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Loan companies in Poland. Theory and practice

Edited by
Iwona Jakubowska-Branicka

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tel./fax +48 22 55 20 134

e-mail: isns@isns.uw.edu.pl

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Reviewers:

Stanisław Kasiewicz,

Bartłomiej Walczak

Editor: Iwona Jakubowska-Branicka

Technical and Language Editor:

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Introduction

This book has been quite a challenge to write. It was not because we made a decision to study an economic phenomenon from a sociological point of view, but above all because during the four years of our research, the section of socio-economic reality that was the focus of our attention underwent a major transformation. In order to understand the issue at hand, we had to engage in interdisciplinary research at the meeting point of sociology, law and economics, taking into account local conditions and time periods, determined by numerous variables and captured by means of various indicators. Due to the dynamics of change, more than once we had to take a step backwards to be able to move two steps forward in our efforts to truly understand and describe the complexity of the issue of non-bank loans in Poland. We started our research in a practically unregulated and extremely predatory market, where everyone could provide lending services, freely shaping their offer, and ended it in an environment limited to large incorporated companies which promoted ethical operations and a mature corporate culture. This dramatic change took place in just four years.

In 2013, we discussed for the first time the social problem of debtors due to the use of the so-called quick loans (*chwilówki*). Our team, initially composed of a narrower group (Iwona Jakubowska-Branicka, Adriana Mica and Aleksandra Herman), had at that time a general knowledge, mainly coming from media broadcasts, publicizing dramatized case studies of indebted pensioners of modest means and large families, comparing them with images of merciless and suspicious businessmen, to whose antisocial endeavours, described as usurious, there was no antidote. The issue appeared wide-spread; the announcements on poster pillars and at bus stops were omnipresent at that time: “up to 25 000 zlotys, no verification, just an ID”. Later on, these carefully collected advertisements complemented our original research methodology for some time, eventually becoming purely archival matter as subsequent changes pressed on.

At the time, our discussions revolved around the democratization of credit, the links between the political system and the power, and the limits of state

interventionism. The background featured a hypothetical theoretical construct of “quasi-formality”, which we understood as activities imitating “formality”, sanctioned by law and reflected by loan companies directly from the way banks operated, which we identified with security and regulation.

The research that we started soon revealed the inadequacy of our general knowledge about non-bank lending practices. First of all, however, the terminology had to be revised, which entailed some changes in the perception of the entire problem. While the term “quasi-formality” supported the sociological operationalization of a fragment of social and economic life, the prefix “quasi-” automatically caused a negative attitude among our respondents representing loan companies. This was due to the discrediting of the term “quasi-banking” (*parabankowość*), which had been popularized by the media since the early 1990s, when the free market began to develop in Poland, the naive dream of a financial career “from rags to riches” had been germinating in society, and the emerging business benefited from both of these circumstances, without taking into account the ethical aspect.

Later stages of the development of our project were impacted by various phenomena, all of which were equally important for us. The initial anarchy somewhat calmed down after pioneering legal regulations introduced in the 1990s (which prohibited entities other than licensed banks from accepting deposits) and by the laborious elementary education of the society. A monopolist appeared on the market, which divided and ruled for over a decade, dictating its own standards and preventing the introduction of balanced competition, but also filling a gap in social demand. Further developments were already linked to the internet and digital revolution, which since 2011 has resulted in a complete remodelling of the sector in structural terms (competition has emerged and fresh capital has arrived), in terms of the offer, customer base and in terms of further growth, in close connection with digital financial technologies. At the same time, the persistent lack of adequate legal regulations increased the appetite for profit maximization at the expense of the quality of life of customers who suffered exploitation. The idea of self-regulation, which was surprising in this context and at that time, paradoxically arose from the largest companies’ desire to combat fragmented competition, and consolidation, aimed at improving the image, enabled lobbying with the legislative authorities in order to introduce real legal regulations (the so-called “anti-usury act” of 2015) and a control mechanism (a register of loan companies introduced in 2017). The government’s demographic initiative to support larger families in the form of the 500+ programme has also had an impact on the non-banking loans market, as the programme has had a social effect in Poland so far, partly changing the

profile of customers and partly their needs from living to consumption and aspirations. These latest developments, occurring after 2013, have been captured while in progress.

At present, we are witnessing a growing professionalization of loan companies, which have been ennobled by the term “loan institutions”, introduced into Polish legislation. Today, on the one hand, they are taking on risks that banks cannot afford because of financing credit facilities with deposits and the banks’ role in maintaining the sustainability of public finances, so loan institutions support and complement the banking system. On the other hand, they are becoming true competitors for banks in terms of personal finance services, as a result of the huge popularity and growing value of e-commerce and inseparable links with the digital financial technology industry. The place that loan companies will occupy in the structure of financial institutions will depend on the direction of subsequent legal regulations. A closer look at past trends in this field on international (EU) level calls for a serious approach to their opportunities for further development and to their importance in the structure of national and global economies. The focus of our study is the characteristics of customers of loan companies. The results of our research (and other research, cited here, as well) lead to the conclusion that the services of loan companies are used primarily by people excluded from the sector of banking services: the precariat, to use the term coined by Guy Standing. If we take this point of view, the importance of our study goes far beyond the characteristics of the discussed sector, thereby prompting a closer look at the social mechanisms and the role of the state in safeguarding and implementing the fundamental economic rights of citizens.

We hope that you will find our publication interesting and inspiring.

We are thankful to Professor Elżbieta Mączyńska, who generously shared her knowledge of economics. We would also like to thank the young PhD students who joined our research team with their full commitment and knowledge: Paulina Spalek, Maciej Frąszczak and Filip Cyuńczyk.

*Iwona Jakubowska-Branicka
Aleksandra Herman*

Is anomaly the new hybrid? Semiformal and parabanking institutions in the financial sector

Introduction

The recent decades have witnessed an expansion of academic interest in hybrid forms, coming from the most distinct domains, well beyond Latour's¹ initial theory in philosophy and anthropology of science. These incipient theories of hybridity have recently begun to be systematized in an attempt to do away with the scattered quality of the analytical attempts which, although proliferating and ambitious, are still somehow dispersed.

This systematization is carried out on various levels (not solely academic). The existing accounts allow us to observe that some of these forms go well beyond what in the relevant literature is depicted as hybrid forms. In order to make this point, this chapter looks closely at the manner in which two forms from the financial sector are presented and semantically constructed – the semiformal and parabanking institutions. The review allows us to see not only that the former element better fits the profile of the hybrid, while the latter – the one of the anomaly, but also that, currently, the discontent and discomfort with regard to hybrids that was attributed to modernity seems to manifest itself in relation to the anomaly. The anomaly is basically the new hybrid.

This chapter looks closely at what could be termed as hybrids in the financial sector. Building upon the existing accounts about semiformal and parabanking institutions, this chapter aims to show two things. First, the description and awareness about certain hybrid forms in this sector is quite advanced. These even seem to belong to a sphere of normality. Second, some of the proliferating new forms come across rather as anomalies than as hybrids. As a matter of fact,

¹Latour, Bruno. 1993 [1991]. *We Have Never Been Modern*. Cambridge (MA): Harvard University Press.

judging by the reaction of amazement and discontent to their social manifestation, these anomalous forms seem to have replaced the hybrids in the social domain.

Why is it relevant to document this new organizational and institutional form? To begin with, this indicates that a shift in framing and modality to institute something new has changed. In the hybrid convention, the organizational and institutional forms are either seen as belonging to domain A-domain B, or to be a mix of domain A and domain B. In the anomalous phase however, forms began to emerge that are something else than an outstanding and paradoxical combination. In this new situation, the resultant form is not anymore something closer to A or B. Instead, it becomes, for instance, something that resembles A or B, but in fact is a fake or *quasi* A or a fake or *quasi* B. Thus, the logic of the anomaly is distinct from that of the hybrid. This prompts the question whether these anomalous organizational forms are indeed new or mainly just new hybrids.

Second, the emergence of these alternative organizational and institutional forms is also important to document in relation to the topology of the possible and the alternative in the organizational domain in general, and the financial sector in particular. In the last years, the social sciences have evidently began to use a vocabulary of potentialities, opportunities, discoveries and alternatives. This is surely in line with their empirical material and cases, which provide countless instances where actors look for solutions, exploit existing possibilities and try to legitimize alternatives. As can be expected, some, if not a great part, of these materialized potentialities or exploited windows of opportunity are seen as lacking legitimacy, having a problematic status, or breaking some of the existing rules (even though it is not always easy to demonstrate why this is the case).

The sharing economy is most probably the empirical research site where the character of the new forms is mostly put into question. Airbnb, Uber etc. are not really seen as hybrids, but more as institutional anomalies. Uber, for instance, is not an organizational hybrid between a transport service and a digital company, but rather an anomalous transportation service that tries to bring a convincing rhetoric in terms of a digital company or an “information society service”, but which is strongly contested. In this sense, the discussion and contention around Uber stem from the fact that this is an anomaly, and not a hybrid.

Third, the emergence of hybrid-types of institutions, organizations and services has a clear social exclusion/inclusion component. This offers a way in for the categories of people that are disadvantaged in the binary type of framing. Certainly, there is a paradox: this inclusion always generates the question whether such hybrids are supportive of social mobility. Nevertheless, what is also important is that the proliferation of hybrid-type of institutions and services goes beyond issues of social stratification, exclusion, discrimination, etc. As noticed

by Ferrand², for instance, in relation to the financial institutions in Kenya, the formal–semi-formal–informal dynamics should also be viewed as market related. The hybrids do not only operate in terms of inclusion–exclusion, but these also diversify the existing offer on the market:

For example, in Kenya, a demand-side survey showed that very few consumers rely on formal services alone. Interestingly, despite a significant expansion in formal service provision, the number of people using multiple sources, formal, semiformal, and informal, has increased in recent years. The rationale is not difficult to understand. Even in the most developed financial markets the needs of consumers or businesses are rarely best met by a single institution [...]³.

To understand the character of these new innovative forms is relevant both in terms of theory and everyday life. The sharing economy as well as the financial new institutions are not only solutions or adaptations to the capitalist dynamics. They also have impact on economic efficiency, social mobility, existing social structure, as well as boundaries. They have a transportative potential, they contribute to social change – and sometimes, they even lead it. Without understanding the logic in which these forms are constituted, we stand no chance as scholars to grasp their further dynamics and the feedback they provoke.

Hybrids

In sociology and the framing associated with actor network theory, the hybrid is commonly understood as a combination of aspects that are traditionally expected to belong to distinct realms – such as the ones of culture and nature. This is a combination between elements of domain A and elements of domain B. In the studies of hybrid organizations and institutions this definition in terms of *combination between elements of A and B* is further retained. Batillana and Dorado, for instance, depicted the hybrid organizations as forms “that combine institutional logics in unprecedented ways”⁴. Observably, the element of surprise, paradoxicality and irony is an important aspect of the story. In this second framing, it is the combination as such which is considered novel, while in

² Ferrand, David. 2013. “Building Inclusive Financial Markets.” In *The New Microfinance Handbook: A Financial Market System Perspective*, edited by Joanna Ledgerwood, with Julie Earne and Candace Nelson, 459-478. Washington (DC): The World Bank.

³ Ibidem, s. 468

⁴ Batillana, Julie, and Silvia Dorado. 2010. “Building Sustainable Hybrid Organizations: The Case of Commercial Microfinance Organizations.” *Academy of Management Review* 35 (6): 1419-1440.

the initial (broader) perspective what appeared out of the ordinary was the origin of the elements, the fact that they belong to distinct domains.

The hybrid forms (organizational, institutional, cultural, etc.) have three elements: combination; elements belonging to different domains; and the emergence of something autonomous and new subsequent to the combinatory process. These suggest a state of in-between, or a mix, that in itself goes beyond a sole intermediary, or combined, condition. The hybrids are autonomous entities. They constitute something in and of themselves, they go beyond the simple adding and joining of previously separate forms. Nevertheless, as suggested by actor-network theory, their trademark or the modality in which they are usually defined is that they either occupy an intermediary status (between A and B) or constitute a mixed state of A and B (but which, nevertheless, is also seen as situated between A and B).

In both the intermediary level and the mixed state situation, the representation of the hybrid forms is that they drive closer to either A or to B, and that A and B are mutually exclusive. Because of the Modernity Constitution⁵, the two essential domains are seen as distinct. The hybrid forms appear as autonomous, yet internally conflicting. The source of the conflict rests in the constitution which is crafted in such a way that this is better equipped to see the hybrids as driving closer to one domain or the other, to ascribe these to certain contexts, to purify them. This act of purification is so mundane and ordinary that it easily passes unnoticed. On the other hand, it is also quite widespread. It can be spotted, for instance, in discursive processes and vocabulary practices which reveal the cultural, normative and political context in which the talk about hybrids unfolds. Hence, it is more common to speak about *hybrids of domain A* or *hybrids of domain B* than about *hybrids as combination of A and B*. The combinatory element and the intermediary status of the hybrid emerges when we try to give a definition of the hybrid. Yet in everyday parlance or academic vocabulary, the hybrids are ascribed to certain domains, or appear to gravitate on the orbit of one domain or the other: a sign that the purification or separation mechanisms that are specific of modern types are set in motion.

According to Czarniawska and Solli, the hybrid is an attachment, grouping in a new whole of distinct parts, components that exclude each other when they function separately [“połączenie w jedną całość różnych części, składników, wykluczających się gdy funkcjonują oddzielnie”]⁶. These authors also demar-

⁵ B. Latour, *We Have...*, op. cit

⁶ Czarniawska, Barbara, and Rolf Solli. (nd [2016]). “Hybrydyzacja Sektora Publicznego”. Translation in Polish language of the article appeared in *Nordiske Organisasjonsstudier* 2016, 18 (2): 23-36. Available at http://instytucjonalizm.uw.edu.pl/wp-content/uploads/sites/75/2015/10/CZARNIAWSKA_SOLLI_Hybrydyzacja_sektora_publicznego.pdf

cated two types of understanding of the hybridization process. In the first, in the tradition of Latour and Bauman, hybridization is a consequence and an intrinsic element of the modernization process. In the second, in the conception of Streeck and Thelen⁷ and Mahony and Thelen⁸, hybridization is associated with the change of the social order. While hybridization is certainly too broad a topic to be undertaken herein, suffice here to note that Czarniawska and Solli opted for the former definition on the grounds that hybridization should not necessarily imply change of the institutional order. Czarniawska and Solli⁹ depicted it rather as a blurring of boundaries, declaring that whether this process implies change of institutional order is still not quite clear.

At first sight not so relevant, this question (i.e. whether the hybrid entails social or institutional change) is nevertheless essential. As will be shown in Chapter 2, one of the arguments advanced by this book is that the persistence of these hybrid forms in the contemporary world is accomplished because of their continuous adaptation, adjustment, being under pressure. To a certain extent, all these processes could be taken to mean social change, or at least support for change via adaptation, translation¹⁰. Yet, Czarniawska and Solli¹¹ argued, this phase of hybridization is not tantamount to social change, at least not automatically and universally. Indeed, as this present volume indicates, the hybrid forms are characterized by volatility and mutability. Yet this does not automatically imply social change.

The identification by Czarniawska and Solli of these two approaches to the process of hybridization can be discussed at a meta-theoretical level as reflecting two analytical frameworks. The former perspective, in the tradition of Latour and Bauman, sees hybridization as a normal process of blurring of boundaries subsequent to combination, mixing and bringing together of elements that traditionally belong to different domains. The second, per authors associated with historical institutionalism wherein hybridization is a more technical and specific process, links hybridization with processes of change, such as institu-

⁷ Streeck, Wolfgang, and Thelen, Kathleen. 2005. "Introduction: Institutional Change in Advanced Political Economies." In *Beyond Continuity: Institutional Change in Advanced Political Economies*, edited by Wolfgang Streeck and Kathleen Thelen, 3-39. New York: Oxford University Press.

⁸ Mahony, James, and Thelen, Kathleen, eds. 2010. *Explaining Institutional Change*. New York: Cambridge University Press

⁹ B. Czarniawska, S. Rolf, *Hybrydyzacja Sektora...*, op.cit

¹⁰ Czarniawska, Barbara, and Bernward Joerges. 1996. "Travels of Ideas." In: *Translating Organizational Change*, edited by Barbara Czarniawska and Guje Sevón, 13-48. Berlin and New York: De Gruyter; Mica, Adriana. 2013. "From Diffusion to Translation and Back. Disembedding–Re-embedding and Re-invention in Sociological Studies of Diffusion." *Polish Sociological Review* 1 (181): 1231-1413.

¹¹ B. Czarniawska, S. Rolf, *Hybrydyzacja Sektora...*, op.cit

tional, regulatory, etc. The normality framework depicts the hybrid as a universal and common manifestation of blurring of boundaries subsequent to processes of combination and mixing due to modernization. The social change perspective views it as a more radical occurrence subsequent to identifiable processes, such as the institutional layering that historical institutionalists talked about. In the case of the former theory, the hybrid although tantamount to paradoxical associations and combinations of elements, is nevertheless considered to be a normal manifestation of social life. This does not necessarily imply social change. In the latter framing, however, the hybrid – even though not necessarily perceived as abnormal – is still considered exceptional and linked with social change.

This distinction between the modalities of understanding the hybrid/hybridization is in a way similar to the modalities of looking at the unintended consequences that can be encountered in the relevant literature. On the one hand, it is possible to consider the unintended consequences as an intrinsic element of reality that even helps reproduce the social structure¹². On the other hand, there is the more exceptional framing wherein the unintended sort of plays havoc with the intentions of the actors, a kind of ricocheting element of the social action¹³.

In the normality perspective, the hybrid is defined as the mixing or association of elements that initially were usually encountered apart. In the framing preferred by Czarniawska and Solli (n.d. [2016], 2)¹⁴, for instance, the hybrid was compared to a coin whose obverse and reverse has been stamped with stamps intended for different coins. The authors applied the “stamping” angle to the public sector organizations with designs that come from different countries and different types of organizations.

Semiformal financial institutions (within microfinance)

In addition to hybrid organizations, and hybrid formalities and informalities, another field which is recurrently framed in hybrid-like terms is the financial sector. Various hybrid financial arrangements and institutions were identified

¹² Giddens, Anthony. 1986 [1984]. *The Constitution of Society: Outline of the Theory of Structuration*. Cambridge: Polity Press/Oxford: Basil Blackwell.

¹³ Menell, Stephen. 1977. “‘Individual’ Action and Its ‘Social’ Consequences in the Work of Norbert Elias.” In: *Human Figurations. Essays for Norbert Elias*, 99–109. Amsterdam: Sociologisch Tijdschrift; Tilly, Charles. 1996. “Invisible Elbow.” *Sociological Forum* 11: 589–601; Mica, Adriana, Arkadiusz Peisert, and Jan Winczorek. 2011. “Introduction.” In: *Sociology and the Unintended: Robert Merton Revisited*, edited by Adriana Mica, Arkadiusz Peisert and Jan Winczorek, 9–26. Frankfurt am Main: Peter Lang.

¹⁴ B. Czarniawska, S. Rolf, *Hybrydyzacja Sektora...*, op.cit

as a research problem already a decade ago. Adams and Fitchett¹⁵, for instance, documented the expansion of the semiformal financial institutions in SSA countries. They showed that this originates from both influx of new members, as well as transformation of informal arrangements into semiformal ones. Arguably, the hybrid that currently enjoys the widest recognition in the relevant literature on the financial system is the semiformal institution. Accounts about its existence and even research studies about its dynamics and impact on other domains can be found already starting with the 1990s, predominantly in relation with microfinance.

According to Kashuliza et al¹⁶, semiformal captures the area between formal and informal (“the middle part of the continuum”) in the sense of partial regulation by government bodies (per licensing, supervision) and possible linkage with the formal financial system. These authors systematized this object of study (types and roles of various credit forms) and also looked at the linkage between informal and semiformal credit institutions and poverty alleviation and eradication in Tanzania. They showed that the recent expansion of informal and semiformal credit arrangements is a more generalized phenomenon in agricultural Low Income Countries (LICs). In circumstances of structural adjustment and policies of financial liberalization of the financial sector, the semiformal credit institutions surfaced in the bulk of the SSA countries. Formal credit arrangements, which were promoted in the 1980s as an alternative to the local or informal money lenders who were charging very high interest rates, failed to promote the development of agriculture. This failure, then, surprisingly, led to a reconsideration and reevaluation of the role of informal arrangements in the region.

