

CONSUMER CREDIT IN EUROPEAN UNION

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Abstract

Modalities of consumer's protection at consumer's lending in European Union Member States are provided with a special directive of the European Parliament and the Council (Directive 2008/48/EZ of the consumer credit agreements). Although this area has been regulated in European Union by the directives since 1987 (Directive 87/102/EEC), for the economic crisis it was increasingly coming to the fore that the consumer, as a weaker agreement party, was not protected enough. The directive 2008/48/EC on consumer credit is based on the principle of maximum harmonization and regulates the minimum legislative framework for each of the member states. Republic of Croatia has become a member of the European Union. As the youngest of the Member States, Republic of Croatia was obliged to adjust its national legislation concerning the protection of consumers when signing a credit agreement with *acquis communautaire*, following is the Republic of Serbia on its European path, therefore Directive 2008/48/EZ about consumer purchase credit is being analyzed in this paper, as well as Serbian and Croatian legal regulations in this field.

Keywords: Consumer credit, the European Union, regulatory framework

Introduction to Consumer Credit in the EU Member States

Consumer credit is a companion and an integral part of the modern society and also one of the most significant financial services in modern economies. As such, consumer credit has a number of economic, legal and social aspects. By improving production and consumption, consumer credit has contributed to raising the standard of living and economic prosperity of the society. The highest percentage of consumer loans in the structure of private consumption and gross domestic product was recorded in the most developed countries (Jovanić, 2004;10). European Union has been trying to establish equal level of consumer protection²⁶⁴ among Member States²⁶⁵. The economic crisis and the instability of the financial market have recently brought to many new ways of consumers' crediting (Petrić, 2007;539, Čulinović-Herc, 2005;176)²⁶⁶, whereby differences in the regulations of consumers protection among Member States of the European Union came to the fore as a bad impact to the common market within its borders (Weatherill, 2005). Aiming to further

²⁶⁴ The notion of consumer is defined in Art. 3. (a) of Directive 2008/48/EC. „Consumer means a natural person who, in transactions covered by this Directive, is acting for purposes which are outside his trade, business or profession“/ consumer is a natural person who contracts consumer credit agreement with target which cannot be attributed to his professional or business activities”.

²⁶⁵ Fundament is Art. 153. Treaty on European Union: “Consumer protection aims to protect the health, safety and economic interests of consumers, and promotes the consumer's right to information, education and organizing in order to safeguard common interests.”

²⁶⁶ Art. 5. Directive 2008/48/EC of the European Parliament and of the Council of 23 April 2008 on credit agreements for consumers and repealing Council Directive 87/102/EEC, OJ L 133/66

harmonization of the legal frameworks in this area and to strengthen business competitiveness, the European Parliament and the Council have brought a new legal framework for consumer credit in the Member States of the European Union²⁶⁷. By this directive, European Union amended 800 billion EUR worth market and enabled all the consumers from European Union to have the same rights in respect of credit arrangements and gave them the ability to compare credit terms all over the common market (Loos, 2008).

Directive 2008/48/EZ of the European Parliament and of the Council of 23rd April 2008 about the consumer credit contracts²⁶⁸ is effective from 11th June 2008 and by its adoption Directive 87/102/EEC²⁶⁹ was repealed; it referred to the approximation of laws, regulations and administrative provisions of the Member States concerning consumer credit of 22nd December 1986 (hereinafter: Directive 87/102/EEC)²⁷⁰. Member States were obliged to implement new directive into their legislations within two years (till 12th May 2010) with the aim of responsible lending and consumers' financial protection and strengthening of consumers' trust²⁷¹. Directive has brought numerous changes related to consumers' protection and it also stipulates the obligation to publish regulations by which its provisions are implemented into a specific national law.

As the newest Member State, Republic of Croatia equalized its legal framework in this area with the EU acquis²⁷² by the adoption of the Consumer Credit Law²⁷³. Consumer protection in the Republic of Croatia was realized for the first time in 2003 by the adoption of the former Consumer Protection Act (Official Gazette, No. 96/03)²⁷⁴ and all subsequent amendments in legislative framework that have gone in the direction of harmonization with the *acquis communautaire*.

