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REQUIREMENTS FOR INTERMEDIARIES AND ADVISORS IN THE AREA OF MORTGAGES RESULTING FROM MORTGAGE CREDIT DIRECTIVE– IMPLICATIONS FOR POLAND

KRZYSZTOF WALISZEWSKI¹

Abstract

The dynamic development of the mortgage market, especially in the period before the current financial crisis, revealed that within the EU there are local mortgage credit markets and that it is necessary to harmonize the rules of the system and consumer protection within the Community. The intention of the creators of the Mortgage Credit Directive was to organize the mortgage lending market for residential purposes and make it transparent, as well as increase the safety of the consumer credit market, along the lines of what took place earlier in the consumer credit market regulations (The Consumer Credit Directives no. 2008/48/EC and earlier no. 87/102/EEC). The Mortgage Credit Directive implies for lenders - credit institutions to act at every stage of the lending process with respect to the consumer's interest and to provide them with adequate services for their needs. Due to the large role of indirect distribution channels of mortgages by banks there are certain requirements for intermediaries, brokers and credit advisors. The implementation term of the Directive, appointed for March 2016, implies action to be taken in order to implement the provisions of this Directive into Polish law. The legislative process is being conducted by the Ministry of Finance and supported by the Group on implementation of the Mortgage Credit Directive operating with the Council of Financial Market Development.

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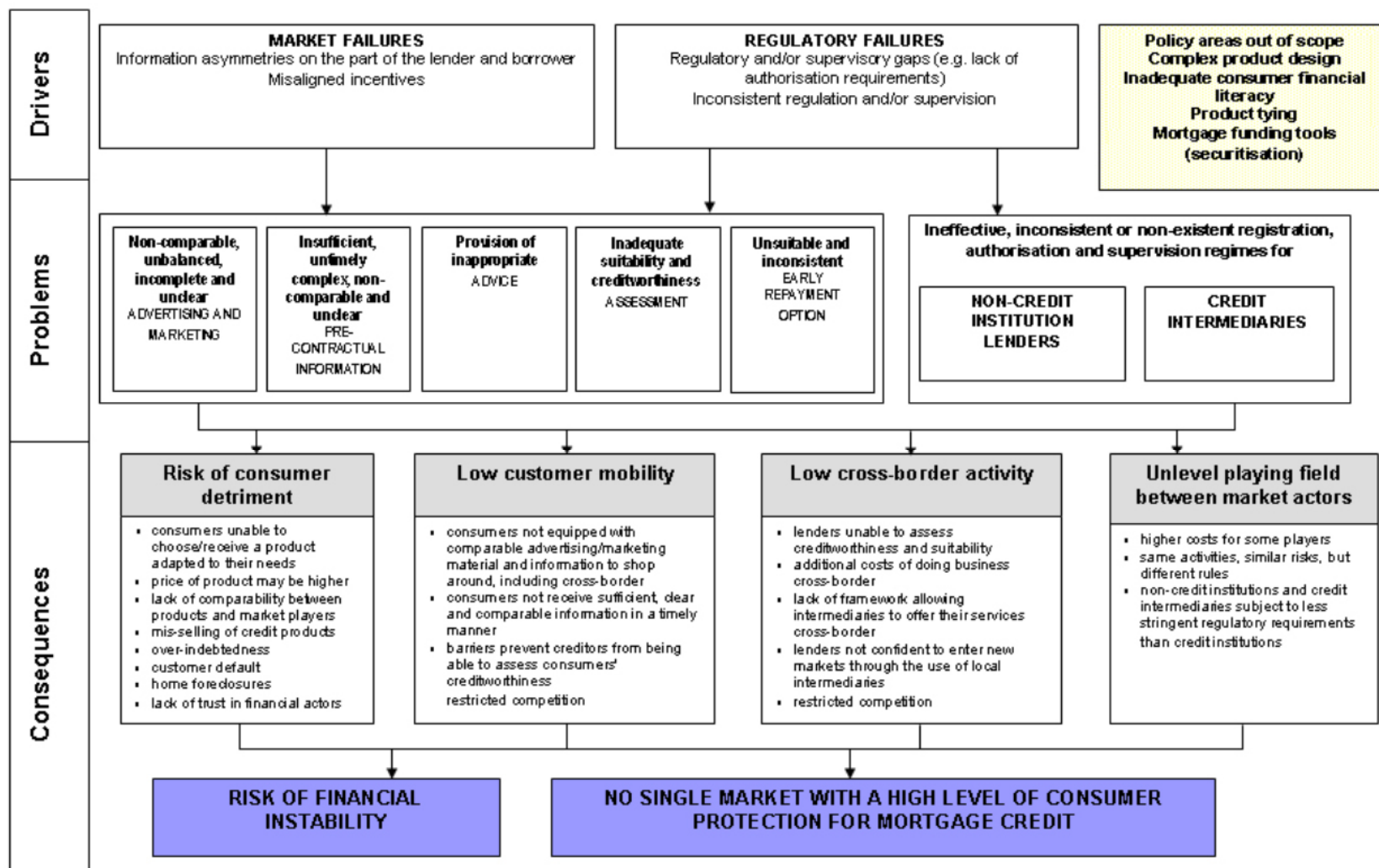
INTRODUCTION

