

Credit Activity Legal Regulation of Commercial Banks

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Abstract: The purpose of this study is to review the changes and prospects of the legal regulation of bank lending in Ukraine based on the current national legislation comparing with the legislation of the European Union and Germany. In this case, the study of existing legal norms is the leading method taking into account the comparative legal aspect. The article presents a brief analysis of the fundamentals of public and private law regulation of bank lending in Ukraine, including in comparison with the legislation of the European Union and Germany, as well as, based on the results of the study of scientific literature and materials of international organizations, the theoretical basis of the transformation of European lending legislation shown the concept of "responsible lending" based on behavioural economics in recent years. At the same time, it was revealed that the new Ukrainian legislation contained some unexplained contradictions that might complicate law enforcement. In addition, many norms require modernization in connection with the adoption of new laws in the main normative acts – the Civil Code of Ukraine and the Economic Code of Ukraine.

Keywords: Credit agreement, legal norms, consumer lending, finance, economics.

JEL Classification: E51, K40.

1. INTRODUCTION

According to the generally accepted international system of national accounts, five groups of economic entities are distinguished for the purposes of macroeconomic analysis: non-financial corporations; financial corporations; state enterprises and institutions; households; non-profit organizations. Non-financial and financial corporations and households are the direct driving force of economic development. In credit relations, non-financial organizations and households (individuals) oppose financial corporations, among which banks are the most influential. These two groups of credit relations correspond to two groups of legal norms: general credit and consumer credit principles. This classification has become most relevant in recent decades. The importance of credit cannot be overestimated for non-financial corporations. Based on objective statistical analysis in recent years, it has been shown that such indicators as the volume of capital investments, the volume of products produced, average wages have increased in Ukraine, along with the growth of credit funds allocated to these recipients and a simultaneous decrease in the number of employed people, due to the increase in automation of production (Kremen et al., 2020).

Individuals (the household sector) make up an important part of the economy, being the main consumer of the created product. Partial financing of this sector through lending plays an important role in maintaining the stability and growth of the economy. This becomes both more problematic and more significant during periods of global and regional economic crises. Since the second half of the 20th century, a special regulation of lending with the participation of individuals has been formed in Western countries. To date, the main European norms are included in 2 documents – Directive 2008/48/EC of the European Parliament and of the Council "On credit agreements for consumers and repealing Council Directive 87/102/EEC" (2008) and Directive 2014/17/EU of the European Parliament and of the Council "On credit agreements for consumers relating to residential immovable property and amending Directives 2008/48/EC and 2013/36/EU and Regulation (EU) No 1093/2010" (2014). Ukraine has adopted Law of Ukraine No. 1734-VIII "On consumer lending" (2017), taking into account the provisions of European legislation. In Germany, the earlier norms of the special law in force were incorporated in the Bürgerliches Gesetzbuch (2002) during the reform of the law of obligations. The literature notes the enormous impact that the financial crisis of 2008, provoked by the crisis in the mortgage lending market, had on lending norms. If previously attention was focused only on the obligation of banks to inform consumers about the full scope of financial services provided

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(including the number of commission deductions), now the legislator has begun to take into account the behavioural characteristics of consumers – individuals (Kotz, 2017).

In contrast to earlier ideas about rational choice, conceptual approaches based on behavioural economics have prevailed, the idea that an individual can be subject to impulsive behaviour, often under the influence of aggressive advertising (Prouza, 2013). Legislative regulation should neutralize the irrational aspect, shifting part of the responsibility of the incompetent and acting under the influence of different circumstances of the consumer to the more competent side of the credit relationship. This generates a certain conflict since the prudent attitude of banks to the choice of customers leads to limited access to the product they offer (Ramsay, 2015). Bankruptcy of individuals is also part of the new policy of the European Union (EU), allowing individuals to clear their debts and quickly, within 3-5 years, fully return to economic relations. Laws on this procedure have been introduced throughout the European Union. The Code of Ukraine on bankruptcy procedures (2018) regulates the issue of insolvency of legal entities and regulates the bankruptcy procedure of individuals. Due to the improvement of legal support, bank lending retains its advantage, since responsible lending is combined with informed borrowing. The lack of regulation in other areas, such as peer-to-peer lending, creates increased risks for both lenders and borrowers (Feretti, 2021), which does not contribute to the stability of turnover and the growth of investments in these areas.

