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Item 2339

ACT

of 6 October 2022

**amending certain Acts in order to prevent usury<sup>1),2)</sup>**

**Article 1.** The Civil Code Act of 23 April 1964 (Journal of Laws 2022, item 1360 and 2337) shall be amended as follows:

1) the following Article 720<sup>1</sup>–720<sup>5</sup> shall be added after Article 720:

‘Article 720<sup>1</sup>. § 1. The provision of Article 720 § 1 does not exclude the right of the cash creditor to claim interest and non-interest costs from the borrower subject to the following provisions.

§ 2. Non-interest costs relating to the conclusion of a cash loan agreement shall be understood as the following arising from that or another agreement, or from any other legal transaction:

- 1) margins, commissions, or fees relating to the preparation of a loan agreement, the granting, or handling of a loan, or costs of a similar nature,
- 2) fees related to the deferral of the loan repayment date, its late repayment, or costs of a similar nature,
- 3) costs of additional services, in particular insurance costs, costs related to establishment of a security for the loan, costs of obtaining information on the borrower where these costs are necessary for the conclusion of the agreement

– excluding notarial fees and public-law contributions which the parties are required to pay in connection with the conclusion of the agreement.

§ 3. If, at the conclusion of the agreement, the creditor is represented by the agent or another person through whom the loan provider enters into an agreement or by whom it fulfils their obligation, the non-interest costs associated with the conclusion of the loan agreement shall also include the remuneration of the agent or that person provided that it is paid by the borrower.

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<sup>1</sup> )The Act amends the following Acts: the Civil Code Act of 23 April 1964, the Code of Civil Procedure Act of 17 November 1964, the Penal Code Act of 6 June 1997, the Banking Law Act of 29 August 1997, the Financial Market Supervision Act of 21 July 2006, the Act on Cooperative Savings and Credit Unions of 5 November 2009, the Consumer Loan Act of 12 May 2011, the Reverse Mortgage Loan Act of 23 October 2014, and the Act of 23 March 2017 on Mortgage Loan and Supervision of Mortgage Loan Intermediaries and Agents.

<sup>2</sup> )This Act was notified to the European Commission on 27 December 2021 under the number 2021/900/PL, pursuant to § 4 of the Regulation of the Council of Ministers of 23 December 2002 on the functioning of the national system of notification of norms and legal acts (Journal of Laws, item 2039 and of 2004, item. 597), which implements the provisions of Directive (EU) 2015/1535 of the European Parliament and of the Council of 9 September 2015 laying down a procedure for the provision of information in the field of technical regulations and rules on Information Society services (codification) (OJ EU L 241 of 17.9.2015, p. 1).

Article 720<sup>2</sup>. § 1. Save as otherwise provided for in special provisions, the total non-interest costs in a cash loan agreement concluded with a natural person that is not directly related to that person's business or professional activity may not exceed the maximum amount of non-interest costs specified in the formula:

$$MKP = K \times n/R \times 20 \%$$

where individual symbols shall be understood to mean:

*MKP* – the maximum amount of non-interest costs,

*K* – the total amount of the loan, understood as the sum of all cash not including the co-financed loan costs that the creditor releases to the borrower under agreement,

*n* – repayment period expressed in days from the date of release of the loan,

*R* – number of days per year.

§ 2. The non-interest costs referred to in paragraph 1 may not exceed 25 % of the total amount of the loan over the entire period of repayment of the loan.

§ 3. If non-interest costs exceed the maximum amount of non-interest costs as laid down in paragraphs 1 or 2, the non-interest costs shall be payable up to the maximum amount.

§ 4. Agreement terms may not exclude or limit the provisions on the maximum amount of non-interest costs, even if a foreign law is chosen. In this case, the provisions of the Act shall apply.

Article 720<sup>3</sup>. § 1. If, in connection with the conclusion of an agreement referred to in Article 720<sup>2</sup> § 1, the borrower undertakes to provide a security for the repayment of the loan, the obligation shall be specified in the agreement. In such case, the agreement shall indicate the method of securing and, as the case may be, the property or right constituting the subject of the security and its value or the sum of the security determined otherwise.

§ 2. A legal transaction requiring the provision of a security in violation of paragraph 1 shall be invalid.

§ 3. The sum of the security of the claims under the agreement referred to in Article 720<sup>2</sup> § 1 may not exceed the amount of the loan plus the maximum interest calculated directly on that amount for the period for which the loan was granted, the maximum default interest calculated on the loan amount for a period of up to 6 months, and the maximum amount of non-interest costs unless otherwise specified in a specific provision.

§ 4. Paragraphs 1 to 3 shall not apply to a security in the form of a mortgage or a registered pledge.

Article 720<sup>4</sup>. Prior to the conclusion of the agreement referred to in Article 720<sup>2</sup> § 1, the creditor shall inform the borrower in an unambiguous and comprehensible manner of the total non-interest costs, the amount of interest, and the amount of interest which they are required to pay in connection with the conclusion of the agreement.