The study of Kashuliza et al¹⁷ may be taken as an indirect evidence that the proliferation of the hybrid financial forms occurred in the context of the reconsideration of the potential of informal lending, especially on the grounds that this presupposes low transaction costs which makes it more suitable for startups and maintenance of mini-economies. Yet this is not to be interpreted as a ‘state of nature’ with formal, informal and hybrid elements running their own

¹⁵ Adams, Dale W. 1992. “Taking a Fresh Look at Informal Finance.” In *Informal Finance in Low-Income Countries*, edited by Dale W. Adams and Delbert A. Fitchett. Westview Press: Boulder & Oxford.

¹⁶ Kashuliza, A. K., J. P. Hella, F. T. Magayane and Z. S. K. Mvena. 1998. *The Role of Informal and Semiformal Finance in Poverty Alleviation in Tanzania: Results of a Field Study in Two*. Research Report No 98.1 Regions. Dar es Salaam: Research on Poverty Alleviation)

¹⁷ Ibidem, pp 7-8

individual course. As evidenced by Adams¹⁸, there are various combinations in which the formal and informal arrangements cease to appear in a pure form.

Still, what does semiformal stand for? What does this mean in concrete terms? And how can we differentiate semiformal from other potential hybrids, or from the formal and informal ends of the continuum? Kashuliza et al¹⁹ illustrated this category with bodies such as “cooperatives and unions, savings and credit societies, community-based projects, credit programmes of nongovernmental organizations (NGOs), venture capital firms, and many others”. The authors discussed in their case-studies the activity of NGOs, projects funded by the Tanzania government and some international development actors, international funds and loan schemes, etc. Based on this work, it can be inferred that an important quality of semiformal financial institutions is that they are not banks, but governmental or non-governmental bodies. Which means that one of the main, if not the major characteristic, defining these financial institutions is the application of other forms of regulation than the ones traditionally in place for formal credit intermediaries. In addition, these semiformal arrangements target specific groups (women, youth, farmers, disabled), and are associated with broader structural aims (such as financing agriculture, or small industries and businesses)²⁰.

Consequently, at least in the case of microfinance, semiformality refers to the lack of the type of regulation and supervision one customarily expects to find in the case of institutions performing similar activities, and not to partial state regulation in general. The semiformal financial institutions are registered, regulated and monitored, yet – unlike the formal financial institutions – these are not licensed and regulated by the banking authorities.

That this is actually the element that takes priority when defining something as “semi-formality” in microfinance is further confirmed by the systematic approach to this phenomenon carried out by Ledgerwood²¹. As in the case of Kashuliza et al²², the semiformal institutions in microfinance are viewed as merging both the property of partial state regulation as well as the one of regulation and supervision by authorities distinct from the ones that similar insti-

¹⁸ Adams, Dale W., and D. A. Fitchett (eds). *Informal Finance in Low-Income Countries*, edited by Westview Press: Boulder & Oxford.

¹⁹ A. K. Kashuliza, J. P. Hella, F. T. Magayane, Z. S. K. Mvena. *The Role...*, op. cit, p. 10

²⁰ See *ibidem*, pp. 44-45

²¹ Ledgerwood, Joanna 2000 [1998]. *Microfinance Handbook: An Institutional and Financial Perspective*. Washington (DC): The World Bank.

²² A. K. Kashuliza, J. P. Hella, F. T. Magayane, Z. S. K. Mvena. *The Role...*, op. cit, p. 10

tutions are being subjected to traditionally in the field. Yet, at Ledgerwood²³, the second characteristic takes priority. But let us have a closer look.

In a manner similar to Kashuliza et al²⁴, Ledgerwood divided the providers of financial intermediation into three categories: formal sector institutions, semiformal sector institutions and informal sector institutions²⁵. She defined the formal financial institutions as “chartered by the government and [...] subject to banking regulations and supervision”. She included banks, other nonbank institutions, insurance firms, various finance companies etc. in this category²⁶. She framed the semiformal ones in terms of “not regulated by banking authorities but are usually licensed and supervised by other government agencies”²⁷, and provided illustrations such as saving and credit cooperatives, credit unions, cooperative quasi-banks, development projects, particular NGOs which unfold financial services but report elsewhere than to the banking organizations etc. Finally, Ledgerwood²⁸ talked about the informal financial intermediaries as active “outside the structure of government regulation and supervision”. She listed here local moneylenders, pawnbrokers, groups engaged in self-help, NGOs as well as the family members who put their savings at stake.

As apparent from the very manner in which the definitions were formulated, the framing of formal, semiformal and informal financial institutions takes into account a mixed criterion: regulation and supervisions by government agencies on the one hand, and regulation and supervision by banking agencies on the other. The formal financial institutions comply with both types of supervision. The semiformal institutions are pretty fine when it comes to the governmental regulation but fell short in terms of banking regulation. While the informal ones fall short in both regards. Thus, the primary criterion defining semiformality, at least at this stage, is not the fact that it is not regulated nor supervised (or that it is partially regulated), but that it lacks regulation and supervision from the agencies which are commonly expected to have oversight over this kind of activities.

The logic of this hybrid is quite peculiar. It almost emerges inverse to the mechanism at work in the phenomenon of legal fictions wherein, as indicated by Beckert²⁹, a legal rule gets to be used in a field distinct from the one for

²³ J. Ledgerwood, *Microfinance Handbook...*, op. cit

²⁴ A. K. Kashuliza, J. P. Hella, F. T. Magayane, Z. S. K. Mvena. *The Role...*, op. cit, p. 10

²⁵ J. Ledgerwood, *Microfinance Handbook...*, op. cit p. 11

²⁶ J. Ledgerwood, *Microfinance Handbook...*, op. cit p. 12

²⁷ *Ibidem*, op. cit p. 12

²⁸ *Ibidem*, op. cit p. 13

²⁹ Beckert, Jens. 2016. *Imagined Futures: Fictional Expectations and Capitalist Dynamics*. Cambridge (MA) and London: Harvard University Press.

which it was created. The logic of semiformal institutions can be stated to be inverse because in their case it is not the presence of rules from other domains that is unexpected, but the absence of the rules which should typically govern a specific type of activity. Certainly, given that the semiformal institutions are not left unregulated, but operate according to “other government agencies”³⁰ indicates that, at the end of the day, the semiformal financial institutions are a sort of legal or formal fiction as well. Yet, the principle operating in the Ledgerwood definition is essentially different than the one listed by Beckert. The first talks about absence (*not regulated by ... but licensed and supervised by other government agencies*). While the second refers to an unexpected presence (*regulated by rules operating in a field other than the one for which it was created*). Thus, even if semiformal institutions can be listed as legal or formal fictions, these are manifestations of a distinct caliber than the ones mentioned by Beckert³¹.

This linkage and resemblance with the legal or formal fictions is important because it helps us realize the nature of semiformality even better, and grasp the kind of hybrid we are dealing with. This is not something that can be dismissed as a mixed composition of formal and informal practices, as something in between, as partial state regulation. Instead, it is a new category distinguished by the *absence* of the conventional regulatory agencies that one expects to find, and the *presence* of subsidiary regulation and supervision by *other bodies instead*.

That this presupposes a certain level of informality, or partial state regulation may as well be the case. Yet, this cannot be stipulated with certainty *a priori*. Semiformality, as replacement of regulation and supervision of specific agencies with that by others, may as well occur on fully formal terms. Still, at least in the case of the semiformal financial institutions, there is a certain perception that semiformality as shift in regulating bodies is closely connected with, even presupposes actually, the characteristic of being located somewhere between the formal and informal financial institutions. For some reasons, these two qualities appear as going hand in hand. At least this can be inferred from the fact that Ledgerwood³², in a similar vein to Kashuliza et al³³, stated almost automatically that the semiformal financial institutions are situated somewhere between the formal and informal financial institutions:

³⁰ J. Ledgerwood, *Microfinance Handbook...*, op. cit p. 12

³¹ J. Beckert, *Imagined Futures...*, op. cit

³² J. Ledgerwood, *Microfinance Handbook...*, op. cit p. 12

³³ A. K. Kashuliza, J. P. Hella, F. T. Magayane, Z. S. K. Mvena. *The Role...*, op. cit

Semiformal institutions provide products and services that fall somewhere between those offered by formal sector and informal sector institutions. The design of their loan and savings products often borrows characteristics from both sectors. In many countries semiformal institutions often receive donor or government support through technical assistance or subsidies for their operations³⁴.

As visible from this quotation, there is not much digging into what the state of *falling somewhere between* actually stands for. The subsequent specification that semiformal institutions happen to receive support from governmental agencies does not bring to much light in this respect either. It actually adds more to the quality of semiformality as shift in licensing and monitoring bodies, than to the one of semiformality as partial regulation.

It seems that what grabs our attention when accounting for the semiformal financial institutions in microfinance is the *absence* of the conventional regulatory agencies that one expects to find, and the *presence* of subsidiary regulation and supervision by *other bodies instead*. The rule is: *Not by ... but by ...* The impression that semiformal institutions are situated on the formal-informal continuum is taken for granted, and not really explicated. The important yet not self-sufficient rule is the one of *in between*. A second scenario is also possible. Namely, that the mixing of formal and informal dimensions is what actually the shift in licensing and regulatory bodies is taken to mean. In the initial handbook on microfinance, Ledgerwood seems to have built on this logic when stating that:

Semiformal institutions are those that are formal in the sense of being registered entities subject to all relevant general laws, including commercial law, but informal insofar as they are, with few exceptions, not under bank regulation and supervision³⁵.

In this definition, however, semiformality appears as a mixing of formal and informal aspects, and not as something in between. The semiformal financial institutions are not formal or informal on the same account. These are formal from the point of view of state regulation, but not from the point of view of bank regulation and supervision. As it emerges from this discussion, the semiformal financial institutions in the microfinance sector constitute a hybrid because of two features: (1) licensing and regulation not by the bodies one expects to find, but by others; and (2) mixing of formal and informal elements, yet only with regard to banking regulation and supervision. The extent to which semiformal

³⁴ J. Ledgerwood, *Microfinance Handbook...*, op. cit pp. 12-13

³⁵ *Ibidem*, op. cit p. 97

financial institutions are informal from the point of view of general laws and commercial law is not as evident.

The financial institutions that look like the semiformal institutions from microfinance, but aren't them

To recapitulate, the initial discussion demonstrated that studies of microfinance have led to the conceptualization of a certain hybrid, the semiformal financial institution. Interestingly, when looking at this definition in a purely abstract manner, as we would be interested strictly in the institution as such without the corresponding microfinance context, we cannot miss the striking resemblance that this bears to the so-called parabanking financial institution, from the private short-term lending sector. The parabanking phenomenon also stands for activities that are of a financial nature, but are separated from the banks and banking regulation and, paradoxically, in the case of India at least, even happen to be launched by the banks themselves.

As we saw, the semiformal hybrid appears to be strongly associated with a certain financial subsector (microfinance), which almost automatically links it with the geographical areas where microfinance is known to have emerged and diffused. The parabanking hybrid, on the other hand, has no direct linkage with any financial subsector. Unlike the notion of semiformal financial institutions which can be expected to be mentioned to a certain extent and to be pointing to certain characteristics, the concept of parabanking institutions is not yet as stabilized. This is why, when eventually encountering it, we find ourselves in one of the following situations. The hybrid is either hinted at as a generic phenomenon, yet no specifications are given – Basañez and Cortés³⁶, for instance, alluded to the competitiveness of parabanking financial institutions. Or, it is discussed specifically in relation to locally embedded financial and banking sectors – such as the ones in India and Poland³⁷.

Such embedding in the local institutional context means that variations in the manifestations of the hybrid from one country to the other may be quite big, even bigger than in the case of the semiformal financial institution, which seems to be treated more trans-nationally. Yet, the characteristic that nevertheless prevails is that this hybrid provides activities similar to traditional banks, without however being monitored or controlled by banking authorities.

³⁶ Basañez, Federico, and Luís Cortés. 1995. "Ethics and Regulation in Financial Institutions and Markets." In *The Ethical Dimension of Financial Institutions and Markets*, edited by Antonio Argandoña, 27-62. Springer.

³⁷ Mądra, Anna. 2014. "Profil klienta korzystającego z usług instytucji parabankowych." *Finanse i prawo finansowe* 1 (4): 109-122.

As outlined by Waliszewski, the regulatory regime targeting the parabanking institutions is contingent on institutional, organizational and normative factors. A less visible and potent role having allowed these, at least until recently, to have lead a life on the edge if not outside the banking system. Still, with the acknowledgement of their presence, the regulatory supervision became more complex and specified. The type of regulatory supervision of these also began to be taken into discussion and closely monitored. In the case of Poland, for instance, the regulatory supervision of the parabanking institutions having been undertaken according to the Consumer Credit Act:

Depending on the state, parabanking institutions are subjected, to a greater or less extent, to legal regulations, financial monitoring and licensing of activity. Still, in the majority of countries, given the until recently less significant role of parabanks in the financial system, they were acting outside the highly regulated and monitored banking sector. In Poland, these institutions are subjected to the generally applicable provisions of law – e.g., the Civil Code, and they must operate in accordance with the requirements of the Consumer Credit Act. In this area, the monitoring and oversight falls to the Office of Competition and Consumer Protection³⁸.

Framed in this way, the parabanking phenomenon in Poland seems to be similar to the semiformal financial tool that is usually find in relation to microfinance. Both definitions are distinguished by the *absence* of the conventional regulatory agencies that one expects to find, and the *presence* of subsidiary regulation and supervision by *other bodies instead*. However, the manner in which this definition is given lets us understand that what we encounter is either two institutions which are only superficially similar or manifestations of the same institution that, for various reasons, are perceived differently – see box. 1.1.

³⁸ Waliszewski, Krzysztof. 2012. “Miejsce i rola parabanków w systemie finansowym i w gospodarce.” In *Institucje parabankowe na rynku usług bankowych w Polsce*, edited by Krzysztof Waliszewski and Grzegorz Kotliński, Warszawa: CeDeWu.

Box 1.1: Hybrid-like institutions in the financial sector

Financial institutions (hybrid-like)	
Semiformal (financial) institutions	Parabanking institutions
Institutions that are formal in the sense that they are registered entities subject to all relevant general laws, including commercial law, but informal insofar as they are, with few exceptions, not subject to bank regulation and supervision ³⁹	Institutions that provide activities similar to traditional banks, yet are not licensed or monitored by central banks ⁴⁰

Source: author's own work

The definition of the semiformal financial institution is based, to a large extent, on the intermediary status between formal and informal institutions. Although in the previous discussion we managed to show that this intermediary status is taken out by the more straightforward property of *not by ... but by ...*, the fact still remains that this hybrid is, to a large extent, framed in terms of an *in between* kind of hybrid. In the case of the parabanking institution, on the other hand, the situation is different. The parabanking institution also appears from the beginning as a *not by ... but by ...* kind of hybrid. Yet, instead of the *in between* status, it is suggested the quality of being *outside of*.

The definition of the semiformal financial institutions and the parabanking institutions are pretty much the same (they are both *not by ... but by ...*), just that in the former case the accent is on *in between*, while in the latter this is placed on *outside of*. The nuance in accent is not to be neglected, as *in between* suggests a completely different hybrid status than *outside of*. *In between* is a clear hybrid, while *outside of* seems to be close to breaking the boundaries of hybridity even. This rather recalls an anomaly.

To give a better account of the distinction, we should turn to the philosophical and anthropological definition of the hybrid and anomaly. The hybrid is usually defined in terms of something in between, as a kind of mixture. As Bruno Latour and his associates are known to have argued, the existence of such hybrids is at odds with the constitution of modernity, which is based on certain cognitive prophylactics against these. Yet this attempt at containment

³⁹ J. Ledgerwood, *Microfinance Handbook...*, op. cit p. 269

⁴⁰ Szpringer, Włodzimierz. 2004. "Problem parabanków na tle pojęcia banku jako instytucji kredytowej w UE." *Prawo bankowe* 11: 49-58; Masiukiewicz, Piotr. 2012 "Regulacje a ryzyko shadow banking w Polsce." *Zarządzanie i Finanse* 4 (2): 5-22.; Waliszewski, Krzysztof. 2012. "Miejsce i rola parabanków w systemie finansowym i w gospodarce." In *Instytucje parabankowe na rynku usług bankowych w Polsce*, edited by Krzysztof Waliszewski and Grzegorz Kotliński, Warszawa: CeDeWu.

leads eventually to their propagation, as in a double move of the proliferation/purification depicted by Latour:

On the contrary (and here the beauty of the mechanism comes to light, *the modern Constitution allows the expanded proliferation of the hybrids whose existence, whose very possibility, it denies*)⁴¹.

Interesting in this quotation, for the purposes of this chapter at least, is that this dialectic is powered by the mechanism of trying to include the hybrids in one category or the other. This allows us to speculate that, at the end of the day, hybrids – although troubling – are eventually bearable because there are some mechanisms of attraction, or pressures, which pull, or push, these hybrids toward integration in one category or the other. There is a certain expectation that at some point, sooner or later, something will happen with these elements or processes, or that the circumstances will be such that certain transformations in their structure may be facilitated.

But the hybrids are characterized not only by this status of being *in between*, but also by being pulled or pushed towards purification and, in result, by being the target of more or less conscious expectations of purification. Indirect proof of these expectations can be found in the manner in which the sociological inquiry about these hybrids is formulated. Powell⁴², for instance, in his paper on hybrid organizational arrangements can be found wondering whether these constitute a new organizational form or just a transitory phenomenon. Implicit here is a certain expectation that purification, by formalization, is a possible path. Certainly, this does not mean that the main research question of Powell's paper – "Hybrid Organizational Arrangements: New Form or Transitional Development?"⁴³ – is pointless, if not futile. Empirical evidence does show that hybrids on the formal-informal continuum undergo processes of purification. And even in the case of semiformal financial institutions, the transformation into a formalized financial institution is one of the three more common paths taken by semiformal institutions when faced with institutional growth⁴⁴. This notwithstanding, it is worth pointing out that pressures towards purification are an intrinsic characteristic of the hybrids to the same extent as the status of being situated *in between* is known to be.

⁴¹ B. Latour, *We Have...*, op. cit, p. 34

⁴² Powell, Walter W. 1987. "Hybrid Organizational Arrangements: New Form or Transitional Development?" *California Management Review* 30 (1): 67-87.

⁴³ *Ibidem*

⁴⁴ J. Ledgerwood, *Microfinance Handbook...*, op. cit p. 106

The anomaly, on the other hand, is defined by the fact that this does not obey certain rules or is not a member of a certain category. As highlighted by Douglas⁴⁵: “When something is firmly classed as anomalous the outline of the set in which it is not a member is clarified”. Thus, unlike the hybrid which is defined by what it is – it is something *in between* – the anomaly is defined by what this is not – it is *outside of*. Douglas⁴⁶ presented a series of modalities of reacting to anomalies, both negatively and positively. The negative treatment is ignorance, avoidance, and condemnation, suppression. The positive is voluntary confrontation and an attempt to create a new set where this would fit.

Given the subject matter of this book, what draws attention in Douglas’s analytical treatment is that she converges anomaly with ambiguity. She does so on the grounds that in everyday life these framings sort of go together. Accordingly:

I apologise for using anomaly and ambiguity as if they were synonymous. Strictly they are not: an anomaly is an element which does not fit a given set or series; ambiguity is a character of statements capable of two interpretations. But reflection on examples shows that there is very little advantage in distinguishing between these two terms in their practical application. Treacle is neither liquid nor solid; it could be said to give an ambiguous sense-impression. We can also say that treacle is anomalous in the classification of liquids and solids, being in neither one nor the other set⁴⁷.