²⁶⁷ Basis for the adoption of Directive 2008/48/EC of the European Parliament and of the Council on consumer credit contract is Art. 95., Treaty on European Union: "... Having regard to the Treaty establishing the European Community, and in particular Article 95 thereof,..." Art. 1. Directive 2008/48/EC of the European Parliament and of the Council of 23 April 2008 on credit agreements for consumers and repealing Council Directive 87/102/EEC, OJ L 133/66

²⁶⁸ *Directive 2008/48/EC of the European Parliament and of the Council of 23 April 2008 on credit agreements for consumers and repealing Council Directive 87/102/EEC*, OJ L 133/66

²⁶⁹ *Council Directive of 22 December 1986 for the approximation of the laws, regulations and administrative provisions of the Member States concerning consumer credit (87/102/EEC)*, OJ L 42

²⁷⁰ The negotiations within the Council focused on five areas; the first includes standardized information that all advertising credit agreement must contain. The second is reduced to standardized information any preliminary loan agreement and loan agreement should include, the third refers to the conditions for termination of the contract, the fourth to repayment of the loan before the agreed term and the right to compensation for the lender, and the last one, the fifth, refers to calculation of the annual interest rate.

Any advertisement or announcement of the credit agreement that include the interest rate and the cost of the credit should clearly and concisely offer the consumer the following information: the total value of the loan, the interest rate, length of loan, the total amount to be paid after the repayment of loans, and in case of loans with deferred payment and the price for cash payment, and the amount of any advance payment.

It should be kept in mind when considering these facts that interest rates on consumer loans in the EU range from six percent in Finland to 12 percent in Portugal.

²⁷¹ Art. 8. *Directive 2008/48/EC of the European Parliament and of the Council of 23 April 2008 on credit agreements for consumers and repealing Council Directive 87/102/EEC*, OJ L 133/67.

²⁷² By signing the Stabilization and Association Agreement with the Community and its Member States on 29th September 2001, the Republic of Croatia has taken the responsibility to harmonize consumer law standards that exist in the community.

²⁷³ Official Gazette of Republic of Croatia 75/09, 112/12.

²⁷⁴ After it followed the new Consumer Protection Act (Official Gazette 79/07, 125/07, 79/09, 89/09, 133/09, 78/12, 56/13, into which were implemented provisions on European directives – especially Directive 87/102/EEC. More about other implemented directives see in: Pošćić, Ana, Protection in the Croatian Legislation – Good or Bad Example of the Legislation, Law and Taxes, 2004., No 9, p. 81-85, p. 84 and Čulinović-Herc, Edita, op. cit. bilj.2, p. 177.

In Republic of Serbia, consumer protection has been regulated by the Consumer Protection Act from 2005²⁷⁵ and the applicable Consumer Protection Law was passed five years later²⁷⁶. Namely, based on the Law of ratification of the Stabilization and Association Agreement between the European Communities and their Member States, on one side and Republic of Serbia on the other²⁷⁷, have committed to work together to align the standards of consumer protection in the Republic of Serbia with the European Union and is provided for this purpose and is their interest that the parties provide: a policy of active consumer protection in line with the *acquis communautaire*, including the increase of information and development of independent organizations; harmonization of consumer protection legislation in Serbia on that in force in the European Union; effective legal protection for consumers in order to improve the quality of consumer goods and maintain appropriate safety standards; monitoring of rules by competent authorities and providing access justice in case of dispute and exchange of information on dangerous products. The above solutions can affect consumers' ability to make the best choices in business and commercial transactions with vendors and service providers that will provide the best education in the field of consumer rights for them, immediate and timely legal assistance and effective judicial and non-judicial protection. In order to implement Directive 2008/48/EC on consumer credit contract, the Law on the protection of consumer financial services²⁷⁸ has been brought and came into force on 04.06.2011. and shall apply from 05.12.2011. except the Article 38 Paragraph 5 of the Law which applies from 01.01.2012. In the future, the legislation of the Republic of Serbia in the field expects a higher level of harmonization with the *acquis communautaire*, as well as the enactment of the Consumer Credit Act and its recent amendments, the legislation of the Republic of Croatia fully implemented Directive 2008/48/EC on consumer contracts credit, which is the alignment of the Croatian national legal framework of consumer protection legislation in the European Union, at least theoretically, and complete.