Article 720<sup>5</sup>. § 1. In the event of early repayment of the loan referred to in Article 720<sup>2</sup> § 1 prior to the deadline as stipulated in the agreement, no interest may be claimed for the remaining period until the end of the period for which the loan was granted under the agreement.

§ 2. If the loan referred to in Article 720<sup>2</sup> § 1 is repaid prior to the deadline as stipulated in the agreement, the non-interest costs incurred shall be reduced by the costs which relate to the period by which the term of the agreement has been reduced, even if the borrower incurred these costs prior to the repayment.';

2) the following Article 724<sup>1</sup> shall be added after Article 724:

'Article 724<sup>1</sup>. § 1. The provisions of Article 720<sup>1</sup>–720<sup>5</sup> shall apply respectively to agreements not governed by other provisions under which a sum of money is transferred to a natural person with an obligation to repay it, which are not directly related to that person's business or professional activity.

§ 2. The provisions of Article 720<sup>1</sup>–720<sup>5</sup> shall also apply respectively to agreements, not governed by other provisions, of a transfer to a natural person, for a consideration, of debts or other property rights the value of which has been determined by a sum of money with an obligation to repay, provided those agreements are not directly related to that person's business or profession. In such case, the total value of the loan shall be understood to mean the value of those claims or rights as of the date of the regulation.'.

**Article 2.** The following amendments shall be made in the Code of Civil Procedure Act of 17 November 1964 (Journal of Laws of 2021, item 1805, as amended<sup>3)</sup>):

1) in Article 777:

a) the following second sentence shall be added in § 2 and shall read as follows:

‘In such a case, the notarial deed shall indicate the legal relationship in respect of which the debtor submits to enforcement, the date on which the debtor’s obligation arose, its content and, in the case of obligations under mutual agreements, also the creditor’s benefit along with a date of performance thereof.’;

b) the following § 21 shall be added after § 2 and shall read as follows:

‘§ 21. Where a declaration of submission to enforcement is made in order to secure claims arising from the conclusion by a natural person of a loan agreement which is not directly related to that person’s business or professional activity or from the conclusion by that person of another agreement to which provisions on the loan apply respectively, the amount of money to which the debtor submits to enforcement may not exceed the amount of the loan plus the maximum interest calculated directly on that amount for the period for which the loan was granted, the maximum default interest calculated on the amount of the loan for a period of up to 6 months, and the maximum amount of non-interest costs referred to in Article 720<sub>1</sub> of the Civil Code Act of 23 April 1964.’;

2) in Article 781, after § 13 the following § 14 shall be added:

‘§ 14. A document confirming the issue of the subject matter of the loan to the borrower or to the person designated by them should be attached to the application for the enforcement order referred to in Article 777 § 1 points 4–6 or § 2 in connection with the granting of a cash loan concluded with a natural person and not directly related to the business or professional activity of that person.’.

**Article 3.** In the Criminal Code Act of 6 June 1997 (Journal of Laws of 2022, item 1138, 1726 and 1855), the following § 25 in Article 115 shall be added and read as follows:

‘§ 25. Costs other than interest shall be understood as:

- 1) margins, commissions, or fees related to the preparation of an agreement from which granting a cash benefit results, or an agreement related to the provision of such a benefit, or handling such agreements, or other such costs,
- 2) fees relating to the postponement of the date of repayment of the cash benefit granted, its late repayment, or other such costs,
- 3) costs of additional services, in particular insurance costs, costs related to establishment of a security of cash benefit repayment, costs of acquiring information related to the provision of the cash benefit, where these costs are necessary for the conclusion of the agreements referred to in point 1,
- 4) remuneration of a person who has represented the person providing cash benefits at the conclusion of the agreements referred to in point 1 or through whom the provider has concluded or provided those agreements, directly borne by the person to whom the service was provided

– excluding notarial and public-law fees which the parties to the agreements referred to in point 1 are required to pay in connection with the conclusion of those agreements.’.

**Article 4.** In the Banking Law Act of 29 August 1997 (Journal of Laws of 2022, item 2324), the following amendments shall be introduced:

1) in Article 48k, paragraph 2 shall read as follows:

‘2. The provisions of Articles 1 to 7, Articles 9 to 11, Article 40a(1), Articles 49 to 70, Articles 73 to 78b, Articles 80 to 95, Articles 101-112, Article 112c, Article 112d, Article 124, Article 124a, Article 133(3), Article 137, Article 138, Article 139(1)(2) and (3), Article 141, and Article 171(4)-(7) shall apply to branches of loan institutions, respectively.’;

2) Article 78b shall be added after Article 78a and shall read as follows:

‘Article 78b. The provisions of Article 720<sub>2</sub>–720<sub>5</sub> of the Civil Code shall not apply to a loan agreement and money loan granted by a bank.’;

<sup>3)</sup> Amendments to the consolidated text of the said Act were published in Journal of Laws of 2021, item 1981, 2052, 2262, 2270, 2289, 2328 and 2459; 2022, item 1, 366, 480, 807, 830, 974, 1098, 1301, 1371, 1692, 1855, 1967, 2127, 2140 and 2180.

