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Institutional Financial Consumer Protection in Czech Republic and Poland: Differences, Strengths, Weaknesses, and Challenges

Abstract: The financial market plays a crucial role in economic growth, but it also poses risks to consumers, who may not have the expertise to navigate its complexities. This article examines the importance of consumer protection in the financial market and the legal background for regulation, including the stable and effective institutional set-up of consumer protection in Poland and the Czech Republic. It also discusses various initiatives that have been implemented to safeguard consumers in the financial market, such as regulations and policies designed to prevent deceptive practices and fraudulent behaviour. Finally, the article highlights the challenges facing consumer protection in the financial market regarding the institutions dealing with it, including the need for more effective enforcement mechanisms.

Keywords: consumer credit, consumer protection, financial market, financial regulation

Introduction

Financial market regulation reflects efforts to create a stable environment that ensures a level playing field for the various players in this market. Regulatory rules limit information asymmetry and efforts by financial institutions to misuse information that is not available to other market participants. Individual measures and

government interventions aim to ensure competition, safety, and the overall health of financial institutions and the financial system. At the same time, it is important to ensure access to financial services (non-discriminatory access) and to promote macroeconomic stability and growth. Poorly designed regulation can be pro-cyclical and foster economic fluctuations, which is another reason for getting regulatory measures right (Stiglitz, 2009, p. 13).

The financial sector is one of the most important sectors in the economy, and for this reason its functioning is subject to regulation. Regulation is used to limit the negative effects associated with the financial market; the main objectives of regulation include promoting transparency, ensuring credibility, and consumer protection (Rajtl, 2016, p. 63). We would like to present research about consumer protection as one of the key objectives of financial market regulation in Poland and Czechia. This article examines institutional consumer protection in both Poland and the Czech Republic and seeks to highlight weaknesses and challenges in this area. In the conclusion, we also try to compare the legal regulation of institutional consumer protection in the financial market in both countries. The methodology adopted in this work involved the analysis of legal texts, both European and national, as well as a review of the literature related to the research topic. Comparative analysis was significant, contributing to the identification of similarities and differences between legal systems in Czechia and Poland, as well as the assessment of their significance in ensuring the proper level of consumer protection.

To achieve our aim, it is necessary to describe and critically analyse consumer protection from the European Union perspective, but also from the local perspective of Poland and the Czech Republic. Also, analysis of the consumer protection institutions which deal with financial services will be carried out in the research section. The conclusion contains the summaries of our findings and makes suggestions for better consumer protection in the future. *De lege ferenda* suggestions are included, especially connected with the financial arbitrator and its legal powers to decide disputes in connection with financial services where consumers and financial institutions are involved.

1. The concept and characteristics of a consumer and consumer protection

The law of the European Union is currently characterized by a multitude of consumer protection instruments and a high level of consumer protection. Initially, protection was perceived primarily as a *sine qua non* for the proper functioning of the internal market, especially within the framework of competition mechanisms. It was singled out at the treaty level as an independent objective and policy of Union action in Article 169 of the Treaty on the Functioning of the European Union (TFEU),

which aimed at promoting consumer interests and ensuring a high level of protection for them. This should contribute to the protection of consumers' health, safety, and economic interests, as well as supporting their right to information, education, and organizations to safeguard their interests.

The horizontal clause indicated in Article 12 of the TFEU, which states that consumer protection requirements must be taken into account in defining and implementing other EU policies and actions, is also of fundamental importance for the protection of consumer rights. Horizontal clauses should be applied in such a way that the consumer becomes a central actor in EU policy, thereby elevating consumer policy to a higher level as one of the policies taken into account in defining and implementing other Union actions. Consumer protection also finds its place in the Charter of Fundamental Rights; according to Article 38, a high level of consumer protection is ensured in the policies of the Union. Ensuring an appropriate level of consumer protection is also essential in connection with the ongoing process of financialization of citizens' lives (Nieborak, 2021, pp. 181–182).