Directive 2008/48/EC on Consumer Credit Contracts

As mentioned earlier, the Directive 2008/48/EC of the European Parliament and of the Council of 23rd April 2008 on consumer credit contracts (hereinafter: Directive 2008/48/EC) has been in force since 11th June 2008 and Member States were obliged to implement it in their legislation within two years, till 12th May 2010²⁷⁹. Directive 2008/48/EZ abolished Directive 87/102/EEC of 22nd December 1986. and brought many novelties into consumer credit matter. Apart from the fact that the Directive 2008/48/EC, unlike the previous one, is based on the principle of the maximum harmonization²⁸⁰ it is necessary to emphasize the introduction of credit intermediary as an entirely new subject of consumer credit. According to the definition adopted by the Directive 2008/48/EC of the Art. 2. (f), the credit intermediary is a natural person or legal entity who does not act as a lender in the market and within his professional or business activities conducted for a specific counter value²⁸¹, represents or offers credit agreements to consumers or helps them over aforementioned preparatory actions which preceded the conclusion of the contract or concludes credit agreements with consumers²⁸². Besides that, directive 2008/48/EC

²⁷⁵ Official Gazette of the Republic of Serbia No. 79/2005.

²⁷⁶ Official Gazette of the Republic of Serbia No. 73/2010.

²⁷⁷ Official Gazette of the Republic of Serbia no. 83/2008.

²⁷⁸ Official Gazette of the Republic of Serbia No. 36/2011.

²⁷⁹ Art. 27., Directive 2008/48/EC

²⁸⁰ Directive 87/102/EEC was based on the principle of minimum harmonization

²⁸¹ That counter value can consist not only of a financial commitment but also of any other contractual economic benefit.

²⁸² Art. 3.(f) Directive 2008/48/EZ „ *Credit intermediary means a natural or legal person who is not acting as a creditor and who, in the course of his trade, business or profession, for a fee, which may take a pecuniary form*

introduces the obligation to inform the consumers in the pre-contractual²⁸³ and contractual stages, the obligation to assess the consumer's creditworthiness²⁸⁴, consumer's right to cancel the loan agreement concluded for an indefinite period, and the right to terminate the loan agreement. Consumer information is the basic obligation of the creditor, with the purpose of achieving a greater degree of equalization of the parties (Foster, 2010). The purpose of the Directive adoption was essentially informing consumer about the consumer contract, thus eliminating consumer's misconceptions regarding the advantages and disadvantages the individual creditor offers in his contractual provisions²⁸⁵. Information is provided to consumer in another durable medium²⁸⁶ using the form from Annex II, directive entitled "European Standard Information for Consumer Loans". For other information, the creditor may provide the consumer in a separate document²⁸⁷.

Fields of application

Directive 2008/48/EC refers to the loan agreements which were defined as agreements whereby a creditor grants or promises to grant a credit to consumers in the form of deferred payment, loan or other similar financial aid (Wilhelmsson, 2004;317, Howells/Reiner Schulze, 2009, Micklitz, 2009; 53, 71), with the exception of agreements on permanent service or delivery of goods of the same species he consumer pays in installments during the provision of services or delivery of goods²⁸⁸. In Art. 2 (a-l) Directive 2008/48/EC explicitly states which contracts are excluded from its application²⁸⁹ and further, in Art. 3. lists contracts partially excluded from the application. There are primary credit agreements in the form of the possible exceeding the balance on current account (Article 3 (d), and the credit agreement in the form of tacit overdraft balance on current account (Article 3 (e)). As noted above, Member States must ensure lenders credit rating consumers when entering loan agreement (Van Boom, 2009). They should have access to information or receive directly from customers or from the database. The information in the database must be available to the other Member States of the European Union²⁹⁰. The information are crucial for the

or any other agreed form of financial consideration: (i) presents or offers credit agreements to consumers; (ii) assists consumers by undertaking preparatory work in respect of credit agreements other than as referred to in (i); or (iii) concludes credit agreements with consumers on behalf of the creditor“

²⁸³ Art. 5 and 6 Directive 2008/48/EC

²⁸⁴ Art. 8 Directive 2008/48/EC

²⁸⁵ Article 6 Directive 2008/48/EC

²⁸⁶ The concept of continuous medium is defined in Art. 3 (m) of Directive 2008/48/EC as any instrument which enables consumer's personal storage so it is available for future use during the period that corresponds to the purpose of the information and which allows the unchanged reproduction of stored data.