3) in Article 105(4)(5), the full stop shall be replaced by a semicolon, and the following point 6 shall be added:

‘6) national payment institutions, small payment institutions, national electronic money institutions, EU payment institutions or EU electronic money institutions, within the meaning of the Payment Services Act of 19 August 2011 providing payment loan referred to in Article 74(3) of that law – information constituting banking secrecy, to the extent necessary to assess the consumer’s creditworthiness referred to in Article 9 of the Consumer Loan Act of 12 May 2011.’.

**Article 5.** The Financial Market Supervision Act of 21 July 2006 (Journal of Laws 2022, item 660, 872, 1488, 1692 and 2185) shall be amended as follows:

1) in Article 1(2)(12), the full stop shall be replaced by a semicolon, and the following point 13 shall be added:

‘13) supervision over loan institutions in accordance with the provisions of the Consumer Loan Act of 12 May 2011 (Journal of Laws of 2022, item 246 and 2339).’;

2) in Article 6b(1), the first sentence, the words ‘or Articles 150 and 151 of the Payment Services Act of 19 August 2011’ shall be replaced by ‘, 150 and 151 of the Payment Services Act of 19 August 2011 or Articles 59h and 59i of the Consumer Loan Act of 12 May 2011.’.

**Article 6.** In the Act on Cooperative Savings and Credit Unions of 5 November 2009 (Journal of Laws of 2022, item 924, 1358, 1488 and 1933) in Article 36, paragraphs 1a and 2 shall read as follows:

‘1a. The provisions of Article 75c(1)-(5) and Article 78b of the Banking Act Law of 29 August 1997 shall apply respectively to loan agreements concluded by cooperative savings and credit unions.

2. The provisions of Article 69, Article 70, Article 74 to 78 and Article 78b of the Banking Act Law of 29 August 1997 shall apply respectively to loan agreements concluded by cooperative savings and credit unions.’.

**Article 7.** The Consumer Loan Act of 12 May 2011 (Journal of Laws of 2022, item 246) shall be amended as follows:

1) in Article 5:

a) in point 2a(c), the full stop shall be replaced by a semicolon and letter (d) shall be added and read as follows:

‘(d) a national payment institution, a small payment institution, a national electronic money institution, an EU payment institution or an EU electronic money institution within the meaning of the Payment Services Act of 19 August 2011 (Journal of Laws of 2021, item 1907, 1814 and 2140, and 2022, item 1488) to the extent that it grants a payment loan as referred to in Article 74(3) of that law;’.

b) after point 3, the following point 3a shall be added:

‘3a) a related party – a related party within the meaning of Commission Regulation (EC) No 1126/2008 of 3 November 2008 adopting certain international accounting standards in accordance with Regulation (EC) No 1606/2002 of the European Parliament and of the Council (OJ EU L 320, 29.11.2008, p. 1, as amended<sup>4)</sup>);’;

<sup>4</sup> )Amendments to this Regulation were published in OJ EU L 338, 17.12.2008, p. 10, 17, 21 and 25, OJ EU L 339, 18.12.2008, p. 3, OJ EU L 17, 22.1.2009, p. 23, OJ EU L 21, 24.1.2009, p. 10 and 16, OJ EU L 80, 26.3.2009, p. 5, OJ EU L 139, 5.6.2009, p. 6, OJ EU L 149, 12.6.2009, p. 6 and 22, OJ EU L 191, 23.7.2009, p. 5, OJ EU L 239, 10.9.2009, p. 48, OJ EU L 244, 16.9.2009, p. 6, OJ EU L 311, 26.11.2009, p. 6, OJ EU L 312, 27.11.2009, p. 8, OJ EU L 314, 1.12.2009, p. 15, 21 and 43, OJ EU L 347, 24.12.2009, p. 23, OJ EU L 77, 24.3.2010, p. 33 and 42, OJ EU L 157, 24.6.2010, p. 3, OJ EU L 166, 1.7.2010, p. 6, OJ EU L 186, 20.7.2010, p. 1 and 10, OJ EU L 193, 24.7.2010, p. 1, OJ EU L 46, 19.2.2011, p. 1, OJ EU L 305, 23.11.2011, p. 16, OJ EU L 146, 6.6.2012, p. 1, OJ EU L 360, 29.12.2012, p. 1, 78 and 145, OJ EU L 61, 5.3.2013, p. 6, OJ EU L 90, 28.3.2013, p. 78, OJ EU L 95, 5.4.2013, p. 9, OJ EU L 312, 21.11.2013, p. 1, OJ EU L 346, 20.12.2013, p. 38 and 42, OJ EU L 175, 14.6.2014, p. 9, OJ EU L 365, 19.12.2014, p. 120, OJ EU L 5, 9.1.2015, p. 1 and 11, OJ EU L 306, 24.11.2015, p. 7, OJ EU L 307, 25.11.2015, p. 11, OJ EU L 317, 3.12.2015, p. 19, OJ EU L 330, 16.12.2015, p. 20, OJ EU L 333, 19.12.2015, p. 97, OJ EU L 336, 23.12.2015, p. 49, OJ EU L 257, 23.9.2016, p. 1, OJ EU L 295, 29.10.2016, p. 19, OJ EU L 323, 29.11.2016, p. 1, OJ EU L 291, 9.11.2017, p. 1, 63, 72, 84 and 89, OJ EU L 34, 8.2.2018, p. 1, OJ EU L 55, 27.2.2018, p. 21, OJ EU L 72, 15.3.2018, p. 13, OJ EU L 82, 26.3.2018, p. 3, OJ EU L 87, 3.4.2018, p. 3, OJ EU L 265, 24.10.2018, p. 3, OJ EU L 39, 11.2.2019, p. 1, OJ EU L 72, 14.3.2019, p. 6, OJ EU L 73, 15.3.2019, p. 93, OJ EU L 316, 6.12.2019, p. 10, OJ EU L 318, 10.12.2019, p. 74, OJ EU L 12, 16.1.2020, p. 5, OJ EU L 127 z 22.4.2020, p. 13, OJ EU L 331, 12.10.2020, p. 20, OJ EU L 425, 16.12.2020, p. 10, OJ EU L 11, 14.1.2021, p. 7, OJ EU L 234, 2.7.2021, p. 90, and OJ EU L 305, 31.8.2021, p. 17.