Enacted in February 2014, the Directive on credit agreements for consumers relating to residential immovable property and amending Directives 2008/48/EC and 2013/36/EU and Regulation (EU) No 1093/2010 called the Mortgage Credit Directive (MCD), aims to increase transparency of mortgages, enhancing integration within the EU mortgage markets and increasing consumer protection in using the loan for housing through the reporting obligations of market participants and the special rights of consumers in respect of mortgage contracts. Moreover, the directive also tries to sort out the market of non-bank intermediaries, brokers and credit advisors, who so far have had free access to the intermediation activities in most EU countries, and were not bound by any special regulations, competency requirements for expertise, nor were they controlled by the state. The increasing cases of misconduct committed by credit intermediaries and advisors who call themselves actors in the area of mortgage loans, drew attention to the growing problem of lack of integrity combined with inadequate knowledge and lack of competence to carry out activities in the area of intermediation and credit advisory services, and even acting against the interests of the clients. Another problem for customers misled by intermediaries and credit advisors was the lack of liability insurance, which could cover the damage to clients. In this context, the purpose of the article is to present the requirements under the directive in relation to mortgage brokers operating in the area of mortgage distribution channels—dealers, brokers and credit advisors, and the implications arising for the market of such services in Poland. This article argues the following statements: the introduction of the mortgage directive into Polish law, even though it will increase the operating costs of entities operating under it (through disclosure obligations covering the knowledge and competence, supervision by a regulatory body, compulsory civil liability insurance), will collate the agency and credit advisory market, reduce the randomness of persons and entities acting in the market, and thereby increase the safety of customers and credit institutions.

REASONS FOR REGULATING THE MORTGAGE CREDIT MARKET

The adoption of a directive of the European Parliament and the Council 2014/17/EU of 4 February 2014 on consumer credit agreements relating to residential property and amending Directive 2008/48/EC and 2013/36/EU and Regulation (EU) No 1093/2010 (Official Journal of the European Union from 28 February 2014) results from the crucial importance of mortgage credit markets for the functioning of the financial system of the European Union and the EU economy as a whole. The mortgage market for residential real estate financing is one of the largest financial markets in the EU and the increase of its integration is expected to bring significant economic benefits by bolstering competitiveness and product offerings. In the course of work on the directive there were also included conclusions from the financial crisis of recent years, particularly in the context of lax lending standards and excessive indebtedness of some households. On the residential mortgage market in the European Union a number of problems was diagnosed concerning irresponsible lending and borrowing and the potential occurrence of irresponsible behavior of market participants. Particularly, the incomparable, incomplete and unclear advertising materials regarding mortgage credit offers; insufficient, untimely, complex and unclear information given to consumers prior to the conclusion of the mortgage; incorrect advice; inappropriate assessment of the adequacy of products offered and the creditworthiness of customers. Among other problematic issues, particular attention was paid to the inefficiency, inconsistency or lack of systems regulating the activities of credit intermediaries and non-credit institutions offering loans related to residential property. The introduction of specific solutions in the Directive was preceded by an analysis commissioned by the European Commission related to the diagnosis of the problems in the mortgage market (Impact Assessment, 2011) and the analysis of the benefits and costs of the introduction of specific solutions (Study on the costs and benefits of the different policy options for mortgage credit, 2009). Diagram 1 presents a problem tree on the mortgage credit market connected with responsible lending and borrowing – its drivers, problems and consequences.

Diagram 1. PROBLEM TREE: RESPONSIBLE LENDING AND BORROWING



Source: Impact Assessment (2011). Accompanying Document to the Proposal for a Directive of the European Parliament and of the Council on Credit Agreements Relating to Residential Property. Brussels: Commission Staff Working Paper, 31.3.2011.

Figure 1 shows the wide variety of the role of indirect distribution channels of mortgages in selected European countries - the share varies from a few percent (Denmark) to 70% (the United Kingdom). According to the EU27,

the average for 2007 was 41.5%, and for the EU 15 - 42.6% (Study on Credit Intermediaries in the Internal Market, 2009).

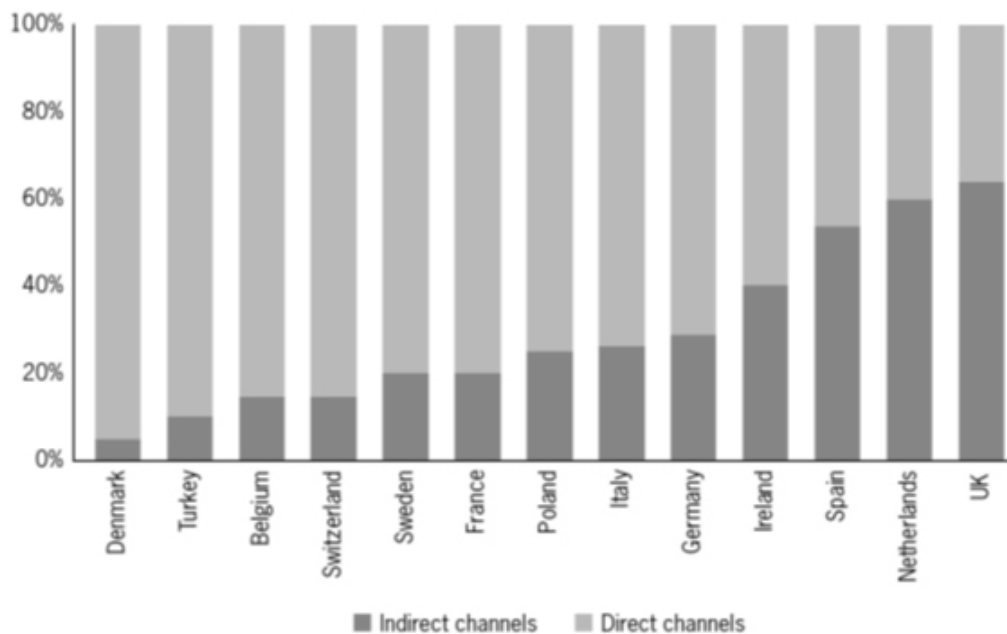


Figure 1. Residential mortgage distribution mix between direct and indirect channels by country (2005)