The concept of a consumer used in the treaties has an autonomous meaning, and the reason for distinguishing this category of entity is their weaker position in the free market compared to professionals. In order to level the playing field for financial market participants, the treaties emphasize the role of increasing financial skills, as well as the need for consumer organizations for more effective representation. The treaties do not narrow the concept of a consumer subjectively or objectively. The decisive factor is whether a particular group of entities is in a weaker position in the market, which requires regulatory intervention to level the playing field to realize the principles of a free market, where transactional decisions are made voluntarily, knowingly, and fairly by all its participants.

Due to the negative consequences of the fragmentation of regulations protecting consumers, Directive 2011/83/EU was adopted, which was intended to comprehensively regulate the rights and obligations of consumers, to consolidate definitions contained in various legal acts, and to harmonize regulations in the individual legal systems of EU Member States. According to the directive, the definition of a consumer includes natural persons acting for purposes that are outside their trade, business, craft, or profession. Although not directly stated in the definition, it follows that consumer contracts are concluded with traders. A trader means any natural or legal person, irrespective of whether privately or publicly owned, who is acting for purposes relating to his/her trade, business, craft, or profession in relation to contracts, including through any other person acting in his/her name or on his/her behalf.

The definition of a consumer introduced in the directive reflects earlier regulations contained in the legal acts repealed by this directive and is consistent with the meaning attributed to the consumer in other directives. Although the basis for providing the consumer with special protection is their structural weakness compared to a professional, this weakness usually is not part of a legal definition. In many cases,

Member States have the option of extending consumer protection to other entities, including non-governmental organizations, start-up companies, or small and medium-sized enterprises, under the so-called national options.

2. The necessity of institutional consumer protection in the financial market

The main premise for distinguishing consumers in the financial market was their lower level of knowledge about the goods or services offered and their weaker economic position compared to the professional trader, which could lead to a violation of their rights. Based on the theories of the free market, it was assumed that such situations were to be corrected by market mechanisms and competition among entrepreneurs, forcing them to offer the best possible goods or services. Therefore, it was assumed that the free market had a natural tendency towards self-regulation, preventing the violation of the rights of its participants, including consumers. Any deviations from this principle were to be corrected *ex post*, through individual protection on the ground of private law. Regulatory interference in the functioning of the free market seemed unnecessary, as the essence of this market was freedom of activity. The introduction of orders or prohibitions could disturb the desired natural balance between entrepreneurs and consumers, which was one of the foundations of the free market economy. However, this assumption turned out to be incorrect. While market mechanisms worked well in commonly concluded daily contracts, they proved ineffective in complex financial services. This led to a change in the original paradigm of the consumer not requiring special protection, towards providing regulatory protection for their basic rights. The paradigm of protection through information strengthened the balance and competitiveness of the market. It maintained the theory of the self-regulation of the market and its natural tendency towards balance, which, thanks to providing consumers with all the necessary information to make rational decisions, would receive additional support. Gradually, the systemic importance of consumers began to be recognized, but until the 2007 crisis, regulators underestimated the systemic risk generated by consumers' inadequate protection. Supervision did not focus on consumer protection; it protected their rights, but indirectly, by ensuring the proper functioning of supervised institutions.

Another redefinition of the consumer protection paradigm came with the financial crisis that began in 2007. Instead of trust in the rationality of financial markets and the belief that there was no need to intervene in the financial system, which is efficient and safe thanks to private risk management at the level of individual institutions subject to microprudential supervision, a new consensus emerged. According to the new paradigm, the market is unstable, pro-cyclical, and tends to exhibit herd behaviour. Its instability is further amplified by the excessive complexity of

the financial systems and business models in use, as well as by the financial innovations introduced into circulation (Baker, 2013, pp. 112–139). For the new consensus, a macroprudential perspective and the protection of consumer rights and interests are of fundamental importance. Although the crisis had many systemic causes, one of the most important was improper consumer protection related to the granting of excessively risky loans (sub-prime credit). The assumptions of behavioural economics questioning the rationality of consumer choices began to be taken into account, leading to a change in the regulatory and supervisory paradigm and emphasizing the need for regulatory and supervisory intervention in the financial market (Monkiewicz & Monkiewicz, 2015, pp. 13–14). It was recognized that the complex nature of financial services and the interrelationships between their participants create risks that even the best-informed consumer cannot estimate. This led to the expansion of regulations protecting consumers. Pan-European supervisory bodies were introduced, aimed at increasing the stability of the European financial market, including by increasing confidence in this market. In the national systems of EU Member States, existing solutions were also assessed for their effectiveness in maintaining the stability of the financial system. The architecture of the safety and protection of consumer interests in the financial services market has become one of the most important areas of security in society (Czechowska, 2017, p. 16).