2) Article 9a shall be added after Article 9 and shall read as follows:

‘Article 9a. 1. The loan institution shall make the granting of consumer loan subject to a positive assessment of the borrower’s creditworthiness.

2. The creditworthiness assessment shall be carried out on the basis of an analysis of the data made available by trusted providers collecting and processing the data necessary for such assessment, in particular by:

- 1) institutions referred to in Article 105(4) of the Banking Law Act of 29 August 1997, or
- 2) business information offices referred to in the Act of 9 April 2010 on Sharing Business Information and Economic Data Exchange.

3. If the analysis of the data referred to in paragraph 2 does not allow an assessment of creditworthiness, and the loan institution does not have any other reliable data enabling that assessment to be made, a statement of the consumer’s income and permanent household expenditure, together with documents confirming the consumer’s income, shall be collected from the consumer in order to carry out that assessment. The declaration, together with the documents referred to in the first sentence, shall be collected from the consumer in any case in which the total amount of the loan exceeds twice the amount of the minimum wage for work, determined on the basis of the Act of 10 October 2002 on minimum wages for work (Journal of Laws of 2020, item 2207).

4. The consumer’s statement collected under paragraph 3 shall be attached to the consumer loan agreement. The data obtained by the loan institution which form the basis for assessing the consumer’s creditworthiness shall be kept by the loan institution for a period of three years from the date of termination of the legal relationship justifying their acquisition. The obligation to demonstrate that the loan institution has assessed the creditworthiness in a manner consistent with the requirements of paragraph 2 rests with the loan institution or its legal successors.

5. Where the loan institution has granted a consumer loan in violation of the provisions of paragraph 1 and 2, or where it appears from the consumer’s statement and information obtained by the loan institution that, at the date of conclusion of the consumer loan agreement, the consumer was in arrears of another cash obligation for more than 6 months and that the consumer loan was not used to repay those arrears, then:

- 1) the sale of claims under the agreement by way of transfer or otherwise shall be invalid;
- 2) recovery of a claim shall be admissible only after the date of full repayment of the earlier obligation, its expiry, or after the court has finally established that the obligation does not exist – without the prohibition on disposing of the claim and its recovery suspending the limitation period, and interest or non-interest costs of the loan as well as other fees relating to the claim may not be added for the period during which the claim may not be disposed of or recovered.

6. The circumstances referred to in paragraph 5(2), shall be examined by the court following the consumer’s allegation.

7. Provisions of paragraph 3 and 5 shall not apply if the total amount of the non-interest loan costs and interest laid down in the agreement is less than half the sum of the maximum amount of the non-interest loan costs referred to in Article 36a(1) and maximum interest referred to in Article 359 § 21 of the Law of 23 April 1964 – Civil Code.

8. A loan institution which has granted a consumer loan shall immediately provide information on the granting to the institutions referred to in Article 105(4) of the Banking Law Act of 29 August 1997. Information on arrears of the loan shall be communicated to those institutions or to the business information office referred to in the Act of 9 April 2010 on the Provision of Economic Information and the Exchange of Economic Data. No fees shall be charged for the provision of information.’;

3) in Article 30(1), the following point 10a shall be added after point 10 and shall read as follows:

‘10a) the payment bank account number to repay the loan where the agreement provides for the payment of instalments by the consumer on their own;’;

4) in Article 36a:

a) paragraph 1 shall read as follows:

‘1. The maximum non-interest cost of a loan for loans with a repayment period of not less than 30 days shall be calculated according to the following formula:

$$MPKK = (K \times 10\%) + (K \times n/R \times 10\%)$$

where individual symbols shall be understood to mean:

*MPKK* – the maximum amount of non-interest loan costs,

*K* – total amount of the loan,

*n* – repayment period expressed in days,

*R* – number of days per year.’;

- b) the following paragraph 1a shall be added after paragraph 1 and shall read as follows:

‘1a. The maximum non-interest cost of a loan for loans with a repayment period of less than 30 days shall be calculated according to the following formula:

$$MPKK = K \times 5\%$$

where individual symbols shall be understood to mean:

*MPKK* – the maximum amount of non-interest loan costs,

*K* – total amount of the loan.’,

- c) paragraphs 2 and 3 shall read as follows:

‘2. Non-interest costs of a loan may not exceed 45 % of the total amount of the loan.