Hence, we learn that the anomaly is ambiguous because this is taken to be not only *outside of one category of elements*, but practically *outside of two*, and more specifically *outside of both*. This process recalls the situation of the hybrids who are caught somewhere between these two polls, being a bit of both. Just that the anomalies are not *in between*, but *outside of* two categories, encountering difficulties when we want to place them in relation with one category or the other. Thus, the anomaly follows a reverse yet still similar logic to that of the hybrid. Both are ambiguous because both appear in an impure form: either according to the logic *a bit of/in between both categories*, or to the one of *neither/outside of both*.

This suggests that being subjected to certain pressures of disambiguation is as much a characteristic of the anomalous occurrences as of the hybrid forms. Douglas⁴⁸ indicated the following modalities to deal with ambiguous or anom-

⁴⁵ Douglas, Mary. 1984 [1966]. *Purity and Danger: An Analysis of the Concepts of Pollution and Taboo*. London and New York: Routledge.

⁴⁶ *Ibidem*, p. 39

⁴⁷ *Ibidem*, pp. 38-39

⁴⁸ *Ibidem*, p. 40

alous manifestations: settling for one or other interpretation, physical control (elimination or exclusion basically), affirming and strengthening the categories to which these do not fit, labelling them as dangerous, using them to draw attention to other levels and modalities of existence. Some, if not the bulk, of these treatments consist of avoidance and condemnation, which suggests that, except the rare instances when an anomaly is picked out and elevated within a special ritual, these manifestations are taken to be dangerous and awkward, and this to a greater extent than the hybrids.

When applying these almost “classic”, or at least institutionalized findings of philosophical and anthropological research, with regard to the manner in which semiformal financial institutions and parabanking institutions are commonly defined, the following findings emerge. The semiformal financial institution is an institutional hybrid, and as with any hybrid the question arises whether this will eventually develop toward a formalized financial institution, whether or not it will be purified. The parabanking financial institution is an institutional anomaly, and as with any anomaly the question is whether or not this will be avoided or condemned, or in exceptional cases singled out as an alternative mode of financial inclusion.

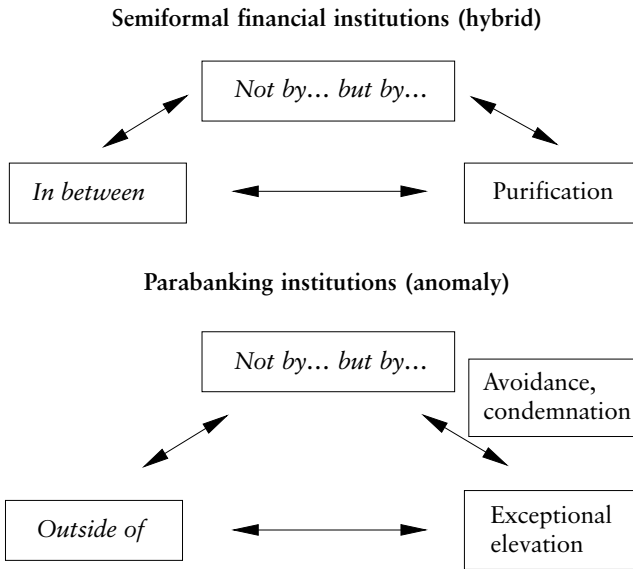
Is anomaly the new hybrid?

Two apparently similar phenomena occur, at a closer look, to work according to different rules of the game as well as to be perceived as having distinct implications. The semiformal financial institution is an institutional hybrid. This is defined as having both formal and informal elements. It is formal because it is subjected to general and commercial laws, but informal because it does not work according to formal bank regulation. The parabanking institution, on the other hand, is an institutional anomaly. This is defined by being outside the reach of central banks.

Thus, the main point in both definitions is that these phenomena manage somehow to escape the banking regulation. This is what semiformal financial institutions and parabanking institutions boil down to. From this point of view, both types behave the same. The point of divergence occurs however when we take into account supplementary characteristics. In the case of the semiformal institutions, the fact that the lack of licensing and monitoring by central banks is presented as a status in between, and there is no value attached to this state. In contrast, in the case of the parabanking institutions, the element that these institutions provide activities similar to the central banks, without however acting according to the rules of the game that we expect them to. And thus, the value

attached to this activity is rather negative, with an implicit tone of discontent and suspicion.

Figure 1: Semiformal financial institutions and parabanking institutions



Source: author's own work

In this sense, both common and distinctive elements of the semiformal and parabanking phenomena are quite clear. The question arises whether the elements of distinction outweigh the symptoms of convergence? Is the fact that one phenomenon recalls an institutional hybrid, while the other one an institutional anomaly, more significant than the common property that these two are not subject to banking regulation? If we reach the conclusion that this is the case, it would mean that we are dealing with two distinct institutions. If, on the other hand, we assume that the distinction between hybrid and anomaly is not as fundamental – the anomaly is still a hybrid, after all – it would mean that we are encountering two manifestations of the same institution, i.e. the phenomenon discussed by Lippi⁴⁹ in terms of *institutional allomorphy*.

Allomorphy stands for a process that is complementary to that of isomorphism. This stands for bottom-up diversification and local adaptation in the

⁴⁹ Lippi, Andrea. 2000. "One Theory, Many Practices. Institutional Allomorphy in the Managerialist Reorganization of Italian Local Governments." *Scandinavian Journal of Management* 16 (4): 455-477.

circulation and implementation of some general, global, ideas and institutions⁵⁰. Interestingly, there are some pressures and constraints that are exercised upon this process of diversification and local adaptation, which are embedded in the institutional and cultural contexts where these global ideas travel. This suggests that allomorphism is neither an ad-hoc nor a voluntaristic process. But this appears as structured and contingent upon several factors and patterns. As indicated by Lippi:

This is not to imply, however, that every organization or every field which incorporates an external element then assumes an entirely particularist configuration. This would be *idiomorphism* [...], whereas institutional allomorphism does not mean that every organization acts on its own, but that there are factors (actors, cultures, languages, institutions, rules) which are able to *standardize and diversify* the global message *here and now*. *Institutional allomorphism* does not cause anarchy or fragmentation, but gives rise to *systematic selection* dictated by institutional, contingent and specific others⁵¹.

At first sight, the studies in institutional allomorphism are not abundant. Although interest in institutional diversity and heterogeneity is not new⁵², it almost seems as one can count on the fingers of one hand the studies in institutional allomorphism that have concretized thus far. As such, in a first attempt, Lippi⁵³ looked into the managerialization of Italian local governments, and showed how the actual emerging practices are multiple and distinct from what is described in the books about managerialism, because these are adapted to the constraints and needs of the context in which these got implemented. Following, Nicolini and Lippi⁵⁴ extended the research into the processes of “translation” of best practices in the Italian public sector. Wherein they talked about “systematic heterogeneity”. And soon after, Mica⁵⁵ came up with a totally distinct type of example, from the field of diffusion studies. She discussed whether two theoretical propositions that are advanced by distinct, and to a certain extent rivaling, theoretical streams can be considered as theoretical allomorphs within the sociological studies of diffusion.

⁵⁰ Ibidem, p. 460

⁵¹ Ibidem, p. 460

⁵² Beckert, Jens. 2010. “Institutional Isomorphism Revisited: Convergence and Divergence in Institutional Change.” *Sociological Theory* 28 (2): 150-166.

⁵³ A. Lippi, *One Theory...*, op. cit

⁵⁴ Nicolini, Davide, and Andrea Lippi. 2012. “Translating ‘Best Practice’ in the Italian Public Sector: Between Homogeneity and Chaos.” Paper presented at the 8th New Institutionalism Workshop, Barcelona, Spain, March 15–16

⁵⁵ A. Mica, *From Diffusion...*, op. cit

At a closer and more insistent look, however, it emerges that there is not only the notion of allomorphism, but a series of possible alternatives to institutional isomorphism that authors came up with, more or less in isolation from one another. We already showed how Lippi⁵⁶ distinguished *allomorphism* from *idiomorphism* – i.e., a structured process versus a more voluntaristic and particularist diversification. In addition to these terms, there is also Schwartz's⁵⁷ notion of *automorphism* depicting the behaviors that organizations respond to, and deal with external stimuli and pressures by applying the same strategies that they used to work with before. Czarniawska⁵⁸ systematized the bulk of these concepts in a typology of mechanisms and consequences of different forms of alterity/identity interplay, that may occur in an organizational field. Wherein, she distinguished between isomorphism, automorphism and allomorphism: "Therefore one could expect existence of allomorphism (divergence of forms), but also of automorphism (Schwartz [...]), an imitation of its own past (as in the case of Warsaw water management), or at least the past of the organization of which one is a part (University Business School)"⁵⁹.

Thus, although quite specific, the study of institutional allomorphism and alternative patterns to institutional isomorphism is non-negligible. Notably, this is also based on solid case-studies and emerges not only as highly systematized but as also benefiting of cumulative knowledge. Besides Nicolini and Lippi, Czarniawska is perhaps the author who contributed to the articulation of this cumulative knowledge to the greatest extent. She first promoted the typology of isomorphism, automorphism and allomorphism in relation to the study of city management in Warsaw, Stockholm and Rome⁶⁰. While, more recently, in cooperation with her associates, and following Lippi's⁶¹ insight into the three types of "interlocutors" who supported the implementation of management accounting in the Italy, she "revealed an allomorphic but stable presence of academics in a consulting function"⁶².

⁵⁶ A. Lippi, *One Theory...*, op. cit

⁵⁷ Schwartz, Birgitta. 2009 [2006]. "Environmental Strategies as Automorphic Patterns of Behaviour." *Business Strategy and the Environment* 18 (3): 192-206.

⁵⁸ Czarniawska, Barbara. 2010 [2008]. "Alterity/Identity Interplay in Image Construction." In *The SAGE Handbook of New Approaches to Organization Studies*, edited by Daved Barry and Hans Hansen, 49-62. London: SAGE.

⁵⁹ *Ibidem*, p. 60

⁶⁰ Czarniawska, Barbara. 2003. *A Tale of Three Cities: Or the City Management*. Oxford: Oxford University Press; B. Czarniawska, *Alterity/Identity...*, op. cit, p. 60

⁶¹ A. Lippi, *One Theory...*, op. cit

⁶² Pipan, Tatiana, and Barbara Czarniawska. 2010. "How to Construct an Actor-network: Management Accounting from Idea to Practice." *Critical Perspectives on Accounting* 21 (3): 243-251; Czarniawska, Barbara, and Carmelo Mazza. 2013. "Consulting University: A Reflection from Inside." *Financial Accountability and Management* 29 (2): 124-139.

As already stated, with regard to the subject matter of this chapter, what renders the semiformal financial institutions and the parabanking institutions as ideal candidates for a case-study in allomorphy is that both are defined by the lack of licensing and monitoring from banking authorities. In contrast, the fact that one acts as an institutional hybrid while the other one as an institutional anomaly suggests that we might be dealing not as much with two different institutions, but with different forms of the same institutions that are contingent upon the institutional and cultural contexts in which they occur. Indeed, the fact that we managed to argue with relative ease that the semiformal financial activities recall an institutional hybrid, while the parabanking phenomenon fits so clearly the profile of the institutional anomaly, seems to suggest that we encountered the so-called systematic heterogeneity or diversity that the authors talked about in relation with allomorphy⁶³.

The criteria of systematic heterogeneity in the allomorphic explanations presupposes that the allomorphs do not appear voluntarily (as in idiomorphism), nor as a copy of initial strategies or reproduction of a constant self (as in automorphism). But these occur as contingent upon a series of factors (actors, cultures, languages, institutions, rules) which are able to standardize and diversify the institution in a given context.

Hence, it is not enough to show that the semiformal financial phenomenon and the parabanking services recall some institutional patterns. But we should also argue that it is not by chance that these would-be allomorphs behave in this way and not the other. We should get to the bottom of why it is the semiformal financial institution that behaves as an institutional hybrid and the parabanking institution that acts as an institutional anomaly, and not the other way around. Only by giving a satisfactory answer to this question we will be able to talk about allomorphy in the financial domain.

In general terms, this book aims to offer an insight into this very question. This focuses on the dynamics of short-term lending services in the Polish financial sector and scrutinizes their hybrid-like character. It demonstrates the anomalous character of the lending practices in the period when they were framed as para-banking institutions. Yet, it also shows the great effort of purification undertaken by various organizational actors in order to purify this anomaly. As will be shown in the following chapters, the dynamics was as such that the depiction of non-banking financial institutions began to be used, while the denomination of para was marginalized/delegated to a concrete set of services

⁶³ A. Lippi, *One Theory...*, op. cit.; D. Nicolini, A. Lippi. *Translating 'Best Practice'...*, op. cit.; A. Mica, *From Diffusion...*, op. cit

considered to be the ones truly anomalous. The following chapters offer interesting details of this process of purification, setting of boundaries, and fight with the anomaly in the Polish financial sector.

The purification of anomalies: parabanking and nonbanking institutions in the Polish financial sector

In Chapter 1, we advanced the general thesis that the proliferation of hybrid organizations, institutions and practices means currently more than the multiplication of mixed forms. This consists also of shifts in the logic of hybridization, to the extent that in certain instances these hybrids look more like anomalies. We raised the problem whether the anomaly can be regarded as the new hybrid in the contemporary world given that it seems to have taken on much of the troubling and contradictory status usually associated with the hybrid, while the hybrid became subjected to normalization.

We indicated and articulated conceptually one of the most frequently encountered hybrid forms in the financial sector, the semi-formal financial institution. We discussed it in relation to a very similar manifestation, the parabanking intermediary. We indicated that these two are very similar. They are basically allomorphs, yet the former behaves rather as a hybrid, while the latter more as an anomaly. The scope of the chapter was to indicate that apparently similar hybrids behave and are framed differently depending on the domain in relation to which these are defined (formality–informality vs banking—non-banking), as well as the context in which these become manifest.

In the present chapter, we continue this investigation. Building on the same strategic research site – the practices of small lending in the financial sector in Poland – we investigate the manner in which these new forms are coped with in the field. We build on the finding advanced by Latour¹ that the hybrids undergo purification pressures that would drive these closer to one or the other of the two ontological domains that these are supposedly mixing, and in this way these are rendered purebred, unmixed. Just that instead of hybrids we look at anom-

¹ Latour, Bruno. 1993 [1991]. *We Have Never Been Modern*. Cambridge (MA): Harvard University Press.

alies. What are the technicalities of the process of purification of anomalies? Do they undergo purification to begin with?

In order to address these issues, we take the investigation further with regard to the hybrid and anomalous forms manifesting in the banking domain. As in the case of Chapter I, our scope is to reveal a certain dynamics. Yet, herein we proceed more empirically and bring in more evidence regarding the manner in which organizations or domains go through various hybrid forms, sequences of categorization and purification, as well as shifts of meaning.

Hybridization, purification

In order to make sense of the process of hybridization it is important to distinguish what constitutes the ingredients that are mixed and which subsequently get to belong to different spheres. Grohs² discussed inspiringly the semantic connotations taken upon by the concept of hybridity (of organizations) in relation to various contexts. He differentiated between various possible scenarios. Accordingly, the interest might be in the “sectoral position” when the organization takes an intermediary position between sectors. In the “governance modes of organizational fields” and the curious combinations present; in the “blending of the functions of the organizations”³; or in the “governance modes of organizations” that are mixed internally. All these scenarios are possible.

In a similar vein, Seibel⁴ traced two analytical frameworks on hybridity. One alternative talks about “hybrids being located at the interface of dominant ‘sectors’”, and the other about the “combination of sector-specific governance mechanisms”. In the former scenario, the hybrid, for instance, might be situated at the intersection zone of various sectors (private, public and non-governmental). In the latter, this might present an original arrangement of logics. Hence, hybridity as well as diversification can appear in relation with different subjects. Certainly, most often, it is the mechanisms of mixing and blending, and the emergent situation of being situated in between, that are given more attention to. As in the case of the type of hybridity identified by Grohs⁵ in terms of “sectoral position of organizations, or the quasigovernmental organizations that exist at the interface between the public and private sectors [...] or between the market

² Grohs, Stephan. 2014. “Hybrid Organizations in Social Service Delivery in Quasimarkets: The Case of Germany.” *American Behavioral Scientist* 58(11): 1425-1445.

³ Ibidem, p. 1427

⁴ Seibel, Wolfgang. 2015. “Studying Hybrids: Sectors and Mechanisms.” *Organization Studies* 36 (6): 697-712.

⁵ S. Grohs, Hybrid Organizations..., op. a7., p. 1427

and civil society [...]”). Yet, as can be spotted in everyday and organizational life, there are more sophisticated mechanisms of hybridization as well. Hence, not only what constitutes the objects of hybridization is relevant (the ingredients or dimensions of hybridity – logics, modes of governance etc.), but also how is hybridization achieved (the *modus operandi* of hybridity – mixing, blending, but also replacement, shifting).

Grohs⁶ distinguished three main inquiries in the study of hybridity. First, “whether hybridity develops a specific quality”: to what extent this entails something more specific than the generic state of mixture, blending – whether and when this is productive. Second, “whether we are experiencing a trend toward more hybridity”: whether hybridity is a new development that is more manifest or just an intrinsic characteristic of the fields or organizations. Third, “the pros and cons of hybridity”: in other words, what are the effects of hybridity in relation to different aspects – logics, governance, integration, problem solving etc. This author made a thorough analysis of the changing of hybridity status of social welfare production subsequent to *quasi*-market reforms in Germany, starting in the 1990s. He discussed three levels of hybridity: field hybridity, governance hybridity and organizational hybridity. In a similar manner to Czarniawska and her associates (see Chapter 1), Grohs⁷ reached the conclusion that hybridity is an intrinsic quality of organizations occurring at various levels that can be distinguished in research. His main finding was that of “different degrees and variants of hybridity”⁸ depending on the sub-sectors wherein the quasi-market measures were introduced, as well as the concomitant processes of fragmentation and dehybridization.

This leads to the conclusion that hybridization is not an ad-hoc process, and neither does this appear out of the blue. A certain fragmentation of sectors should have taken place beforehand. As well as there should be specific cultural, institutional and regulatory contexts which are favorable to hybridization. Certainly, the presence of fragmentation, just like the one of favorable factors, does not automatically imply that hybridization will occur. However, there are elements and conditions which render it possible, some being even indispensable (like sectorial separation, as well as institutional/regulatory context which permits the blurring of boundaries between the sectors that are expected to be unmixed).

The hybridization process is mainly defined as combination and mixing of characteristics and elements that were initially expected to belong to distinct domains. The hybrid is quite often depicted as something in-between and as

⁶ Ibidem, p. 1427

⁷ S. Grohs, *Hybrid Organizations...*, op. cit.

⁸ Ibidem, p. 1425

blurring of boundaries. Yet, as indicated in the systematization by Grohs⁹ and Seibel¹⁰ there are also mechanisms of combination which seem to adopt a different logic than the one of mixing and blurring of boundaries and which have a similar, yet different connotation. Chapter 1 discussed the distinction between semi-formal institutions and para-banking (near-banking) institutions in the financial sector. This already indicated what a semantic shift can be obtained simply by using the word *para-* and not that of *semi-* when defining an institution. How by using *para-* instead of *semi-*, the hybrid gets closer to anomaly and seems to be problematic because it suggests false pretense, or contrary to expectations usage of resources.

The proliferation of hybrids and the emergence of anomalous forms indicated in Chapter 1 is an intriguing phenomenon¹¹ yet this is only one among the many social processes that can be observed. It is only half of the story. In addition to emergence and proliferation, what is usually been drawn attention to is the process of purification. Basically, purification denotes a tendency at categorization that shifts the connotation of the hybrid as to make it more in line with one of the two domains this is supposedly mixing. The hybrid simply gets reinterpreted as to look more like a purebred type, or as to indicate that it drives closer to one of the domains which, purportedly, are excluding each other.