The purpose of this study is to review the changes and prospects of the legal regulation of bank lending in Ukraine based on the current national legislation comparing with the legislation of the European Union and Germany.

2. METHODS AND MATERIALS

To achieve these goals, normative sources of law and theoretical research on the topic were studied. The systemic features of the legal regulation of lending, which historically relates primarily to the practice of commercial banks, are reflected in the public law norms of Law of Ukraine No. 2121-III “On banks and banking” (2000) and banking activities and by-laws adopted by the National Bank of Ukraine (NBU) aimed at developing the provisions of the law and fulfilling Ukraine's international obligations to the World Bank. Following the Association Agreement between Ukraine, of the one part, and the European Union, the European Atomic Energy Community and their Member States, of the other part (2014), Ukraine has undertaken to bring legislation into line with the European one. In this regard, it is of interest to follow the progress and parameters of the of the legal regulation convergence of bank lending with the norms of the EU and European countries. In recent years, there has been a big shift in the public regulation of bank lending towards strengthening requirements.

Aimed at maintaining the economic sustainability of both banks and borrowers, as reflected in Basel III (2010), as well as in the EU documents regulating the financial viability and activities of credit institutions in the field of consumer lending. All these novelties in the West have received a theoretical justification in the form of the concept of “responsible lending”. Although Ukrainian legislation is being actively

improved, following the vector set by European countries; sufficient attention has not yet been paid in the Ukrainian legal literature to the study of the impact of the new paradigm on the legal regulation of lending. At the same time, it is necessary to see the connection between the current situation in the regulation of the parameters of banks' activities, between changes in economic relations and the resulting need to adjust private legal regulation. Private legal regulation of loans and credits develops less dynamically in Ukraine. As for consumer lending, the situation is relatively favourable.

However, bank lending is outside the relations with consumer citizens, i.e., lending to economic entities, and is based on the little-updated norms of the Civil Code of Ukraine (2003) and the Commercial Code of Ukraine (2003). At the same time, the Civil Code of Ukraine (2003) is an example of classical dispositive regulation, and the norms of the Commercial Code of Ukraine (2003) need additional analysis in terms of their regulatory value. At the same time, using the example of a separate institution, without going into a long-term discussion between supporters and opponents of the concept of economic law, we can draw some conclusions. A systematic analysis of the listed legislative acts of Ukraine gives a general idea of the state of legal regulation of bank lending and the prospects for its development. The comparative analysis uses the norms of European law (Directive 2008/48/EC..., 2008). When studying the topic, it was taken into account that the EU norms are framework, do not cover private legal regulation and other detailed aspects, therefore, German legislation was involved for a comparative study of the norms on the legal regulation of the status of banks and the credit agreement.

3. RESULTS

In contrast to the legally related loans, a significant array of public law norms is a feature of the legal regulation of bank lending. The NBU and commercial banks form the institutional basis of the banking system of Ukraine. The legislation of Ukraine determines a bank based on formal signs of a license and inclusion in the State Register (Article 2 of Law of Ukraine No. 2121-III..., 2000). In the EU, the relevant framework regulation applies to credit institutions, this category is defined functionally (accepting deposits, issuing loans) since the status of historically established financial institutions is determined in detail by the norms of the national legislation of EU members. Thus, in Germany, following Gesetz über das Kreditwesen (1998), there are various types of credit institutions, including banks (while in § 39 Gesetz über das Kreditwesen (1998) it is indicated that the term “bank” is used to denote business purposes or for advertising purposes), cooperative (people's) banks, savings banks (cash desks) and some other organizations (Sinn and Schmundt, 2017). Prudential (preventive) regulation and supervision are the main functions of the regulator in the banking system. The EU provides for the distribution of powers between the central bank and a special supervisory banking authority. At the national level, the powers may be concentrated in the hands of the central bank (Italy, Spain, Portugal) or a non-bank supervisory authority (Austria, Denmark, Sweden), or the powers are distributed between the central bank and the supervisory authority, as is the case

in the United States of America, Switzerland, Germany (Panaseiko and Guba, 2018).