3. Non-interest costs of a loan arising from a consumer loan agreement shall not be payable in the part exceeding the maximum amount of non-interest loan costs calculated in the manner as specified in paragraph 1–2.’,

- d) the following paragraph 4 is added:

‘4. The provisions of Article 720<sup>2</sup>–720<sup>5</sup> of the Civil Code shall not apply to a monetary loan agreement granted by a loan institution on the basis of the provisions of this Act.’;

- 5) in Article 36c, the introduction to enumeration shall be replaced and read as follows:

‘Where a creditor or an entity affiliated to it has granted further loans to a consumer who has not fully repaid the loan within 120 days of the date on which the first loan is disbursed.’;

- 6) Article 59a shall be amended as follows:

- a) paragraphs 1 and 2 shall read as follows:

‘1. A loan institution may operate only in the form of a joint-stock company, or a limited-liability company in which a supervisory board has been established.

2. The minimum share capital of the loan institution shall be PLN 1 000 000.’,

- b) paragraph 4 shall read as follows:

‘4. Only a person who has not been legally convicted of an offence against the credibility of documents, property, business trade, trading in money and securities, or fiscal crime may be a member of the management board, supervisory board, or a proxy of a loan institution.’,

- c) in paragraph 5, point 1, the words ‘members of the management board, the supervisory board and the audit committee’ shall be replaced by ‘members of the management board and the supervisory board’;

- 7) in Article 59ac, paragraph 3 shall read as follows:

‘3. A certificate from the National Criminal Register confirming that a member of the board of directors, supervisory board, or proxy of a loan institution has no criminal record in respect of the offences referred to in Article 59a(4), and documents proving compliance with the conditions referred to in Article 59a(1) and (2) by the entity applying to be entered in the register of loan institutions shall be attached to the request referred to in paragraph 1.’;

- 8) in Article 59ae, in point (2)(d) the full stop shall be replaced by a semicolon and point 3 shall be added and read as follows:

‘3) a note on deletion from the register.’;

- 9) in Article 59ag, paragraph 2 shall read as follows:

‘2. The Polish Financial Supervision Authority shall immediately delete an entry from the register of loan institutions concerning an entity which no longer fulfils the conditions referred to in Article 59a or which has been deleted from the register of entrepreneurs in the National Court Register.’;

- 10) the following Articles 59ca to 59cc shall be added after Article 59c and shall read as follows:

‘Article 59ca. 1. Funds allocated to the granting of a consumer loan by loan institutions shall not be derived from the activity of collecting funds of other natural persons, legal entities, or organisational units without legal personality, including the issuance of bonds or other debt instruments and undocumented sources.

2. The funds allocated to the granting of consumer loan by loan institutions may come either from a bank loan or from loans from affiliated entities, provided that the affiliated entities providing such loans do not accumulate cash in the manner specified in paragraph 1.

Article 59cb. 1. A loan institution in respect of consumer loans granted through the acts or omissions of its employees, loan intermediaries through whom it grants consumer loans, or other undertakings carrying out activities relating to the provision of consumer loans on its behalf, shall be liable to the borrowers as for its actions, including actions in connection with a demand for the borrower to pay interest or non-interest costs of the loan in an amount higher than the maximal one, or with conclusion of an agreement which obliges the borrower to do so towards the loan institution.

2. The liability referred to in paragraph 1 may not be excluded or restricted.

Article 59cc. The burden of proving that the loan institution has correctly complied with its statutory obligations towards consumers shall remain within that institution.’;

11) in Article 59d:

a) paragraph 1 shall read as follows:

‘1. An entity established in the territory of a country which is a member of the European Union other than the Republic of Poland, the Swiss Confederation, or a Member State of the European Free Trade Agreement (EFTA) – a party to the Agreement on the European Economic Area may, in accordance with the rules laid down in the Act, carry out activity in the territory of the Republic of Poland in the field of granting consumer loans if it meets the conditions referred to in Article 59a(2)-(4).’;

b) paragraphs 1a and 1b shall be added after paragraph 1 and shall read as follows:

‘1a. The entity referred to in paragraph 1 shall notify the Polish Financial Supervision Authority of the intention to undertake the activity of granting consumer loans on the territory of the Republic of Poland no later than two months prior to taking up this activity.

