across the market; b) an indication of the fee payable by the consumer for the advisory services or, where the amount of such fee cannot be established at the time when the information is provided, the method used for its calculation (Art. 16, paras. 1 and 2).

Where advisory services are provided to consumers, creditors or credit intermediaries have obligation to: a) obtain the necessary information regarding the consumer's financial situation, preferences and objectives related to the credit agreement, in order for the creditor or the credit intermediary to recommend credit agreements that are suitable to the consumer; b) assess the financial situation and the needs of the consumer on the basis of the obtained information; c) consider a sufficiently large number of credit agreements in their product range and on that basis recommend one or more credit agreements from among that product range that are suitable to the consumer's needs, financial situation and personal circumstances; d) act in the best interests of the consumer, i.e., inform themselves about the consumer's needs and circumstances and recommending credit agreements suitable to the consumer's needs, financial situation and personal circumstances, bearing in mind also the objective to minimize defaults and arrears (Recital 50); d) give the consumer a record of the recommendation provided, on paper or on another durable medium chosen by the consumer and specified in the contract for the provision of advisory services. In addition, they are obliged to warn the consumer when a credit agreement may induce a specific risk for the consumer considering the consumer's financial situation. (Art. 16, paras. 3 and 5).

In principle, advisory services may be provided exclusively by creditors and, where applicable, credit intermediaries. However, the provision of advisory services may also be allowed to other persons if one of the following conditions is met: a) the advisory services are provided in an incidental manner in the course of a professional activity that is regulated by legal or regulatory provisions or a code of ethics which do not exclude the provision of those services; b) the advisory services are provided in the context of management of existing debt by insolvency practitioners and where that management activity is regulated by legal or regulatory provisions; c) the advisory services are provided in the context of management of existing debt by public or voluntary providers of debt advisory services which do not operate on a commercial basis; d) the advisory services are provided by persons that are authorized and supervised by competent authorities (Art. 16, para. 6).

4. Conduct of business obligations of creditors (credit intermediaries)

The Directive regulates for the first time the active actions of creditors (credit intermediaries) undertaken in the function of consumer protection. These activities, which regulate the manner and organisation of the operations of creditors (credit intermediaries), are regulated in Chapter 10 of the Directive by rules on business conduct when providing credit to consumers (Art. 32) and by those regulating the conditions to be met by staff involved in carrying out credit activities (Art. 33). In addition to the above, creditors are obliged, where necessary, to refer consumers to debt advisory services provided by authorised third parties (Art. 36).

Activities of creditors (credit intermediaries). – Regarding the business conduct of creditors (credit intermediaries), it is determined that they must act honestly, fairly, transparently and professionally (responsible behavior) and take account of the rights and interests of consumers when carrying out any of the following activities: a) manufacturing credit products; b) advertising credit products; c) granting, intermediating or facilitating the granting of credit; d) providing advisory services; e) providing ancillary services to consumers; f) executing a credit agreement. (Art. 32, para. 1). The Court of Justice of the EU, within the framework of disputes on currency clauses (see judgments in cases C-26/13, para. 71–75; C-186/16, para. 50), developed the concept according to which the transparency requirement from Art. 4 and 5 of Directive 93/13 cannot be reduced only to the linguistic understanding of those contractual provisions, but rather it is necessary that the user can understand, or assess the economic consequences of such a provision (Terzić, 2022, p. 519).

Responsible behavior (conduct) includes the obligation of creditors (credit intermediaries) to refrain from practices that may negatively affect consumers, and above all to

conduct a remuneration policy for their staff that will not be contrary to the obligation to take account of the rights and interests of consumers, i.e., their possible vulnerability and difficulties in understanding the product, based on the information available to the creditor or the credit intermediary at the relevant time and on reasonable assumptions about risks to the consumer's situation over the term of the proposed credit agreement (Art. 32, para. 2 and Recital 76).

When establishing and applying remuneration policies for staff responsible for creditworthiness assessment, creditors are required to comply with the following principles: a) the remuneration policy is consistent with and promotes sound and effective risk management and does not encourage risk-taking that exceeds the level of tolerated risk of the creditor; b) the remuneration policy is in line with the business strategy, objectives, values and long-term interests of the creditor, and incorporates measures to avoid conflicts of interest (Art. 32, para. 3). The effective risk management is achieved by fulfillment of its goals. The goal of risk management is to identify existing and potential threats to the financial system, especially the banking sector, and to assess the system's ability to absorb them, while maintaining stability and the ability to function smoothly (Petrović et al., 2024, p. 81). Conflicts of interest arising from remuneration may be avoided by appropriate management, in particular by incorporating measures providing that remuneration is not contingent on the number or proportion of accepted applications for credit (Art. 32, para. 3 and Recital 76).

If creditors or credit intermediaries provide advisory services, Member States are obliged to ensure that the remuneration structure of the staff involved does not prejudice their ability to act in the consumer's best interest and is not contingent on sales targets (Art. 32, para. 4).