Source: *European mortgage distribution. Changing channel choices (2007)*. Olivier Wyman and Fortis and the European Financial Management and Marketing Association

FFORMS OF MORTGAGE CREDIT REGULATIONS ACCORDING TO THE MORTGAGE CREDIT DIRECTIVE

The Mortgage Credit Directive is based on the principle of maximum harmonization, which means that the Directive does not prevent the Member States from maintaining or introducing more stringent provisions to protect consumers, but there are areas that could be regulated in a more restrictive way. The Mortgage Credit Directive in the shape of the directive on credit agreements for consumers (The Consumer Credit Directive) introduces a European Standardized Information Sheet (ESIS) that the consumer must receive from the lender, the loan broker or a appointed representative prior to the conclusion of the credit agreement. The aim is to give the customer the opportunity to compare offers that are presented in a standardized form. According to the Directive, the Member States shall designate the national mortgage

competent authorities empowered to ensure the application and implementation of the Directive and ensure that the authorities are granted the powers of investigation and enforcement, and adequate resources for the efficient and effective performance of their duties. These bodies should be public authorities, bodies recognized by national law or public authorities expressly authorized to do so by national law.

The Directive imposes on mortgage market entities acting in mortgage financing sector the obligation of consumer financial education. The Member States should promote measures to support consumer education on responsible borrowing and debt management, in particular with regard to mortgage contracts. To instruct consumers, clear and general information on the procedure of granting credit, especially for those who take out a mortgage for the first time, is necessary. Information on the tips, which can be provided to consumers, consumer organizations and national authorities is also required.

The Directive also introduces a requirement that any information on an advertising and marketing of credit agreements is fair and transparent and that it is not misleading. Pre-contractual information should be prepared in such a manner and form, to enable comparison of loan quotes, and in particular should include:

- 1) the name of the creditor or, where applicable, the credit intermediary or a appointed representative,
- 2) where appropriate, that the credit agreement will be secured by a mortgage or another comparable security on residential property commonly used in a Member State or a right related to residential immovable property,
- 3) borrowing rate, indicating whether the rate is constant, variable or a combination of both types of interest rate, together with details of any charges included in the total cost of credit incurred by the consumer,
- 4) the total amount of credit,
- 5) APR, which is placed in the advertising materials in the spot at least as prominent as any data on the rate of interest,
- 6) where appropriate, the duration of the credit agreement,
- 7) where appropriate, the amount of installments.

The new Directive introduces provisions that allow to a borrower to withdraw from the mortgage contract within 7 days from the date of its conclusion. In addition, consumers are granted the right to early repayment. In such cases, the consumer is entitled to a reduction of the total cost of credit incurred by the consumer, which includes interest and costs for the remaining duration of the contract. The Member States may provide that the exercise of this right is subject to certain conditions. These conditions may include time limitations on the execution of this right, different treatment depending on the interest rate of the loan or the date on which the consumer exercises this right, as well as restrictions on the circumstances under which the right may be exercised. The Member States may provide that the creditor was entitled to receive in justified cases, fair and objective compensation for potential costs directly linked to early repayment, but cannot impose a penalty on the consumer. Therefore, the amount of compensation cannot be higher than the financial loss of the lender. Under such conditions, the Member States may provide that the amount of compensation cannot exceed a certain level, or it may be allowed only in the specified period.

REQUIREMENTS FOR CREDIT INTERMEDIARIES AND ADVISORS ACCORDING TO THE MORTGAGE CREDIT DIRECTIVE

The Mortgage Credit Directive pays particular attention to mortgage credit intermediaries and advisors, whose activities within the existing regulations of the Member States were governed by national legislation in a different manner, and in a significant number of states they were not regulated and supervised at all. This gave rise to a number of risks and costs borne by the consumer who took out a loan with the participation of a broker or advisor. The Mortgage Credit Directive introduces a number of concepts related to the credit advisory agency services and –a credit broker, tied loan broker, advisory services, independent advice (independent advisor) (Table 1).

In addition to sorting out the terminology, the Directive introduces an obligation to keep a public register of credit intermediaries and advisors (it shall describe whether the advisor is independent or tied). A further obligation on the side of agents and advisors is to take out liability insurance for business. The Directive itself does not specify the guarantee amount and the scope of the insurance, which will have an impact on its price and the cost. Although the requirement of credit intermediaries on the mortgage market insurance against civil liability with respect to the activity or comparable guarantee is a new regulatory requirement at the EU level, this requirement exists at national level in some Member States. Countries applying the requirement to have insurance against civil liability with regard to the activity, have the highest proportion of mortgage sales through brokers across the EU and a significant market penetration by credit intermediaries, and as a result have a more specific approach to the regulation of the sector. Therefore, the EU rules on the minimum amount of liability insurance in respect of the activity or comparable guarantee should be based on the experience in these jurisdictions when it comes to determining the most appropriate approach to calculate the minimum amount. Determining the amount of the guarantee was preceded by a public consultation organized by the European Banking Authority (EBA). On 13.11.2014 the Commission Delegated Regulation No. 1125/2014 of 19 September 2014 entered into force, supplementing

Tabela 1: Notions connected with credit intermediation and advisory in Mortgage Credit Directive