²⁸⁷ Article 5 Directive 2008/48/EC

²⁸⁸ Art. 3. (c) Directive 2008/48/EZ

²⁸⁹ Completely excluded are: the loan agreements, where the claim is secured by a mortgage or other similar collateral means which is usually contracted with real estates in Member States, or the right to property; the loan agreements intended for acquisition or retention of ownership of real property or an existing or planned building; the loan agreement, in which the total amount of the loan is less than 200 or greater than 75 000 euros; lease agreements and lease obligations when acquiring ownership is not provided in the treaty or a separate contract; loan agreements interest-free and loan contracts with maturity up to 3 months in which the borrower arises only negligible costs; loan agreements which are for free deferred payment of existing debt; loan agreement the employer approves as his secondary activity to his employees according to legislative regulations and in general interest allocated to a limited number of customers, whether at a lower interest rate than the market or without interest or under other conditions; loan agreements concluded with investment company within the meaning of Art. 4 of Directive 2004/39/EZ on market's and financial instruments or with a credit institution within the meaning of Art. 4 of Directive 2006/48/EC; credit agreement as a result of a court settlement or settlement before any other legally authorized body; loan agreements where the consumers must give the creditor a thing to pledge to insurance claims and where the responsibility is strictly limited to the pledged asset.

²⁹⁰ Art. 6. 1. Directive 2008/48/EZ

creditor when deciding whether to approve a loan (Article 8 of Directive 2008/48/EC). The loan agreement must be drawn up on a durable medium; each of the parties must be given a copy of the contract (Wilhelmsson, 2008; 227).

Special Rights of Consumers

In order to achieve a higher level of consumer protection, Directive 2008/48/EZ regulates some specific consumer rights such as:

a) *The right to cancel the loan agreement for an indefinite period*

▪ The consumer is free at any time and without any obligations to cancel the loan agreement concluded for an indefinite period, unless the parties agreed the notice period which should not be longer than a month²⁹¹.

b) *The right to terminate the loan agreement*

▪ The consumer has the right to terminate the loan agreement within 14 calendar days without giving a reason. Period of fourteen days starts on the date of the loan agreement or the date when the consumer was delivered the contract terms and information according to Art. 10 Directive 2008/48/EZ if that day occurred after the day of signing²⁹².

c) *Related Agreements*

▪ Related loan agreement²⁹³ is an agreement in which the loan serves solely for financing delivery contract of certain goods or the provision of certain services, and objectively speaking, the two contracts constitute a single economic entity²⁹⁴.

d) *Early Repayment*²⁹⁵

▪ The consumer has the right at any time to fulfill their obligations from the loan agreement partially or entirely, whereby they become eligible for the reduction of the total cost of the loan which consists of interest and costs of the remaining duration of the contract. Assuming that the pre-payment followed in a period which is fixed NCS, the creditor has the right to demand a fair and objectively adequate compensation for possible costs directly linked to early repayment of the loan (Faure, 2008; 441)

e) *The Transfer of Rights*

When the creditor transfers their rights from the contract or transfers 'loan agreement', creditor retains all the objections he had to the first provider of credit, including the objection of compensation if the objection is allowed in the law of Member State²⁹⁶. Directive 2008/48/EC promotes the amicable solving of consumer's disputes occurring in consumer's

²⁹¹ Art. 13 Directive 2008/48/EZ

²⁹² According to Art. 14 Directive 2008/48/EC consumer may be entitled to terminate the agreement achieved in a way that allows him proving according the national law; notice of termination, which should be promptly sent on paper or another durable medium and be available to the creditor or be available to him; after termination, the creditor must, without delay and no later than 30 days after sending the statement of termination return the loan and the interest of the loan amount calculated from the date of the beginning of the day to repay the loan.

²⁹³ Article. 3 (n) of Directive 2008/48/EC

²⁹⁴ Single economic unit exists when the supplier or provider of goods finances the loan themselves in favor of the consumer, or when the lender is funded by the third party in the preparation or conclusion of the loan agreement and uses the cooperation of the supplier of goods or provider or services or when the certain goods or a service is expressly stated in the loan agreement.

²⁹⁵ Article 16, Paragraph 1, Directive 2008/48/EZ – During the negotiations, the issue of the loan repayment before the agreed terms emerged as a major stumbling block. Achieved compromise solution gives creditors a limited right to compensation for early loan repayment in the amount of 0.5 to 1 percent of the loan amount prepaid. This benefit, however, applies only at fixed interest rates in cases where the benchmark rate is lower in the period of early repayment than at the time of the loan agreement conclusion. Moreover, the EU Member States may restrict the bank's request for compensation in cases when the amount of the repayment period of 12 months exceeds the maximum limit of 10 000 euros.