Interestingly, this tendency goes beyond the sphere of everyday life. This is also deeply entrenched in the scholarly domain. Mica's¹² typology of hybrid forms (that she abstracted from the relevant literature), for instance, talked about hybrid formalities and informalities. Certainly, such way of constructing the hypothesis may be taken as denoting simply what this is: an exercise to make sense of the hybrids occurring in relation with the informal domains. On the other hand, we cannot help noticing that Mica's typology divides basically the hybrids between the pole of formality, on the one hand, and the one of informality, on the other. As regards the formality part, she talked about meta-formality, semi-formality via partial state regulation, semi-formality via subsidiary state regulation (paraformality), as well as quasi-formality. As regards the informality part, she identified second economy (not planned economy), second-to-informal economy, beyond the law informality, trans-informality, formalized informality (rule bound informality), and instrumental informality.

Building on these types, Mica attempted to draw a general profile of hybrid formality and hybrid informality. Thus she pointed that the former usually com-

⁹ Ibidem

¹⁰ W. Seibel, *Studying Hybrids*, op. cit

¹¹ Nayak, Binod. N. 2015. *The Synergy of Microfinance: Fighting Poverty by Moving beyond Credit*. SAGE Publications.

¹² Mica, Adriana. 2016. "Towards a Typology of Hybrid Formalities and Informalities." *Polish Sociological Review* 2 (194): 139-153.

prises of instances which “can be stated to belong with formality, but which are somehow devalued in everyday parlance or sociological phraseology”¹³. In the case of the latter, she demonstrated that this “is linked with activities which transgress the boundary of what we traditionally understand as Informality, which are formally embedded and interacting with Formality, and which are instrumental in supporting various forms of entrepreneurship”¹⁴. Thus, she made sense of the various hybrid forms. But the way she accomplished this was by classifying and including the hybrids in more and more general categories that are nevertheless linked or attributed to one of the two ontological domains that the hybrids were mixing (eg. formality—informality). It is important to draw attention to this process of classification, of dragging practically the hybrid forms towards a purebred status, not because this might be faulty, but for the essential reason that this exists and that it occurs according to the logic identified by Latour¹⁵ and actor-network theorists as “purification”.

To give just another example of a similar classification behavior, Ledgerwood and Gibson¹⁶, in the spirit of microfinance literature (see Chapter 1), also identified formal, semiformal and informal intermediaries in the financial sector. But, as in the case of Mica¹⁷, these authors started following a pairing logic of classification by including these three types in broader community and institutional categories:

While financial service providers are often characterized as formal, semiformal, or informal, traditionally referring to their regulatory status, we classify them as either community-based (generally informal with no legal status) or institutional (generally more formal and in some cases more regulated)¹⁸.

In both these cases, the tendency of the author/s was to reclassify the hybrids. Relevantly, the logic of classification or categorization was to impose a pairing structure (hybrid formality—hybrid informality and community-based—institutional intermediaries). The hybrids got purified by being explicitly located in relation to one ontological domain or the other.

The process of purification is an intrinsic element of hybridity. It is not only a process subsequent to the proliferation of hybrids, but anterior and concomi-

¹³ Ibidem, p. 149

¹⁴ Ibidem, p. 149

¹⁵ B. Latour, *We Have...*, op. cit

¹⁶ Ledgerwood, Joanna, and Alan Gibson. 2013. “The Evolving Financial Landscape.” In *The New Microfinance Handbook: A Financial Market System Perspective*, edited by Joanna Ledgerwood, with Julie Earne and Candace Nelson, 15-48. Washington (DC): The World Bank.

¹⁷ A. Mica, *Towards a Typology...* op. cit

¹⁸ J. Ledgerwood, A. Gibson. *The Evolving...*, op. cit

tant to this. Hybridization is actually contingent upon purification. Czarniawska and Solli¹⁹, for instance, noted that “Likewise, history shows irrefutably that to create hybrids you have to first disconnect what has been held together for many years.” These authors invoked Czarniawska’s²⁰ case study of the separation between the private and public spheres as an example of the succession of the phases of separation and hybridization. The ideological separation between the two spheres occurred at the end of the 19th century, and it could have been observed in the 1940s as already in play²¹. Czarniawska and Solli²² documented and analyzed this process in reference to two periods wherein the hybridization (emergence and constitution of hybrids) was in evidence too, i.e. the 1990s and 2000s. They made a comprehensive literature review in order to show how this process of blurring of boundaries between different domains, of mixing and blending, is continuously under way.

Purification of anomalies in the Polish financial sector

How does the purification of the anomalies manifest itself? Building on Douglas²³, Chapter 1 presented some modalities of coping with the ambiguous and anomalous manifestations. As can be expected, this included ignorance, avoidance, and condemnation, suppression, but also voluntary confrontation and an attempt to create a new set where these unconventional manifestations would fit.

In this chapter, because of the theoretical proximity with Latour’s original theory, we would insist on framing purification as inclusion in distinct ontological zones, in the sense that the hybrids are (re)framed as to come closer to one ontological domain or the other, or are perceived as satellites of this. In this sense, purification is first and foremost a process of categorization or of reshuffling of existing categorization (the hybrid is associated with a certain category, or it is included in a bigger one). From a certain point, the hybrid-like and anomaly-like forms are becoming so diffused and visible that the pressure at categorization, differentiation, making sense etc. emerges as natural. Curiously,

¹⁹ Czarniawska, Barbara, and Rolf Solli. (nd [2016]). “Hybrydyzacja Sektora Publicznego”. Translation in Polish language of the article appeared in *Nordiske Organisasjonsstudier* 2016, 18 (2): 23-36. Available at http://instytucjonalizm.uw.edu.pl/wp-content/uploads/sites/75/2015/10/CZARNIAWSKA_SOLLI_Hybrydyzacja_sektora_publicznego.pdf.

²⁰ Czarniawska, Barbara. 2014. *Zmiana kadru. Zarządzanie Warszawą w latach 1990-tych*. Warszawa: Sedno.

²¹ Horwitz, Morton J. 1982. “History of the Public/Private Distinction.” *University of Pennsylvania Law Review* 130: 1423-1428.

²² B. Czarniawska, R. Solli. *Hybrydyzacja Sektora...*, op. cit

²³ Douglas, Mary. 1984 [1966]. *Purity and Danger: An Analysis of the Concepts of Pollution and Taboo*. London and New York: Routledge.

the purification as categorization appears in multiple variants. There is, for instance, the categorization in the sense of providing the definition of the anomaly as such. The actors simply need to understand what is going on. But there is also categorization in the sense of reinterpreting the identity of the hybrid in order to render it a purebred, unmixed form. On the one hand, categorization as catching the anomaly, signaling it out. On the other hand, categorization as reinterpretation and semantic change.

The purification of hybrids – or of anomalies for that matter – is the outcome of actions undertaken by various agents who do not necessarily have the aim of purification in mind. These uncoordinated and unintended actions of purification occur in specific contexts and are triggered by particular mechanisms or elements in the field. One such element that favors the activating of purification is also the simple proliferation and increased visibility of the anomalies. The parabanking institutional practices, for instance, began to be subjected to higher level and more specific regulation the moment it became visible that these are an important actor of the financial system²⁴ see the development of regulatory oversight regarding shadow banking in Girasa²⁵. Thus, (visible) agency of the forms in question and power relations (in general) act as important engines or facilitators of purification.

Purification as categorization

The purification of the anomaly in the sense of specifying its characteristics serves not only to delimit the anomaly in relation to the ontological realms, but to distinguish it from other hybrids and anomalies. Thus, purification acts as acknowledgement, statement and autonomization. In the case of parabanks, for instance, the delimitation of what these stand for is a reflexive act and an action of sense-making. The notion of parabank as such does not exist in the Polish law. Thus the categorization is a process of purification because this sets some terminological boundaries. This is instrumental because it specifies the anomaly as an anomaly. It indicates its place in the field and distinguishes it from other forms.

Para-banking institution vs shadow banking institution

In the case of the financial sector, another anomaly-like form that manifested in the field of lending, in addition to the para-banking financial institution, is shad-

²⁴ Waliszewski, Krzysztof. 2012. "Miejsce i rola parabanków w systemie finansowym i w gospodarce." In *Institucje parabankowe na rynku usług bankowych w Polsce*, edited by Krzysztof Waliszewski and Grzegorz Kotliński. Warszawa: CeDeWu.

²⁵ Girasa, Roy J. 2016. *Shadow Banking: The Rise, Risks, and Rewards of Non-Banking Financial Services*. New York: Palgrave Macmillan.

ow banking. Shadow banking is an umbrella term used to denote institutions working on similar principles with the parabanking institutions and having this characteristic that they provide activities similar to traditional banks, yet are not licensed or monitored by central banks – see Box 1.1 in Chapter 1. Both parabanking institutions and shadow banking institutions operate according to the *not by ... but by ...* logic. Both these anomalies seem to beneficiate of the same logic of replaced/shifted/unconventional regulatory oversight. It may even seem that parabanking and the shadow banking institutions are one and the same thing. That we are dealing with the same institution just that, depending on the context, it takes up related yet slightly different terms, nuances and diffusion patterns. Indeed, it happens even in the relevant literature that the terms are used as synonyms or are conflated. Waliszewski²⁶, for instance, in his systematization of the definition and role of parabanking institutions in the financial system, used the parabanking institution and the shadow banking as synonyms.

Just that this conflation was not automatic, unreflexive. Waliszewski²⁷, as such, documented extensively the difficulties in depicting the coverage area of the shadow/parabanking system, and presented various nuances in the existing definitions. Basically, his exercise leaves the impression that, although in general terms the shadow banking anomaly and the parabanking anomaly can be conflated, when it comes to the actual details, practices, organizational and institutional infrastructure, and even to the differences between the disciplines which define these terms, these anomalies are not one and the same.

The parabanking form suggests or seems to capture this tendency of some financial intermediaries to emulate or to pretend to be banking intermediaries (see Chapter 1²⁸). The shadow banking term, in the specialized books at least, has the connotation of non-banking. The problem seems to be not one of false pretense, but the fact that these services are probably less transparent, and less formalized. Furthermore, as it comes out from the usage of Girasa²⁹ the shadow institutions have rather an equivalent in the term of non-banking.

Thus, the para-banking financial institution does converge/overlap with shadow banking, yet in the same time it does not. Depending on the context, the two are used as equivalents, the shadow banking becomes the *explanans* or the broader category for the parabanking institution, or there occurs to be a subtle, yet still perceptible rivalry between the two. The situation of the relation between the two terms is not very clear and this might also be due to the

²⁶ K. Waliszewski, *Miejsce i rola...*, op. cit., p. 56

²⁷ *Ibidem*, pp. 56-62

²⁸ A. Mice, *Towards a Typology...*, op. cit

²⁹ R. J. Girasa, *Shadow Banking...*, op. cit

fact that, at least for the Polish parabanking institutions, the shadow banking forms did not constitute a concrete rival in practice. The discussion about the parabanking financial institutions and the shadow banking institutions mainly occurred in academic and quasi-specialized texts, as well as encyclopedia entries on the internet. It did not really play out in practice, or on the internet forums offering financial-type of counseling and information for the public interested in small loans. And this is not because of the fact that the shadow banking institution is not an anomaly. By all means, this occurs to be one. For the Polish financial sector, however, this was not a locally developed anomaly.

The shadow banking institution, as the notion itself suggests, is an umbrella term for a wide range of non-bank financial institutions that provide services similar to traditional banking institutions, without however being subjected to banking regulation. The term was first used in 2007, at a symposium of the Kansas City Federal Reserve Bank, organized in Jackson Hole – (Wyoming) that analyzed the economic crisis which was emerging at that time³⁰. In light of what we already know from Chapter 1, it can be inferred that shadow banking is obviously an anomaly when taking into account the fact that it has this intrinsic logic of *not by ... but by ...*. Girasa, for instance, approached it straightforwardly in these terms of being an interesting and also bizarre evolution, while also pointing that at a closer look its key can be deciphered quite easily and that it fits into the normality realm:

The term “shadow banking” appears to imply a sinister development in the financial services environment. Rather, it simply refers to the broad range of financial services that in many ways are duplicative of traditional banking services but are exempt from both the onerous regulatory environment and from its mainly consumer protective reimbursements in the event of losses³¹.

Beside its highly informative and analytical character, the work of Girasa is relevant for two reasons. First, as it turns out in the above paragraph, it is perceptible that there is either something anomalous about the shadow banking system, or that this is perceived as such – i.e., “the term ‘shadow banking’ appears to imply a sinister development”³². The second element is that throughout the book, the shadow banking institutions are given the equivalent of “non-bank financial institutions”, and quite often the two terms appear as merged –

³⁰ Ibidem, p. xxiii

³¹ Ibidem, p. xxiii

³² Ibidem, p. xxiii

i.e., “[s]hadow [b]anking ([n]on-[b]ank [f]inancial [i]ntermediation)” or “[g]overnance of [s]hadow ([n]on-[b]ank [f]inancial [i]nstitutions)”³³.

This last aspect is important. It is actually the non-banking financial institution the one which is the local competitor for the parabanking intermediary in Poland. Or better stated, the dynamics of the financial sector was as such that from some point on the categorization—purification of the parbank anomaly was done through the drawing of the boundary between the parabanking intermediary on the one hand and the non-bank financial intermediary on the other hand.

Purification as inclusion in distinct ontological zones

Story 1 – internet platforms offering online counseling and consumer tips

The categorization—purification of the parabanking institution in the Polish financial sector unfolds at certain levels (regulatory included) and it is quite visible and agentic. It is especially noticeable on the internet platforms which offer online counseling and consumer tips. These began to draw in the last few years a definite border between these two institutions.

The claim these sites make is practically that the parabanking intermediary works in analogous manner to the bank, while not being one. The parabanking intermediary is said to offer several financial services (such as short-term lending), to be not regulated as such (it does not appear in the Polish law) and to be subject to oversight by the regulatory institutions which traditionally control banks. While the non-banking financial intermediary is defined as engaged in short-term lending services. Unlike the parabanking institution, it is shown to be subject to regulation by the Consumer Credit Act which automatically imposes limits and acts as deterrent against any acts of exploitation of consumers (such as by very high interest rates). Practically, the non-bank financial intermediary is presented as short-term lending institution which operates under oversight, such as the one coming from loan companies, associations, and thus implicitly has increased regulatory legitimacy.

As can be inferred from the internet platforms which offer online counseling and consumer tips, the categorization—purification of the parabanking hybrid occurred by two simultaneous movements. First, the drawing of boundaries between this one and other hybrid- and anomaly-like forms. Second, the specification of the connotation of it – the parbank gets presented on the fringe of legality (not necessarily fraudulent, but having the objective possibility to be) and outside the normal. It transpires quite evidently that this is a strategy of purification. The tone of the account is performative. This does not as much

³³ Ibidem, pp. 47, 81

account for hybrid- and anomaly-like institutions in the financial sector, or for short-term lending in particular, as it makes a statement about it. It is an educative (institutional work-kind) undertaking, and not a solely descriptive one. As can be seen in the following illustrative account which appeared on a counseling and consumer tips portal (but the list of examples is bigger than this):

Knowledge about the difference between parabanking and non-banking institutions will allow us to make more responsible decisions and, consequently, to avoid loan fraudsters. The definition says that a parabank is an institution that works analogously to a bank, yet without being one. The concept itself is neither included nor clarified in Polish law. Parabanks operate on the financial market, offering various types of financial services, including loans. They are also not subjected to the Polish Financial Supervision Authority or the Bank Guarantee Fund.

What's more, the parabanks are based on capital from people. [...]

Non-bank institutions, unlike parabanks, operate in accordance with the principles set out in the Consumer credit. The non-bank institutions provide **short-term loans** or **installment loans**, constituting an ideal support for the clients who need cash fast³⁴.

The inclusion in distinct ontological zones leads to the association of the parabanking activity with fraudulent, risky and dangerous (from consumers' points of view) activity, whilst the nonbanking intermediary is shown to be in a safer zone, and it is actually neutralized by rendering it a loan company. What makes this possible is that the inclusion of the parabanking institution in the illegal ontological zone is not stated straightforwardly, but indirectly, by the use of modal verbs. Accordingly, the parabanking intermediary due to the possibility to make use of the deposits of its clients has actually the potential to impose risk on these. Thus, the inclusion of the parabanking institution in the illegality ontological zone in the equation is realized not because of what this actually does (it uses the private deposits or not), but because of the risk this comports (it may use these deposits and it can expropriate and damage its clients). What is also noteworthy, in the case of the non-banking financial institution the inclusion in the formal/legal ontological zone is done by redefining this as a loan organization. By this move, the hybrid-like appearance is actually lost and the financial intermediary acquires a new purebred, unmixed identity. As in the following excerpt from the same portal we used as illustration throughout this chapter.

³⁴ Suwik, Maciej. 2016. "Różnica między instytucją pozabankową a parabankiem." *Loando — Porównywarka pożyczek*.

<https://loando.pl/wpis/roznica-miedzy-instytucja-pozabankowa-a-parabankiem>

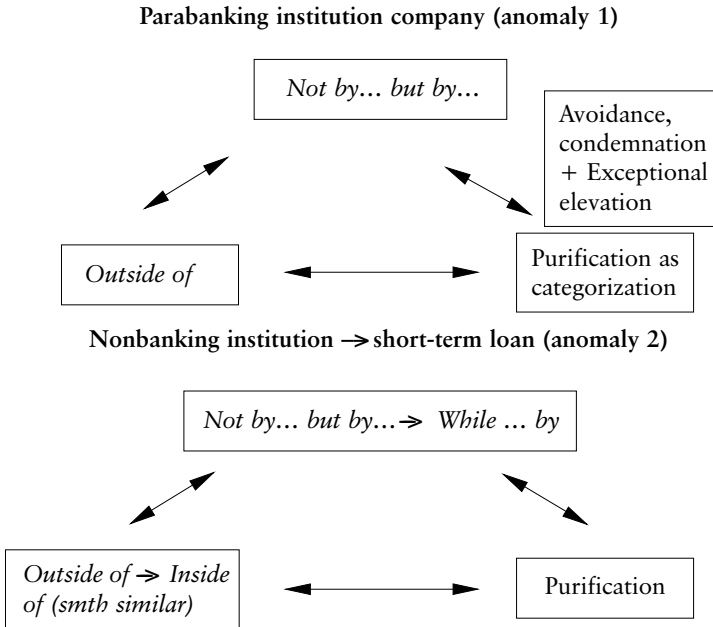
The main difference between the non-banking institution and the parabank is [...] the capital itself. As already stated, the parabanks make use in their activity of deposits paid by the clients. The non-banking institutions, on the other hand make use of the funds of their owners or stakeholders, thus it is these who are burdened with the risk of their possible loss, and not the lay persons³⁵.

Worthy of note in this quotation and the one preceding it, the purification as inclusion in distinct ontological zones does not reposition the hybrid- and the anomaly-like forms in the initial ontological zones (where these came from), but in related, broader, yet distinct domains. The parabanking financial intermediary is associated with the domain of illegality, while further remaining outside the banking system. The non-banking institution is associated with the domain of legality, while also further remaining outside the banking system. In the case of the parabanking institution, the logic of “*not by ... but by ...*” gets accentuated, as well as the “avoidance, condemnation” aspect is emphasized – see figure 1. In the case of the nonbanking intermediary, there is only the element of “*by*” (usually *presented as while ... by ...*) and purification by conferring formal and legal legitimacy. By inclusion in the formal, regulated and legal ontological domain it is given the impression that the integration is practically in the banking domain. But this is not the case. The non-banking financial intermediaries remain outside the banking system, just that the effect of the purification is to mystify this fact.

Interestingly, both the parabanking institution and the nonbanking institution are anomalies as they both act according to the rule *not by ... but by ...* Just that the latter, for some reason, undergoes different type of purification – see figure 2.1.

³⁵ Ibidem

Figure 2.1 Purification of anomalies in the Polish financial sector – story 1



Source: author's own work

Story 2 – Office of Competition and Consumer Protection

Certainly, we could further try to explore why do the parabanking institution (anomaly 1) and the nonbanking institution (anomaly 2) act differently – see figure 2.1. Within the limits of this chapter, however, we would rather draw attention to the fact that the account of the two anomalies, at least as this is framed on the comparison sites for short term loans in Poland, is actually a narrative, a story. And that according to this story, it seems as there is a rivalry or race between two anomalies that compete for institutionalization in the Polish financial sector – as in the case of the so-called “proto-institutions”³⁶. Though in this competition the proto-institution account is an appealing one, it is also important to draw attention to the fact that the story might be told in a different manner altogether.