Notion	Definition
Credit intermediary	means a natural or legal person who is not acting as a creditor or notary and not merely introducing, either directly or indirectly, a consumer to a creditor or credit intermediary, and who, in the course of his trade, business or profession, for remuneration, which may take a pecuniary form or any other agreed form of financial consideration: (a) presents or offers credit agreements to consumers; (b) assists consumers by undertaking preparatory work or other pre-contractual administration in respect of credit agreements other than mentioned in point (a); or (c) concludes credit agreements with consumers on behalf of the creditor
Tied credit intermediary	means any credit intermediary who acts on behalf of and under the full and unconditional responsibility of: (a) only one creditor; (b) only one group; or (c) a number of creditors or groups which does not represent the majority of the market
Advisory services	means the provision of personal recommendations to a consumer in respect of one or more transactions related to credit agreements and constitutes a separate activity from credit granting and from credit intermediation activities
Independent advice or independent advisor	creditors, credit intermediaries or appointed representatives providing advisory services: (a) creditors, credit intermediaries or appointed representatives shall consider a sufficiently large number of credit agreements available on the market; and (b) creditors, credit intermediaries or appointed representatives shall not be remunerated for those advisory services by one or more creditors. Point (b) of the second subparagraph shall apply only where the number of creditors considered is less than a majority of the market.

Source: Own study based on Mortgage Credit Directive

Directive 2014/17/EU with regard to regulatory technical standards on the minimum monetary amount of liability insurance on account of their activity or comparable guarantee granted by credit intermediaries, specifying the minimum monetary amount of liability insurance in respect of their activity or comparable guarantee, which credit intermediaries are required to have, in the amount of EUR 460,000 for a single claim and a total of 750,000 per calendar year for all claims. In addition, the European Banking Authority shall make periodic review of regulatory technical standards to amend the minimum monetary amount of liability insurance in respect of the activity or comparable guarantee - the first by 21 March 2018 and then every two years. The Mortgage Credit Directive imposes a number of obligations related to the conduct of business in credit lending to consumers. The lender, the credit intermediary or an appointed representative

should act honestly, fairly, transparently, professionally, taking into account the rights and interests of consumers. With respect to granting, mediating or providing consultancy services in the field of lending, the activities will be based on the information on the situation of the consumer and any special requirements raised by them, and on reasonable assumptions regarding the risks for the consumer's situation over the duration of the credit agreement. The method of remuneration of creditor staff, credit intermediaries and other personnel shall not impede this obligation. In the case of providers rendering consulting services, salary structure of the personnel involved should be without prejudice to their ability to act in the best interest of the consumer, and in particular not to depend on the sales targets. To achieve this objective, the Member States may also prohibit the commission paid by the lender to a credit intermediary.

The Member States may prohibit the payment by the consumer to the creditor or credit intermediary prior to the conclusion of the credit agreement or impose restrictions on such payments.

The Directive requires credit intermediaries and appointed representatives to provide consumers with information. Before carrying out any of the credit intermediation activities, the credit intermediary or appointed representative shall provide the consumer with at least the following information on paper or on another durable medium:

1) the identity and the geographical address of the credit intermediary,

2) the register in which they have been included, the registration number, where applicable, and the means for verifying such registration,

3) whether the credit intermediary is tied to or works exclusively for one or more creditors. Where the credit intermediary is tied to or works exclusively for one or more creditors, it shall provide the names of the creditors for which it is acting. The credit intermediary may disclose that it is independent,

4) whether the credit intermediary offers advisory services,

5) the fee, where applicable, payable by the consumer to the credit intermediary for its services or where this is not possible, the method for calculating the fee,

6) the procedures allowing consumers or other interested parties to register complaints internally about credit intermediaries and, where appropriate, the means by which recourse to out-of-court complaint and redress procedures can be sought,

7) where applicable, the existence and, if known, the amount of commissions or other inducements, payable by the creditor or third parties to the credit intermediary for their services in relation to the credit agreement. Where the amount is not known at the time of disclosure, the credit intermediary shall inform the consumer that the actual amount will be disclosed at a later stage in the ESIS.

Credit intermediaries who are not tied but who receive commission from one or more creditors shall, at the consumer's request, provide information on the variation in levels of commission payable by the different creditors providing credit agreements to the consumer. The consumer shall be informed that he has the right to request such information. Where the credit intermediary charges a fee to the consumer and additionally receives

commission from the creditor or a third party, the credit intermediary shall explain to the consumer whether or not the commission will be offset against the fee, either in part or in full.

The Mortgage Credit Directive aims to increase the reliability and professionalism of credit services, because the lender, credit intermediaries and appointed representatives must require their staff to possess and update the appropriate level of knowledge and competence in the development, offering or entering into credit agreements and rendering credit intermediation services or providing advice. The Member States shall establish minimum requirements for knowledge and competence related to the staff of lenders and credit intermediaries appointed representatives. These requirements must include at least the following:

1) appropriate knowledge of credit products within the scope of Article 3 and the ancillary services typically offered with them,

2) appropriate knowledge of the laws related to the credit agreements for consumers, in particular consumer protection,

3) appropriate knowledge and understanding of the immovable property purchasing process,

4) appropriate knowledge of security valuation,

5) appropriate knowledge of organization and functioning of land registers,

6) appropriate knowledge of the market in the relevant Member State,

7) appropriate knowledge of business ethics standards,

8) appropriate knowledge of the consumer's creditworthiness assessment process or where applicable, competence in assessing consumers' creditworthiness,

9) appropriate level of financial and economic competency.

