

THE RIGHT TO EARLY CONSUMER LOAN REPAYMENT IN BOSNIA AND HERZEGOVINA AND EUROPEAN UNION

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ABSTRACT

The right to early repayment or repayment of the loan has a significant protective role for the consumer, who, especially in circumstances of lending need and under the pressure of a difficult economic situation, may find himself "trapped" in multi-year loan arrangements from which it is not easy for him to escape. In addition to an important protective role, the right to early loan repayment is also an instrument for stimulating market competition by enabling greater mobility of clients of loan institutions, i.e. consumers themselves. This right enables the consumer, especially when he has the means to settle existing obligations or has the opportunity to borrow from another loan provider under more favorable conditions, fulfill his contractual obligation towards the loan provider earlier, and thus save part of the interest amount. If there were no mentioned or similar mechanisms, the loan consumer would be "hostage" of the loan and the costs it carries, regardless of the possible possibilities to repay the loan debt earlier and thus free from unnecessary interest costs for the remaining repayment period.

KEYWORDS

loan, early loan repayment, Bosnia and Herzegovina, European Union

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1. Introduction

Despite the indisputable power of the general consumer population to influence the markets of goods and services, consumers are actually often vulnerable since they enter into consumer contracts and transactions individually rather than as the total population, and are often found in a subordinate relationship with sellers of goods and service providers. Consumer protection is necessary for several reasons: due to the significant difference in economic power between the consumer and his professional counterpart, due to the imbalance of information of consumers and service providers or sellers of goods, and because of the general perception of consumer inferiority, who can hardly stand up to banks, corporations and other business entities that are in the role of the other contractual party of a certain consumer contract.

Such financial, information and legal inferiority of consumers is the most obvious when contracting and during the period of repayment of consumer loan, which today represents the existential basis not only of a large number of consumers in Bosnia and Herzegovina (B&H) but also in the rest of the world, including many of the most developed of the countries. The consumer who encounters financial difficulties such as sudden unemployment or similar events, is in a vulnerable position of loan need that "forces" him to borrow, and repay the loan sometimes even for decades, producing additional costs for him in the form of loan processing costs and, of course, significant accrued interest.

Bearing in mind the above, the importance of protecting consumers as users of financial services, through relatively recently established special consumer rights in consumer loan agreements, the right to early repayment, the consumer's right to terminate a loan agreement concluded for an indefinite period of time, the right to withdraw from loan - is unquestionable. Analysis of the legal establishment and practical application of one of these protective institutes, the right to early repayment of consumer loan, will be the subject of further discussion in this paper.

2. Consumer and Consumer Loan

Over the past fifty years, consumer lending has been exposed to various changes, innovations and perceptions, but none have stopped or slowed down the constant growth of offers in the financial services market and the number of consumers who rely on them - not only to meet significant life and consumer goals, but also to ensure the fulfillment of their most basic needs. This is best evidenced by the recent statistics showcased by the European Banking Authority (2020) that indicate that the consumer lending market in 2020 was "worth" 1.4 trillion EUR in the European Union (EU), and in B&H almost 10 billion BAM (Bosnian Convertible Marks).

Statistics of the European Banking Authority show that the consumer loan market at the EU level reached a volume of 800 billion EUR⁶¹ in 2010, and that it has been growing steadily in the last decade. Thus, in the period from 2015 to 2020, the number of consumer loans in the EU increased by 14.1%, and in 2020 their value reached a record amount of 1.4 trillion EUR.

When it comes to loans taken in B&H, a 2019 survey⁶² shows that B&H citizens borrowed over six billion EUR from commercial banks that year. The most common are the so-called "survival loans".⁶³ According to data from the Central Bank of B&H, as much as 75% of the loans taken in B&H are

⁶¹ <http://sdw.ecb.europa.eu/reports.do?node=100000143>, accessed on 03.07.2022.