Challenging the rationality of choices made by consumers justified the need to replace the passive role of the regulator in the consumer market with an active one. This also meant assigning a new role to financial institutions, which must take much more responsibility for the choices made by consumers. The dogma of the rational consumer has been replaced by the dogma of the rational regulator and the rational professional participant in the financial market, who play by fair rules. The new paradigm significantly raises the importance of national and international public institutions responsible for maintaining the stability of the financial market. It presents the financial market as too complex for consumers and challenges the assumption that they always make rational choices. It represents a form of institutional paternalism, which in extreme cases can even prohibit participants from entering into unfair agreements. Through the possibility of intervening in the market through both regulations and supervision, institutions are able to limit the fundamental characteristic of a free market – the freedom to enter into agreements. The infallibility of financial markets and their natural tendency towards stability were challenged by introducing a regulatory and supervisory paradigm in the financial sector. This is associated with an increased role of the state in managing macro-financial systems and their risks (Monkiewicz & Monkiewicz, 2019, p. 33).

3. Institutional consumer protection on the financial market in Czechia

There is a different situation in the Czech Republic, especially connected to experience with loans burdened with currency risk. There was no stress situation similar to the Polish experience in 2006–2008 regarding the ‘Swiss franc’ loans, and therefore the pressure for new consumer protection regulation in the following period has not been so strong. The competitive environment within the Czech credit market is at a high level, not only from the perspective of banks, but also from the perspective of non-bank providers, which offer somewhat different products than banks but share a part of the market. Consumers can choose from a range of available credit products that differ in price, maturity, amount provided, and other characteristics. But how is the consumer protected from over-indebtedness and moral hazard? Regulation in this respect harmonizes rules across the banking and non-banking markets and is largely based on European standards (Rajtl, 2006, p. 7).

The primary authority responsible for consumer protection in the Czech Republic’s financial market is the Czech National Bank (CNB). The CNB’s mission is to maintain price stability, ensure the stability of the financial system, and protect the rights of consumers in the financial market. Since 2016, it is also the supervisory authority for the consumer credit area. Based on the EU regulation mentioned above, the Act No. 257/2016 Coll. on Consumer Credit was adopted, valid from 1 December 2016. There were no real restrictions for entities providing services prior to December 2016, which was the reason why too many people went into debt, were prosecuted, or faced personal bankruptcy. This regulation brought strict conditions for those entities interested in providing credit.

Credit registers are a very important source of information in the context of consumer credit; however, these are not maintained by any public institution, but by various private institutions. As part of its supervision, the CNB recommends that non-bank providers of consumer credit participate in credit registers and use the data available from them as part of their lending processes. In this regard, the CNB takes inspiration from the Slovak National Bank, which is in an easier position as participation in the credit register is compulsory for consumer credit providers in the Slovak credit market. In the Czech Republic, the Consumer Credit Act does not mandate the use of credit registers; however, from the regulator’s perspective, participation in registers is recommended (Rajtl, 2019, p. 34).

The CNB has several departments that deal with consumer protection issues, including the Consumer Protection and Financial Innovation Department, which is responsible for promoting fair and transparent practices in the financial market and protecting consumers from abusive practices. It receives consumer complaints and alerts, answers relevant questions, publishes interpretative opinions, and conducts examinations of supervised financial institutions. The CNB is the supervisory

authority for compliance with consumer protection rules on the financial market by selected entities providing financial services.

Professional care is one of the areas which the CNB emphasizes. The subject of supervision in this area is, among other things, the examination of whether financial institutions which are in the position of a financial services provider, i.e. in the position of a stronger contracting party, act towards consumers in accordance with the law (e.g. informing consumers sufficiently and transparently about relevant facts, charging them fees and interest, or handling complaints in accordance with the law). Public complaints from consumers pointing out shortcomings in the activities of financial institutions are therefore a valuable source of information for the CNB's activities.