In Ukraine, the NBU is the only regulator. Recently, laws have been adopted that strengthen its independence and expand its powers to fulfil Ukraine's obligations to the International Monetary Fund (IMF) (Law of Ukraine No. 79-IX..., 2019; Law of Ukraine No. 590-IX..., 2020). In recent years, the doctrine of “responsible lending”, generated by the 2008 debt crisis, has become the basis for many restrictions in bank lending. Its supporters believe that the availability of credit is fraught with excessive debt burden for debtors. Consequently, the creditor (bank), which is a more competent participant in the credit relationship, must be charged with the duty of verifying the financial solvency of the debtor and a sound assessment of the risks of the transaction. Debtors often overestimate their capabilities, which leads to over-indebtedness and negatively affects economic relations. An effective system of regulation of responsible lending should cover five main parameters: institutional mechanisms for the protection of debtors' rights; disclosure of information that should be understandable, complete and comparable; promotion of relevant business practices; compensation for damages to consumers; improvement of consumers' capabilities in the field of proper assessment and selection of financial opportunities (PROUZA, 2013). As can be seen from the above, most of the requirements imply consumer credit, but the creditworthiness of enterprises may pose no less a threat, which affects the appropriate regulation.

The credit and investment portfolio of Ukrainian banks consists of such elements as loans granted to economic entities (the sector of non-financial corporations) – 68.4% of the total credit and investment portfolio; loans to individuals (households) – 28.6%; loans to state administration bodies and non-bank financial institutions – 3.0%. Profitability is a component of ensuring the financial stability of banks. The period from 2015 to 2019 was unprofitable for Ukrainian banks: in 2015 – 0.449 billion euros, in 2016 – 0.266 billion euros. In the period from 2017 to 2018, the situation improved, but in 2019 the loss of the banking sector amounted to 1.83 billion euros, while the return on assets was -4.07%, the return on capital was (-30.46%). Banks of the 1st group, which lent large-scale projects in Ukraine, had the greatest impact on the negative financial result. According to the NBU, the share of negatively classified debt in the total credit debt of banks in 2018-2019 increased from 12.9% to 19.0%. In particular, overdue loans increased by 92.5% (by 2.26 billion euros) to 4.69 billion euros (13.5% of the total amount of loans). Since 2015, there has been a decrease in the share of loans in total assets, which amounted to 76.4% in 2019, and 80.1% in 2015 (Trusova et al., 2021).

Bank investment lending has a great influence on the real sector of the economy of Ukraine. An increase in the amount of lending by banks to non-financial corporations leads to an increase in GDP, the volume of industrial products (goods, services), exports, capital investments, the number of employees involved in scientific research and development, the number of the unemployed population, and the average monthly salary. At the same time, the increase in the volume of lending by banks to non-financial corporations leads to a decrease in the volume of the employed population, which

may be evidence of the intensification and automation of production as a result of the use of credit funds (Kremen et al., 2020).

A number of the most significant prudential requirements date back to Basel III (2010) regarding capital adequacy and sustainability, liquid coverage ratio, leverage ratio (Tsarikova, 2017). Some of the regulatory documents may be of direct importance for the possibility of concluding a credit agreement. In particular, the NBU has established the procedure for determining credit risk for banking transactions (Regulations on determining ..., 2016). Articles 49, 53-56, 60 of Law of Ukraine No. 2121-III “On banks and banking” (2000) contained special rules regulating bank lending. The main ones include:

- prohibition on granting loans by banks for the purchase of their securities, shares of other banks and the provision of subordinated debt to other banks;
- prohibition on indirect lending to bank-related persons, restrictions listed in Article 52 of Law of Ukraine No. 2121-III “On banks and banking” (2000) apply to direct lending;
- the need to check the solvency of borrowers and collateral, compliance with the requirements of the NBU on risk assessment;
- issuing a blank (unsecured) loan by banks only if economic standards are met;
- prohibition on the inclusion in the contract of the condition on the gratuitousness (interest-free) of the loan, except in cases provided for by law;
- the right of banks to forcibly write off funds to repay the debt under the credit obligation from the debtor's accounts in this bank, if this is provided for by the contract;
- prohibition of unfair competition (including underestimation of interest rates and commission payments);
- prohibition of false advertising;
- the obligation to check potential debtors according to the NBU Credit Register (since 2018);
- the obligation to preserve bank secrecy.