⁶² European Banking Authority: Consumer Lending in the EU banking sector. March 2020. EBA/REP/2020/11

⁶³ "Total loans in BiH exceeded BAM 20bn for the first time- improved loan interest rate", <https://ba.ekapija.com/news/2554962/ukupni-kredit-u-bih-prvi-put-premasili-20-mlrd-km-poboljsana-stopa>. Accessed on 01.10.2022

consumer loans. Statistics from the Central Bank of B&H from 2019 show that total loans that year exceeded the figure of 20 billion BAM for the first time, of which 47.7% represent loans to consumers.⁶⁴

Pugh (2022) expects these trends to keep on rising, particularly due to the ongoing surging inflation which is expected to force consumers worldwide to borrow more and save less.⁶⁵ Global demand for consumer loan is expected to rise 7.2% until the end of 2022, and for additional 5.1% in 2023 as the cost-of-living pressures escalate.⁶⁶

2.1. Consumer

The generally accepted definition of *consumer*, both in the legislative circles of the EU⁶⁷ and in B&H legislation⁶⁸, is that a consumer is a natural person who buys, acquires or uses products or services for his personal needs and for the needs of his household. Somewhat generalized, a consumer is therefore considered to be a natural person who acts in contracts for purposes that do not fall within the framework of his trade, business, professional or trade.

2.2. Consumer Loan

A *consumer loan* is a loan intended for individuals, usually without any or low collateral, for personal, family or household purposes. This loan is of great economic importance because it allows consumers to spend beyond their objective capacity and thus directly causes an increase in demand.⁶⁹ Šabić-Učanbarlić (2019, 65) defines consumer loan as "a contract that the consumer, as an exclusively natural person, acting in meeting private needs, concludes with a loanor, as a natural or legal person, who acts within the framework of his business activity".

Consumer loans are certainly vitally important for the livelihood of a large number of consumers. According to Mišćenić (2010, 4) The rise in the number of different new types and forms of lending and changing behavior of consumers living beyond their means of living today has led to loans being used as a "means of maintaining a certain standard of living" as opposed to a period when loan was used exclusively as a means of financing significant investments. For a long time now, consumers have been borrowing even to buy groceries and other household consumables, or even to go on summer vacation with their families.⁷⁰

3. Consumer Right to Early Loan Repayment in the European Union

Mišćenić (2010, 5) points out that the right to early repayment of the loan has a significant protective role for the consumer, who, especially in circumstances of lending need and under the pressure

⁶⁴ "Life on loan" in Bosnia and Herzegovina, <http://www.rtvusk.ba/vijesti/zivot-na-kredit-u-bosni-i-hercegovini/32324>. Access on 01.07.2022nd year

⁶⁵ "Borrowing to rise consumers grapple surging inflation", <https://www.rsmuk.com/real-economy/economic-voice/borrowing-to-rise-consumers-grapple-surg-ing-inflation>, accessed on 30.10.2022.

⁶⁶ "Consumer loan balloons as inflation bites", <https://www.moneymarketing.co.uk/news/consumer-loan-balLOOns-as-inflation-bites/>, accessed on 29.10.2022.

⁶⁷ The term consumer is defined in Article 2 (1) of Directive 2011/83/EC, previously by Council Directive of 20 December 1985 for the protection of consumers in respect of off-premises contracts, Official Journal of the European Communities L 372/31 of 31 December 1985.

⁶⁸ Article 1, Para. 3 of the Law on Consumer Protection in Bosnia and Herzegovina ("Official Gazette of BiH", No. 25/2006 and 88/2015), similar to the provisions of Article 2a of the Law on Consumer Protection in Republika Srpska according to which the consumer is a natural person who buys, orders, acquires or uses products or services for his own needs and for the needs of his household or to whom an offer for goods or services has been sent.

⁶⁹ Definition taken from Moj-bankar.hr, <https://www.moj-bankar.hr/Kazalo/P/Potro%C5%A1a%C4%8Dki-kredit> retrieved 20 June 2022 2.

⁷⁰ All these circumstances have led to the need to raise consumer protection standards. To which member states reacted by adopting various regulations in the field of consumer loan law. This has resulted in numerous and deep differences between the consumer loan rules of the Member States, which has had a negative impact on the marginal offer of borrowers on the one hand and consumer confidence on the other.

of a difficult economic situation, may find himself "trapped" in multi-year loan arrangements from which it is not easy for him to escape. In addition to an important protective role, as Mišćenić points, the right to early loan repayment is also an instrument for stimulating market competition by enabling greater mobility of clients of loan institutions, i.e. consumers themselves.

For Bajrić (2015, 14) this right enables the consumer to, especially when he has the means to settle existing obligations or has the opportunity to borrow from another loan provider under more favorable conditions, fulfill his contractual obligation towards the loan provider earlier, and thus save part of the interest he would otherwise pay to loan provider. Further, author elaborates that if there were no mentioned or similar mechanisms, the loan consumer would be a sort of a "hostage" of the loan and the costs it carries, regardless of the possible possibilities to repay the loan debt earlier and thus free from unnecessary interest costs for the remaining repayment period.