1b. In the notification referred to in paragraph 2, the entity referred to in paragraph 1 shall identify the competent state supervisory authorities referred to in paragraph 1 designated to supervise this entity with regard to the consumer loan granting business or inform that the laws of the state referred to in paragraph 1 do not provide for the designation of such authorities.’;

12) in Article 59de, paragraph 2 shall read as follows:

‘2. The Polish Financial Supervision Authority shall immediately delete an entry from the register concerning an entity which no longer fulfils the conditions referred to in Article 59da(2) or which has been deleted from the register of entrepreneurs in the National Court Register or from the Central Register and Information on Economic Activity.’;

13) the following Chapter 5ab shall be added after Chapter 5aa and shall read as follows:

#### ‘Chapter 5ab

##### Supervision over operations of loan institutions

Article 59df. 1. The activities of loan institutions in the scope of granting consumer loans shall be supervised by the Polish Financial Supervision Authority.

2. The purpose of supervising the activities of loan institutions shall be to control and enforce the compliance of these activities with the Act.

Article 59dg. 1. The loan institution shall provide the Polish Financial Supervision Authority with quarterly and annual activity reports on consumer loans, including information on:

- 1) consumer loans granted, including their number, taking into account the number of loans referred to in Article 36b, the value, timing and currency structure, and delays in repayments;
- 2) consumer loan agreements concluded, including their number, types, and status;
- 3) the number of customers to whom a consumer loan was granted taking into account the number of customers to whom the loan as referred to in Article 36b was granted;
- 4) the total revenue obtained from granting consumer loans with separated revenues obtained in relation to non-interest costs of the loan;
- 5) the balance sheet, indicating the sources of financing of consumer loan activities;
- 6) persons referred to in Article 59a(4), along with information on their compliance with the requirements set out in this provision.

2. The reports referred to in paragraph 1 shall be provided to the Polish Financial Supervision Authority in electronic form only using the reporting forms and communication channels provided by the Polish Financial Supervision Authority.

3. The minister for financial institutions shall determine, by means of a regulation, the detailed scope and time limits for submitting the information referred to in paragraph 1 and templates for reporting with a view to ensuring that the Polish Financial Supervision Authority has access to the data necessary for effective supervision of the operations of loan institutions.

Article 59dh. 1. As part of its supervision, the Polish Financial Supervision Authority may:

- 1) require the provision or periodic provision by the loan institution of information, documents, or data necessary for the purpose referred to in Article 59df(2), other than the information referred to in Article 59dg(1) by the loan institution;
- 2) issue recommendations to the loan institution to ensure that operations relating to granting consumer loans comply with the Act.

2. Measures performed as part of supervision shall be without prejudice to agreements concluded by loan institutions pursuant to the Act.

Article 59di. 1. Where it is found that the loan institution fails to comply with the information provision obligation referred to in Article 59dg(1) or Article 59dh(1)(1), or complies with it incorrectly, or has failed to comply with the recommendations referred to in Article 59dh(1)(2) within the prescribed period, and where it is found that the activities of the loan institution, including those carried out with the participation of a loan intermediary, are carried out in violation of the Act or contrary to the conditions laid down in the Act, the Polish Financial Supervision Authority may:

- 1) impose a financial administrative penalty of up to PLN 150,000 on the member of the management board of the loan institution directly responsible for the identified irregularities;
- 2) impose an administrative penalty of up to PLN 15,000,000 on the loan institution;
- 3) apply to the competent body of the loan institution to dismiss the member of the management board referred to in point 1;
- 4) suspend a member of the management board referred to in point 1 until a decision has been reached on the application referred to in point 3; suspension shall consist of exclusion from decision-making in respect of the property rights and obligations of that entity;
- 5) delete the loan institution from the register of loan institutions and, if it is entered simultaneously in the register of loan intermediaries, also from that register.

2. The penalties referred to in paragraph 1 shall be applied by administrative decision.

3. Administrative decisions in the matters referred to in paragraph 1(3) to (5) shall be immediately enforceable.

4. The financial administrative penalty referred to in paragraph 1(1) may also be imposed after termination of their duties as a member of the management board if the violation occurred in the course of the performance of that function.

5. The financial administrative penalty referred to in paragraph 1(2) may also be imposed where the entity is deleted from the register of loan institutions.

6. The provisions of section IVa of the Code of Administrative Procedure Act of 14 June 1960 (Journal of Laws of 2022, item 2000 and 2185) shall apply to administrative financial penalties referred to in paragraph 1(1) and (2).

7. The Polish Financial Supervision Authority shall announce information on the application of the penalties referred to in paragraph 1 unless disclosure of such information would disproportionately prejudice the legal interest of the parties concerned. The name of the person on whom the fine referred to in paragraph 1(1) or (4) is imposed shall be made public when the decision on the matter is final.

8. The information referred to in paragraph 7 shall be available on the website of the Polish Financial Supervision Authority for 5 years from the date on which it is shared except that information concerning the name of the person on whom the penalty has been imposed shall be available on this website for one year.