²⁹⁶ Art. 17, paragraph 1 Directive 2008/48/EC

credit contract, stipulating that Member States must ensure the existence of consumer's disputes resolutions (Micklitz, 2009; 66-67, Poncibò, 2009; 357, Faure, 2008; 443).

The ultimate goal of this provision is actually a trend, which is promoted by Directive 2008/48/EC, to facilitate cooperation between all bodies, in order to increase the share of cross-border loans, and to contribute to a cross-border dispute resolutions (Micklitz, Reich 2009; 481).

Definition and regulation of consumer credit in Serbia and Croatia

In the Republic of Serbia it is provided by Article 5, Paragraph 13 of the applicable Consumer Protection Act that "financial services are banking and credit services, insurance and pension insurance services related to pension funds, investments and payment services", but *lex specialis* called The Law on Protection of Financial Services was only passed in 2011²⁹⁷. Previous Law on Consumer Protection²⁹⁸ contained provisions that provide the basic elements for a contract of consumer credit. Article 29 from the previous Law on Consumer Protection of the Republic of Serbia regulated that the provider of the consumer credit shall, prior to the conclusion of the contract, inform the consumer, in written form, about the highest amount of consumer loans, the annual interest rate and the terms of its possible change, the cost of credit charged at the time of the contract conclusion and terms of their possible change, as well as the conditions and procedure for contract termination. The provisions of Article 30 of the Law provides that any consumer credit contract must include: the name and price of a product or service that is the subject of the contract; the total amount, repayment period, the number and amount of monthly loan installments, interest rate, method of securing the repayment of loans and the terms for contract termination; amount of the annual interest rate and terms of its possible change; conditions and ways of the loan repayment before the agreed term and other elements, in accordance with the Law, as the provider of the consumer credit cannot charge consumer an extra cost that is not in the contract. Provisions from the Article 31 from the Law have provided that any product payment in monthly installments can be arranged in a manner and under conditions proscribed by the Law. Advertising of consumer credit was not thoroughly defined by the Law on Advertising, except that, like any other message, it must be truthful, complete and defined in accordance with the law, good business practices of loyal competition and professional ethics. The method of calculation and publication of the effective interest rate on the loans is regulated by the National Bank of Serbia.

The current Law on the Protection of Financial Service applies only to natural persons who are users of financial services for purposes other than their intended business or other commercial activity²⁹⁹. Such limitation is based on the principle of contract law that requires appropriate level of attention from parties in legal matters, depending on the type of contractual relationship in question, so that the legal transactions between commercial entities require attention of a good businessman – which implies a higher degree of attention in relation to the level of attention of natural person who enters into contractual relationship in order to meet their non-business needs³⁰⁰. The law provides, starting from basic principles of contract law, right to equal treatment with the provider of financial service, the right of the user to the determination or determinability of contractual obligation, determination and determinability of contractual obligations, precise criteria for the precision of cash contractual obligations, as well as precision of the floating interest rates in a manner that their height

²⁹⁷ <http://www.politika.rs/rubrike/Ekonomija/Potrosacki-krediti-ispali-iz-zakona.lt.html>, access 13.08.2013.

²⁹⁸ Official Gazette of the Republic of Serbia no. 79/2005.

²⁹⁹ Article 2, Paragraph 1, item 9, Law on the Protection of Financial Services

³⁰⁰ Article 18, Paragraph 1, Law of Obligations, "Fig. SFRY", no. 29/78, 39/85, 45/89 - Decision USJ and 57/89, "Official Gazette", no. 31/93 and "Official Gazette", no. 1/2003 - Constitutional Charter.