Mišćenić (2010, 7) reminds that the right to early repayment of consumer loans was one of the most pressing issues for the EU legislators considering the different attitudes of interested representatives of financial institutions, consumer protection associations and representatives of member states, and experienced several different formulations and proposals. The final solution contained in Directive 2008/48/EC⁷¹ is still labelled today as a significant progress in consumer protection and a major contribution to limiting the arbitrariness of financial institutions.

Regarding the arrangements for the consumer's early loan repayment, contained in Directive 2008/48/EC, it should be noted that the Directive already in the point number 39 of the Preamble stresses that the consumer should be entitled to a full or partial early repayment of the loan, and that in this case the borrower should be entitled to reimbursement of costs directly related to early repayment. Also, according to Šabić-Učanbarić (2018, 9) Directive points out that when calculating the amount of compensation that belongs to the bank in case of early loan repayment, several rules should be followed. Among such rules are the rule on the necessity of transparency, intelligibility and simplicity of the method of calculating the amount of compensation, and the rule on the necessity of introducing the consumer to such a method before concluding a loan agreement or at the latest at its conclusion. Transparency, intelligibility and simplicity of the method of calculating the amount of compensation should serve not only to better and simpler information of consumers on this important issue, but also contribute to a kind of more effective control of compensation by the appropriate supervisory authorities.

Article 16 para 1 of Directive 2008/48/EC entitles the consumer to fulfil, in whole or in part, his obligations under the loan agreement, whereby he is entitled to a fair reduction of the total cost consisting of interest and costs for the remaining agreed duration of the loan, while the borrower is entitled to reasonable, limited and objectively determined compensation for any damage caused by premature repayment (Šabić-Učanbarić, 2019, 78).

4. Consumer Right to Early Loan Repayment in B&H

Strengthening economic and political ties between the European Union, its Member States and those states that have affinities for joining the European Union – including B&H as a country with a status of potential candidate and aspirations for joining the EU, led to the need for active harmonization of national legislation in the field of protection of consumers as users of financial services.

When it comes to B&H, the Consumer Protection Act of 2006 (CPA B&H) was the first attempt to harmonize domestic legislation with EU standards in the field of consumer protection in consumer

⁷¹ Directive 2008/48/EC of the European Parliament of the Council of 23 April 2008 on credit agreements for consumers repealing Council Directive 87/102/EEC of 22 May 2008

lending. By the aforementioned Act, just two years before the adoption of Directive 2008/48/EC, the Bosnian state legislator sought to transpose the already outdated solutions of Directive 87/102/EEC⁷². After the adoption of Directive 2008/48/EC, as stated by Šabić-Učanbarlić (2019), the need to harmonize domestic solutions with the solutions of this Directive was created. Unfortunately, the harmonization was undertaken at the impractical entity level, in the Federation of B&H through the Law on Protection of Financial Service Users⁷³ (LPFS FB&H), and in Republika Srpska within the existing Law on Banks of Republika Srpska⁷⁴ (LOB RS), in a special chapter titled Protection of rights and interests of banking services.

Prior to the adoption of the CPA B&H and the entity laws, the issue of the right to early repayment of loans in B&H was regulated by the provisions of the Law on Obligations⁷⁵ (LOO) – more specifically, by the virtue of Article 1068. In accordance with the provisions of this article, the loan consumer can repay the loan even before the deadline set for repayment, with the obligation to inform the bank in advance and with the obligation to compensate for any damage caused to the bank. From this we can conclude that even before the adoption of the *lex specialis* regulations, there already existed a certain set of rules that regulated the issue of early repayment of the loan and allowed the borrower/consumer to repay the loan before the lapse of the agreed time, and enabled the bank to exercise the right to a certain damage compensation. (Šabić-Učanbarlić, 2018, 17)

However, as a result of the undertaken obligations of B&H to harmonize regulations with EU law, which is an obligation arising from Article 70 of the 2008 Stabilization and Association Agreement⁷⁶ (SAA), the right to early repayment of consumer loan is contained in two entity laws, which represents a significant – yet unfortunately unharmonized - progress in the process of protection of consumers entering into a loan and a step forward from earlier regulation.⁷⁷