An alternative account of the purification scenario might, for instance, be that there is one anomaly that gets purified and which changes its name temporarily

³⁶ Lawrence, Thomas B., Cynthia Hardy, and Nelson Phillips. 2002. “Institutional Effects of Interorganizational Collaboration: The Emergence of Proto-institutions.” *Academy of Management Journal* 45(1): 281-290.; Zietsma, Charlene, and Brent McKnight. 2009. “Building the Iron Cage: Institutional Creation Work in the Context of Competing Proto-institutions.” In *Institutional Work: Actors and Agency in Institutional Studies of Organizations*, edited by Thomas B. Lawrence, Roy Suddaby and Bernard Leca, 143-177. Cambridge: Cambridge University Press.

and successively. The change of name is actually a symptom of this process of purification. We saw this phenomenon already taking place in the case of the purification of what was supposed to be an autonomous anomaly – the non-banking financial institution. This practically began to be depicted as lending intermediary. The comparison sites for short-term loans in Poland simply conflated the nonbanking financial institution with the short term loan company. But, it might also be that the change of name occurred in relation with the parabanking institution as well, and that in fact there is one anomaly / proto-institution trying to make its way.

Thus, there are (at least) two stories. Story 1 speaks about the competition between the parabanking proto-institution and the nonbanking proto-institution. While story 2 presents the transformation of the parabanking institution in the nonbanking institution. Story 1 transpires when going through the accounts of the short-term lending portals. Story 2 comes out, for instance, when looking chronologically through the various reports and press releases issued by the Office of Competition and Consumer Protection (UOKIK).

The review of the vocabulary used by the Office in its various press releases and reports indicates that a certain shift occurred at some point. Thus, in 2011, within the framework of a press release regarding the new rules that were to be introduced by the modifications to the Consumer Act and the institutions that are supposed to obey the act, the Office used the word parabanking institution³⁷. In 2013, within a report about the ads and marketing strategies used by parabanks and nonbanking financial institutions, the Office basically used the formulas para- and non- interchangeably³⁸. Further, in 2015, within a press release about an educative campaign launched prior to the Christmas holiday season with the aim to financially educate the people, the Office spoke about short-term loan companies³⁹. In about the same time, in an informative press release about the marketing strategies in the field, the Office used the formula of short-term loan companies⁴⁰. In 2016, in a press release about new regula-

³⁷ UOKIK. 2011. "Kredyt konsumencki – nowe zasady od poniedziałku". 15 December. Accessed 25 May 2018.

https://www.uokik.gov.pl/aktualnosci.php?news_id=3142&news_page=1

³⁸ UOKIK. 2013. "Reklamy parabanków – raport UOKiK" 23 May. Accessed 25 May 2018

https://www.uokik.gov.pl/aktualnosci.php?news_id=10415

³⁹ UOKIK. 2015a. "Nowa odsłona kampanii „Nie daj się nabrać. Sprawdź, zanim podpiszesz.” 23 November. Accessed 25 May 2018

https://www.uokik.gov.pl/aktualnosci.php?news_id=12025

⁴⁰ UOKIK. 2015b. "Pożyczki konsumenckie – konsumencie uważaj" 10 April. Accessed 25 May 2018

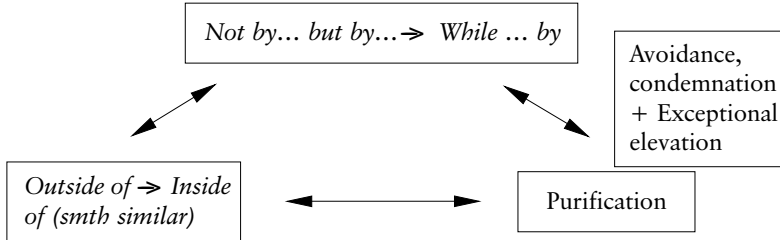
https://www.uokik.gov.pl/aktualnosci.php?news_id=11568

tions, the Office, again, related to short-term loan companies solely⁴¹. While, in 2018, in a summary about the decision to issue fines for short-term loan companies in a large amount, the Office used again the formula of short-term loan companies alone⁴².

Thus, as it emerges from going through the various press releases given by the Office over the years, the dynamics is that after an initial period of usage of the world parabank institutions – in convergence with the one of nonbanking – the formula of short-term loan companies got institutionalized. Further, at least in the Office document and press releases, the connotation of something anomalous, or misleading (such as in the case of the ads promising easier conditions of providing the loan than in reality) continues to persist. To a certain extent, this is surely not something out of the ordinary and it is even understandable in the given context and position occupied by this public organization. The Office is, after all, the main authority where the complaints and suspicions regarding the short-term and lending companies are being directed – see figure 2.2.

Figure 2.2: Purification of anomalies in the Polish financial sector – story 2

Parabanking/Nonbanking institution → Short-term loan companies (anomaly)



Source: author's own work

Story 3 – Opinion poll

To check whether this negative and suspicious connotation of short-term loan companies still persists, it is useful to look at the result of an opinion poll carried out within our research project. The survey was realized by the Centre for Public Opinion Research (CBOS) on behalf of the Polish Post as part of the omnibus survey (2016/03). The measurement was carried out in the period 21-

⁴¹ UOKiK. 2016. "Pożyczki konsumenckie – nowe regulacje." 8 March. Accessed 25 May 2018.

https://uokik.gov.pl/aktualnosci.php?news_id=12253.

⁴² UOKiK. 2018. "Ponad 1,65 mln zł kar dla firm pożyczkowych – decyzje UOKiK." 2 marca. Accessed 25 May 2018.

https://uokik.gov.pl/aktualnosci.php?news_id=14092&news_page=3.

28 January 2016 on a nationwide representative random sample of 992 adult Poles randomly drawn from the Universal Electronic System for Registration of the Population (PESEL).

Table 2.1: In your opinion, loan companies providing short termloans are: institutions that are not banks

		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	1 Definitively yes	442	44,5	44,6	44,6
	2 Rather yes	288	29,1	29,1	73,7
	3 Rather no	96	9,7	9,7	83,4
	4 Definitively no	60	6,0	6,1	89,5
	7 Hard to say	104	10,5	10,5	100,0
	Total	990	99,8	100,0	
Missing	8 Refusal to answer	2	0,2		
Total		992	100,0		

Source: The survey was carried out by Fundacja Centrum Badania Opinii Społecznej (Public Opinion Research Centre Foundation) at the commission of Poczta Polska S.A. as an omnibus survey (2016/03). The survey was carried out on 21-28 January 2016 on a random sample of 992 adult Poles, representative for the entire country, drawn from the PESEL (Polish Resident Record System) register.

Table 2.2: In your opinion, loan companies which provide short term loans are: institutions that act legally

		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	1 Definitively yes	129	13,1	13,1	13,1
	2 Rather yes	429	43,3	43,4	56,5
	3 Rather no	173	17,5	17,5	74,1
	4 Definitively no	80	8,1	8,1	82,2
	7 Hard to say	176	17,7	17,8	100,0
	Total	988	99,6	100,0	
Missing	8 Refusal to answer	4	0,4		
Total		992	100,0		

Source: CBOS 2016/03

Table 2.3: In your opinion, loan companies which provide shortterm loans are: institutions that are subject to banking oversight

		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	1 Definitively yes	24	2,4	2,4	2,4
	2 Rather yes	120	12,1	12,1	14,5
	3 Rather no	348	35,0	35,1	49,6
	4 Definitively no	212	21,4	21,4	71,1
	7 Hard to say	287	28,9	28,9	100,0
	Total	990	99,8	100,0	
Missing	8 Refusal to answer	2	0,2		
Total		992	100,0		

Source: CBOS 2016/03

The questions regarding the short-term loan companies indicate that a considerable percentage realize that these are institutions which are not banks – 73,6% (table 2.1), that these are institutions which act legally – 56,4 (table 2.2); and are institutions not subject to supervision of banking regulatory agencies – 56,4% (table 2.3). Thus, it can be inferred, the purification leading to the short-term loan companies as main financial intermediary is quite advanced. Yet, this is more developed in terms of distinguishing the short-term loan companies from the banking institutions, than in associating these with the domain of legality. Nonetheless, the association with the legal sphere – 56,4 % – is bigger than the perspective denying this – 25,6% – or the proportion of respondents undecided on the issue – 17,7% (see table 2.2).

Table 2.4: L3q42 11.3. ... the parabank pretends to be a bank, while the loan company does not

		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	1 Definitively yes	95	9,5	9,6	9,6
	2 Rather yes	301	30,3	30,5	40,0
	3 Rather no	97	9,8	9,8	49,9
	4 Definitively no	22	2,3	2,3	52,1
	7 Hard to say	473	47,7	47,9	100,0
	Total	988	99,6	100,0	
Missing	8 Refusal to answer	4	0,4		
Total		992	100,0		

Source: CBOS 2016/03

The findings regarding the perception of parabanking institutions are also revealing. A considerable percentage considers that the parabanking institution pretends to be a bank, while not being one, whereas the short-term loan companies do not – 39,8% (see table 2.4). It is another sign that, again, the institutionalization of the distinction between the parabanking institution and the short-term institution, although not universal, is quite widespread, together with the distinct semantic connotations implied by the attribute of pretending.

Table 2.5: The parabank is an institution providing loans and accepting deposits that is not subject to banking oversight

		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	1 Definitively yes	130	13,1	13,2	13,2
	2 Rather yes	301	30,3	30,4	43,6
	3 Rather no	98	9,9	9,9	53,5
	4 Definitively no	22	2,3	2,3	55,7
	7 Hard to say	438	44,2	44,3	100,0
	Total	989	99,7	100,0	
Missing	8 Refusal to answer	3	0,3		
Total		992	100,0		

Source: CBOS 2016/03

Table 2.6: The parabank is an institution carrying out activity similar to banks, while not being a bank

		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	1 Definitively yes	225	22,7	22,8	22,8
	2 Rather yes	356	35,9	36,1	58,9
	3 Rather no	53	5,3	5,3	64,3
	4 Definitively no	8	0,8	0,8	65,1
	7 Hard to say	344	34,7	34,9	100,0
	Total	986	99,4	100,0	
Missing	8 Refusal to answer	6	0,6		
Total		992	100,0		

Source: CBOS 2016/03

Table 2.7: The parabank is an institution that conducts activity specific to banks based on other regulations than the banking law

		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	1 Definitively yes	140	14,1	14,2	14,2
	2 Rather yes	305	30,8	30,9	45,1
	3 Rather no	66	6,6	6,7	51,8
	4 Definitively no	25	2,5	2,5	54,3
	7 Hard to say	451	45,5	45,7	100,0
	Total	987	99,5	100,0	
Missing	8 Refusal to answer	5	0,5		
Total		992	100,0		

Source: CBOS 2016/03

The above findings about the parabanking institution as undergoing purification in the direction of the dangerous and illegal is further confirmed. A considerable proportion of respondents answers affirmatively that the parabanking institution facilitates loan services, takes deposits, and that it is not supervised by bank regulatory agency – 43,4% – see table 2.5. As in the case of the previous question regarding the false pretense of the para-institution to be a bank – 39,8% – (see table 2.4), this one was answered positively in the amount of approx. 40%. Importantly, the question does not imply that the facilitation of short-term loan services, the accepting of deposits and lack of regulatory supervisions by traditional agencies is a problem. So that there is no way to show how the respondents framed this issue. Nevertheless, the distribution of answers shows awareness about this element that the parabanking intermediary has both loan and deposits related activities, which are not supervised by banking regulatory agencies. As shown earlier, this aspect was used on the financial comparison websites to show that the parabanking institution involve a great deal of risk because of the possibility to expropriate the deposits/savings of the people. Thus, it can be speculated, the distribution of answers is an outcome of the process of purification which drags the parabanking institution towards the illegality pole. Yet, this cannot be stated for certain.

Relevant, however, is the fact that, as in the case of the short-term loan companies a high percentage considers that the parabanking institution carries out activity similar to the banking ones, while not being one – 58,6 % (table 2.6). Yet, in the case of the short-term loan companies this percentage was even bigger – 73,6% (see table 2.1). This might be taken to mean that the purification-catego-

rization of loan companies is more advanced than in the case of the parabanking ones. On the other hand, there might also be the case of the technical issue that in the case of the loan companies the question was whether these are “institutions that are not banks” (table 2.1). While in the case of the parabanking institutions, the question was whether these constitute an “institution carrying out activity similar to banks, while not being a bank” (table 2.6). The questions are quite similar, indeed. Yet, in the latter case, the anomalous character is more poignant. The former questions works according to the rule *while ... by*, while the later according to the principle *not by ... but by ...* — see figure 2.1.

In general, it seems that the distribution of the answers was quite contingent upon the manner in which the questions were constructed in the opinion poll. Hence, when the question was whether the parabanking institution pretends to be a bank, while the short-term loan company does not, the affirmative answer was 39,8% – see table 2.4. On the other hand, when the question was posed in terms of whether the parabanking institution carries out activity similar to the one of the banks, but upon other regulation than the bank one, the affirmative answer was 44,9 % — see table 2.7. This small difference suggests two things. The purification processes introduce nuances that, at first sight, may not seem important yet, in reality, the actors are receptive to changes in formulation. On the other hand, it also seems that the purification of the parabanking institution in relation to the banking sector is “a bit” more advanced than the one in relation to the loan companies. Certainly, this “a bit” might be argued to be so small as to be less significant. On the other hand, it confirms that the hybrid- and anomalous-like institutions undergo purification on various levels and in relation with distinct institutions. These purification sequences certainly form a bigger process, yet inside the process is not homogeneous.

Conclusions

This chapter discussed the dynamics of various processes involving hybrid-like and anomaly-like institutions in the contemporary world, and the financial sector in particular. Building upon Latour’s⁴³ and organizations scholars’ insights into the process of purification, this posed the question of how this process unfolds in the case of anomalies, and whether it takes place to begin with. The findings emerged from various accounts: the comparison platforms for short-term loans in Poland, the press releases and reports of the Office of Competition and Consumer Protection, as well as the results of the opinion poll con-

⁴³ B. Latour, *We Have...*, op. cit.

ducted between 21-28 January 2016 on the theme of short-term loan companies and parabanking institutions.

What did the investigation reveal? First, the purification of the anomaly takes place through a variety of mechanisms, especially through categorization. Second, the purification rarely “returns” the anomaly in the area of the ontological domains this supposedly deviates from (e.g., banking—formal). What happens is that this is purified by being integrated in related, sometimes more encompassing domains (e.g., legality—illegality). Third, the purification of the hybrid can be viewed from different perspectives (battle with other proto-institutions, going through several hybrid-like phases, etc.). It is difficult to establish which of these stories is accurate because the framing is contingent on the more or less conscious interest of the agents/organizations as well as their position in the field. Fourth, the process of purification takes place on various levels and in relation to other institutions. These layers may run concomitantly but may also have different rhythms. The purification of the anomaly takes place in a context of other processes also unfolding, and this influences its course.

Analysis of legal regulations concerning the quasi-bank sector – loan companies.

An analysis of legal regulations concerning the quasi-bank sector is not an easy task, as it is not easy to analyze something that, at first sight, does not exist. The Polish legal system does not have any normative acts that address quasi-bank institutions directly. The term “quasi-bank” has not been defined in the provisions of law, and the legislator has not introduced any norms directly concerning quasi-banks. This does not mean, however, that the concept of quasi-banks is entirely unknown to legal sciences – the term does appear in legal discourse. It must be emphasized, however, that it is not without unambiguity and, depending on the adopted definition, it may refer to different entities.

The situation is somewhat different as regards loan companies which, in my opinion, are one of the forms of quasi-banks. Up until 2015 they functioned in the same way as the other quasi-bank institutions, based exclusively on provisions concerning all entrepreneurs. This changed upon the implementation of the act of 5 August 2015 amending the act on financial market supervision and certain other acts, which changed the law on consumer loans, thus providing a general framework for the functioning of loan companies. Still, however, loan companies, providing banking services, are subject to the oversight of the Financial Supervision Authority, as a result of which they may be perceived and analysed as a special form of a quasi-bank institution that represents a certain link between the strictly regulated sector of banks and credit institutions and the non-regulated quasi-bank sector.

As already mentioned, the quasi-bank sector seems unregulated, and from the strictly normative perspective, that is the case – there is not a single provision that addresses the obligations or rights of quasi-banks. Nevertheless, it does not mean that normative acts do not affect their functioning. While exploring the legal regulations concerning the quasi-bank sector, it is necessary to broaden the perspective. The present analysis is an attempt at characterizing a section of the legal reality that constitutes *sui generis* the substrate for the emergence of quasi-banks, delimits their areas of interest and activity (primarily by

way of restricting certain operations of bank entities), with a special focus on institutions that provide loan services.

This text is divided into five parts. The first part is of introductory nature, and it aims to define the concept of quasi-banks for the purposes of the present analysis. The second part is an attempt at outlining the historical background of regulations concerning the financial services sector. The third part covers Recommendation T, which in my opinion has played a pivotal role in the development of non-bank loan services. The fourth part is devoted to the general legal bases of the functioning of enterprises that may be classified as quasi-banks. The last part addresses loan institutions within the meaning of the act on consumer credit.

Definition of quasi-banks

As I have already mentioned, the Polish legal system does not provide a definition of a quasi-bank, and this term, although frequently used in legal language, does not appear in legal acts. Witold Srokosz defines quasi-banks as entities of the financial market that are not banks, but that based on laws other than the Bank Law, provide banking services reserved to banks or, without statutory endorsement, perform banking operations within a broad meaning¹. Thus, pursuant to Witold Srokosz's definition, a quasi-bank would be any institution that is not a bank within the meaning of the Bank Law, whose operations entails any of the areas indicated under Article 5(2) of the said act, including loan companies.

A different definition of quasi-bank institutions is offered by the Financial Stability Commission, according to which quasi-banks provide financial services and products similar to bank services, but they do not operate based on the Bank Law, and their functioning is not subject to the oversight of the Financial Supervision Authority (FSA)². (It is worth mentioning here that even though the FSA has been running a Register of Loan Companies since 2017, it does not have any supervisory authority over them the way it does over banks). Unlike the previously quoted definitions, this one does not include Cooperative Savings and Credit Unions (CSCUs; in Polish: SKOK), as they are subject to the supervision of the FSA.

¹ W. Srokosz, *Czynności bankowe zastrzeżone dla banków*, Oficyna Wydawnicza Brandta, Bydgoszcz-Wrocław 2003, p. 62

² Chancellery of the Sejm, Office of Analyses and Documentation, *Operations of Non-Bank Institutions (So-Called Quasi-Banks) and Related Legal Regulations in Selected Countries – Latvia, Germany, Sweden, Great Britain and the United States of America*, 31/05/2017, <http://www.senat.gov.pl/gfx/senat/pl/senatopracowania/43/plik/050.pdf>

Literature of the subject also includes the view that quasi-banks are institutions whose operations are, by definition, illegal. This position seems too far-reaching, however, and to adopt it would in fact defy the purpose of discussing the legal frameworks for the functioning of quasi-banks, as the natural consequence of concluding that quasi-bank operations are illegal would be to agree that the only provisions applicable to them are provisions of penal law, and these do not delimit the frameworks for operations of quasi-banks; they only outline the potential legal consequences.

For the purposes of the present analysis, I assume that a quasi-bank is a financial institution that renders services similar to those offered by banks (i.e. banking services within a broad meaning), that are not subject to the oversight of the Financial Supervision Authority and do not apply the provisions of the Bank Law, and so I adopt the definition elaborated by the Financial Stability Commission. This definition of quasi-banks allows the conclusion that loan companies are one of the forms of quasi-banks.

It also merits a mention that the discourse also offers the concept of non-bank sector, which entails all institutions, other than banks, that render financial services.