The Financial Arbitrator is an independent body appointed by the Czech Ministry of Finance. It provides an alternative dispute resolution mechanism for consumers who have complaints against financial institutions. The Financial Arbitrator has the power to issue legally binding decisions, which can be enforced by the courts. The biggest question arises in connection with the specific classification of the Financial Arbitrator's position among public authorities, where there is often speculation from the public as to the anchoring of the Financial Arbitrator in the system of the separation of powers and his/her procedural authority (Smolik, 2006, p. 277).

In the event of a dispute with a financial services provider, it is preferable for consumers to go to the Financial Arbitrator first. This out-of-court protection body aims to resolve disputes at the lowest possible cost and in the shortest possible time. However, it can only resolve them until a court decision has been taken or legal proceedings have been initiated. The arbitrator exercises his/her function independently and impartially. The role was established on 1 January 2003 by Act No. 229/2002 Coll. on the Financial Arbitrator. The term of office is five years, and s/he is appointed by the government on the basis of a proposal by the Minister of Finance. S/he is part of the FIN-NET organization, which brings together similar institutions from the European Economic Area. Compared to other countries, the Czech arbitrator has extremely limited powers; only Cyprus, which does not even have a similar institution, is worse off. The Czech Financial Arbitrator cooperates with foreign institutions for out-of-court protection.

Dispute resolution is free of charge and takes place within a maximum of 90 days from the time when all the necessary circumstances have been established. On average, the Financial Arbitrator declares a dispute resolution time of 98 days, which is significantly faster than the average court resolution time of 271 days. However, the Financial Arbitrator's powers are limited, although they have expanded over time. Currently, the arbitrator is empowered to rule in disputes with (a) a payment service provider in the provision of payment services; (b) an electronic money issuer in the issuance and redemption of electronic money; (c) a creditor or intermediary in the offer, provision, or arranging of a consumer loan or other credit, loan, or simi-

lar financial service; (d) a person managing or administering a collective investment fund or offering investments in a collective investment fund or comparable foreign investment fund; (e) an insurer or an insurance intermediary offering, providing, or arranging life insurance; (f) a person carrying on a foreign exchange business; (g) a building society or an intermediary offering, providing, or arranging building savings; or (h) a securities dealer, tied agent, investment fund manager, or investment intermediary providing investment services or carrying out activities pursuant to Article 11(1)(c)–(f) of the Act No. 240/2013 Coll. on Investment Companies and Investment Funds.

The Financial Arbitrator, like the Czech National Bank, is obliged to publish an annual report on its activities in an appropriate manner. It must be made available for remote access and published once a year, no later than 30 June of the following calendar year. It must include a description of the disputes pending before it without identifying the claimants (Financial Arbitrator, 2021, p. 1). The latest annual report declares that the number of applications received for initiation of proceedings reached 1,709; compared to the previous year, this is an increase of 39%. Consumer credit was the most frequent subject of pending disputes in 2021, accounting for a total of 75% of all pending disputes.

The Czech Trade Inspection Authority (CTIA) is a government agency responsible for enforcing consumer protection laws in the Czech Republic. It monitors business practices and investigates complaints from consumers regarding unfair or deceptive practices by financial institutions. It is a state administrative body that falls under the Ministry of Industry and Trade; it is not primarily focused on the financial market, but it can deal with certain situations. The most frequent cases concern unfair commercial practices, incorrect or incomplete information about rights when making a complaint about a service, or failure to deal with a complaint within the statutory 30 days. It also investigates a consumer's submission if they believe that a credit agreement did not contain all the necessary information. Unlike a financial arbitrator, this body acts only as a mediator and does not issue decisions in private law disputes. However, it can rule as an administrative authority in the event of breaches of legal obligations by individual financial institutions towards consumers. It also operates a European Consumer Centre, which consumers can contact if they need help resolving disputes related to the purchase of a product or service from other EU countries, Norway, and Iceland. All services are free of charge.