Although B&H has a state-level Consumer Protection Act⁷⁸ (CPA B&H), which also contains a chapter dedicated to consumer loan, the harmonization of domestic legislation with the regulation of Directive 2008/48/EC has been undertaken in the legislation of B&H in the most complicated way possible – via entity legislation. In 2011, LOB RS was amended as to integrate the regulation of the Directive, along with supplementing decisions and interventions of the Banking Agency of the RS. The legislation of the Federation of B&H was harmonized with the solutions of Directive 2008/48/EC about three years later, i.e. in 2014. Thus, since the moment of adoption of entity level legislation, in B&H, we have a parallel application of the CPA B&H modeled on outdated Directive 87/12/EEC and LPFSU FB&H and LOB RS modeled on the Directive 2008/48/EC. (Šabić-Učanbarlić, 2018, 10)

4.1. Regulation Under B&H Consumer Protection Act

According to Article 65 of the CPA B&H, within chapter XI that regulates consumer loan, the consumer, as a loan consumer, has the right to perform his obligations on the loan even before the agreed

⁷² Council Directive 87/102/EEC of 22 December 1986 on the revocation of the laws, regulations and administrative provisions of the Member States relating to consumer credit, OJ LLL 42/48 of 12.02.1987

⁷³ Law on Protection of Users of Financial Services of the Federation of Bosnia and Herzegovina ("Official Gazette of FBiH" no. 31/14)

⁷⁴ Law on Banks of the Republika Srpska (Official Gazette of RS, No. 44/03, 74/04, 116/11, 05/12, 59/13)

⁷⁵ Law on Obligations of the FB&H (Official FB&H Gazette " no. 29/2003, 42/2011)

⁷⁶ Stabilisation and Association Agreement between the European Communities and their Member States, of the one part, and Bosnia and Herzegovina, of the other part of 06.06.2008.

⁷⁷ Article 70(1) of the SAA states: The Parties recognise the importance of aligning existing legislation of Bosnia and Herzegovina with that of the Community, as well as its effective implementation. Bosnia and Herzegovina will seek to ensure the gradual harmonization of its existing laws and prospective legislation with the EU Consumer *Acquis*. Bosnia and Herzegovina will ensure the appropriate implementation and application of existing and future legislation.

⁷⁸ Law on Consumer Protection in Bosnia and Herzegovina ("Official Gazette of B&H", no. 25/2006 and 88/2015)

deadline, in which case the total loan costs will be reduced by interest and other expenses calculated for the period after early repayment. With the exception of the this provisions, the CPA B&H does not contain any further provisions regulating the issue of early repayment of loans, and in particular does not contain provisions that would more precisely regulate the bank's right to compensation. This omission is partly a reflection of the fact that Directive 87/102/EEC on wich CPA B&H is based, itself did not regulate this issue, and in part it is the result of the fact that the issue of compensation as a bank's right in the event of early repayment of loans regulated the existing solutions from the LOO.

Bajrić (2015, 24) explains how such foramation left place for the banks to contract a clause on the basis of which they retained the right to calculate and collect a one-time fee in case of early loan repayment, but the amount of this fee was defined by the bank's internal act, which essentially indicates that it was an unfair practice of banks. Bearing in mind that banks lose part of the interest that represents their profit by premature loan repayment, they have developed special methods in business practice by which they have secured significant earnings and to some extent discouraged loan users from using the right to early loan repayment. In the loan agreements, banks have conceived repayment plans in which most interest is paid in the initial stages of the loan, when the consumer is less likely to decide on early repayment, and the same was enabled by entity regulations of banking regulators.⁷⁹

Bajrić (2015, 25) further elaborates that by conceiving such repayment plans in which the interest rate at the beginning of the loan repayment is significantly higher compared to the principal, banks mitigated the negative consequences in case the consumer exercises his right to early loan repayment, i.e. they reduced the risk of losing most of the interest and incurring other possible costs. Such repayment plans also reduce the effectiveness of this tool, since the profitability of its realization is the lowest in the final stages of repayment when it is more likely that the consumer will be financially able to repay his loan debt early. In addition to the aforementioned problem of structuring loan repayment through repayment plans that favor the position of the loan provider, another factor that also discouraged loan beneficiaries from early repayment are the significantly high fees that banks charged in these cases. Author explains that the practice of banks in B&H "was such that banks regularly charged fees for early loan repayment in the amount of 2-5%. For example, if the borrower of 30,000 BAM decided to repay the loan early when the remaining debt is 20,000 BAM, he would be obliged to pay the bank the amount of 1,000 BAM at the closing fee of 5%, without any objective explanation of what constitutes such compensation." Therefore, such actions of the banks lead to the conclusion that banks charged the aforementioned fees in the name of losing part of the interest (evaded profit) that they expected until the end of the repayment period, which is certainly contrary to Article 1068, para. 4 of the LOO.