As can be seen from the above, many measures are aimed primarily at maintaining the stable operation of the bank itself (a ban on issuing interest-free and unsecured credits, the right to compulsory write-off), others are aimed at a balanced risk assessment and informing the potential borrower. In the private legal regulation of credit relations, 2 groups of norms can be distinguished according to the subject composition of the participants in the relationship: credits to economic entities; credits to individuals. The regulation of credits issued to economic entities can be considered the freest. Here debtors can be guided by the norms of the Civil Code of Ukraine (2003) and Commercial Code of Ukraine (2003). When issuing consumer credits, banks and debtors-individuals follow, first of all, the special norms of Law of Ukraine No. 1734-VIII “On consumer lending” (2017). In the EU, a credit agreement with the participation of econom-

ic entities is not regulated at the union level. Directive 2008/48/EC of the European Parliament and the Council “On credit agreements for consumers and repealing Council Directive 87/102/EEC” (2008) and Directive 2014/17/EU of the European Parliament and the Council “On credit agreements for consumers relating to residential immovable property and amending Directives 2008/48/EC and 2013/36/EU and Regulation (EU) No 1093/2010” (2014) establish some requirements concerning consumer relations only. In the Civil Code of Ukraine (2003), a credit agreement is traditionally contrasted with a loan one, the differences are generally presented in Table 1.

Table 1. Comparison of a Credit Agreement and a Loan Agreement Under the Legislation of Ukraine

Credit Agreement	Loan Agreement
Consensual	Real
Written	May not be written
Issued at interest	Can be interest-free
Cash is the object	Money or things are the objects defined by generic characteristics

Such properties as repayment and urgency are inherent in both a loan and a credit. The lower rigidity of the loan structure in comparison with the credit one is explained by its purpose for regulating relations between citizens. After the reform of the law of obligations, *Bürgerliches Gesetzbuch* (2002) does not single out a credit agreement as a separate type in which a credit institution issuing credits is a party. A loan agreement is a common construction for all types of provision of funds on a refundable basis. A consensual loan construction (previously there was no specifics in the description of this type of contract) became a novelty of § 488 of the *Bürgerliches Gesetzbuch* (2002). Shifting away from the real loan agreement can be traced in other legal systems. A consensual loan agreement is recognized by the Civil Code of the Russian Federation (1994) (for the case when a loan is issued by a legal entity). The specificity of its subject composition is the main difference between a credit agreement and a loan one under Ukrainian law. The lender under a credit agreement may be a bank or other financial institution. Banks are created in the forms of joint-stock companies and cooperative banks (Article 6 of Law of Ukraine No. 2121-III..., 2000). Article 1 of Law of Ukraine No. 2664-III “On financial services and state regulation of financial services markets (2001) specifies a financial institution as a legal entity providing financial services following the law.

A credit agreement, including a consumer credit agreement, is not public, despite the fact that most of its terms may be contained in forms. According to the above provisions of the law, banks are obliged to be guided by the risk assessment system when issuing a credit. Therefore, it is impossible to oblige banks to conclude a credit agreement under which there are risks of non-repayment of the credit. The norms of § 2 of Chapter 71 of the Civil Code of Ukraine (2003) on credit agreements are concluded in 7 articles and are generally stable and traditional, the only exception is Article 1056-1, which has been updated several times. It provides for the

regulation of the credit rate: it can be fixed (unchanged throughout the entire term of the contract) or variable in accordance with changes in the indicator agreed by the parties and must meet certain requirements, within the limits of such changes. Articles 345-349 of the Commercial Code of Ukraine (2003) are also concern with the legal regime of credit agreements concluded within the framework of economic activity. These norms describe credit operations, lending procedures, forms and types of credits, the concept of credit control by banks and their credit resources.

