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The background of regulating non-bank loan institutions in Poland

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Abstract

Non-bank loan institutions in Poland often face a bad reputation or a lack of trust, are compared to "parabanks" and frequently recognised as companies operating at the borders of the law. Despite their membership in the financial sector, until recently, public supervision had little control over loan companies and had little knowledge about the scale of their operations. The greater restrictiveness of the new regulations caused a slowdown in the development of loan companies. Changes such as the introduction of bank levy and the amendment to the Consumer Credit Act of 2016 had a significant impact on the financial results and the structure of products offered by loan companies. Along with the new regulations, however, there is doubt regarding whether these changes, which are intended to organise the market for non-bank loans, will actually lead to an exodus of loan institutions from the market and to significant limitation and financial exclusion on the part of Polish consumers.

Introduction

The subject of non-bank loan institutions raises controversy and provokes discussions among both borrowers and market observers. Loan companies in Poland often have a bad reputation or a lack of trust, are compared to "parabanks" and considered to operate at the borders of the law. Although they belong to the financial sector, until recently, public supervision exercised little control over them and had little knowledge of the scale of their activities[1]. Due to recent law changes, the issues of non-bank loan institutions (also known as loan companies) have become increasingly important.

The increased stringency of the new regulations has slowed down the development of loan companies. The amendment to the Consumer Credit Act of 2016 in Poland (*Ustawa o kredycie konsumenckim*) had a significant impact on the financial results and structure of the loan companies' products. Doubts have arisen as to whether the desired effect of the new regulations, which are (according to their originators) supposed to organise ("civilise") the market of non-bank loans, will not actually lead to their limitation and the financial exclusion of a part of the society which, due to its low creditworthiness, does not use banking services. The aim of this article is to present the most important changes in the legal regulation of loan institutions in Poland, to show the reasons for these changes and to assess their impact on the industry. The research method in the article is the analysis of literature.

The definition of a non-bank loan institution

In Polish law, the term "loan institution" was defined in August 2015 with the amendment to the Consumer Credit Act. According to this Act, "a loan institution is any legal entity that is a lender and does not fall into any of the following categories: (1) bank or credit institution; (2) cooperative savings and loans credit union (*Spółdzielcza Kasa Oszczędnościowo-Kredytowa*, SKOK); (3) entity whose activity consists of granting consumer credits in the form of the deferred payment of price or remuneration for the purchase of goods and services offered by it" (Journal of Laws 2019, item 1083, Art. 5, point 2a). From July 22, 2017, the Polish Financial Supervision Authority (*Komisja Nadzoru Finansowego*, KNF) keeps the Register of Loan Institutions[2]. Without a registration in the aforementioned register, a loan institution may not conduct business activity – otherwise, it may be fined up to PLN 500,000. Before July 22, 2017, the unofficial Register of Loan Companies was kept

[1] According to the data from the Polish Central Statistical Office (*Główny Urząd Statystyczny*, GUS), the total value of loans and credits granted in 2017 by the loan companies in cooperation with credit intermediaries amounted to PLN 45.9 bn. For comparison, receivables from the non-financial sector in Poland in 2017 totalled PLN 976 bn (Markowski & Tymoczko, 2018).

[2] On 30 January 2019, there were 430 entities in the register.

(without registration obligation) by the Polish Union of Loan Institutions (*Polski Związek Instytucji Pożyczkowych*, PZIP), formerly the Union of Loan Companies (*Związek Firm Pożyczkowych*, ZFP).

The codification of the "loan institution" concept had a positive impact on the image of these entities by making consumers aware that the services of loan companies are properly regulated and supervised. Deficiencies in nomenclature caused loan companies to often be mistakenly called "parabanks". By definition, parabanks are "institutions other than banks which perform deposit activities as their core business" (https://www.nbportal.pl/). Loan institutions cannot accept deposits from their customers and put them at risk; however, the funds for lending come from their own resources. Therefore, they are not parabanks. Loan companies are also called "shadow banking" institutions. Although this term may be negatively perceived by consumers (Domańska-Szaruga, 2015), loan companies meet this definition when they grant consumer credits, process liquidity transformation and maturity transformation (Markowski & Tymoczko, 2018).