4.2. Entity Level Regulation

The entity legislators, when transposing the regulations of Directive 2008/48/EC into domestic legislation, decided to adopt different solutions, certainly missing the opportunity to undertake harmonization with the EU standards at the state level, thus avoiding the problem regarding the application of different regulations within one state.

The first difference that is noticed between the regulation contained in the LPFSU FB&H and those contained in LOB RS is related to the fact that the LOB RS does not specifically mention the

⁷⁹ A repayment plan or loan repayment plan is an integral part of a loan agreement in which individual payments and periods are indicated, as well as conditions related to payment of installments. The plan contains a specification of each payment, thus showing amortization principal, interest calculated on the basis of the interest rate and any possible additional costs. If the interest rate is not fixed or if the additional costs may change under the loan agreement, the repayment plan shall indicate clearly and stipulated that the data will remain valid only until such time as the change in the interest rate or additional costs in accordance with the loan agreement – a provision of Article 10 of the Charter of Fundamental Rights of the European Union. Para. 2 letter (i) of Directive 2008/48/EC.

conditions that must be met in order for the bank to be entitled to compensation for early repayment of loans that finance the purchase of real estate.

In Article 98 LOB RS, the RS legislator omitted to define important issues from the segment of early loan repayment, such as the upper limit of the request for reimbursement of costs, and the aforementioned omission was eliminated by the Decision of the Banking Agency of the RS on the conditions of early repayment of loans of natural persons not intended for their business or other commercial activity, which literally took over the rules from the Directive 2008/48/EC. The bank is entitled to an objectively justified fee provided that early repayment occurs during the period in which a fixed interest rate is charged, and in terms of the amount of early repayment over a period of one year, it refers to the limit values defined by the Banking Agency of Republika Srpska. In Article 2 of the Decision on the conditions of early repayment of loans of natural persons that are not intended for their business or other commercial activities it is pointed out that the bank is entitled to compensation for damages where the amount of early loan repayment in a period of one year exceeds the amount of 10,000 KM. Banking Agency of RS in Article 3 of the mentioned Decision limits the maximum amount of damage compensation as it was done in the LPFSU FB&H – by limiting the amount of damage compensation to 1% of the loan repaid early if the period between the early repayment and the period of fulfillment of the obligation under the loan agreement is equal to or longer than one year. If the period is shorter than one year, the limit of damage compensation is set to a maximum of 0.5% of the amount of early repaid loan.

In the provisions of Art. 27 LPFSU FB&H points out that the consumer has the right to repay the loan at any time, in full or in part, before the deadline set for repayment, and that he is entitled to reduce the total loan costs by the amount of interest and costs for the remaining period of the contract, with the obligation to notify the bank in advance of the intention to repay the loan in advance within the agreed deadline (Šabić-Učanbarlić, 2018, 13)

From the aforementioned, it is clear that the loan consumer has the right to early repayment at any time after the conclusion of the contract, and before the expiry of the agreed deadline, and that he can repay the loan in whole or in part. In order to exercise this right of his, the loan consumer should notify his contracting party of early repayment within the contract unceasing period, which means that this deadline should be specified at the latest when concluding the contract.

4.2.1. Issues with Transposition on Entity Level Regulation

The entity model of harmonization of regulations in B&H with EU law certainly is not the the best solution for the implementation of directives because it resulted in vertical inconsistency of regulations, i.e. non-compliance of state with entity regulations on consumer protection, e.g. although through amendments to the LOB RS and LPFSU FB&H, solutions of the Directive 2008/48/EC were taken over, while the solutions of the old Directive 87/102/EEC remained in the CPA B&H. (Bajrić, 2015, 28)

Such transposition, which Bajrić (2015, 30) characterizes as "inconsistent and unsystematic transposing EU directives into the legal system of B&H", given that the same legal issue is regulated by the CPA B&H, which was modeled on "very tight regulations" of the old consumer loan directive, i.e. Directive 87/102/EEC. In this way, a unique situation has been created in B&H where both the old and the new regulations of consumer directives continued to coexist, although with the entry into force of Directive 2008/48/EC the old Directive 87/102/EEC ceased to be valid. When we add the subsidiary application of the LOO, i.e. the provisions of that Law concerning loan agreements, then it is clear that the fragmentation of regulations of the consumer protection often leads to confusion and various problems regarding the adequate and complete use of the right to early loan repayment.