related to reference elements that are officially published, ban on referral business policy provider in terms of the essential elements of the contract, the obligation that the bank and the provider of leasing are obliged to advertise credit and deposit services where the advertisement message includes an interest rate or any other numerical data related to cost revenues, through representative examples which include: the amount of the effective interest rate, which should be written so it can be visible from the other elements; currency; contracting period; indexing criteria; total amount and all the expenses. The law prohibits providers of financial services when advertising to use expressions which describe credit or leasing free if the credit or leasing approval is conditioned by the conclusion of another contract or is subject to anything that creates obligation to the user. The user has the right to withdraw from the loan agreement, agreement on overdraft, issuance and use of credit cards, leasing contracts and financial negotiations – within 14 days of the conclusion of the contract, without giving any reasons for withdrawal. In the loan agreement that is secured by a mortgage, as well as contracts whose object is purchase, or financing the purchase of real estate, the user can cancel the contract provided that he has started using the credit or finances. The user has the right at any time, entirely or partially, to carry out their obligations provided by the loan agreement. In this case, the user has the right to reduce the total credit cost by the amount of interests and charges for the remaining period of the contract; and the bank, in the cases determined by law, may contract fee for early repayment and only if the fixed nominal interest rate has been determined for the early repayment period. The exceptions are the credit agreements which are the subjects of the real estate purchase. Also, contract must include data about an interest paid by the bank, bank interest rate for interest calculation, with information whether it is fixed or variable and if it is variable – there must be some elements whose change affects the change in interest rates, periods when the bank will change them, as well as the method applied for the interest calculation. Also, the novelty in consumer protection field is that bank is allowed to assign one contract to one bank only.

Consumer credit contracts are regulated in the Republic of Croatia by the Consumer Credit Act³⁰¹, which was passed in 2009. Prior Republic of Croatia, Republic of Slovenia regulated this field by the law on its European way³⁰². The term consumer credit defines Law, stating that it is a “legal transaction by which one party agrees to make available to the other a certain amount of cash for a fixed or indefinite period of time, for any purposes or purposes set forth, and the other contracting party assumes the obligation to pay the agreed interest, or the agreed fees and to return the used amount of money on time as well as any other legal transaction, which is economically equal to this legal work³⁰³. The Republic of Croatia implemented Directive 2008/48/EC into its national legislation³⁰⁴. Except the consumer credit contract³⁰⁵, this Law regulates information and loan agreement rights³⁰⁶,

³⁰¹ Official Gazette 75/09, 112/12

³⁰² Slovenian law on consumer credits from 2000 was actually regulating credit agreement forms such as deferred payment of goods and services, loans, especially cash credits and overdrafts on current accounts, as well as other financial arrangements that have the same purpose as a loan in economic terms. This law defined the obligations prior to conclusion of credit agreement, the content of the contract, conditions for contract termination, and conditions for repayment before the agreed term, as well as mathematical equation for calculating the effective interest rate method. Slovenian law was dictating terms for credit mediation and responsibilities for the control of credit institutions. This regulation was also defining the required content for advertising of credit arrangement, so that every advertisement must contain representing and clear example of calculation of the total cost of the loan.

³⁰³ Art. 2 par. 15 Law on Consumer Credit.

³⁰⁴ Art. 1 Law on Consumer Credit

³⁰⁵ In terms of the consumer credit: "The loan agreement is a contract in which the lender approves or promises to grant consumer credit in the form of deferred payment, loan or other similar financial settlement, unless the contract of providing continuous service or product delivery to the same species when a consumer pays for such services or products during their entire delivery in the form of a meal." (Article 2, Item 3.) cf. art. 1021. Law on

where borrower presents a consumer who takes a loan under the terms and for the purposes prescribed by the law³⁰⁷. Misuse of certain provisions of the Consumer Credit Law made Croatian legislator to amend the current law, which should prevent such abuses in the future³⁰⁸. The amendments to the Act revoked the exemption from the Act for loans of less than HRK 1,500.00 and the exemption for loans on collateral pledge ensuring consumer protection in these credit relationships. The Draft Law on Amendments to the Law on Consumer Credit Act states that, in practice these exceptions were misused, which guaranteed loan value less than HRK 1500 and the collateral loan without the approval of the Ministry of Finance and were approving multiple loans lower than HRK 1500 on usurious terms to the consumer. The same practice was present at granting of pledge³⁰⁹. These Amendments abolished these exemptions and since they are in accordance with the principle of maximum harmonization of the Law and in full compliance with the provisions of Directive 2008/48/EC provisions of the obligation to assess credit worthiness of the consumer³¹⁰ have been taken and mandatory licensing of all providers of consumer credit³¹¹ was introduced. Also, creditor is bound to define parameters which will change the variable interest rate³¹² and is obliged, in accordance with the provisions of Directive 2008/48/EC, prior to the conclusion of the loan agreement, to warn consumer of the risks, clearly and unequivocally³¹³. If the creditor is going to change the interest rate in the loan agreement that is in progress, he will be able to do so only with the consent of the consumer whose loans are in process³¹⁴. Furthermore, the Law regulates the effective interest rate which must not exceed the limit of the interest rate stipulated in the Law of Obligations³¹⁵ which provides consumer protection of usurious interest rates and various fees³¹⁶. Accordingly, consumer