Therefore, it is impossible to classify them as regulatory or protective norms since they contain neither prohibitions nor prescriptions. They are hard to lay down rules of conduct for the participants since they describe separate phenomena (the concept of credit transactions, credit classifications) and common practice (providing banks with documents, bank control). As an example, Part 2 of Article 345 of the Commercial Code of Ukraine (2003) provides that the terms of a credit agreement include the purpose, amount and term of the credit, conditions and procedure for its issuance, etc. Based on the wording, it is impossible to determine whether this rule is imperative or dispositive, and therefore whether the listed conditions relate to the essential conditions of a credit agreement within the meaning of Article 180 Commercial Code of Ukraine (2003) and Article 638 Civil Code of Ukraine (2003). Law of Ukraine No. 1734-VIII “On consumer lending” (2017), as emphasized in its Article 2, pursues the goal of harmonizing Ukrainian legislation with EU norms and international standards, and fully meets this goal, including all the principal provisions of Directive 2008/48/EC of the European Parliament and of the Council “On credit agreements for consumers and repealing Council Directive 87/102/EEC” (2008) and Directive 2014/17/EU of the European Parliament and of the Council “On credit agreements for consumers relating to residential immovable property and amending Directives 2008/48/EC and 2013/36/EU and Regulation (EU) No 1093/2010” (2014): the obligation of a creditor to assess the solvency of a debtor, a free look period, etc.

4. DISCUSSION

Bank lending is one of the foundations of the modern economy, so the importance of public law regulation in this area increases every year, with every economic crisis. At the same time, the financial stability of banks is of great importance, which is determined not only by legal requirements (the establishment of a risk assessment system, a certain management structure) but also by special economic criteria (capital, liquidity, leverage ratio). The relevant regulations and the stages of their introduction in Ukraine are beyond the scope of this study since they are determined by the basic economic circumstances specific to the country. The literature states the fact of a slow convergence with international requirements (Tsarikova, 2017), which reflects the need for banks to increase capital, which directly depends on the economic well-being of the country and on the consolidation processes of banks. There is no doubt that the associated full implementation of Basel III (2010) will contribute to the stability of the banking system of Ukraine. With less confidence, we can say that this will improve the situation with bank lending, which is undergoing difficulties. Progress is

expected due to the write-off of bad debts on credits, the transition to the national currency of debt, the reduction of interest rates on credits, the introduction of new rules for dealing with debt (Kharabara, 2017).

Structurally, the banking system of Ukraine meets international requirements. However, strengthening the status of the NBU, expanding its competence as the sole body of banking supervision should correlate, if necessary, with self-restraint. Harmonization in such a situation implies a proportional strengthening of the mechanisms for protecting banks from the arbitrariness of a single regulator. Modernization of norms is overdue in the private legal regulation of credit and loan. The terminological differentiation of loans and credits dates back to the times of low legal and general literacy of the population emphasizes the differences between business and household loans. In fact, it is a tribute to tradition. The literature suggests that a credit agreement is an independent civil law agreement, and the subsidiary application of the loan rules provided for in part 2 of Article 1054 of the Civil Code of Ukraine (2003) is a technique of legislative technique (Babaskin, 2019). However, using the example of the German law and order, it can be seen that the difference between a credit and a loan is not so significant, but only terminological, and is eliminated without fatal legal consequences. On the contrary, regulation becomes more economical. This is confirmed in practice: paragraph 2 of Part 2 of Article 3 of Law of Ukraine No. 1734-VIII "On consumer lending" (2017) extends its effect to reimbursable (i.e., interest) loan agreements.

One of the disadvantages of the separate existence of a credit and a loan in the Civil Code of Ukraine (2003) was that the detailed regulation of fixed and variable interest rates did not affect the rules on the loan agreement in any way. At the same time, the reduction of arbitrariness could have a positive impact on the stability of these kin legal relations. The law does not provide for a consensual loan and this is more significant. Thus, the legislator forces under the contractual regulation of the future issuance of a loan to put forward a speculative and not corresponding to the intentions of the parties, the design of the preliminary contract. The obligation to issue a loan, which the parties wish to consolidate, in this case is deprived of legal security without any grounds, which does not contribute to the stability of civil turnover. The economic and legal regulation of credit needs to be transformed. As the analysis of Articles 345-349 of the Commercial Code of Ukraine (2003) shows, the legislator has not quite decided on the purpose of legal regulation of economic lending. The concepts, lists, descriptions given by the legislator do not find any application, since there are no regulatory norms applying these concepts and classifications in the Commercial Code of Ukraine (2003). They are not applicable in other regulations, as will be shown below.