Resolution of possible non-compliance of regulations is contained in the provision of Article 1, Para. 2 of the CPA B&H, according to which "in case of doubt or conflict of provisions, a provision that provides a higher level of consumer protection shall apply." Although this collision can also be solved by applying the rules *lex specialis derogat legi generali*, the application of the quoted provision indicates precisely the specificity of the consumer relationship and the need to provide increased protection to the weaker contractual party.

Bajrić (2015) also problematizes "time-taking over stipulations of the decision of Directive 2008/48/EC where the same was carried out in the RS three years earlier in relation to the FB&H, which indicates that two different legal regimes existed in the territory of B&H, which are not fully harmonized even after the adoption of new regulations. Therefore, everything points to the conclusion that the transposition of Directive 2008/48/EC into the legal system of B&H should have been carried out at the state level, i.e. through state law, and not entity laws and bylaws, because due to fragmentation of regulations creates additional disharmony and confusion in the process of exercising the right to early repayment of consumer loans."⁸⁰

The entity model of transposing EU directives and harmonization of national legislations that is present in B&H creates a serious horizontal normative mismatch given that there are certain differences between the regulations in FB&H and RS. Also, another important issue is the fact that certain regulations in RS were adopted through bylaws, which is contrary to the European practice of implementing consumer directives. Pošćić (2004) lists acceptable models of adopting European regulations: transposition into civil codes, transposition in special laws on consumer protection of limited field, in special laws regulating specific consumer relations, and in laws of special areas. Thus, the significant portion of the transposition in RS which has been done through the various decisions of the Banking Agency is flawed and disputable.

5. Creditor's Right to Compensation of Damages

Although the protection of consumer interests is definitely seen as a priority of these regulations, it is also necessary to take into account the fact that the bank might sustain damages caused by the debtors' early loan repayment. Such damages might occur in forms of administrative costs, the costs of the source of funds from which the loan was approved, costs of the time required for its re-valorization, and possible differences of lending yield. Perović (1995, 32) anticipated that the damage in these cases may also consist in the fact that the average interest rate for the same type of loan has fallen, so the bank will receive interest from the next borrower who will "take over" the early repaid amount, at a lower rate than that of the user who repaid the loan early. Thus, both the EU legislator and legislators in B&H foresaw and regulated the banks' right to compensation of such damages.

In order for damage to be compensated to the bank, the damage must be reasonable and objectively determined in accordance to specific criteria. Bajrić (2015, 42) points out that banks are professional business entities with loan as their primary activity and "will very soon re-evaluate the

⁸⁰ Such a conclusion may also be drawn from the provision of Article 76 of the SAA: "The Parties shall cooperate with a view to harmonizing standards for consumer protection in BiH with the same standards in the Community. Effective consumer protection is necessary to ensure the proper functioning of the market economy, and this protection will depend on the development of administrative infrastructure to ensure market advancing and law enforcement in this area. To this end, and in terms of their common interests, the Parties shall encourage and ensure: (a) an active consumer protection policy, in accordance with Community law, including greater awareness and the development of independent organization; (b) alignment of legislation in the field of consumer protection in Bosnia and Herzegovina with legislation in force in the Community; (c) effective legal protection of consumers to improve the quality of consumer goods and maintain appropriate standards; (d) that the competent authorities follow the law and ensure access to justice in the event of a dispute.

previously repaid amount and re-market it to other users by charging new interest." Both entity laws contain a solution according to which, in the case of early repayment, the bank is entitled to objectively justified and agreed reimbursement of costs directly related to early repayment.

For the realization of this right, however, further conditions prescribed by both Banking Agencies of the FB&H⁸¹ and RS⁸² must be met, and entity legislation regarding these conditions differs. The maximum amount of compensation is limited by the provisions of Art. 27 para. 3 LPFSU FB&H in such a way that this amount cannot exceed 1% of the early repaid loan, if the period between early repayment and the deadline for fulfilling the obligation under the loan agreement is longer than one year. Where this period is less than one year, compensation may not exceed 0.5% of the amount of the loan repaid early.