When setting the minimum requirements for knowledge and competence, the Member States may differentiate the levels and types of requirements applicable to the staff of creditors, credit intermediaries personnel or appointed representatives and the management of credit intermediaries or appointed representatives. The Member States shall determine the appropriate level of knowledge and competence on the basis of: professional qualifications, for example diplomas, degrees, training, competency tests; or professional qualifications, which can be defined as the minimum period of five years of service in the fields

related to the conclusion of contracts for the purchase of credit products, their distribution or agency (only up to 21 March 2019). After a period of 3 years from the entry into force of the Directive, meeting the requirement of knowledge and skills will not be possible.

The Directive defines the standards for advisory services. The Member States shall ensure that the creditor, credit intermediary or appointed representative explicitly informs the consumer, in the context of a given transaction, whether advisory services are being or can be provided to the consumer.

The Member States shall ensure that the creditor, credit intermediary or an appointed representative clearly informs the consumer, in the context of a transaction, of the possibility of providing advisory services to the consumer and ensure that, prior to the provision of advisory services or, as appropriate, prior to entering into a contract for the provision of advisory services the creditor, credit intermediary or an appointed representative supplied the consumer with the following information on paper or on another durable medium:

- 1) whether the recommendation will be based on consideration of only the scope of their own products, or a wider range of products from the whole market, so that the consumer is able to understand the basis on which the recommendation was prepared,
- 2) where appropriate, of the charge borne by the consumer for the use of advisory services or if the amount cannot be determined at the time of the transfer of this information, the method of remuneration.

Where advisory services are provided to consumers, the Member States shall ensure that:

- 1) creditors, credit intermediaries or appointed representatives obtain the necessary information regarding the consumer's personal and financial situation, their preferences and objectives so as to enable the recommendation of suitable credit agreements. Such an assessment shall be based on information that is up to date at that moment in time and shall take into account reasonable assumptions as to risks to the consumer's situation over the term of the proposed credit agreement,
- 2) creditors, tied credit intermediaries or appointed representatives of tied credit intermediaries consider a sufficiently large number of credit agreements in their product range and recommend a suitable credit agreements or several suitable credit agreements from among their product range for the consumer's needs, financial situation and personal circumstances,

3) non-tied credit intermediaries or appointed representatives of non-tied credit intermediaries consider a sufficiently large number of credit agreements available on the market and recommend a suitable credit agreement or several suitable credit agreements available on the market for the consumer's needs, financial situation and personal circumstances,

4) creditors, credit intermediaries or appointed representatives act in the best interests of the consumer by gathering information about the consumer's needs and circumstances; and recommending suitable credit agreements in accordance with points 1-3,

5) creditors, credit intermediaries or appointed representatives give the consumer a record on paper or on another durable medium of the recommendation provided.

The Member States may prohibit the use of the term 'advice' and 'advisor' or similar terms when the advisory services are being provided to consumers by creditors, tied credit intermediaries or appointed representatives of tied credit intermediaries. Where the Member States do not prohibit the use of the term 'advice' and 'advisor', they shall impose the following conditions on the use of the term 'independent advice' or 'independent advisor' by creditors, credit intermediaries or appointed representatives providing advisory services: creditors, credit intermediaries or appointed representatives shall consider a sufficiently large number of credit agreements available on the market; and creditors, credit intermediaries or appointed representatives shall not be remunerated for those advisory services by one or more creditors (this point shall apply only where the number of creditors considered is less than a majority of the market).

The Member States may impose more stringent requirements in relation to the use of the terms 'independent advice' or 'independent advisor' by creditors, credit intermediaries or appointed representatives, including a ban on receiving remuneration from a creditor. The Member States may provide for an obligation for creditors, credit intermediaries and appointed representatives to warn a consumer when, considering the consumer's financial situation, a credit agreement may induce a specific risk for the consumer. The Member States shall ensure that advisory services are only provided by creditors, credit intermediaries or appointed representatives. Credit intermediaries shall be duly admitted to carry out all or part of the credit

intermediation activities or to provide advisory services by a competent authority in their home Member State.

The Directive also specifies the admission to the activities of credit intermediaries. To operate, in whole or in part, as credit intermediaries or provide consulting services, credit intermediaries must have the necessary authorization issued in the Member State of origin by the competent authority. The Member States shall ensure that the admission to the activities of credit intermediaries is granted subject to compliance with at least the following professional requirements, in addition to the requirements listed below:

1) credit intermediaries shall hold professional indemnity insurance covering the territories in which they offer services, or some other comparable guarantee against liability arising from professional negligence. However, for tied credit intermediaries, the home Member State may provide that such insurance or comparable guarantee can be provided by a creditor for whom the credit intermediary is empowered to act,

2) a natural person established as a credit intermediary, the members of the board of a credit intermediary established as a legal person and natural persons performing equivalent tasks within a credit intermediary that is a legal person but does not have a board shall be of good repute. As a minimum they shall have a clean criminal record or any other national equivalent in relation to serious criminal offences linked to crimes against property or other crimes related to financial activities and they shall not have previously been declared bankrupt, unless they have been rehabilitated in accordance with national law,

3) a natural person established as a credit intermediary, the members of the board of a credit intermediary established as a legal person and natural persons performing equivalent tasks within a credit intermediary that is a legal person but does not have a board shall possess the appropriate level of knowledge and competence in relation to credit agreements. The home Member State shall establish the appropriate level of knowledge and competence in accordance with the principles set out in the Directive.

The Member States shall ensure that the criteria established in order for credit intermediaries' or creditors' staff to meet their professional requirements are made public. The Member States shall ensure that all admitted credit intermediaries, whether established as natural or legal persons, are entered into a register with a competent authority in their home Member State.