Article 59dj. 1. Information obtained or generated in connection with the exercise of supervision, the granting, disclosure, or confirmation of which could undermine the legally protected interests of entities directly or indirectly concerned by that information, or make it more difficult to exercise supervision of loan institutions, shall constitute professional secrecy protected in accordance with the provision of Article 16 of the Financial Market Supervision Act of 21 July 2006 (Journal of Laws of 2022, item 660, 872, 1488, 1692, 2185 and 2339).

2. The obligation to protect the secrecy referred to in paragraph 1 shall not affect:

- 1) provision of information necessary to achieve the objective referred to in Article 59df(2);
- 2) provision of information in the situations referred to in Article 59dk;
- 3) filing a report of suspicion of a criminal act;
- 4) providing information to a person, authority, or other entity under separate provisions.



3. In the case of information protected under separate provisions, the provision and transmission of the information referred to in paragraph 1 by the Polish Financial Supervision Authority shall not infringe upon the principles of protection laid down in those provisions.

Article 59dk. 1. The Polish Financial Supervision Authority may provide information obtained or generated in connection with the performance of tasks resulting from the Act:

- 1) the competent supervisory authorities in the cases referred to in Article 59dm;
- 2) the authorities and institutions of the European Union competent in matters relating to consumer loan granting activities and the supervision of entities carrying out such activities.

2. The information referred to in paragraph 1 is provided if:

- 1) the information provided shall only be used for the purposes of the tasks carried out by those authorities relating to the activity of granting consumer loans or the supervision of entities carrying out such activities;
- 2) it is guaranteed that providing the obtained information outside these bodies shall only be possible upon the prior consent of the Polish Financial Supervision Authority;
- 3) this is without prejudice to the protection of information arising from separate provisions.

Article 59dl. 1. Where it is established that an entity referred to in Article 59d(1), when carrying out activities in the Republic of Poland in the field of granting consumer loans, infringes upon the provisions of the Act or conducts this activity contrary to the conditions laid down in the Act, the Polish Financial Supervision Authority may:

- 1) request the entity, in writing, to comply with the provisions of Polish law and set a deadline for remedying the irregularities found;
- 2) prohibit the operation of the entity on the territory of the Republic of Poland in the scope of granting consumer loans.

2. The penalty referred to in paragraph 1(2) shall be applied by an administrative decision. This decision shall be immediately enforceable. The Polish Financial Supervision Authority shall announce the decision.

Article 59dm. 1. In order to ensure that the activities of the entity referred to in Article 59d(1) are consistent with the provisions of the Act and that the actions referred to in Article 59dl(1) are performed towards this entity, the Polish Financial Supervision Authority may cooperate with the competent supervisory authorities of the State referred to in Article 59d(1) in so far as such authorities have been designated.

2. The Polish Financial Supervision Authority may cooperate with the competent supervisory authorities of the States referred to in Article 59d(1) in so far as such authorities have been designated, in respect of the activities of loan institutions in their territory.

3. As part of the cooperation referred to in paragraph 1 and 2, the Polish Financial Supervision Authority may communicate information obtained in carrying out tasks under the Act necessary to achieve the objectives of that cooperation to the competent supervisory authorities, upon request or on its own initiative.

Article 59dn. The Polish Financial Supervision Authority and persons carrying out supervision activities shall not be liable for damage resulting from a lawful act or omission which shall be related to the supervision exercised by the Polish Financial Supervision Authority.

Article 59do. 1. Loan institutions shall be required to contribute to the costs of supervision in an annual amount not exceeding 0.5 % of the sum of revenues on loan operations in the scope of consumer loan granting obtained for the preceding financial year, but no less than an equivalent of EUR 5,000 in PLN calculated using the average EUR exchange rate announced by the National Bank of Poland for the last business day of the year preceding the calendar year in which the obligation arose.

2. Loan institutions shall provide the Polish Financial Supervision Authority with declarations of making the payment to cover supervisory costs. Article 59dg(2) shall apply respectively.

3. The Prime Minister shall determine the following by means of a regulation:

- 1) time limits for payment, the amount and method of calculating the payments referred to in paragraph 1,
- 2) the method and time limits for settlement of the payments referred to in paragraph 1,
- 3) the sample declaration for making the payment to cover supervision costs

– with a view to ensuring that the amount of contributions to cover the costs of supervision does not significantly increase the operating costs of entities obliged to pay them, the need to ensure the effectiveness of supervision, and the possibility to submit declaration on payment of costs of supervision in the form of an electronic document within the meaning of Article 3(2) of the Act of 17 February 2005 on Computerisation of the Activities of Bodies Performing Public Tasks.

Article 59dp. 1. A loan institution which has failed to comply with the obligation referred to in Article 59dg(1)(4) shall pay a penalty fee in PLN in the amount equivalent to EUR 5,000 to the Polish Financial Supervision Authority. Payment of the penalty fee shall not exempt from the obligation referred to in Article 59dg(1)(4).

2. The equivalent in PLN expressed in EUR of the amount referred to in paragraph 1 shall be converted using the average EUR exchange rate announced by the National Bank of Poland on the last working day of the year preceding the calendar year in which the obligation arose.