Some confusion may arise as regards the relations between these concepts: quasi-bank, non-bank sector and loan company. The definition adopted by me makes it possible to conclude that all loan companies are, at the same time, quasi-banks and non-bank institutions. There exist, however, some entities that are non-bank entities, such as CSCUs, which I don't believe should be classified as quasi-banks.

Amendment of the act of 12 May 2011 on consumer credit, in effect since 11 October 2015, has defined a loan institution as a creditor (and this applied to consumer credits, which is not the same as the concept of credit functioning within the meaning of the Bank Law), which is not: a national bank, a foreign bank, a branch of a foreign bank, a credit institution or a branch of a credit institution, a cooperative savings and credit union, a National Cooperative Savings and Credit Union, but an entity whose operations consist in extending consumer credits in the form of deferred payment or remuneration for the purchase of goods and services offered by it. A separate part of analysis is devoted to loan institutions, a very significant issue, and for this reason at this point I only mention them briefly.

Historical outline of legislation

The history of regulations in connection with the functioning of the quasi-bank services sector coincides with the history of smaller and larger financial scandals that took place in Poland in the wake of the political transformation of the

early 1990s. The quasi-bank sector, as already mentioned, is a non-regulated sector, but this does not mean that it is not noticed by the legislator. Legislative activity, primarily consisting in restricting the options of taking up certain types of operations, was often a reaction to abuses of quasi-banks which took excessive advantage of “privileges” connected with the freedom of conducting business activities and with the fact of not being subject to regulations concerning banks. This of course does not mean that all entrepreneurs fitting within the definition of quasi-banks adopted for the needs of this paper operate on the margin of law. Yet as long as the functioning of a company is within the boundaries of law and does not violate “public order”, such a company remains outside of the legislator’s interest.

Of particular significance for the functioning of quasi-banks in the sector of loan services was Recommendation T, concerning good practices in managing the risk of retail credit exposures, issued by the Financial Supervision Authority in February 2010, based on Article 137(1)(5) of the Bank Law. Recommendations issued pursuant to the mentioned provision are not normative acts. They are merely guidelines of the bank supervision concerning safe running of banking activities, addressed to all banks.

Recommendation T was drafted after the financial crisis that commenced in mid-2007, as a result of US banks granting mortgage loans to sub-prime borrowers who did not have the income to pay them off. Additionally, in a process referred to as securitization, these loans were bundled together into mortgage-backed securities.

The reason cited by the Financial Supervision Authority for issuing this recommendation was the loosening of credit policies, manifested especially by:

- 1) Lowering requirements in the analysis of credit capacity;
- 2) Excessive and unjustified prolongation of credit periods, aiming to decrease the instalment amounts;
- 3) Increasing loan to value ratio (LtV)³.

Recommendation T does not apply to cooperative savings and credit unions, branches of foreign banks nor quasi-bank institutions as defined in this analysis.

Banks have been obliged to objectively assess the borrowers’ credit capacity and creditworthiness not only at the time of taking out a liability, but also for the future. The recommendation stipulates that the credit capacity assessment should entail a financial situation check and it should determine whether it

³ Financial Supervision Authority, *Recommendation T concerning good practices in managing the risk of retail credit exposures* 2010, p. 2, 18/05/2017,

allows for the repayment of debt, as well as verification of completeness and authenticity of the documentation presented by the client. In evaluating creditworthiness of clients, banks should account for their history and analyse all available information, both from internal and external sources.

Recommendation authors also advise banks to set maximum limits of expenses in connection with debt as related to debtor's income. Recommendation T set the maximum permissible proportion to the client's income at 50% in the case of retail clients whose earnings do not exceed the national average, and at 65% for the others (i.e. those who have a higher income).

In evaluating client's credit capacity, the banks were to critically verify the borrower's declared expenses, accounting for the number of dependents in the household, residential status and place of residence, as well as expenses in connection with other loans. In order to prevent the underrepresentation of actual household expenses, the banks have been obliged to vet the assumptions adopted for the verification of credit capacity. The recommendation also addresses borrowers who earn their income in a currency different from the one of the credit, encouraging the banks to apply a 10% increase of the adopted credit burden, and if the crediting period is longer than 5 years – 20%.

The next recommendation concerned the elements that should be taken into account in evaluating the borrower's credit capacity. Here the Financial Supervision Authority indicated that the income and expenses of borrowers are the principal aspects to consider. Among the income sources, those with greatest stability should be preferred.

If the potential borrower's income is irregular or not permanent, the banks should factor this into the estimation of his or her future earnings. In evaluating the borrower's credit capacity, banks should also account for other long-term, non-credit liabilities that the client cannot be freed of, such as child support or pensions to third parties.

In the event of applying for credit in a currency other than the borrower's income, the banks have been advised to analyse the credit capacity with the assumption that the credit principal is 20% higher, and the interest rate at least equal to the interest rate for credits in Polish zlotys.

Another recommendation instructs banks to apply the aforementioned credit capacity criteria to all persons obliged to repay a liability.

Also the rules for documenting credit capacity and creditworthiness have been tightened. Banks were advised to ensure the completeness, authenticity and veracity of documentation upon which the analyses are based. The banks were recommended to seek information in internal and external databases. The catalogue of databases was neither limited nor precisely specified.

Finally, the last recommendation that deserves special attention within the context of quasi-bank loan institutions addressed the need of constant monitoring of creditworthiness of existing borrowers. Banks were urged to take advantage of all available sources of information, including databases. Banks should monitor creditworthiness especially closely when there are delays in payments, in the event of loss of security value or change in the value of repayment source, e.g. if the borrower's salary decreases or real estate rent collected by the borrower is lowered. Recommendation T of 2010 was an element of the Financial Supervision Authority's policy aiming to better regulate the functioning of the financial market and to safeguard both banks and clients against bankruptcy. It fed into the tendency of increased regulatory activity of the FSA.

Solutions of the 2010 Recommendation T were mostly upheld in the current Recommendation T from 2013. The most important changes regarded the banks' obligation to draft written internal procedures setting out the form and scope of providing information to retail clients, as well as simplified procedures of evaluating credit capacity of clients who have been with the bank for a long time, and credits and instalment loans whose value does not exceed four monthly remunerations in the entrepreneurial sector.

Recommendation T, although it did not apply to quasi-banks, had a direct influence of the development of quasi-bank loan institutions. Bank cash credits became less accessible to retail clients, especially those employed based on civil law contracts, or in a difficult financial situation. In the period from the end of 2010, there was a significant spike in the sale and balance of loans granted by the largest loan companies. The presented data seems to confirm the thesis that even though Recommendation T was not addressed to quasi-banks, owing to stricter regulation of banking operations, it in fact also affected the area of quasi-banks activity.

Legal frameworks for the functioning of loan institutions as businesses

Credit, loan and consumer loan

In colloquial use, the words "loan" and "credit" are used interchangeably, but from the legal point of view, they are two different things.

Under the Polish legal system, credits may only be granted by banks, cooperative savings and credit unions and by so-called "credit institutions", that is such entities that have their seat outside of the Republic of Poland, in one of the EU member states, and whose activities consist in accepting deposits and grant-

ing credits or issuing electronic money⁴. The credit agreement has been addressed under Article 60 of the Bank Law. Pursuant to this act, the credit agreement is understood to be such a legal relationship under which the bank undertakes to give to the disposal of the borrower a specific amount of money for a given purpose, and the borrower undertakes to use this amount in the manner specified in the agreement, as well as to repay this amount along with interest and commission.

The loan, in turn, is the simplest and most general form of legal transaction of credit nature⁵. The main legal regulation concerning the loan agreement is the Civil Code, but other provisions regarding loans can also be found in other legal acts, for example in the act of 5 August 1939 on premium loans, in the act of 20 April 2004 on promotion of employment and institutions of the labour market or in the act of 17 July 1998 on student loans and credits.

The succinct wording of the code's regulation of loans means that in practice the contents of the legal relationship is supplemented with contractual provisions, and code's provisions only apply primarily to interest-free loans of non-commercial nature,⁶ for example to favours between neighbours.

Pursuant to Article 720 of the Civil Code, "by the contract of loan, the lender undertakes to transfer to the borrower the ownership of a specified amount of money or of things specified as to their kind only, and the borrower undertakes to return the same amount of money or the same amount of things of the same kind and of the same quality."

Unlike in the case of a credit agreement, contract of loan may be entered into in any form (e.g. oral, written, document or electronic, in the form of a notary's deed). Only in cases where the value of the loan exceeds PLN 1000, it should be documented (Article 720(2) of the Civil Code). Failure to observe this form does not automatically invalidate the agreement, but it may give rise to evidentiary difficulties in the event of pursuing claims⁷.

A loan may be both free of charge or against payment. A loan against payment occurs when the lender reserves remuneration for using the capital – for example in the form of interest or commission. Where the contract of loan

⁴ Cf. Article 4 par. 1 point 1 Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms and amending Regulation (EU) No 648/2012, 19.06.2017 <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2013:176:0001:0337:pl:PDF>

⁵ ed. S. Grzybowski, *System prawa cywilnego vol. III part 2*, Ossolineum, Wrocław, 1976; p. 699

⁶ W. Pyziół, *Pożyczka*, in: *System Prawa Prywatnego, t 8, Prawo zobowiązań, część szczegółowa*, ed. J. Panowicz-Lipska, CH. Beck, Warsaw 2004, p. 294

⁷ ed. J. Gudowski, *Kodeks cywilny. Komentarz. Tom V. Zobowiązania. Część szczegółowa*, Lex online Published: WKP 2017

does not stipulate the interest amount, the lender is entitled to statutory interest equal to the reference rate of the National Bank of Poland and 3.5 percentage points (the NBP reference rate currently stands at 1.5%⁸). If the parties choose to determine the amount of interest in the contract of loan, it cannot exceed twice the statutory interest rate per annum (i.e. 10%). Moreover, provisions of the Civil Code stipulate delay interest. The statutory delay interest is equal to the sum of NBP reference rate and 5.5 percentage points. The parties may agree upon a different amount of delay interest, but it cannot in any case exceed twice the statutory delay interest.

In comparing the contract of loan and the credit agreement, the following differences should be underscored:

- 1) a credit agreement only applies to money, while a contract of loan may also concern things specified as to their kind;
- 2) a credit may only be granted by a bank, while a loan may be granted by any entity with capacity to perform acts in law;
- 3) a credit agreement must be made in writing, while the form of the contract of loan is discretionary;
- 4) a credit is granted for a purpose determined in advance, while a loan may be used by the borrower for any purpose;
- 5) a credit agreement is always against payment, while the loan may be given free of charge if the parties so agree,

Quasi-bank institutions, for the obvious reasons, can only grant loans. Yet these loans are of special nature, because in the great majority of cases, they are also consumer credits within the meaning of the act of 12 May 2011 on consumer credit. Pursuant to the provisions of this act, a consumer credit agreement is understood to be an agreement for a credit of up to PLN 255 550 or its equivalent if the credit is given in a foreign currency, as well as of a higher amount if its purpose is the renovation of a house or residential premises. The fact that the legislator applies the term “credit” may give rise to confusion, as it can in no case be identified with a bank credit.

The 2011 act on consumer credit implemented the Directive 2008/48/EC of the European Parliament and of the Council of 23 April 2008 on credit agreements for consumers, whose objective was to ensure that the market offers sufficient consumer protection to promote consumer confidence. This protection is provided primarily by furnishing consumers with reliable information allowing them to compare the offers of different credits and to make an informed

⁸ NBP base interest rates, 27/06/2017, <http://www.nbp.pl/home.aspx?f=/dzienne/stopy.htm>

decision concerning taking out a consumer credit and the attendant consequences, both factual and legal⁹.

The most important obligations of the creditor to be satisfied prior to entering into a credit agreement, are:

- 1) to provide, in the advertisement of the offered product, information about:
 - a) credit interest rate (with an indication of whether it is variable or fixed), together with charges and fees included in the total cost of credit;
 - b) total amount of credit;
 - c) annual percentage rate of charge, the so-called APR, understood as the total cost of the credit borne by the consumer, expressed as a percentage value of the total amount of credit per annum.

If it is justified by the type of the credit granted, the creditor is obliged to inform the borrower of the period of contract, the total amount to be paid by the consumer, or the instalment amount, as well as of the price of good or service and the amount of all advance payments in the event of a credit agreement entailing deferred payments.

The creditor must also notify the borrower if entering into the contract on the terms and conditions specified in the advertisement is tied to purchasing another product (e.g. insurance).

From 22 July 2017, creditors have a duty to inform the borrowers about the aforementioned significant terms and conditions of the credit in a manner that is at least as visible, readable and audible as the information concerning the cost of credit.

Considering the unequal position of the creditor and the consumer, who is a non-professional entity, the legislator has obliged the creditor to present the above-mentioned credit terms and conditions based on a representative example, i.e. illustrating the advertised product with concrete numbers.

- 2) to perform a credit capacity check;

The obligation to perform a credit capacity check before granting a consumer credit has been in place since 17 January 2014. Prior to the amendment of the act, the creditor had the duty to evaluate the borrowers' credit risk. The two terms refer to two different things. Credit risk denotes "the danger that the borrower will not satisfy his or her obligations under the contract, putting the creditor at risk of financial loss¹⁰".

⁹ T. Czech, *Kredyt konsumencki. Komentarz*. Lexis Nexis Warsaw 2012, p. 22.

¹⁰NBP glossary, Credit risk, 21/06/2017, <https://www.nbportal.pl/slownik/pozycje-slownika/ryzyko-kredytowe>

In the case of consumer credit, the creditor is under the obligation to perform credit capacity check, but even if the borrower fails to meet the criteria, this does not automatically mean that he will be refused the consumer credit, as long as the creditor is not a bank, which are bound by more restrictive provisions of the Bank Law in this respect¹¹. A creditor that is not a bank will also not be bound by the rules stipulated in the aforementioned Recommendation T. This means that loan companies do not have to check the borrower's status in the databases of the Credit Information Bureau or others, and the decision on granting a consumer credit may be made based solely on the basis of information provided by the potential borrower.

- 3) inform the applicant about the check results, along with indication of the databases in which the check was performed, if the credit is refused;
- 4) provide clarifications concerning the contract;
- 5) to provide the client, at his or her request, with the contract draft, free of charge;
- 6) to furnish the client with information (on a carrier: paper, CD, disk) with pre-contract information, including:
 - a) first and last name (business name) and address (registered business address) of the creditor and of the credit agent;
 - b) type of credit;
 - c) duration of the credit agreement;
 - d) credit interest rate and the terms and conditions for its application, as well as, if available, information concerning the index or reference rate applicable to the original credit interest rate, data regarding changes in the credit interest rate. If the consumer credit contract provides for different interest rates, this information must be given for all applied interest rates within the duration of the contract;
 - e) total amount of credit;
 - f) dates and manner of credit release;
 - g) the total amount to be paid by the consumer;
 - h) annual percentage rate and the total amount to be paid by the consumer, presented in a manner accounting for at least one of the components preferred by the credit consumer, such as contract duration or total amount of credit;
 - i) information concerning the possible increase of the annual percentage rate in the event of application of specified mechanisms of credit release;

¹¹ T. Białek, *Obowiązek oceny zdolności/ryzyka kredytowego w nowej ustawie o kredycie konsumenckim*, Monitor Prawa Bankowego, 2011, no. 12 p. 72.

- j) terms and conditions and dates of credit repayment and, in applicable cases, the order in which instalments will count toward the amount due to the creditor, with account of the possible consequences of applying various percentage rates;
- k) information concerning the obligation to enter into additional contracts, especially into insurance contracts, if doing so is necessary to receive the credit or to receive it on preferential terms;
- l) in applicable cases, information about other costs that the consumer must bear in connection with the consumer credit contract, especially interest, fees, commissions, margins, charges, including charges for maintaining bank accounts and costs of additional services, if known to the creditor, and terms and conditions on which these costs may change;
- m) information about having to bear notary's fees, if applicable;
- n) information about the delay interest rate, terms and conditions for its changes and possible other charges for delays in credit repayment;
- o) information about the consequences of non-payment;
- p) in applicable cases, information about the required collaterals of the consumer credit;
- q) information about the consumer's right to withdraw from the contract;
- r) information about the consumer's right to early repayment;
- s) information about the creditor's right to reserve in the contract a commission for early credit repayment and the rules for establishing the commission amount;
- t) information about the consumer's right to immediately receive free of charge information concerning the results of the verification in databases performed for the needs of credit capacity evaluation;
- u) information about the consumer's right to receive a free of charge draft contract, on the terms specified under Article 12;
- v) in applicable cases, information about the period throughout which the creditor or credit agent is bound by the information conveyed to the consumer.

Article 29(3) of the act of 12 May 2011 on consumer credit stipulates that the contract must be drafted in unambiguous and understandable wording. "Understandable contract wording means that its provisions are clear, accessible and easy to understand. It is without a doubt that unambiguity and clarity of contract provisions must be analysed from the perspective of an average consumer, and not from the perspective of the knowledge of a professional creditor or credit agent about the credit market"¹².

¹² Z. Ofiarski, *Ustawa o kredycie konsumenckim. Komentarz*, LEX 2014, LexOnline

Pursuant to Article 30 of the act on consumer credit, the consumer credit contract must include in particular:

- 1) first and last name of the consumer and consumer's address, the first and last name (business name) and address (registered business address) of the creditor and of the credit agent;
- 2) type of credit;
- 3) duration of the credit agreement;
- 4) total amount of credit;
- 5) dates and manner of credit release;
- 6) credit interest rate, the terms and conditions for its application and changes with information concerning the index or reference rate, if applicable to the original credit interest rate; if the consumer credit contract provides for different interest rates, this information must be given for all applied interest rates within the duration of the contract;
- 7) annual percentage rate and the total amount to be paid by the consumer as established on the date of entering into the consumer credit contract, along with all the data adopted for its calculation;
- 8) terms and dates of credit repayment, in particular the order in which credit instalments are counted toward the repayment of the amount due to the creditor, including information about the right to receive, at one's request, a free of charge payment schedule at any point throughout the contract duration, with account for possible application of different interest rates;
- 9) a comprehensive list of dates and rules concerning interest rate payments and all other credit costs where the creditor or credit agent grants a grace period;
- 10) information about other costs that the consumer must bear in connection with the consumer credit contract, especially fees, commissions, margins, charges, including charges for maintaining bank accounts and costs of additional services, if known to the creditor, and terms and conditions on which these costs may change;
- 11) annual delay interest rate, terms and conditions for its changes and possible other charges for delays in credit repayment;
- 12) consequences of non-payment;
- 13) information about having to bear notary's fees, if applicable;
- 14) manner of securing and insuring credit repayment, if provided for in the contract;
- 15) date, manner and consequences of the consumer withdrawing from the contract, the consumer's obligation to repay the credit granted by the creditor with the interest, as well as the amount of daily interest due;

- 16) consumer's right to early repayment and the related procedure;
- 17) information about the creditor's right to commission for early credit repayment;
- 18) information on the right to pursue claims for obligation performance;
- 19) terms and conditions for the termination of the contract;
- 20) information concerning the possibility of out of court settlement of disputes and about the rules for accessing such procedure, if the consumer is entitled to this right;
- 21) indication of the supervision authority competent for protection of consumers.

The failure to meet the above requirements may give rise to sanctions in the form of a fine, as provided for in the Infractions Code. Liability for the infractions is borne by the entrepreneur who is a natural person, and in the case of entrepreneurs who are not natural persons, the person managing the enterprise or the person authorized to enter into contracts with consumers.

The legislator has also decided to set the maximum level of non-interest credit costs, defined as all costs borne by the consumer in connection with the consumer credit contract, with the exception of interest. Non-interest credit costs entail: fees, commissions, taxes, margins and costs of additional services if they have to be paid in order to receive the credit, with the exception of notary costs. The legislator's aim was for the definition to cover the costs and fees for both in-house services and for those charged when granting loans over the Internet¹³.

For example, in the case of a credit of PLN 20 000, taken out for a period of two years, the maximum credit costs cannot exceed PLN 17 000¹⁴.