Obligations (Official Gazette 35/05, 41/08, 125/11). “ By the Credit Agreement bank obliges the borrower to make available a certain amount of cash for a fixed or indefinite period of time, for any purposes or purposes not identified, and the user commits to pay the bank the contractual interest rate and to return the used amount of money on time and the way it was agreed.”

³⁰⁶ In terms of the Consumer Credit: A consumer is a natural person who, in transaction covered by this law operates outside business activity or self-employment (Art. 2, p. 1), while Art. 5, p. 1 of the Consumer Protection Act of the Republic of Serbia stipulates that “the consumer is exclusively a natural person who obtains market goods or services for purposes other than their intended business or other commercial activity.”

³⁰⁷ Art. 1 Law on Consumer Credit

³⁰⁸ As a misuse in the Draft Law on Amendments to Law on Consumer Credit (PZ 147) is said to be increasing number of creditors, offering consumer loans with extremely adverse conditions making use of the specific provisions of the former Act on Consumer Credit according to which they are not obliged to obtain authorization to provide a service of consumer credit from the Ministry of Finances assembling such loan agreements which are not subjects of the provisions of the Law. The legislator further states that creditors were offering loans to consumers with high interest rates which consumers were not able to pay after some period of time, which brought them to the great financial burden and finally to the edge of existence; Available at: <http://www.sabor.hr/Default.aspx?art=49547>, access 02.08.2013..

³⁰⁹ PZ 147, page 3. Available at: <http://www.sabor.hr/Default.aspx?art=49547>, access 02.08.2013.

³¹⁰ Art. 8 Of the Consumer Credit

³¹¹ Approval for the provision on the consumer credit issued by the Ministry of Finance within 60 days of request receipt and for a period of 3 years; Art. 21, p. 3. Conditions which credit providers must meet for giving service of lending to consumers are prescribed more detailed in the Regulations on Approval for the Provision of Consumer Credit which came into force on January, 28th 2010. Credit institutions, credit unions and leasing companies are exempted from this provision because they also approved by Croatian National Bank (HNB) and Croatian Agency for Supervision of Financial Services (HANFA).

³¹² Art. 11, p 2, Law on the Consumer Credit: The parameters may be, for example, reference interest rate (EURIBOR, LIBOR), the Consumer Price Index and the like, changes which do not depend on the will of a Contracting Party.

³¹³ Art. 11a (4). Law on Consumer Credit

³¹⁴ Art. 11a (6) of the Consumer Credit.

³¹⁵ Art. 20a of the Consumer Credit

³¹⁶ In this regard, the provisions from Art. 44-48 of the current Law on Consumer Protection of the Republic of Serbia regulate the protection of consumers in exercising their rights under contracts that contain unfair contract

lending, provided by creditors, others than credit institutions, credit unions and leasing companies, must be solely dedicated crediting and cannot be the main activity of the creditor, but these loans are given for the purpose of performing basic activities of the creditor (e.g. sale of goods and services), and all entities that will grant consumer loans or interfere with their approval, must obtain an operating license issued by the Ministry of Finance³¹⁷. Harmonization of the legal framework for the protection of the consumers at the conclusion of consumer loans with the EU *acquis*, introduced so-called credit intermediary into Croatian legal system who is in the law, as well as in Directive 2008/48/EZ, defined as natural person or legal entity that is not a creditor and who, in scope of his activities or leisure occupations and on the basis of power of attorney of the creditor, for compensation in money or other agreed financial form: presents or offers credit agreements to consumers, pursuing other preparatory work for consumers related to the loan agreement or enter into credit agreements with consumers on behalf of creditors³¹⁸. Credit intermediaries are obliged, in advertising or in a document for the consumer to specify the scope of their authority, especially whether they work with the number of creditors or as an independent broker; specify the amount of compensation, if any, consumer is obliged to pay for his services, or to agree a fee with the consumer in writing or another durable medium before the conclusion of the contract and finally to tell the creditor the amount of compensation, if any, which the consumer is required to pay with a credit intermediary for his services for the purpose of calculating the EIR. Monitoring of the implementation of the Law is governed by the economic powers of inspectors to act in cases of provision of services at consumer lending and brokerage in consumer credit without the approval of the Ministry of Finance³¹⁹. In this case, inspector's decision, without delay, prohibits the provision of consumer credit and seals the business premises of the creditor³²⁰. In accordance with the provisions of Directive 2008/48/EC Croatian legislator encourages alternative dispute resolution³²¹. In all disputes between consumers and creditors, which arise in the application of the provisions of the Law, may file a motion for mediation Conciliation Centre of the Croatian Chamber³²² of Commerce; a deal that closes in conciliation proceedings before the Conciliation Centre of the Croatian Chamber of Commerce has an executive title.