Both the LPFSU FB&H and LOB RS prescribe the cases where the bank cannot demand compensation for early repayment. Thus, it is not possible when the repayment was made on the basis of a concluded insurance contract whose purpose was to secure the repayment of the loan, where repayment is made during the period for which the variable nominal interest rate is agreed, whereby in the legislation of the FB&H this is allowed for loans that finance the purchase of real estate and in case of permitted overdraft of accounts.

Both laws, the LPFSU FB&H⁸³ and the LOB RS⁸⁴ emphasize that the fee for early repayment of the loan cannot exceed the amount of interest that the user would pay during the date of return the loan until the day the loan under the contract was to be repaid. Although Directive 2008/48/EC in Article 16 para. 4 stresses that a bank may exceptionally seek higher compensation provided that it proves that the loss suffered by early repayment exceeds the limits of Article 16 para. 2, neither the LPFSU FB&H nor the LOB RS provide for this possibility in B&H. (Šabić-Učanbarlić, 2018, 22)

Since the borrower must not find himself in a more favorable position than it would be if the consumer repaid the loan within the contract set time limit, Article 16 para. 5 of the Directive provides that the fee may in no case exceed the amount of interest that the consumer would have to pay in the event of repayment of the loan within the contract unceasing period. Article 27, para. 5 of the LPFSU FB&H and Article 98, para. 4 of the LOB RS establish a general rule that the fee for early repayment of the loan in no case may exceed the amount of interest that the consumer would pay within the contractual specified repayment period.

It is important to mention that Directive 2008/48/EC, as well as the Bosnian and Herzegovinian legislators, fail to provide a solution to an extremely important issue concerning the establishment of a single model of calculating the reimbursement of costs suffered by the bank as a result of early loan repayment, and the regulation of the method of presenting the same consumer in a manner that will not unnecessarily discourage the consumer from paying such possible compensation and therefore early repayment of loan debt.

⁸¹ Decision of the Banking Agency of the FBiH on a uniform method of calculating and expressing the effective interest rate on loans and deposits (Official Gazette of the FBiH No. 48/12, 23/14)

⁸² Decision of the Banking Agency of the RS on a uniform method of calculating and expressing the effective interest rate on loans and deposits (Official Gazette of the RS No. 15/12)

⁸³ Article 27, para. 5 of the LPFSU FB&H

⁸⁴ Article 151, para. 4 of the LOB RS

4. Conclusion

The consumer's right to early repayment of consumer loans is certainly a valuable instrument of its protection, but also a tool for achieving better financial conditions. Its legal and economic importance will surely keep on rising in the times of surging inflation when more and more consumers are struggling to make ends meet with their income and decide to borrow in order to maintain their standard of living.

With the early repayment of the loan, the loan provider comes early to funds and will be able to reinvest more efficiently than the consumer himself and thus make additional profit, or at least compensate for the possible loss he had due to early repayment of the loan. On the other hand, this right whose primary role is certainly consumer protection certainly gives the consumer significant flexibility by allowing him to change the loan provider in case of finding more favorable conditions on the loan market, and lowering his total expenditure related to the loan.

However, common practices of borrowers of concepting repayment plans in such a way that the consumer in the period of the consumer loan agreement first repays a higher share of interest and then a smaller one still somewhat defeats the purpose of early loan repayment. With such a repayment regime, in the event that the consumer opts for early repayment, the consumer "damages" the bank for a smaller part of the interest, given that it is more logical and more likely that the loan will be repaid early in the advanced phase of the loan, than in the initial one when the interest is higher. Therefore, the financial viability of using this right is greatest at the very beginning of the loan repayment, and over time it becomes smaller, and once the consumer repays the loan provider most of the interest, the early repayment of the loan becomes unprofitable. In the case of B&H, entity regulations of LPFSU FB&H and LOB RS introduced significant novelties and made progress in the field of protection of consumers in the financial services market through the special consumer rights, such as the right to early loan repayment. However, B&H regulation still remain vertically inconsistent, where different laws offer different consumer protection. Therefore, B&H needs to undergo a internal harmonization of regulation in this area, in order to ensure that consumers are well aware of their rights and well protected by their application.

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