Violation of the provisions concerning the form and content of the contract (with the exception of the list of obligatory content components specified under points 7,9,12 and 13) may lead to a sanction of so-called "free credit". The consumer may submit a written statement to the creditor and return the credit without any interest or other credit costs, within the time limit and in the manner determined in the contract. If the contract does not provide for the relevant time limit and manner, the consumer returns the credit in equal instalments over a period of 5 years if the debt does not exceed PLN 80 000, or over a period of 10 years, if the debt amount is higher than PLN 80 000.

The consumer is also entitled to early credit repayment – in part or in whole. Moreover, in order to prevent creditors from putting additional requirements that would in practice impede the borrower's possibility of earlier repayment,

¹³ A. Jankowska-Galińska, K. Sawicka Katarzyna, *Koszty kredytów mają być niższe*, Rzeczpospolita, 10.02.2016, accessed online on 21.06.2017

¹⁴ $(20000 \times 25\%) + (20000 \times 730/365 \times 30\%) = 17000$

the legislator has implemented a significant restriction on commission for early repayment – it cannot exceed 1% of the paid off credit amount where the period between the actual payment date and the contractual payment date is more than a year, and 0.5% if it is shorter.

The act of 12 May 2011 on consumer credit also warrants a 14-day period to withdraw from contract, similar to the right enjoyed by consumers entering into remote contracts, especially when purchasing goods online. The intention behind this provision is to give consumers the time to reconsider, as sometimes they make hasty, impulsive decisions, frequently under the influence of advanced sales techniques employed by the seller¹⁵. “Giving consumers the right to withdraw from contract within a certain period of time, without having to justify the exercise of this right, is an instrument of consumer protection, elaborated in European legislation and adopted in the legal orders of member states. In relation to consumer credit contracts, the *ratio legis* is also preventing consumers’ rash decisions on taking out credit liabilities. The 14-day period for withdrawal gives consumers additional opportunity to reconsider their decision”¹⁶.

Quasi-banks that are not loan institutions as entrepreneurs

The form of running a quasi-bank business activity is, in principle, discretionary. The exception to this rule are loan institutions, which may only be run as limited liability companies or stock companies. Their functioning will be discussed in more depth later on. As regards the remaining quasi-banks, there is no need to report the intention to take up this type of activity, nor to obtain any type of licence or permit. From the perspective of the law, an entrepreneur who is a quasi-bank is the same type of entrepreneur as a person running, for example, a newspaper stand, and his operations are regulated almost exclusively by provisions that apply to all entrepreneurs (it must be emphasized once again that this does not apply to loan companies). In the current legal order, it is possible to run a quasi-bank operation in the form of a one-person business activity, a partnership or an incorporated company.

Legal framework for the functioning of loan institutions

Provisions concerning loan institutions, as already mentions, are fairly new. They were introduced into the act of 12 May 2011 on consumer credit as a result of

¹⁵ T. Czech, *Kredyt konsumencki. Komentarz*, LexisNexis 2012, LexOnline

¹⁶ *Uzasadnienie projektu ustawy o kredycie konsumenckim*, Sejm paper no. 3596 of 15 November 2010, pp. 48-49, www.sejm.gov.pl

the amendment that took effect on 11 October 2015. Nevertheless, they are of great significance for the functioning of quasi-bank loan activities. The introduction of a new legal entity, that is the loan institution, and the imposition of fairly strict frameworks for its functioning, to a certain degree pushed loan companies out of the category of quasi-banks. The 2015 amendment to the act on consumer credit made the bill “in fact an «industry act» for loan companies, regulating the bases for their functioning much in the same way in which the Bank Law is the basis for functioning of banks, or the act of 5 November 2009 on cooperative savings and credit unions is the basis of functioning of these unions. As a result of the introduced changes, the scope of activities of loan companies has been tied to this specialized act to a greater extent”¹⁷.

In the light of effective provisions, entities that grant consumer credits (provided they are not banks of CCSUs) may only operate as limited liability companies or stock companies, that is capital companies. The minimum share capital of a loan institution is PLN 200 000 and may only be paid up in cash, with the reservation that funds for covering this capital cannot originate from a credit, loan, issuance of bonds or from non-documented sources. In other words, the establishment of a company that is a loan institution requires holding sufficient capital. It should be emphasized that the essence of share capital is its inviolability – it cannot be lowered below the amount required at the start, and so it fulfils a warranty function in the event of undue performance of the given entity’s obligations.

Special requirements have also been introduced for the management board members, for the supervisory board, revision commission and proxies. They cannot be persons convicted with a binding judgement of a court of law for document forgery, offences involving property, economic transactions, transactions in money and securities or tax offences.

As a result of the amendment of the act of 12 May 2011 on consumer credit, which took effect on 22 July 2014, the Register of Loan Companies was established. The Register is maintained by the Financial Supervision Authority. An entity that intends to take up the activities of a loan institution must lodge an application containing the following particulars:

- 1) business name of the limited liability company or stock company;
- 2) company’s registered seat and address;
- 3) first and last names and personal identification numbers (PESEL numbers) of management board members;

¹⁷ M. Pogoński, *Nieściągalne pożyczki w kosztach podatkowych firm pożyczkowych*, published: ABC, LexOnline

- 4) number in the Register of Entrepreneurs of the National Court Register;
- 5) tax identification number (NIP).

The fact that loan companies need to obtain an entry in the register does not mean under any circumstances that the supervision they are subject to is similar to the one over the bank sector. Obtaining the entry is subject to the satisfaction of formal requirements, but the very operations of the loan institution remain outside of the FSA's scope of control.

The act on consumer credit also provides for penal sanctions for running a loan institution in violation of the relevant provisions.

Conclusions

The legal situation of loan institutions has been subject to far-reaching changes over the recent years. Covering their operations (at least partially) with special regulations has turned them into a very specific segment of the financial services market and, depending on the adopted classifications, they can be considered a part of the quasi-bank sector or not. In light of the definition elaborated by the Financial Stability Commission, which serves as a point of reference for this analysis, it must be concluded that loan institutions should still be classified as quasi-banks. This may change quickly, however, given the fact that the legislator may return to drafting a new anti-usury law.

Further progress within the area of regulating loan companies market is all the more likely since, despite criticism¹⁸, the 2015 anti-usury act seems to have a positive effect on the quality of loan services rendered by the quasi-bank market. This view is supported by data concerning complaints lodged with the financial ombudsman. 250 such complaints have been submitted since October 2015, of which only 12 concerned the activities of loan companies in the period since the 2015 provisions took effect¹⁹.

Previous experience suggests that regulating the quasi-bank operations in the area of loans will cause quasi-banks to shift their activity onto new, heretofore unnoticed fields, posing new challenges to the legislator.

¹⁸ Cf. e.g.: J. Ryba, *Ustawa antylichwiarska: słomiana pararegulacja*, Forbes, 28 August 2015, 23/06/2017, <http://www.forbes.pl/ustawa-antylchwarska-slomiana-pararegulacja,artykuly,198536,1,1.html>

¹⁹ P. Słowik, "Lichwa wychodzi z mody", *Gazeta Prawna*, 21 February 2017, 23/06/2017, <http://biznes.gazetaprawna.pl/artykuly/1021318,ustawa-antylchwarska-skargi-na-firmy-pozyczkowe.html>

Consumer finance in Poland: the characteristics of the market of non-bank lending

INTRODUCTION

In the present-day world, the democratization of credit has become a reality, a natural consequence of mass culture and economic capitalism as well as social egalitarianism and mass consumption. Muhammad Yunus, the Bangladeshi economist awarded the 2006 Nobel Peace Prize for developing the concept of microcredit, even stated that credit should be a fundamental human right¹. Since the mid-1970s, Yunus's Grameen Bank has been developing a model of microfinance aimed at offering small loans to residents of Bangladesh who seek to start a small business.

Loan companies have drawn on Yunus's concept of microcredit and turned it from an idealistic social tool and an instrument of development into a commercialized business product. That being said, access to non-bank loans has improved the standards of living of many individuals and families who do not qualify for traditional bank loans. On the flip side, the commercialization of Yunus's concept comes at a price—some of those customers have become trapped in a debt spiral and have faced a worsened financial situation.

This chapter aims to explore the structure of the lending sector and the pace of changes with a focus on the fundamental divisions, relations, and conflicts within the sector and the factors behind such phenomena. Importantly, the materials are primarily based on the information provided in in-depth interviews by respondents professionally linked to the institutions related to non-bank lending.² Other sourc-

¹ Yunus Muhammad (2008), *Foreword*, s. 7 [w:] Alex Counts (2008), *Small Loans, Big Dreams: How Nobel Prize Winner Muhammad Yunus and Microfinance are Changing the World*, Hoboken, New Jersey: John Wiley & Sons, Inc.

² The interviews used in this chapter were carried out using the following sample: seven interviews with representatives of loan companies and organizations whose members are loan companies, five interviews with supervision and consumer protection institutions, two interviews with representatives of banks, one interview with a representative of the credit information bureau BIK, and one interview with a business journalist. The interviews were carried out in the years 2016 and 2017.

es include online resources: reports and analyses as well as articles and studies posted on economic websites. In light of the sociological nature of the research, the strictly economic issues unrelated to the approach adopted are not included.

LOAN COMPANIES VERSUS BANKS

Rival yet complementary

The sector of non-bank financial services is not limited to Poland: over the past three decades, similar services have flourished across the world, and the companies that operate in Poland are present practically on all continents. On the one hand, this reflects the emergence of demand on the part of customers (the democratization of credit and the dominant patterns of the consumer culture). On the other one, the emergence of loan companies was in the interests of banks, which are subject to stringent prudential regulation due to the need for systemic risk control and the protection of public finance stability. For that reason, banks became involved in developing the sector of non-bank financial services, thus helping to strategically strengthen and professionalize such stability. They made financial investments so as to manage the financial resources transferred to such projects in a bolder way, while avoiding risk³ and participating in the profits. The flow of money was coupled with a flow of people: the Polish sector of loan companies was created to a considerable degree by experts who had gained professional experience by working in banks.

Likewise, non-banks consolidated their position in the aftermath of the global financial crisis in 2008, which brought a drop in confidence in banks. Despite macroprudential regulation, they partially lost their liquidity, and the resultant loss of confidence was visible among customers, other banks, and central banks. In order to prevent similar situations in the future, the European central banks, market regulators, and financial institutions [including the International Monetary Fund (IMF), the Financial Stability Board (FSB), and the European Commission (EC)] focused on taking steps aimed at minimizing the risk of market stability being undermined again. The crisis brought an appreciation of the

³ Risk transfer involves shifting the responsibility from a company that suffers losses to another entity. It may be implemented in two ways: (1) the transfer of the operations that generate potential losses by the establishment of links with another entity that performs the operations that are exposed to risk, or (2) the transfer or liability for potential losses through insurance. Insurance is a very important method of risk assumption. Reinsurance companies were created specifically to assume the risks faced by other entities.

contribution of loan companies in the functioning of the whole of the financial sector, including their role as a buffer for banks and economies.

First of all, loan companies lend out their own funds and are therefore not covered by state guarantee schemes. When they assess risks, they only examine potential profits and losses. In this respect, such companies benefit from remaining outside the stringent (and expensive to implement) regulatory framework envisioned for banks. On the other hand, banks enjoy privileged access to the least expensive ways of financing their lending activity, namely deposits and interbank transactions. As a result of this fundamental difference, banks offer relatively inexpensive, long-term credit and loans for higher amounts, whereas non-bank lenders offer small, short-term loans that are proportionally more expensive and boost consumption. For that reason, potential rivalry between banks and loan companies is limited to the narrow segment of small, short-term loans, which are nonetheless offered by banks relatively infrequently.

Secondly, customers of loan companies also represent a higher risk. They include both bank customers as well as those who do not meet the rigorous requirements made by banks. The latter group comprises individuals with poor financial liquidity and an adverse credit history as well as those who do not have stable employment and regular income, which necessitates more flexible estimates of their liquidity, which banks are not allowed to perform. In addition, the higher costs of non-bank loans reflect higher debt collection costs and compensation for the share of the debts that cannot be recovered.

Another completely different yet significant aspect of systemic consolidation between the banking sector and the sector of non-banks in Poland involves sharing information about borrowers, a practice that was established in Poland relatively recently. For years, the flow of such information was fragmentary, which generated the risk of overlending and related losses for both sectors. Currently, up to 90% of loan companies use the credit information bureau Biuro Informacji Kredytowej [BIK],⁴ a rise from a mere 27 companies who did so in 2015, when the number of loan companies was several times lower. Moreover, the same companies not only took but also generated such risks, because they likewise did not share information about their customers. For that reason, the use of the BIK database by loan companies is beneficial also for banks: first of all, they know whether potential customers have borrowed money from any loan company and, secondly, they have access to the credit history of such cus-

⁴ The credit information bureau BIK is a company owned by banks and created by and for banks in 1997 (Article 105(4) of the Banking Law of 29 August 1997). Banks enjoy access to the BIK platform on preferential terms. Participation is based on information sharing. The BIK has the largest database with information about individual and business customers in Poland.

tomers and therefore can assess their creditworthiness. From this perspective, that is also beneficial to customers, because those who have no credit history may be prevented from taking on higher loans, unlike those with a good credit history. At the same time, customers with no credit history are not prevented from obtaining loans from non-bank lenders.⁵

The stereotypical “ease” of access to non-bank loans therefore no longer means unconditional availability (“no BIK, only ID card”). It is reduced to short waiting periods and minimum formalities. Importantly, the average approval rate for non-bank loan applications was only 30% in the first quarter of 2016, a situation caused by low credit scores at BIK, debts reported in the BIG economic information bureaus, and problems with the fulfillment of income criteria⁶.

Terminology and its meaning

International financial policy officially recognizes the fact that the banking system comprises two segments: traditional banks, which are subject to economic and political supervision, and the “shadow banking” sector, which is largely not subject to regulation. Interrelations between these two segments are discussed in *Green Paper Shadow Banking*, an official document used in the EU consultation procedure. This interconnectedness means that the more regulated the banking sector is, the greater the transfer of activities to the non-bank sector, which is not subject to regulation. In turn, the less the non-bank sector is regulated, the more effectively it can reduce the burden placed on banks. Paradoxically, however, the lesser the burden on the banking system, which helps stabilize the economy, the greater the risk that this stability will be undermined again as a result of the otherwise beneficial activity of the non-bank sector⁷. Such risks are mitigated by the size of the sector of loan companies, which is a lot

⁵ Credit information registries are complemented by the economic information bureaus (BIGs). They operate under a different legal basis, namely the Act on the Disclosure of Economic Information and the Exchange of Economic Data (of 9 April 2009). The bureaus collect above all adverse reports on defaults on obligations from the broadly defined creditors in order to support debt collection. Economic information bureaus, unlike credit registers, are not governed by the principle of reciprocity. Markowski Krzysztof (2012), *Cele, funkcje i dylematy funkcjonowania systemów wymiany informacji kredytowej* [w:] *Systemy wymiany informacji kredytowej. Doświadczenia polskie i europejskie*, red. Lech Kurkliński, Krzysztof Markowski, Warszawa: BIK S.A., s. 14, http://www.wzieu.pl/imgs_2/KsiazkaBIK.pdf, dostęp 1.03.2017

⁶ Dobrowolski Jeremi (2016b), *Credit Check od wywiadowni gospodarczej Deltavista ochroni (część) konsumentów przed przekredytowaniem*, 22 sierpień 2016, źródło: <https://midas24.pl/guehotoacco/209.htm>, dostęp: 13.03.2017

⁷ *Green Paper Shadow Banking*, European Commission, Brussels, 19.3.2012, COM(2012) 102 final, źródło: http://ec.europa.eu/internal_market/bank/docs/shadow/green-paper_en.pdf, dostęp: 16.03.2017

smaller than the sector of consumer credit provided by banks—according to one of our respondents, in 2016 those two sectors were worth PLN 5 billion and around PLN 135 billion respectively.

The shadow banking sector's important role within the structure of the whole of the financial market determined the emergence of international terminology and reinforced its positive connotations. Publications by the EC, the FSB, and the IMF place a lot of emphasis on explaining that the term “shadow banking” is not pejorative⁸. In Poland, however, its Polish equivalent, *parabanking*, meets with very strong resistance due to the local characteristics described later. Consequently, the Polish translation of *Green Paper Shadow Banking* includes the subtitle *równoległy system bankowy* (parallel banking system). A report by the National Bank of Poland (NBP) on the stability of the financial system uses analogous terminology⁹.

In turn, the English term “shadow banking” was first used by economist Paul McCulley in the speech delivered in 2007 at the annual financial symposium organized by the Kansas City Federal Reserve Bank in the United States. He used it to refer to an institution or a bank-created special purpose vehicle that is able to persuade clients they can retrieve the deposited funds in a timely manner and without value loss, despite the absence of state guarantees. The term “shadow banking” is practically not used in Poland.

At the same time, the term *instytucje pożyczkowe* (“loan institutions”), introduced in Poland's legislation in 2015, indicates a similar recognition of the sector, just like in the Western countries of the EU, and the institutionalization of its role, which is complementary to the activity of banks (levying the bank tax on loan companies in 2016 was also a reflection of official recognition).¹⁰ At the same time, the term is not etymologically related to banks or banking. Nonetheless, I use the term “loan company” throughout this chapter. First of all, it appears the most neutral of all terms, especially for the purpose of the consistent description of the changes that have taken place in the sector of non-

⁸ Szakun Mirosława, Bieszki Mirosław Augustyn (2013), *Analiza regulacji dotyczących funkcjonowania niebankowych instytucji finansowych pod kątem należytej ochrony interesów ekonomicznych i prawnych ich klientów*, Opinie i ekspertyzy OE-201, Kancelaria Senatu, Biuro Analiz i Dokumentacji, źródło: <http://bs.net.pl/analizy-raporty-projekty-ustaw/analiza-regulacji-dotyczacych-funkcjonowania-niebankowych-instytucji>, dostęp: 5.01.2015

⁹ *Analiza regulacji dotyczących funkcjonowania niebankowych instytucji finansowych pod kątem należytej ochrony interesów ekonomicznych i prawnych ich klientów*, Opinie i ekspertyzy OE-201, Kancelaria Senatu, Zespół Analiz i Opracowań Tematycznych Biura Analiz i Dokumentacji, Luty 2013, s. 4, źródło: https://bs.net.pl/upload/File/pdf7/opinie_i_ekspertyzy201_do_internetu.pdf, dostęp: 16.03.2017

¹⁰ See Article 5 of the Act on the Tax on Certain Financial Institutions of 15 January 2016, *Journal of Laws* of 2016, Item 68

bank loans over the past three decades. Secondly, I assume that the introduction of the term “institution” in legislation is motivated by structural care for public finance. However, that practice should not necessarily be copied in colloquial or business language (excluding efforts to build a positive image). Finally, other forms of business activity are not referred to as “cleaning institutions,” “consultancy institutions,” or “trade institutions.”

Loan companies in Poland also create definitions of their activity, steering clear of phrases that carry negative connotations in Poland or are associated with lending:

1. the sector of consumer finance services, provided in response to the need for “the democratization of credit,”¹¹
2. the sector of e-commerce, which provides services via the Internet as an intermediary in transactions in online shops,
3. the sector of FinTech, whose business goals focus on the development of IT systems. Thanks to pioneering solutions used in the present-day world, the sector of FinTech stands a chance of playing a key role in the integration of all financial services used by customers and by the same token rising to a position that is in a sense above that of banks.¹²

THE SECTOR OF NON-BANK LOANS IN POLAND: DEVELOPMENT AND CHANGES

The 1990s: pyramid schemes and deposits

Poland’s sector of non-bank financial services started developing in the early 1990s together with the country’s transition to democracy and free-market economics. The economy was unstable and characterized by a high inflation rate¹³. According to press reports from that period, non-bank companies specialized in offering high-interest deposits. Obviously, such deposits aroused the interest of members of the public, ignorant about financial issues. Non-bank institutions were allowed to accept deposits until 1992, after which a require-

¹¹ Poland’s consumer finance sector is formed in particular by banks, credit unions (SKOKs), and loan companies. It relies on consumer credit (extended to private individuals for personal purposes), credit cards, and mortgage loans. In the future, the sector stands to play a key role in the integration of all financial services for individual customers [Dobrowolski 2016a].