The Member States shall ensure that the register of credit intermediaries is kept up to date and is made publicly available online. The register of credit intermediaries shall contain at least the following information:

1) the names of the persons within the management board who are responsible for the intermediation business. The Member States may require the registration of all natural persons who exercise a client-facing function in an undertaking that runs the activity of credit intermediation,

2) the Member States in which the credit intermediary conducts business pursuant to the rule of the freedom of establishment or the freedom to provide services and of which the credit intermediary has informed the competent authority of the home Member State,

3) whether the credit intermediary is tied or not.

Furthermore, the Directive introduces the supervision of mortgage credit intermediaries and appointed representatives. The Member States shall ensure that credit intermediaries in their current operations are subject to supervision by the competent authorities of the Member State of origin. The Member State of origin shall ensure that tied credit intermediaries are directly subject to supervision or that they are under the supervision of the lender, on behalf of which they operate. For example implementing EU mortgage regulations in UK could cost intermediaries or lenders up to £22.8m with no obvious benefits to them apart from compliance (Baxter, 2015).

MORTGAGE CREDIT INTERMEDIARY AND ADVISORY SERVICES MARKET IN POLAND AND ITS ROLE IN BANK DISTRIBUTION CHANNELS

Credit intermediation is one of the youngest and least recognized segments of the Polish financial market. It exists because, in addition to stable capital companies, there are many small, spontaneously arising and failing companies, usually assumed by individuals. These entities spontaneously react to every call of banks or large retail chains to cooperate. This makes the impression of a multitude of active credit brokers. Using the services of credit intermediaries is particularly attractive for small banks, banks created as subsidiaries of transnational financial corporations, as well as banks whose strategy is focused on getting customers in small towns. Intermediaries, especially if you are acting on behalf of several banks, provide a way to reach the same

group of retail buyers of financial products at a much lower cost than the cost of the construction from scratch, or even a bank branch point of customer service. (Ancyparowicz, 2009). The result of the development of services and credit advisory agency in Poland is to increase the availability of mortgage loans in smaller towns where there are no branches of nationwide commercial banks.

In Poland, brokerage and credit advisory are very popular among banks and customers. Mediation concerned initially (early 1990s) consumer loans, in particular finance and was a response to a discrepancy between the potential demand for durable goods and the actual abilities of purchasing households (Waliszewski, 2010a). Over time, diversification of the structure of loans offered by intermediaries followed. Recognizing the success of credit intermediaries, people leaving banks or other financial institutions have begun to create broker entities, offering mortgages of most banks, which marked the beginning of the financial advisory industry (Waliszewski, 2010b). Involvement of intermediaries by banks as part of their multichannel distribution strategies, particularly after 2004, when provisions on banking outsourcing entered into force, is beneficial for the banks themselves, as well as for customers. However, the lack of uniform regulations defining the legal status of credit intermediaries and advisors and the lack of financial oversight of the industry for customers to use the services of any entities whose knowledge, competence and intentions are impossible to verify leads to significant risks that need to be taken into account by people using services of agents and advisors (Antczak & Tłoczek, 2013). It is particularly important in the case of long-term mortgages because the irresponsible action of an agent or consultant can lead to certain problems

of borrowers. The example can be misguided foreign currency loans or investments in investment funds frequently associated with mortgage loans. At the macroeconomic level the materialization of these risks can lead to social costs, dissatisfaction and frustration.

The mortgage market in Poland gained particular momentum after 2004, when Poland joined the EU, and the banks gradually liberalized rules for mortgage lending. At the same time the drop in mortgage rates intensified the demand for housing, which in the short term could not be fully satisfied due to the rigidity of the housing supply. The side effect of the increase in housing prices was an unjustified increase in the cost of construction or land. Economic downturn during the 2007-2009 financial crisis also affected the real estate market and mortgage lending. The introduction of credit restrictions by banks, increasing margins and commissions and limited access to foreign currency loans contributed to decline in volume and numerous mortgage loans (Figure 2). Another reason for the stagnation in the mortgage market was the entry into force of the supervisory recommendation of the Polish Financial Supervisory Authority PFSA (KNF) (S, T, SII) restricting access to foreign currency loans and domestic currency. At the same time the same private debt in banks with mortgage loans increased both in absolute terms and relative to GDP which made the credit market in Poland similar to the credit markets of developed countries of Western Europe.

During the whole period (2006 to September 2014), we can notice an increase in the share of financial advisors in the distribution of bank mortgages from 15% in 2006 to 40% in September 2014. This reflects the continuous growth of the popularity of this channel of mortgage borrowing, particularly in the post-crisis period,