Unfair practices of non-bank loan institutions

The non-bank loan institution sector has faced negative public opinion for years, which is also reflected in the literature: "Parabanks feed on the naivety of consumers, taking advantage of their helplessness" (Koćwin, 2016). Negative opinions were the result of many unfair practices of loan companies in Poland, which determined the tightening of legal regulations for this sector in 2015.

The reports of the Office of Competition and Consumer Protection (*Urząd Ochrony Konkurencji i Konsumentów*, UOKiK) are an objective source of information about improper practices on the non-bank loan market. In 2013, UOKiK examined the fees charged to the clients of loan companies (*Ponad 1,65 mln zł...*). At that time, high non-interest charges were allowed and this was a common practice. UOKiK focused on the truthfulness of information on the total cost of a loan and whether it complied with the Acts on counteracting unfair market practices and counteracting unfair competition.

The first unfair practice was not to provide the customer with information specified in the Consumer Credit Act (5 out of 30 companies did not do this). Most companies explained that this information was provided to the consumer only after the loan was paid out. Other infringements included: a lack of information about the interest rate of the loan, the total cost of the loan, the total amount to be repaid, the order in which the instalments were counted towards the repayment, etc. Some companies did not provide information about the duration of the contract, the date of payment of the loan, the annual percentage rate (*roczna rzeczywista stopa procentowa*, RRSO), the costs of debt collection activities, etc. There were credit agreements that also contained provisions significantly limiting the customer's rights, e.g. the right to change the content of the agreement without the consumer's consent, charging fees for contacting the customer, additional costs for terminating the agreement, etc. In 30 surveyed companies, UOKiK detected over 207 violations of law related to the loan agreements and information forms provided to clients (UOKiK, June 2013).

UOKiK also analysed advertisements broadcast by loan companies (e.g., on TV, radio, the Internet, on leaflets, posters and in the press)[3] in terms of the occurrence of unfair practices, i.e. in the active form – presenting false information or passive form – concealing true, desired information (UOKiK, May 2013). The main irregularity was the suggestion in advertisements (by means of the slogan "without BIK") that no analysis of the borrower's credit risk is made upon granting a loan. The president of UOKiK stated that if companies do not check their clients in the Credit Information Bureau (*Biuro Informacji Kredytowej*, BIK)[4] and assess credit risk in a different way, they deliberately mislead the recipient by suggesting that they grant a loan to anyone who requests it. A frequent practice has been to misrepresent the loan company as the "cheapest" or "the only one available" on the market and to conceal key information about the cost of borrowing (e.g. by a short informational display in TV commercials or using small print). In total, 23 of the 25 companies surveyed had breached fair advertisement practices.

The impact of law changes on the non-bank loan institutions in Poland

The idea of introducing stricter regulations concerning the market of non-bank loans is part of the global trend to increase supervision of the financial market, which was ignited by the subprime crisis. The main reasons for regulating consumer loans (Waliszewski, 2017) are:

- the asymmetry of information between the lender and the borrower, leading to adverse selection (before the conclusion of the contract) or to the temptation of fraud (after the transaction);
- high transaction costs;
- an unequal legal position between a loan company and an individual consumer;
- the relevance of the loans for the economy from a macroeconomic and microeconomic point of view; and
- the occurrence of client interest breaches by loan firms.

The "closing" of legal loopholes in the Polish financial sector was addressed, among others, by the Financial Stability Committee (ZPP, 2015). The Consumer

[3] The specificity of the loan institution industry was that few companies used TV spots at that time. Most lenders preferred marketing channels such as the Internet and the press. Interestingly, many of them advertised anonymously – not giving the name of the company, but using slogans such as "momentary loans", "no BIK" (no creditworthiness check in any credit agency), "quick money transfer", etc.

[4] BIK acts as a credit reporting service.

Credit Act, amended in 2015, defines the notion of a loan institution, its legal form (a capital company), the minimum amount of share capital (PLN 200,000) and limits on the punishability of the management board or supervisory body members.