The Ministry of Finance of the Czech Republic plays an important role in protecting consumers in the financial market. It is responsible for ensuring that financial institutions and other entities operating in the market comply with relevant laws and regulations, and that consumers are treated fairly. Specifically, the Ministry of Finance is responsible for implementing and enforcing laws related to financial products and services, such as consumer credit, insurance, and investments. It also oversees the activities of regulatory bodies, such as the Czech National Bank and the

Czech Securities Commission, which are responsible for ensuring that financial institutions and markets are operating in a fair and transparent manner. In addition, it is responsible for educating consumers about financial products and services, and for providing resources to help consumers make informed decisions. This includes providing information about the risks and benefits of different financial products, as well as information about consumer rights and how to file complaints.

4. Institutional consumer protection on the financial market in Poland

The level of consumer protection in Poland can still be considered inadequate. This is particularly evident in the case of loans burdened with currency risk, which were especially popular in Poland in 2006–2008. The institutions responsible for consumer protection did not ensure proper enforcement of borrowers' rights and were too slow to counter banks' unfair practices. As pointed out by the Supreme Audit Office, public administration entities did not ensure the proper enforcement of borrowers' rights and were too slow or insufficiently effective in countering the risks arising from the nature of these loans and the unfair practices of banks. The low activity of the consumer protection authorities, their lack of effective tools, and the design of the protection model, which requires a lengthy court process to establish the existence of unfair clauses, were the reasons for the institutional inefficiency of consumer protection. According to the Supreme Audit Office, the undefined competencies of the Financial Supervision Authority in protecting the interests of financial market participants also had a negative impact on the effectiveness of consumer protection (NIK, 2018, p. 55). As a result of these weaknesses in the consumer protection system, banks benefited from the use of unfair contractual provisions. Meanwhile, with few exceptions, they did not incur financial penalties for this, and the burden and risks associated with recovering these amounts were transferred to borrowers. So far, no systemic solutions have been implemented to solve the problem of these loans, and consumers are forced to assert their rights independently through lengthy and costly legal proceedings (Cyman, 2022, p. 125). Problems related to indexed loans have shown that even formally meeting the obligation to provide the consumer with all necessary information does not always allow for maintaining a balance between the parties. This led to the expansion of protection to institutional protection.

In 2015, the institution of the Financial Ombudsman was established, whose aim is to support clients in disputes with entities operating in the financial market. This has contributed to eliminating a significant gap in the protection system resulting from the lack of a specialized entity offering assistance in individual cases in the banking market. The Ombudsman has taken active information-providing and supportive measures to help borrowers in their quest for justice. Its scope of competence includes both the financial services market in general and the protection of individ-

ual consumers in the financial market. The Ombudsman may bring an action on behalf of clients of financial market entities in cases involving unfair market practices by such entities, and with the consent of the plaintiff may participate in proceedings that are already underway. It is also authorized to give opinions on draft legal acts concerning the organization and operation of financial market entities and to request that competent supervisory authorities initiate legislative initiatives, as well as informing relevant control authorities of any irregularities detected. Its role in educational and informational activities is also significant. It should be noted that the Financial Ombudsman plays a very active role, manifested in a significant number of initiatives taken to increase consumer protection. In 2022, the Financial Ombudsman registered approximately 4,600 applications and inquiries from clients of financial market entities (Rzecznik Finansowy, 2023, p. 6).

Another institution responsible for consumer protection is the President of the Office of Competition and Consumer Protection (Urząd Ochrony Konsumenta i Konkurencji – UOKiK). The President of UOKiK has broad competencies, including conducting proceedings in cases of practices that violate the collective interests of consumers, conducting proceedings to recognize model contract provisions as invalid, and publicly disclosing consumer warnings when there is a particularly justified suspicion that an entrepreneur is engaging in practices that violate the collective interests of consumers. The President of UOKiK is also equipped with the ability to express opinions in individual cases that are the subject of a court proceeding.