The task of legislation in the sphere of regulating the economy is to create stable foundations, which is achieved by a clear separation of private and public law norms (Knipper, 2012). The consolidation of repayment, the fee for credit, collateral, liability for non-fulfilment of obligations is the private legal basis for credits. The Civil Code of Ukraine (2003) copes with these tasks or should cope with them, there are no specifics for economic legal relations here, it is

for this reason that the merger of loan and credit structures took place in Germany. In the legislation of Ukraine, there are not only loan and credit agreements under the Civil Code of Ukraine (2003) but also special regulations in the Commercial Code of Ukraine (2003). The norms of the Commercial Code of Ukraine (2003) on credit look informational, not regulatory. This approach seems unreasonable, since the law should be the regulator of relations, and not constitute (name and create) legal relations. Thus, the concept of credit transactions has undergone significant changes in Article 49 of Law of Ukraine No. 2121-III "On banks and banking" (2000) compared to the one given in Part 1 of Article 345 of the Commercial Code of Ukraine (2003) and differs significantly from the definition contained in subparagraph 18 of paragraph 5 of Regulations on determining the amount of credit risk by banks of Ukraine for active banking operations (2016) (Table 2).

Table 2. The Concept of Credit Transactions in the Legislation of Ukraine.

Commercial Code of Ukraine (2003) (Part 1 of Article 345)	Credit operations involve placing funds raised by legal entities (borrowers) and citizens by banks on their behalf, on their terms and at their risk. Credit is recognized as banking transactions defined as such by Law of Ukraine No. 2121-III "On banks and banking" (2000).
Law of Ukraine No. 2121-III "On banks and banking" (2000) (Article 49)	This article considers as credit operations those ones specified in paragraph 3, Part 3 of Article 47 of this Law of Ukraine No. 2121-III "On banks and banking" (2000) (placement of funds and bank metals attracted to deposits (deposits), including current accounts, on its behalf, terms and at its risk), as well as: performing operations on the capital markets on its behalf; provision of guarantees and sureties and other obligations from third parties providing for their execution in monetary form; acquisition of the right of claim to fulfil obligations in cash for goods delivered or services rendered, assuming the risk of fulfilling such requirements and accepting payments (factoring); leasing.
Regulations on determining the amount of credit risk by banks of Ukraine for active banking operations (2016) (sub-item 18, item 5)	a credit transaction is a type of active banking operation related to the placement of funds attracted by the bank in this way: providing them for temporary use or accepting obligations to provide a certain amount of funds; providing guarantees, sureties, letters of credit, acceptances, avails; placing deposits; conducting factoring operations and financial leasing operations; issuing credits in the form of bills of exchange, in the form of reverse repo operations; any extension of the debt repayment period, which is provided in exchange for the debtor's obligation to repay the amount owed, as well as obligations to pay interest and other fees for such amount (deferred payment) instalment payments for assets sold by the bank.

If in Law of Ukraine No. 2121-III "On banks and banking" (2000) and in Regulations on determining the amount of credit risk by banks of Ukraine for active banking operations

(2016), which was issued by the NBU within its competence, the presence of such a definition is appropriate and justified, since the term is repeatedly used in regulatory norms, then the meaning of placing a truncated definition in the Commercial Code of Ukraine (2003) remains unclear. On the one hand, the concept of “credit transactions” is not used in the regulatory norms of the Commercial Code of Ukraine (2003). On the other hand, by such a superficial definition, participants in civil turnover are misled about the depth of the concept and the complexity of banks' activities. “Credit transactions” is a category of financial law taken out of context and not used for its intended purpose in the Commercial Code of Ukraine (2003). Similarly, the legal meaning of Article 347 of the Commercial Code of Ukraine (2003), consisting of several classifications of credit (“types and forms”), is unclear. The purpose of the classification should be to establish different regulations for different types or subspecies of transactions. In the Commercial Code of Ukraine (2003), these classifications are placed without any continuation, as declarations. They are also not used in Law of Ukraine No. 1734-VIII “On consumer lending” (2017), in which paragraph 2 of Part 3 of Article 9 and some others speak about types (credit, credit line, account lending), although Article 347 of the Commercial Code of Ukraine (2003) speaks about types of credit by the method of granting, and not about types. These contradictions in the central legislative acts need to be corrected. The meaning of the placement in the codified act of the procedure for obtaining credit from the bank is also unclear. Thus, part 1 of Article 346 of the Commercial Code of Ukraine (2003) states that a potential borrower must submit an application, a feasibility study and other documents to the bank.