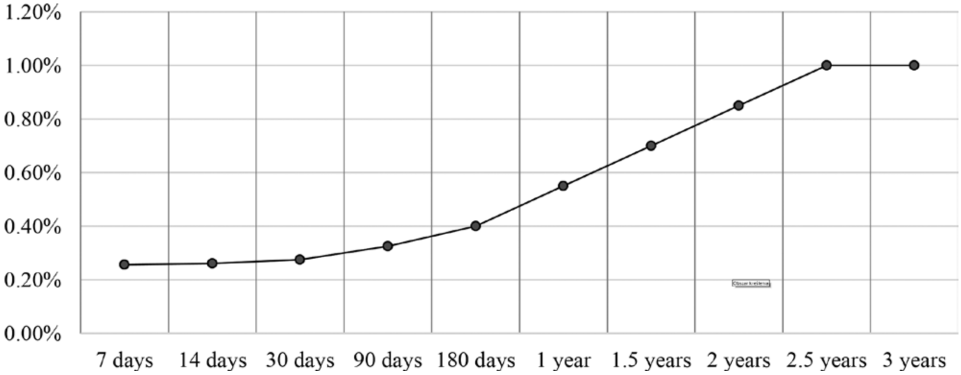

Figure 1. Maximum level of the total cost of a loan as a % of the loan amount

Source: Authors' own study on the basis of the Act that amended the supervision over financial market and other acts, along with the report *Rynek firm pożyczkowych* (Miliński & Żmudzin, 2016).

Since March 2016, amendments to the Civil Code and the Act of 12 May 2011 on Consumer Credit have been in force, introducing the maximum value of interest on granted loans and credits. If the interest is not specified, statutory interest amounts to the National Bank of Poland (NBP) reference rate +3.5 percentage points (p.p.). Maximum interest may not exceed twice the amount of statutory interest (Journal of Laws 2015, item 1830, Art. 2, point 1). If the debtor does not repay the loan on time, the creditor may demand interest for the duration of the delay. If interest for delay is not given in the contract, statutory interest for delay shall be due at the NBP reference rate increased by 5.5 p.p. Maximum interest for delay may not be higher than twice the above-mentioned statutory interest for delay (Journal of Laws 2015, item 1830, Art. 2, point 2). Non-interest-bearing costs (hitherto constituting a significant part of the loan cost) are limited to 25% of the total loan amount and 30% of the loan amount per year (Journal of Laws 2019, item 1083, Art. 36a). Therefore, non-interest-bearing credit costs over the loan term cannot exceed the total loan amount, as shown in Figure 1.

In summary, loan companies may now charge consumers 10% of the annual p.p. and an additional amount of up to 55% of the loan value per year, while the maximum amount of non-interest charges may not exceed the loan value. The changes in the law are summarised in Table 1.

The changes above enforced amendments to the offers of loan institutions. According to the ZFP survey, more than half of the surveyed companies had to change

Table 1. Changes in the law in the period 2015–2017 affecting non-bank loan institutions

Date of entry into force	Legal basis	Fundamental legal changes
11 March 2016	Act of 5 August 2015 amending the Act on the supervision of the financial market and certain other acts (anti-usury act, *ustawa antylichwiarska*)	– the definition of credit institution – requirements for the amount of share capital and the form of business activity – prohibition of the punishability of persons exercising control over the company – maximum amount of non-interest-bearing credit costs – maximum amount of total credit costs
1 February 2016	Act of 15 January 2016 regarding the tax on certain financial institutions	– "bank levy" refers to loan institutions with assets over PLN 200 m
22 July 2017	Act of 23 March 2017 on Mortgage Credit and Supervision of Mortgage Credit Intermediates and Agents	– Public Register of Loan Institutions at the Polish Financial Supervision Authority

Source: Authors' own study.

their loan offer within three months after the change of law (ZFP, 2016). In 2016, the share of short-term loans offered decreased by 12 p.p.[5] and the share of long-term loans increased by 10 p.p. y/y (Kozieł, 2017). Previously, the main revenues of loan companies came from very high non-interest-bearing costs (e.g. costs of outcalls / home credit services). The reduction of loan costs resulted in the lower profitability of outcalls, whose share in the offer of loan companies decreased[6], giving way to Internet loans with much lower service costs but a higher loss ratio (Markowski & Tymoczko, 2018). It is noteworthy that the loss ratio of the loan portfolio (share of unpaid receivables) in the loan sector is much higher than in banks[7], which justifies the higher total loan costs in relation to the banking sector. Loan companies try to cover their losses due to write-offs of non-performing assets[8], mainly with non-interest-bearing costs. Further statutory reductions of these costs may make the lending business unprofitable[9] or lead to a significant reduction of scale.