The Financial Supervision Commission (FSC) is the competent authority in matters of supervision over the financial market. As part of consumer protection, it undertakes monitoring, analytical, and supervisory actions and uses its supervisory powers to eliminate illegal market practices by supervised entities. It also analyses the construction of financial contracts offered to consumers and directed at them through advertising, and influences legal regulations affecting the rights and obligations of recipients of financial services by reviewing or preparing draft legal acts and inspiring self-regulation of the market. To ensure proper protection, it cooperates with entities aimed at protecting consumers, including the President of the UOKiK, the Financial Ombudsman, the Ombudsman for Civil Rights, and non-governmental organizations in matters of complaints, contractual patterns, and other matters relating to the protection of the interests of non-professional participants in supervised markets. The arbitration court at the FSC also plays a significant role. Although it is not a consumer court, as all participants in the financial market can be parties to it, it deals practically with cases related to the violation of consumer rights.

The protection of consumer rights is also one of the tasks of local government. This is achieved by appointing a district (city) consumer ombudsman, whose primary task is to provide free consumer advice and legal information on the protection of consumer interests. Within their competencies, they may also submit requests for the establishment and amendment of local laws and regulations and approach entre-

preneurs in matters of consumer protection. They may bring legal action on behalf of consumers and, with their consent, participate in ongoing proceedings concerning the protection of their interests.

The central bank is starting to play an increasingly important role in consumer protection in the financial market, primarily due to its efforts to maintain the stability of the entire financial system. It takes action in the field of economic and financial education, disseminating knowledge about the functioning principles of the financial market, supporting entrepreneurial attitudes, shaping responsibility in making financial decisions, raising the level of knowledge about economic issues, popularizing knowledge about the national economic heritage, and promoting modern attitudes that affect the shaping of capital within society. Furthermore, the central bank indirectly influences the protection of consumers of financial products and services by participating in the creation and management of macroprudential policy. The National Bank of Poland is the leading institution in the collegial body of macroprudential supervision, the Financial Stability Committee.

To sum up, it should be noted that in many cases, consumer protection in Poland was insufficient, introducing risks not only for individual consumers but also for banks and even the entire banking sector. However, it is important to emphasize that in recent years, the role of consumer protection institutions has strengthened. There is noticeably broader reference to the European consumer protection model, as well as to the significant importance given to the judgments of the Court of Justice of the European Union. A weakness of the Polish legal system is the lack of consistent systemic solutions concerning out-of-court dispute resolution; examples include the current disputes between banks and clients who took out loans indexed to foreign currencies. Appropriate mechanisms in this regard would contribute to a more comprehensive and multifaceted protection of customers of financial institutions.

Conclusions

While both the Czech Republic and Poland have implemented consumer protection measures in their respective financial markets based on European law, there are some differences worth noting. In terms of financial regulation, the Czech Republic has a stronger regulatory framework than Poland, which has experienced some issues with weak enforcement and insufficient penalties for financial institutions that violate consumer rights. The Czech National Bank has a well-established system of supervisory control over financial institutions, which helps to prevent financial misconduct and ensure the safety of consumer investments. On the other hand, Poland has implemented some innovative measures to protect consumers in recent years. For example, the Polish Office of Competition and Consumer Protection has introduced a system of 'mystery shopping' in financial institutions to detect any irregularities in

the provision of financial services. Additionally, Poland has created a centralized database of consumer complaints, making it easier for consumers to file complaints and ensuring that financial institutions are held accountable for their actions.

Consumer protection in out-of-court dispute resolution is very effective in this respect and is being used more and more by consumers every year. In Poland, there are alternative dispute resolution institutions in place, but there is a need to advocate for increased usage of them. The majority of disputes are resolved in courts, which leads to a significant increase in costs and length of proceedings. This is due to a lack of awareness among consumers about the possibilities of resolving disputes out of court, as well as the occasional reluctance of financial institutions to submit disputes to arbitration or mediation.

Overall, while both the Czech Republic and Poland have made efforts to protect consumers in their financial markets, there are differences in the strength of their regulatory frameworks and the specific measures they have implemented. However, both countries recognize the importance of consumer protection in maintaining a stable and trustworthy financial system and continue to work towards ensuring the safety and wellbeing of their citizens in financial matters. In both countries, institutional consumer protection is also being strengthened, based not only on guaranteeing the provision of adequate information, but also on active support, both direct and indirect, in the financial services market.

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