3. Where the Polish Financial Supervision Authority finds that the loan institution has failed to comply with the obligation referred to in Article 59dg(1)(4), the Polish Financial Supervision Authority shall request the institution to pay the penalty fee referred to in paragraph 1 within 30 days, and shall call for the immediate implementation of the obligation referred to in Article 59dg(1)(4), providing information on the content of paragraph 1, second sentence.

4. The penalty fee referred to in paragraph 1 shall be subject to enforcement under the provisions of the Act on Enforcement Proceedings in Administration of 17 June 1966 (Journal of Laws of 2022, item 479, 1301, 1692, 1967, 2127 and 2180).

5. If failure to comply with the obligation referred to in Article 59dg(1)(4) entails imposing the penalty referred to in Article 59di(1)(2) on the loan institution, when determining the amount of the penalty payment, account shall be taken of the amount of the penalty fee paid as referred to in paragraph 1.’;

14) Article 59j shall be added after Article 59i and shall read as follows:

‘Article 59j. 1. Anyone who, being responsible for providing information to the Polish Financial Supervision Authority in a loan institution, provides factually incorrect information or otherwise misleads the Authority, shall be liable to a fine of up to PLN 1 000 000 or imprisonment of up to 2 years, or both.

2. If the perpetrator acts unintentionally, they shall be liable to a fine of up to PLN 500 000 or an imprisonment of up to one year, or both.’.

**Article 8.** Article 3 in the Reverse Mortgage Loan Act of 23 October 2014 (Journal of Laws of 2022, item 158) shall read as follows:

‘Article 3. In matters related to the reverse mortgage loan, Article 69(1) and (2), Article 70, Articles 74-75a, Article 76a, Article 77, Article 78, and Article 78a of the Banking Law Act of 29 August 1997, and Article 387<sub>1</sub> of the Civil Code Act of 23 April 1964 (Journal of Laws of 2022, item 1360, 2337 and 2339) shall not apply.’.

**Article 9.** In the Act on Mortgage Loan and Supervision of Mortgage Loan Intermediaries and Agents of 23 March 2017 (Journal of Laws 2022, item 2245), in Article 63:

1) in paragraph 3, in point 2(e), the full stop shall be replaced by a semicolon and point 3 shall be added and read as follows:

‘3) a note on deletion from the register of loan intermediaries.’;

2) the full stop in paragraph 4(3) shall be replaced by a semicolon and point 4 shall be added and read as follows:

‘4) a note on deletion from the register of loan intermediaries.’.

**Article 10.** 1. The provisions of the Acts amended in Article 1, Article 4, Article 6, and Article 7(3)–(7), as amended by this Act, shall not apply to agreements concluded prior to the date of entry of those provisions into force.

2. Article 777 of the Act amended in Article 2 shall apply in its previous wording in proceedings for the granting of an enforceability clause to a notarial act in which the debtor submitted to enforcement and which was drawn up before the date of entry into force of Article 2 of this Act.

**Article 11.** A loan institution engaged in the business of providing a consumer loan before 1 January 2024 shall make the first payment as referred to in Article 59do(1) of the Act amended in Article 7 in 2024 within the deadline and in the manner defined in the provisions issued based on Article 59do(3) of the Act amended in Article 7.

**Article 12.** 1. Loan institutions entered in the register referred to in Article 59aa(1) of the Act amended in Article 7, prior to the date of entry into force of the provisions of Article 7(6), (7), (10), and (11) of this Act, that, at the date of entry into force of those provisions, fail to meet the requirements laid down therein may continue to operate in the field of granting consumer loans without meeting those requirements until 31 December 2023.

2. By 30 November 2023, the loan institutions referred to in paragraph 1 shall inform the Polish Financial Supervision Authority of the actions taken in order to comply with the requirements referred to in Article 59a(1) and (2) of the Act amended in Article 7 as amended by this Act.

3. Loan institutions which, as of 1 January 2024, fail to meet the requirements referred to in Article 59a(1) and (2) of the Act amended in Article 7, as amended by this Act, shall be deleted on that day from the register referred to in Article 59aa(1) of the Act amended by Article 7.

4. Proceedings concerning entry in the register referred to in Article 59aa(1) of the Act amended in Article 7, initiated and not completed prior to the date of entry into force of Article 7(6), (7), (10), and (11) of this Act shall be remitted if the applicant does not comply with the requirements laid down therein on the date of entry into force of those provisions.

**Article 13.** The entry into force of this Act shall not give rise to an obligation to redeem the issued bonds in advance or to repay early the financing obtained with the use of other debt instruments, if such liabilities are not permitted under Article 59ca(1) of the Act amended in Article 7 of this Act.

**Article 14.** The Act shall enter into force 6 months after publication thereof except for:

- 1) Article 1, Article 2, Article 4, Article 6 and Article 7(1), (3)–(7), (10) and (11), which shall enter into force 30 days after the date of publication;
- 2) Article 7(13), which shall enter into force on 1 January 2024.

President of the Republic of Poland: *A. Duda*