The reduction of maximum loan costs and the extension of the average repayment period led to a decrease in the revenues of loan companies. Up to 42.5% of the surveyed companies confirmed that their financial situation deteriorated (ZFP, 2016). The CEO of Provident's owner announced that the direct reason for the decrease in the company's revenues in 2016 by 6% y/y were legislative changes, which forced a reduction in employment and cost optimisation, etc. (http://media-provident.pl, 2017).

[5] The "500+" programme, introduced by the Polish Government in April 2016, could also have contributed to the decline in demand for short-term loans.

[6] In 2010, 73.5% of loans granted by non-bank loan companies were home-serviced loans and in 2017, this share decreased to 26.4% (Markowski & Tymoczko, 2018).

[7] Loans with late repayment of instalments (exceeding 90 days) constituted 12.1% of the number of loans granted in 2016–2017 by Polish non-bank loan companies; in the case of Polish banks, the ratio for cash loans amounted to 4.3% (Markowski & Tymoczko, 2018).

[8] Non-performing loans and credits are called "NPLs".

[9] The average return on assets (ROA) of the non-bank loan company sector in 2017 amounted to 3.20% and was still higher than that of banks (0.8%) (Markowski & Tymoczko, 2018; PZIP & FRRF, 2019).

The law changes also affected the strategy of managing overdue loan portfolios. Prior to the introduction of the loan cost limit, due to late repayment, it was worthwhile for lenders to process debt collection and additionally charge customers for this action. After the law changed, a new trend emerged among non-bank loan companies: securitisation[10].

The legislator expected that the changes in the law would result in lower loan costs, greater confidence in the lending sector and fewer abuses and complaints from consumers (Waliszewski, 2017). However, according to some experts, the same results could have been achieved by other actions, e.g. (Szpringer, 2015):

– increasing the information requirements of financial institutions *vis-à-vis* consumers;
– reducing social exclusion;
– implementing measures to prevent the over-indebtedness of society; and
– promoting the free market while protecting consumers' rights.

In December 2016, the Ministry of Justice published a draft amendment to the Polish Penal Code that provided a limit for non-interest-bearing loan costs of 20% per year (instead of 55%). In the explanatory memorandum to the draft law amending certain laws to counter usury, it was written that usurious loans, which prey on poverty and human drama, and often also on the credulity of the elderly people, remain a shocking social problem (*Uzasadnienie do projektu ustawy…*). At the time of this article's publication, these changes, considered by the industry to be very controversial, had not yet entered into force[11]. For a long time, the Polish government had proposed the reduction of non-interest-bearing loan costs to 45% (from 55%); but on 18 June 2019, it adopted a surprising bill restoring the previously planned limit of non-interest-bearing costs of 20%. The Polish Union of Loan Institutions declared that the proposed regulations would eliminate the legal and supervised lending market in Poland and would also cause (Bednarz, 2019):

– the development of non-contractual loans in the grey market and pawnshops for the most desperate consumers;
– attempts to circumvent the limit by complicated legal constructions or foreign structures; and
– increasing financial exclusion by cutting consumers off from the possibility of taking out a legal, small short-term loan that banks do not offer due to insufficient creditworthiness.

[10] In the Polish reality, the securitisation of NPLs consists of their sale (for a fraction of the nominal value) to non-standard closed-end securitisation funds (NS FIZ) serviced by debt-collecting companies. The main sellers of non-performing loans in Poland are banks, which may recognise tax deductible costs in such a sale only if the buyer is a securitisation fund.

[11] The project was considered very restrictive and that its implementation could lead to paralysis of the loan market. The potential effects of these changes were evidenced by the reactions of stock market investors: shortly after the publication of the draft bond, the price of IPF Investments Polska bonds (a company related to Provident Polska) of the IPP0620 series (with a total nominal value of PLN 200 m) decreased from 97% to 73% of the nominal value.

Discussions on the regulation of the market in credit institutions often raise the issues of the numerous limitations of credit costs and stricter penalties for credit companies, but almost completely ignore the need for universal consumer education and raising consumers' (legal) risk awareness. The low level of financial and legal knowledge in society causes consumers to more often fall into the so-called "debt spiral" when the costs of borrowings exceed the consumers' income. The most common reason for this is the inappropriate, often ill-considered consumption of the loan institutions' offer. This phenomenon is often exacerbated by a pushy marketing message from loan institutions, emphasising easier access to loans than in banks, but not showing the risk associated with the potentially higher costs of these loans.