Conclusion

European Union has been emphasizing for many years consumer protection as one of the most important segments, which requires special attention. In order to create increased consumer protection and greater transparency of consumer loans at the unique European market, Directive 2008/48/EC was adopted. New legislative framework, adapted to changes on the financial market, has brought a number of innovations in the field of consumer protection among the Member States. Except that, unlike the previous Directive 87/102/EEC, based on the principle of maximum harmonization, and regulates the minimum legislative framework for each of the Member States, the Directive 2008/48/EC on consumer credit contract in a matter of consumer lending introduces a number of novelties. The introduction

terms and therefore are void under the law, as well as after provisions of Article 8 and Article 26 paragraphs from 1 to 3 Law on the Protection of Financial Services.

³¹⁷ Art. 21a (1) and (2) Law on the Consumer Credit

³¹⁸ Art. 2 (6) of the Consumer Credit Law

³¹⁹ Supervision in the implementation of the Law on Consumer Protection of the Republic of Serbia is regulated by the Art. 148 of the Law

³²⁰ Art. 23a (2) Law of the Consumer Credit

³²¹ Out of court settlement of consumer disputes is governed by Art. 132 of the current Law on Consumer Protection of the Republic of Serbia and article 40-50 of the Law on Protection of Financial Services.

³²² Mediation is conducted in accordance with the Rules of Conciliation of the Croatian Chamber of Economy (Art. 24, p. 2 of the Law on Consumer Credit)

of credit intermediaries as an entirely new entity in consumer lending, the need to inform consumers in the pre-contractual and contractual stages and obligation to conduct assessment of creditworthiness of consumers are some of the important ones that we emphasized. The first concrete steps in the approximation of the laws of the Republic of Croatia to the European Union regulations on consumer credit contract were made in 2003, when the Consumer Protection Act was enacted. This Law implemented provisions of Directive 87/102/EEZ into Croatian national legislation. Adoption and entry into force of Directive 2008/48/EC of the European Parliament and the Council of 23 April 2008 about the consumer credit contracts, the Croatian legislator is facing a new challenge further harmonization of positive legislation in the field of consumer protection with the EU acquis. Directive 2008/48/EC underlines the obligation of Member States to take care of responsible lending and protect the financial interests of consumers, as well as amendments to the existing legislative framework with a goal to further protect consumer users of consumer credit. Namely, the turbulent developments in the financial market, further need to ensure a high level of consumer protection appeared, as well as weaker contracting party, in order to strengthen consumer confidence. In addition, it is needed to ensure that the areas of consumer credit lending movement take to offer optimal conditions for both parties – both creditor and consumer. According to that, in Republic of Croatia was adopted Consumer Credit Law and its recent amendments expanded the scope of its application in order to further strengthen consumer protection in the consumer credit business. In Republic of Serbia, Directive 87/102/EEC has been implemented in the previous Law on Consumer Protection containing provisions that provide the basic elements for concluding contract of consumer credit. The current Consumer Protection Law stipulates that financial services are banking and credit services, insurance and pension insurance services related to pension funds, investments and payment services, but the *lex specialis* named Law on Protection of Financial Service adopted in 2011 has implemented Directive 2008/48/EZ into national law. Significant changes have been introduced into Europe, and thus the Serbian and Croatian law consumer credit Directive 2008/48/EC, should provide positive results in protecting consumers, but, as always, time is the best indicator of whether this will actually come true.

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