It is unlikely that the significance of this dispositive or imperative rule for civil turnover is so great that it requires regulatory consolidation at the level of the code. If the bank establishes a different list of documents, but at the same time conducts a proper risk assessment, the legal result will not change. Thus, Article 10 of Law of Ukraine No. 1734-VIII “On consumer lending” (2017) does not mention any specific documents, leaving the list at the discretion of the lender. The expediency of having other rules of the Commercial Code of Ukraine (2003) on credit also looks controversial. As for consumer lending, its regulation in Ukraine is difficult to characterize unambiguously, if we proceed from the theoretical allocation of such areas as paternalism, neoliberalism, consumerism (Vagonova, 2016; Dibra and Bezo, 2021). This is due, in particular, to the fact that the concept of “responsible lending” plays a dual role. Thus, assigning the lender the obligation to comprehensively weigh risks not only makes it possible to make sure that the product meets the individual capabilities of the borrower but also has the potential to restrict access to consumers from the market – such as new borrowers (who do not have a credit history), single or self-employed persons (Ramsay, 2015). In addition, banks bound by risk assessment requirements also become restricted in market access, losing out to persons not bound by prudential requirements and special regulations. In this regard, we can say that responsible lending protects not only and not so much the interests of both parties to the contract, the main object of protection is the stability of economic relations.

Directive 2008/48/EC of the European Parliament and the Council “On credit agreements for consumers and repealing Council Directive 87/102/EEC” (2008) created a framework for the harmonization of rules on advertising, on pre-contractual and subsequent provision of information, on the right to refuse performance of the contract, on early payment and compensation for early termination of the contract; in addition, it regulates the basics of calculating interest rates. All these provisions are reflected in Law of Ukraine No. 1734-VIII “On consumer lending” (2017). Let's focus on some illustrative moments. According to Part 1 of Article 8 of Directive 2008/48/EC of the European Parliament and the Council “On credit agreements for consumers and repealing Council Directive 87/102/EEC” (2008), the lender must assess the creditworthiness of consumers based on “sufficient information”. A similar norm is contained in Article 10 of Law of Ukraine No. 1734-VIII “On consumer lending” (2017). Given the rather broad scope of the law, the requirements for all lenders (except for lenders on interest-free loans) are equalized; however, there is a clause in the law that the risk assessment is carried out “using their professional capabilities”. Obviously, these opportunities are different for different market participants, and the NBU will proceed from this when conducting inspections. A novelty of consumer protection legislation was the introduction of the so-called “cooling-off period” – the consumer's right to change his mind and withdraw his consent to conclude a contract within 14 days (Article 14 Directive 2008/48/EC..., 2008; Article 15 Law of Ukraine No. 1734-VIII..., 2017).

The reason for the introduction of such a rule is that the consumer may initially be misled about the prospects of the transaction or overestimate their capabilities. On the other hand, the creditor does not incur significant losses upon the termination of the contract (Kotz, 2017; Thi et al., 2019). The Ukrainian legislator has taken a much stricter approach to regulating the exercise of the right of refusal by the consumer than Directive 2008/48/EC of the European Parliament and the Council “On credit agreements for consumers and repealing Council Directive 87/102/EEC” (2008) and Law of Ukraine No. 1734-VIII “On consumer lending” (2017). Firstly, the refusal can only be made in person, an additional requirement of notarization of the signature or power of attorney of the representative is addressed to the presentation in another way, which significantly complicates the procedure. Secondly, unlike Directive 2008/48/EC of the European Parliament and of the Council “On credit agreements for consumers and repealing Council Directive 87/102/EEC” (2008) and Law of Ukraine No. 1734-VIII “On consumer lending” (2017), Law of Ukraine No. 1734-VIII “On consumer lending” (2017) provides no more than 30, and only 7 days. Meanwhile, Article 16 of Law of Ukraine No. 1734-VIII “On consumer lending” (2017) does not stipulate the early repayment of the credit at the initiative of the consumer by the fulfilment of formalities and by any deadline, and in case of early repayment at the request of the lender sets 30-day and 60-day deadlines. However, if, upon cancellation of the contract, the consumer is obliged to pay only interest on the day of repayment, then in case of early return – interest and the cost of all services related to servicing and repayment of the credit for the period of actual use of the credit.