Legal regulations for loan institutions in selected European countries

In 2014, maximum credit cost regulations existed in most European countries. According to the World Bank, interest rate caps on loans were introduced to protect consumers from the unfair practices of lending companies, to prevent them from falling into debt and to reduce the problem of financial exclusion (Maimbo & Henriquez Gallegos, 2014). It seems that changes in Polish law, such as limiting the maximum credit costs, do not result from the specificity of the local market, but are part of a common trend, examples of which are presented in this chapter.

In 2015, Slovakia banned cash loans by eliminating the possibility of home servicing (www.bankier.pl, 2015) and introducing the obligation for loan companies to hold licences granted by the National Bank of Slovakia and restrictions on the legal form and minimum capital[12]. Employees of loan companies may maintain direct contact with customers only on working days until 6 p.m. (Szołucha, 2015). Provident Financial board member Aleš Janek stressed that the withdrawal of cash loans would have a negative impact on the situation of the lending sector because many customers did not have or did not want to use a bank account or wait any longer for a loan (https://www.investujeme.sk, 2015). A year after this statement, International Personal Financial, the owner of Provident Financial, decided to completely withdraw from the Slovak market (*Provident Financial leaves…*, 2016). The regulatory changes caused the withdrawal of approximately 80% of loan companies from Slovakia (Instytut Staszica, 2019).

In the United Kingdom, the law for loan companies has also been tightened. British institutions must have a licence obtained from the Office of Fair Trading – British Office of Competition and Consumer Protection (Szołucha, 2016). In 2015,

[12] Legal regulations introduced in July 2017 for the Polish market are similar to some restrictions operating in Slovakia, e.g. the establishment of a register of loan institutions, the introduction of a minimum limit on the amount of share capital and a limitation of legal forms of conducting business activity by loan institutions to joint-stock companies and limited liability companies.

the British Financial Conduct Authority (FCA) introduced limits on the maximum cost of loans to 12 months, for a maximum of 100% of the loan amount, and the daily cost – a maximum of 0.8% of the loan amount. Collection fees for late repayment may amount to a maximum of GBP 15 (Szelągowska, 2015).

In Latvia, there is no limit to the maximum cost of a loan, but since 2011, loan companies have to hold a licence from the Latvian Consumer Protection Centre, at a cost of approximately EUR 70,000. The minimum share capital of a loan company is EUR 426,000. Because of the new regulations, the number of companies operating in the Latvian loan market has decreased (Szołucha, 2016).

According to the German banking law (*Kreditwesengesetz*), loans can only be granted by banks. However, there are many credit intermediaries in Germany that provide financial advice and mediate loans (Szołucha, 2016). The maximum loan costs are not legally sanctioned in this country, but the emphasis is on transparency and the comprehensibility of credit agreements. However, it is assumed that the maximum cost of a loan is up to twice the average consumer loan rate calculated by the ECB (Szelągowska, 2015).

Conclusions

The specificity of the loan company market is that the regulatory environment, rules of conducting and financing operations and the method of sale are completely different for loan companies than for banks (even though their loans resemble bank loans). Until recently, this market was not supervised, which, when combined with unethical actions taken by some entities, cast a shadow over the reputation of the entire market. Legislative control became a challenge for those loan institutions that had based their activities on the vision of quickly obtaining the highest possible margin from loans.

The trend of tightening the regulation of loan institutions, mainly in terms of maximum costs and interest rates, is global. The reasons for the tightening of the law were the unfair practices of some loan institutions, very high loan costs, a lack of clear information on the structure of loans and the violation of consumer rights. Although the new regulations were supposed to benefit consumers (e.g. by lowering the maximum cost of loans and protecting them from usury and falling into a "debt spiral"), they may result in a significant drop in the profitability of the lending industry and a decrease in the supply of loans, which paradoxically may further exacerbate the financial exclusion of those members of the population who will not be financed by banks due to their low creditworthiness. An example of overregulation is the ban on cash loans introduced in Slovakia in 2015 that caused the exit of Provident, the largest local loan company, from this country. Unfortunately, in the discussion concerning non-bank loans, it is often overlooked that the origins of social problems related to over-indebtedness are not usually caused by insufficient regulation of the loan company market, but mainly by the lack of sufficient financial and legal education of the consumers.

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