Apart from the set of obligations creditors and credit intermediaries need to comply with, their staff is also required to possess and keep up-to-date an appropriate level of knowledge and competence (minimum knowledge and competence requirements should be determined by national regulations) in relation to the manufacturing, the offering and the granting of credit agreements, the carrying out of credit intermediation activities and the provision of advisory services, as well as in relation to consumer rights in the area of their trade. If the conclusion of a credit agreement includes ancillary services, appropriate knowledge and competence are required in relation to those services (Art. 33). While knowledge and expertise requirements, apply to staff directly engaged in the performance of credit activities (front- and back-office staff, including management and, where appropriate, members of the board of creditors and credit intermediaries, who fulfil an important role in the credit agreement process), persons fulfilling support functions which are unrelated to the credit agreement process (e.g. human resources and information and communications technology personnel) fall out of the scope of the Directive (Recital 77).

Third party activities. – Independent debt advisory services should be made available to consumers who experience or might experience difficulties (e.g. delay in repayment of debt for more than 90 days) in meeting their financial commitments, with only limited charges payable for such services charges (in principle covering only operating expenses) (Art. 36, para. 1 in connection with Recital 81). Referral of consumers by creditors to debt counselling services is also mentioned in the case of rejection of a credit application (Art. 18, para. 9), as well as in the case where the consumer regularly uses a tacitly accepted overdraft (Art. 25, para. 2), in order to help the consumer find cheaper alternatives (Recital 63). In order to ensure consumers are effectively referred to accessible debt advisory services (preferably before the enforcement proceedings are initiated), creditors should have processes and policies in place for the early detection of consumers experiencing financial difficulties (Art. 36, paras. 2 and 3 in relation to Recital 81). The objective of debt advisory services is to help consumers facing financial difficulties by providing them with personalised and independent assistance (direct or indirect) which may include legal counselling, money and debt management as well as social and psychological assistance. Debt advisory services should be provided with only limited charges (in principle covering only operating expenses), preferably before the enforcement proceedings are initiated (Recital 81). Several main characteristics of independent debt advisory services may be identified: they are impartial; counselling is in the sole interest of the consumer; it is related to the consumer's financial situation; it takes into account the consumer's needs and preferences (Apan, 2024).

5. Restrictive and educational measures for the purpose of consumer protection

With the adoption of the Directive, a list of measures protecting consumers has been complemented with two new measures that, on the one hand, aim to prevent abuse, and, on the other hand, seek to ensure responsible borrowing and debt management through financial education of consumers.

In order to effectively prevent abuse, measures should be introduced to ensure that consumers cannot be charged with excessively high borrowing rates, annual percentage rates of charge or total costs of credit to the consumer, such as caps. In addition, Member States may prohibit or limit specific fees charged by creditors on their territory (Art. 31, paras. 1 and 2). According to the German case law, a credit agreement is immoral if there is a significant imbalance between the creditor and the borrower's obligations and the creditor abuses the economically weaker position of the borrower. A significant imbalance is usually found to exist where the contractually agreed interest rate doubles the average interest rate in the market, in which case the court applies a rebuttable presumption that the creditor has abused the borrower's weaker position (Cherednychenko, 2024, p. 256).

Introducing of the aforementioned measure (and the adoption of appropriate legal rules) could result in a

change in the position adopted in Serbian case law, according to which the bank has the right to collect costs and fees for banking services (it is not obliged to prove the structure and amount of costs) incurred in connection with the realization of the credit, provided that the bank informed consumer in the pre-contractual phase about the type and amount of all fees and other costs that fall on the burden of the consumer (Judgment of the Supreme Court of Cassation of the Republic of Serbia, Rev. 5483/2021 of 4 November 2021).

In the context of consumer education, with the aim of increasing consumers' financial self-awareness, it is necessary to develop and improve support measures for educating consumers on responsible borrowing and debt management. When designing and promoting such measures, Member States shall consult relevant stakeholders, including consumer organisations. In any case, consumers shall be provided with clear and general information on the credit granting process. The purpose of such information is to guide consumers, in particular those who take out consumer credit for the first time by means of digital tools (Art. 34).

6. Conclusion

From the first to the last EU Directive on consumer credit agreements, the need to increase the level of harmonisation of consumer credit rules was emphasized so that consumers would enjoy the same level of protection in all EU Member States. However, results were lacking for several reasons, primarily because certain provisions in those directives were not precisely formulated, which left room for countries to regulate the same issues in different ways, as well as because some aspects of the consumer credit market were not covered by the adopted directives. It seems that the newly adopted Directive, due to the large number of precisely defined terms and the introduction of new "pillars" of consumer protection, has ensured a significant increase in the level of harmonisation of consumer credit rules, as well as the level of protection of consumer interests. In this regard, out of particular importance are rules aimed to enhance consumer protection in terms of advertising of consumer credit, provision of relevant services, business conduct of creditors and credit intermediaries. In addition, specific measures are introduced aiming to effectively prevent abuse by limiting borrowing rates, annual percentage rates of charge or total costs of credit to the consumer, as well as measures aimed to ensure responsible borrowing and debt management through financial education of consumers. It may be expected that these measures trigger the change in the existing position in Serbian case law, according to which the bank has the right to collect all fees and costs, provided that consumer is timely informed about such costs and fees. With the adoption of newly introduced rules, payments, i.e., consumer debts, will not be able to exceed the limits established by regulations, nor will bank be able to collect certain fees, if they are prohibited.

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