Some provisions of Directive 2008/48/EC of the European Parliament and the Council “On credit agreements for consumers and repealing Council Directive 87/102/EEC” (2008) and Law of Ukraine No. 1734-VIII “On consumer lending” (2017) require clarification. For example, paragraph 2 of Part 1 of Article 12 of Law of Ukraine No. 1734-VIII “On consumer lending” (2017) states that the purpose of the credit must be named in the contract. Clarity is needed on what the legislator considers a direct indication of the purpose of the credit. In particular, will the wording “to meet the needs of the borrower” or “financing expenses” be considered sufficiently specific (in fact, such a “goal” is the absence of a specific goal) or should there be more specifics in the contract? Directive 2008/48/EC of the European Parliament and of the Council “On credit agreements for consumers and repealing Council Directive 87/102/EEC” (2008) does not apply to mortgage lending. However, the Ukrainian legislator, like the German one, expanded the scope of Law of Ukraine No. 1734-VIII “On consumer lending” (2017) to mortgage lending, in which there is now some lack of regulation. Considering the extension for 6 months from 04/21/2021 of the moratorium on foreclosure on housing for debts under foreign currency mortgage agreements provided by Law of Ukraine No. 895-IX “On amendments to certain legislative acts of Ukraine concerning a moratorium on recovery of property of citizens of Ukraine provided as collateral for foreign currency loans” (2020), a difficult situation that has arisen for several years in the mortgage lending market, on the horizon of the next few months will not be resolved.

In this regard, the conclusion suggests that special legal regulation of mortgage lending is not among the immediate priorities of the legislator. It should be noted that the Association Agreement between Ukraine, of the one part, and the European Union, the European Atomic Energy Community and their Member States, of the other part (2014), subject to subsequent changes, does not provide for the requirement for urgent implementation by Ukraine of Directive 2014/17/EU of the European Parliament and of the Council “On credit agreements for consumers relating to residential immovable property and amending Directives 2008/48/EC and 2013/36/EU and Regulation (EU) No 1093/2010” (2014) on this issue. Settlement of issues of execution of judicial acts and bankruptcy of debtors is of great importance for the stability of the market. In this regard, the adoption of the Code of Ukraine on bankruptcy procedures (2018) gives great hopes for the successful and stable development of lending.

5. CONCLUSIONS

Thanks to the active law-making activity in the direction of harmonization of Ukrainian legislation with European legislation, many norms of banking legislation have undergone significant changes: the status of the NBU has been transformed and strengthened, which entails diverse consequences for banking supervision, prudential requirements for banks' activities (capital, risk management) have been improved, which should contribute to the stability of the banking system and lending. As a result of the development and adoption of the framework of modern legal regulation of consumer lending, bankruptcy procedures, Ukraine has come close to the highest international standards in this area. The

basis of the legal regulation of credit relations is now the post-crisis (meaning 2008) concept of “responsible lending”, which covers various aspects of the relationship between the lender (bank) and the borrower. In this case, banks are under increased obligations to assess risks, since both the stability of the bank itself and the ability of the borrower to repay the credit depend on this.

When implementing the norms of the European Union, the Ukrainian legislator took into account all the features of this approach as much as possible. However, there are some problems inherent in the new system of legal regulation. In particular, the consumer's refusal from the contract is regulated quite strictly, which minimizes the possibility of its application, in contrast to this, early repayment of the credit is simplified as much as possible. At the same time, the rules on the refusal of credit are one of the recent, conceptually important novelties, since they take into account the peculiarities of the behavioural economy and the mentality of the borrower. Practice will show how difficult it is for citizens to use this right. Perhaps in the future, the rules will be revised towards greater compliance with Directive 2008/48/EC of the European Parliament and the Council “On credit agreements for consumers and repealing Council Directive 87/102/EEC”. Archaic elements of the legal regulation of bank lending in the Commercial Code of Ukraine clearly need to be reworked or abolished. Gaps (mortgage lending) will need to be filled following the new realities.

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