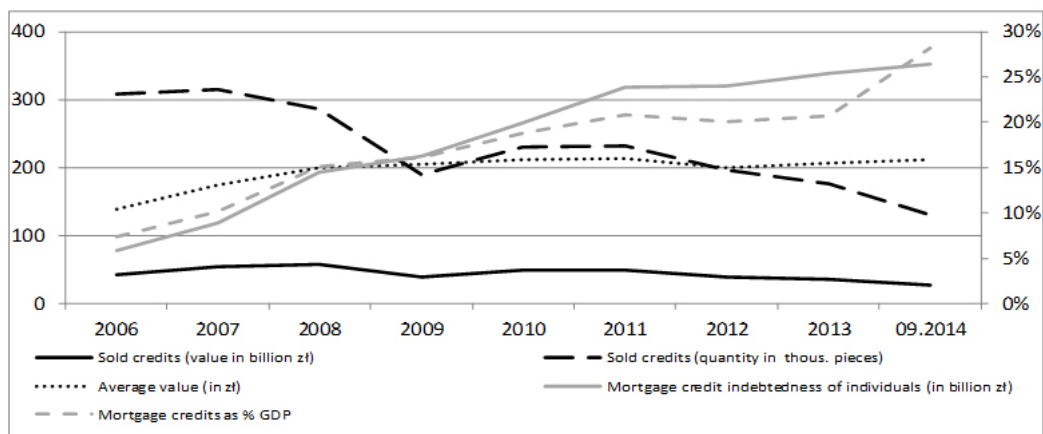


Figure 2. Mortgage credit market characteristics in Poland

Own study based on data from the Polish Bank Association

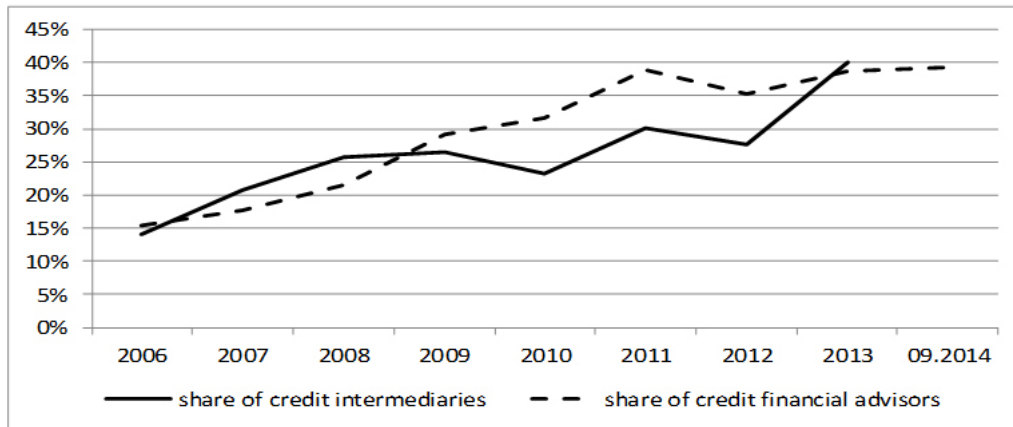


Figure 3. Mortgage credit distribution by intermediary channels in Poland

Own Own study based on data from the Polish Bank Association, Central Statistical Office (data concerning credit intermediaries), Association of Financial Advisory Firms (data concerning financial advisors)

when the role of a credit advisor proved to be indispensable. In the case of credit intermediaries between 2006-2013 we can also observe an increase from 15% to 40%, which only confirms the above hypothesis (figure 3). Both in the case of brokers and financial advisors in 2010-2012 fluctuations of their participation in the distribution of bank loans can be observed. This is due to the fact that the banks that had problems with financing lending tightened the criteria for awarding contracts, raised prices, and reduced the costs by eliminating indirect distribution channels in order to take advantage of their own institutions and provide employment to their employees. Financial problems of banks and their customers were moved to the brokerage industry and financial advisory services, which also began to feel the crisis and a decline in customer activity (Czechowska, 2012). The crisis was the impetus for change: modify products, centralization of certain processes, use of tools for better risk consolidation analysis. Despite the many difficulties the industry survived this period (Czechowska, 2011).

IMPLICATIONS FOR MORTGAGE CREDIT INTERMEDIARIES AND ADVISORS ARISING FROM THE MORTGAGE CREDIT DIRECTIVE IN POLAND

The adoption of the MCD implies its implementation into national law by EU Member States by 21 March 2016. The Ministry of Finance under the Financial Market Development Council as an advisory body to the Minister of Finance on issues of financial market on 23 May 2014

established the Working Group for the Mortgage Credit Directive implementation, whose task is to identify issues that require special analysis of the implementation of the provisions of the MCD into Polish law, and preliminary development of a legal solution. In the course of the meetings of the Working Group, various options related to the needs of the financial market and the possibility of their introduction were taken into consideration. The aim of the Working Group is to help prepare assumptions for the draft law on mortgage and participation throughout the legislative process.

The first important finding of the Working Group is the decision on separation of the Consumer Credit Act section on mortgage and to develop a new legal instrument. During the first meeting of the Group (30 May 2014), the financial sector representatives discussed the critical points of the shape of the implementation of the Directive. FTC representatives stressed the need to:

- 1) apply a 5-year transitional period for the implementation of the Directive, in order to spread the costs of implementation in time,
- 2) align the requirements of pre-contractual information (including: KNF Recommendations), in order to avoid information overload by the consumer,
- 3) not to make maximum limit fees for early repayment,
- 4) clarify issues of verifying the competence of the staff (who and how to conduct verification).

At the second meeting of the Working Group (2 July 2014) the following issues were intensively analyzed: the scope of the Directive; supervision of non-credit and credit intermediaries, the requirements of the knowledge and

competence of staff lenders and brokers. The meeting showed the urgent need for detailed analysis in the topic areas covered by the Directive.

On 18 September 2014, at the third meeting of the Working Group, discussions focused on:

1) APR – this issue falls under maximum harmonization, the relevant provisions will be directly copied to the Polish Act.

2) Loan floatation – it will be necessary to unify the already existing Polish regulations covering this issue

3) Foreign currency loans.

4) The issue of implementation of the ESIS sheet over a 5-year period, if it is used as an information sheet under the CCD Directive.

5) Representatives of the KNF assure that after the implementation of the ESIS form into the Polish legal system, Recommendation S shall be changed in terms of the disclosure requirements for the consumer.

6) The issue of supervision in the extent provided by the Directive. KNF does not see itself in this role, i.e. it does not provide supervision coverage of non-banking entities (mainly credit intermediaries). The Ministry of Finance, developing a consistent approach at the design assumptions stage, will later handle this issue.

The project is now being worked on. The purpose is to create a mortgage credit law draft and amend other

acts by the Ministry of Finance, that will end in Q2 2015 (Table 2). Since September 2014 recommendations for best practices for credit advisors developed by the Polish Bank Association (ZBP) and the Association of Financial Advisors (ZFDF) have been in force. The main objective of the recommendations is to establish the basic principles of uniform standards of customer service and financial advisory market in offering and selling mortgage loans (Recommendation, 2014).

The introduction of the Mortgage Credit Directive in Poland will have the following effects (Szramowski, 2014):

1) systematization of the brokerage market,

2) the distinction between the tied loan broker and independent advisor,

3) the introduction of admission to the activities and supervision of intermediaries,

4) the professional requirements.

Implementation of the Mortgage Credit Directive into Polish law raises a number of questions that the creator of the mortgage credit act will have to answer. Firstly, which body in Poland shall serve as a supervisor and which authority shall maintain a register of credit intermediaries? Secondly, it should be detailed what range of knowledge and skills are necessary to practice as a credit intermediary or an advisor, and who will be involved in their

Table 2. Purpose of the draft of mortgage credit law and amendment to other acts

<p>The project</p>	<p>Creating competitive mortgage markets in the EU can be achieved by measures which facilitate the cross-border supply and funding of mortgage loans, increasing the diversity of products, improving consumer confidence and promoting customer mobility. For this purpose, the Polish legal system will introduce special rules for loans to finance residential properties to consumers, which on the one hand, ensure professionalism in the operation of creditors and credit intermediaries, on the other hand, allow consumers to obtain comprehensive information on credit agreements so that they can take the best decisions. Due to the need for consistent rules, the specificity of loans secured by a mortgage, the need for new laws for Polish legal institutions and the establishment of oversight, a separate implementation of the Act and the amendment of existing legislation is required (paragraph 5). The expected effect of legislative implementation process is the objective of the Directive 2014/17 / EU, i.e. to ensure a high level of consumer protection on property-related credit agreements. The Law has led to the development of a more transparent, efficient and competitive internal market through consistent and fair credit agreements relating to property, and at the same time promoted responsible lending and borrowing.</p>
<p>Body responsible for drafting and submitting it to the Council of Ministers</p>	<p>The Minister of Finance</p>

Source: Retrieved from <http://bip.kprm.gov.pl/kpr/wykaz/r1484,Zalozenia-projektu-ustawy-o-kredycie-hipotecznym-oraz-o-zmianie-niektorych-innyc.html> (access 1.02.2015).

verification – whether it will be a government body or economic self-government organizations associating credit intermediaries and advisors. Thirdly, the Directive in certain points mentioned in this article gives leeway to the member states– they can settle some issues independently of the Directive – in this area it will also have to be decided whether Poland will select the general provisions or individual solutions. The big unknown in particular comes with respect to the cost of obligation of business insurance against civil liability, which will affect the level of profitability of the brokerage and credit advisory entities. Implementation of the MCD in Poland will be done in 2 acts: amendment of the Consumer Credit Act and a new act on activity of loan institutions and credit intermediaries. Answers to those questions are included in the draft guidelines to the project on the Consumer Credit Act and the Act on loan institutions and credit intermediaries (version dated June 18, 2015). For the law’s implementation in the area of credit law, especially consumer protection, the President of the Office of Competition and Consumer Protection (OCCP, UOKiK) will be responsible and in the area of loan institutions and credit intermediaries it will be the PFSA (KNF). According to new regulations, activity in the area of credit mortgage intermediation and granting loans from own resources will require a permit of the PFSA, which will set up a register of credit intermediaries, their appointed representatives and loan institutions and will supervise these institutions. The proposed solution involves costs for credit institutions, cooperative credit unions, credit intermediaries and loan companies. These costs are related to additional information requirements, consumer financial education and protection, authorization and registration in the relevant register, training of personnel, credit intermediaries liability insurance and the cost of supervision by the Polish Financial Supervision Authority. The regulatory test prepared by the Ministry of Finance shows that the costs of implementing new solutions in over 10 years will amount to PLN 19.29 million (PLN 1,015 million in first year and PLN 2,03 million in every 9 years), which will be the beneficiary of the PFSA. Financial institutions probably in the future will try to transfer these costs to customers as final beneficiaries of the new rules by increasing mortgage credit costs.

CONCLUSIONS

The introduction of the provisions of the Mortgage Credit Directive into Polish law certainly brings long-awaited changes, because it collates the market and credit advisory agency by increasing its transparency, eliminating randomness, increasing knowledge and skills of people working in the industry and eventually eliminating unfair entities acting to the detriment of the customer in the name of reaching individual goals. At the same time, these changes lead to an increase in the financial security of the consumer, who will receive additional protection tools, and for financial institutions, including lenders, brokers and credit advisors, this means additional information requirements supplied to consumers and the costs of supervision of the State, thus increasing operating costs. The Mortgage Credit Directive sets a new direction in the provision of financial services to consumers, where reliable and professional information, the investigation of the customer situation to tailor the loan to their individual needs, the suitability of the solution for the customer and broader financial advice are becoming increasingly important. The introduction of the Directive will, to a greater extent than before, contribute to more responsible behavior of mortgage credit market participants – lenders, credit intermediaries and advisors – responsible lending and responsible borrowing.

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