¹² Konferencja Przedsiębiorstw Finansowych (Conference of Financial Companies), where most loan companies in Poland are members, organized the 1st FinTech Congress in March 2017.

¹³ Roczne wskaźniki cen towarów i usług konsumpcyjnych od 1950 roku, <http://stat.gov.pl/obszary-tematyczne/ceny-handel/wskazniki-cen/wskazniki-cen-towarow-i-uslug-konsumpcyjnych-pot-inflacja-/roczne-wskazniki-cen-towarow-i-uslug-konsumpcyjnych-w-latach-1950-2014/>, dostęp: 19.03.2018.

ment to have a license to collect deposits was introduced. Several days later, it became an activity reserved exclusively for licensed banks. *Gazeta Wyborcza* (a large Polish daily) has online archives with available material reaching back to 1994. Since that time, they have included articles using the Polish term *parabank*. Despite the introduction of the above-mentioned restrictions, in the years 1994–2004 *Gazeta Wyborcza* described a total of 16 companies that accepted term deposits from customers, always in the context of the loss of savings by customers and years of lawsuits that ended in no damages being awarded. The first non-banking sector, or—in light of the range of its services—the sector of *parabanking*, was created by people who were often linked to criminal groups or simply dishonest.

The late 1990s: the rise of a monopolist

A major change in the market (though not in terminology) occurred in 1997, when the British company Provident established its presence in Poland. Provident did not fight against the pejorative label of a *parabank*, because it did not have to. On the contrary, it enjoyed the position of the only “big player” from the outset, and it was associated not with a *parabank* but, amazingly, simply with the idea of “Provident”: the brand quickly started to be used to describe all similar companies. Until 2011, Provident extended up to 90% of loans to hundreds of thousands of customers a year¹⁴.

In addition to Provident, the market comprised a handful of smaller yet ambitious companies, and it was slowly developed by experts from the banking sector who had joined the non-banking sector¹⁵ as well as a number of unprofessional companies and intermediaries. The publicity crisis and the dominance of the monopolist led to the establishment of the first organization for loan companies in 1999: the association of employers Confederation of Financial Companies (currently the Conference of Financial Companies [KPF]), which aimed to represent the interests of the financial sector vis-à-vis lawmakers, government administration, and the public¹⁶.

At that time, individuals excluded from the financial market and therefore less financially literate presumably accounted for a large share of the customers

¹⁴ Roter Andrzej (2015), *Consumer Finance w ofensywie*, 2015-09-07, źródło: <http://prnews.pl/nasz-gosc/consumer-finance-w-ofensywie-3404269.html>, dostęp 3.01.2017

¹⁵ Białek Tadeusz (2016), referat wygłoszony podczas Kongresu Sektora Pożyczkowego w Warszawie w dn. 11.05.2016

¹⁶ <https://kpf.pl/o-nas/misja-i-dzialalnosc/>, dostęp 17.03.2017. Jak wypada rynek pożyczek w Polsce na tle Europy? (2017), 22.03.2017, <http://forsal.pl/artykuly/1029385,jak-wypada-rynek-pozyczek-w-polsce-na-tle-europy.html>, dostęp 25.03.2018

of loan companies. At the same time, creditworthy customers were given the opportunity to use credit cards issued by banks, because those services—similar in form yet markedly different in terms of service providers and customers—developed simultaneously in Poland. For bank customers, overdraft facilities made available to holders of bank accounts played a role similar to that of loans.

The early 2000s: profit maximization

In the early 2000s, the word *parabank* started to be used in the media discourse in Poland in the context of the operations of loan companies. Its negative connotations persisted. Around that time, *Gazeta Wyborcza* launched an information campaign about high-interest loans, focusing on two companies: Provident and Profireal¹⁷. Lack of regulation was conducive to commission fees disproportionate to the amount of the loans and exorbitant interest rates, with the media placing emphasis on greed and calculation on the part of the companies from the sector.

Insufficient regulation was coupled with a lack of supervision: the only authority with the right to conduct inspections was the Office of Competition and Consumer Protection [UOKiK]. Due to the wording of penal provisions, it was practically impossible to prosecute the crime of usury. According to surveys conducted by the Institute of Justice, nearly 90% of usury cases in the years 2008–2010 were discontinued or the authorities refused to even launch proceedings, and only several cases from those that were actually investigated ended up in convictions¹⁸.

Likewise, the Supreme Chamber of Audit [NIK] reported that loan companies enjoyed too much freedom in handling the money of their customers, stressed the need for supervision of agreements with customers, and urged the adoption of a law that would introduce relevant procedures for the state authorities¹⁹.

However, that did not put an end to the sector's worsening publicity crisis or the lack of regulation and supervision. The global crisis of confidence in banks (in 2007 and 2008), the introduction of "Recommendation T" for

¹⁷ Jaremko-Siarska Monika (2004), *Parabankowa lata*, "Gazeta Wyborcza Częstochowa" nr 299, wydanie z dnia 22/12/2004, KRAJ, s. 6

¹⁸ Wysota Karolina (2016), *Minister Ziobro chce dokręcić śrubę lichwie. Firmy pożyczkowe zaniepokojone*, źródło: <http://biznes.onet.pl/podatki/wiadomosci/kary-grozace-za-lichwe-w-polsce/14dx54>, dostęp 17.03.2017

¹⁹ NIK (2007), *WYSTĄPIENIE POKONTROLNE: Funkcjonowanie systemu ochrony praw klientów banków i innych instytucji pośrednictwa finansowego*, KBF-41018-4/07, P/07/029, Warszawa: NIK, grudzień 2007, s. 5, źródło: <https://www.nik.gov.pl/kontrolne/P/07/029/kbf/>, dostęp: 27.02.2017

banks²⁰ in Poland (in 2010), and the amendment to the Consumer Credit Act (in 2011) were all grist to the mill for the further development of the sector. Poland was not severely affected by the consequences of the financial crisis yet banks curbed lending, despite the fact that demand for loans was not dwindling. “Recommendation T,” issued by the Financial Supervision Authority [KNF],²¹ imposed more rigorous criteria for the assessment of the financial and life situation of potential borrowers by banks, thus limiting the supply of bank loans and the practice of giving away credit cards. Finally, there was the amendment to the Consumer Credit Act (*Journal of Laws* of 2011 No. 126 Item 715, the Consumer Credit Act of 12 May 2011), which imposed more stringent banking regulations yet also introduced a less rigorous framework for loan companies by lifting the caps on the fees they charged.

Consequently, loan companies started to grant loans on a mass scale, ignoring even their own prudential mechanisms, focusing on profit maximization, and taking advantage of the lack of supervision on the part of state institutions.

The years 2011–2017: the Internet revolution. “Self-regulation” versus “the gray area.”

Experts break down the development of the market of small loans in Poland into the period until 2011 and the period after 2011, thus indicating the emergence of online loans and the division of the market into two segments: offline and online. Today’s leaders set up their companies in late 2011 or in 2012. At that time, foreign capital started to flow into Poland; none of the largest companies was wholly-owned by Polish shareholders. Provident was dethroned as the monopolist, and its influence declined each year (less than 40% in 2015, compared to up to 90% before 2011²²). Digitization was facilitated by the development of new technologies in the field of financial services and the emergence of FinTech, which allowed the extension of loans and the assessment of the creditworthiness of customers via the Internet. Another necessary requirement was the growing availability and popularity of online banking among customers, who were required to have online access to their bank accounts to receive money transfers from lenders. Those years also witnessed the emergence

²⁰ “Recommendation T” was a document that recommended limits in the extension of loans and in practice hindered access to loans for consumers [see: https://www.knf.gov.pl/knf/pl/komponenty/img/knf_49957_Rekomendacja%20T_18474.pdf]. It was commonly adopted by banks.

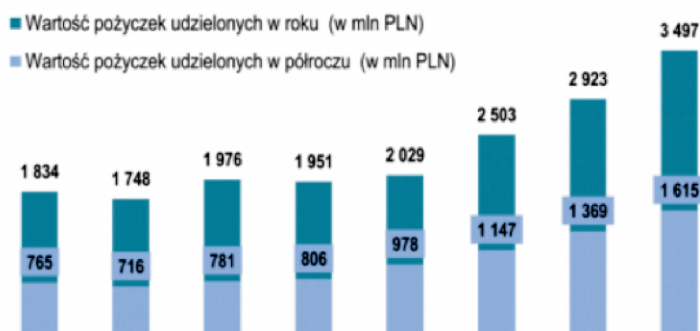
²¹ The Financial Supervision Authority is a central government institution that exercises supervision of the financial market in Poland.

²² However, that did not necessarily entail a drop in profits, because the market grew rapidly (see Chart 1).

of a new group of customers: digitally literate and therefore younger and often high-earning.

Statistics gathered over a period of several years show the systemic nature and the pace of growth of the sector of non-bank loans with a clear upward trend since 2012.

Chart 1. Value of loans in the years 2007–2018 (estimates for the largest companies).



<https://loan-magazine.pl/tempo-wzrostu-ryнку-pożyczkowego-w-polsce-zwalnia/>,
dostęp 22.03.2018

The chart shows the estimated revenue of the largest loan companies in the years 2008–2017. At the same time, demand, minimum regulation, and the lack of state supervision and customer protection resulted in the emergence of a number of small loan companies. In the years 2012–2014, “demand was largely in excess of supply, and every business could easily find clients to buy its products”²³. In the following years, the market became saturated, rivalry grew, and online companies reached their full potential.

It is estimated that before 2016 there were around 100 nationwide loan companies that operated as joint-stock or limited liability companies and over 1,000 local businesses, mostly in the form of sole proprietorships²⁴, whose profits were hard to estimate. In practice, anyone, regardless of how much (or how little) capital they had, could set up a business and extend consumer loans. For that reason, the aforementioned division into offline and online

²³ Ustawa o kredycie konsumenckim, Dz.U. 2011 nr 126 poz. 715, z dnia 12 maja 2011 roku
Ustawa o zmianie ustawy o nadzorze nad rynkiem finansowym oraz niektórych innych ustaw, Dz.U. 2015 poz. 1357, z dnia 5 sierpnia 2015 r.

Ustawa z dnia 15 stycznia 2016 r. o podatku od niektórych instytucji finansowych, Dz.U. 2016 poz. 68, art. 5

²⁴ K. Waliszewski Krzysztof, *Rynek pozabankowych pożyczek konsumenckich w Polsce*. Op. cit.

businesses was coupled with the emergence of another division, brought into focus by publicity activities and consolidation on the part of the large companies, which was the only way in which they could eliminate their scattered rivals. By creating the image of a sector that was “professional” and “self-regulating” (in the context of business ethics), large companies wanted to radically distance themselves from what was referred to as “column companies”²⁵ that advertised using “tear-off flyers”²⁶ and slogans of “loans without BIK.” For large companies, such polarity served to emphasize the high quality of their services and to discredit small companies, which they pictured as leaders of the “gray area” of allegedly abusive practices. Nevertheless, it must be noted that in the period in which loan companies were subject to no regulation, many of them could be accused of acting unethically yet not unlawfully.²⁷

Nevertheless, the non-bank lending landscape remained or still remains characterized by more polarities, and their multitude highlights actual differences as well as conflicts and rivalry, as indicated by the respondents:

1. **Sales channels** – loans granted via the Internet (the online channel) or direct contact between consultants and customers (the offline channel). Sales channels determine the costs and the direction of the investments. In practice, the most relevant division is that into not two but three sales channels: home visits (chiefly Provident and Bocian Pozyczki), branches (including Profi Credit and Capital Service), and the Internet (Vivus, Wonga, and Kreditech, among other companies).
2. **Business models**²⁸ – key sources of profits. Loan companies profit from interest on timely repayments. Before the Anti-Usury Act was introduced (2015), however, they also profited from delinquent loans, because they could extend the loan due date (the practice of rolling over loans). Conse-

²⁵ That was what we initially called small companies or the intermediaries of other companies that used advertising columns for promotion. It quickly became widely used in financial slang.

²⁶ Reference to tear-off flyers with phone numbers on advertising columns that were used until the Anti-Usury Act came into effect (in 2016).

²⁷ For example, no law prevented the lender from taking ownership of the borrower’s home worth 10 times more than the amount of the loan. The lender could take ownership of the borrower’s apartment until the loan was repaid. The agreement was similar to a contract for the sale of an apartment with the proviso that once the loan and the costs were repaid, the apartment would return to its original owner. A different method involved the establishment of mortgage and inflating the total amount of the debt with the costs of debt enforcement against the real property and payments for the creditor (the interest on the loan was limited, unlike other costs such as commission fees, margins, insurance, and so on). Borrowers could challenge such agreements in court by proving they had been misled or by invoking Article 5 of the Civil Code and the principles of social coexistence. However, the procedure was neither easy nor certain, and it was only effective in isolated cases.

²⁸ The respondents themselves used the term “business model” to describe the difference in the source of profits.

quently, some of the respondents presented the debt spiral problem in two ways: (1) unreliability on the part of borrowers, and (2) a well-thought-out strategy of offering customers products that are not suited to their borrowing capacity. In our surveys, representatives of the offline sector blamed such practices on the online sector, not hindered by the BIK credit scores. Offline agents, who could assess the financial situation of customers “at a glance” and worked on commission, were presented as the antidote. Those from the online sector, in turn, stressed that such a quick “glance” did not take into account objective data, and commission also depended on the fees that customers paid for extending loan due dates. A mystery shopper survey carried out by Millward Brown in May 2014 revealed that only brick-and-mortar lenders were willing to extend loans to so-called “subprime customers”²⁹.

3. **Repayment periods** – determined the types of loans sold. In the period in which the surveys were conducted, the online segment specialized in instant cash loans (smaller amounts, repaid all at once), whereas the offline sector had a tendency to offer higher loans repaid in installments.
4. **Loan and customer safety** – reflected in the degree of the acceptability of creditworthiness based on various metrics. In addition to using credit and economic information bureaus, loan companies developed their own innovative models, for example by pioneering the concept of social scoring.³⁰
5. **Company size** – until 2015, the size of a loan company was stereotypically linked to the integrity it displayed in relations with customers, especially by representatives of “large” companies (such derogatory terms as “small-fry column companies” or “small-time crooks”). Over time, the division started to reflect the consolidation of the sector and contributed to the legal regulation in the market. In this way, the largest companies successfully got rid of their scattered rivals.
6. **Business ethics** – a company’s approach to legal issues (until 2015) was measured by the ease of access to loans, advertised on advertising columns with the use of such popular slogans as “no BIK” and “only ID card.” Similar practices were used by large and recognizable companies, though in a less demonstrative way. The same held true for the transparency of contractual provisions, because hiding some of the costs was not prohibited by law until 2015.

²⁹ Raport. *Walka o polski rynek pożyczkowy w świetle nowelizacji ustawy o kredycie konsumenckim, Związek Przedsiębiorców i Pracodawców*, czerwiec 2015, Warszawa, źródło: <http://zpp.net.pl/files/manager/file-e85ab5493a5fe34d9d6a1f61a73fcc0f.pdf>, dostęp: 3.01.2017

³⁰ Rating customers based on their presence in social media, a method that has attracted the interest of banks.

7. **Other divisions** – other potential division included: the country of the origin of capital, the reach, and the approach to regulation in the form of the Anti-Usury Act (2015).³¹
8. **Legality** – in addition to the divisions within the market (associated with legally operating entities), the respondents finally pointed out such illegal practices as the acceptance of deposits, pyramid schemes, and the continuance of operations despite being included in the list of warnings published by the KNF or the UOKiK or despite a pending court case. The respondents who represented legally operating businesses described that group as “criminals who tarnish the reputation of loan companies.” Back in 2016, they stated that such entities still operated in the market essentially because there was no national register, and it was therefore impossible to conduct effective inspections.

Most of the largest companies adopted the strategy of self-regulation and consolidation to eliminate their scattered rivals and boost their own image. When we started our surveys in 2013, almost all large loan companies were members of sectoral organizations, which favored the adoption of internal codes of ethics and good practices, such as the requirement to use the BIK database to assess the creditworthiness of borrowers. The presence of such organizations also helped loan companies keep track of changes in the legal and business environment, participate in sectoral events, and build a network of collaboration.

Back then, there were three organizations for loan companies that continue to exist until the present day (the number resulted from different business models). In this way, the network of collaboration as well as rivalry becomes condensed, because the interests of specific firms clash within a single organization yet these organizations are additionally engaged in rivalry. By contrast, all banks are members of the Polish Bank Association [ZBP], so the banking sector speaks with one voice. Many of our respondents stressed that this was one of the reasons why there was no rivalry in the banking sector.

Below is a brief description of the organizations whose members are loan companies that operate in the Polish financial market:

The Conference of Financial Companies [KPF] – KPF with its seat in Gdan­sk was the first of such organizations. It was established in 1999. Its membership is several dozen companies that operate in various sectors of the financial market. Its president is Andrzej Roter. The number of the loan companies that were members of the KPF at the end of 2016 was 13 (compared to 21 in March

³¹ Before the amendment was enacted, the organizations whose members were loan companies were engaged in fierce lobbying over the final wording of the act. For that reason, stressing support or its absence with respect to an act of legislation that has already been adopted is a far-going simplification, because it fails to convey what exactly a given company supported.

2018) [see the Appendix for the list]. Representatives of other sectors were banks (four in December 2006, six in March 2018), economic information bureaus (three in December 2006, seven in March 2018), entities that support financial services (including consultancies, IT companies, and companies offering B2B loans) (nine in December 2006, 13 in March 2018), crowdfunding companies (three in December 2006, four in March 2018), home equity companies (reverse mortgage) (two in December 2006 and two in March 2018), financial intermediaries and advisers (13 in December 2006 and 18 in March 2018), insurance companies (two in December 2006, three in March 2018), and receivables management companies (28 in December 2006 and 29 in March 2018). The growth in the number of members in such categories as entities that support financial services and intermediaries shows the direction of transformations in certain companies that failed to meet more rigorous requirements for lending activity. Moreover, the list of sectors shows that the benefits from the membership include the facilitation of the mutual provision of services.

The KPF's main goals were dominated by efforts to "build social capital in the finance sector in Poland"³². In addition, the organization listed such goals as conducting research on the financial market and gaining expertise yet it distanced itself from any attempts to influence legislation.

The Polish Association of Loan Institutions [PZIP] (until 2017 the Association of Loan Companies – the Association of Employers [ZFP],³³ initially the Association of the Managers of Loan Companies) with its seat in Warsaw is a strictly sectoral organization. It has been operating since 2013. Its president is Jaroslaw Ryba. The formation of the Association coincided with the Amber Gold scandal,³⁴ which erupted in mid-2012, was aimed to building a positive image of loan companies. The Association was established by one of the leading loan companies, Vivus.pl, also as a lobby organization, despite the fact that such information was not directly made available to public. Its members include 16 companies that own 23 brands and additionally five brands as supporting members (the status at the end of 2016). In 2018, the Association had 28 brands and 24 supporting members. The disproportion between ordinary

³² <https://kpf.pl/o-nas/misja-i-dzialalnosc/>, dostęp 17.03.2017. Jak wypada rynek pożyczek w Polsce na tle Europy? (2017), 22.03.2017, <http://forsal.pl/artykuly/1029385,jak-wypada-rynek-pozyczek-w-polsce-na-tle-europy.html>, dostęp 25.03.2018

³³ The change of the name resulted from the introduction of a new term in legislation: loan companies started to be called loan institutions (as described in the paragraph devoted to the relations between loan companies and banks).

³⁴ It was an illegally operating company that embezzled money from over 11,000 individuals. Since 19 July 2016, a special commission in the Sejm has been investigating the lawfulness and legality of the operations of public administration bodies and public institutions with respect to the entities from the Amber Gold Group.

and supporting members resulted from legal regulations and the introduction of more rigorous requirements for loan companies. [The list of the PZIP members is included in the Appendix.]

In addition to transparency and good practices, the fundamental membership criteria included, and still include, online activity. In 2015, the Association declared that its mission involved self-regulation in the sector, and its goals included in particular representing its members in public debate and contacts with lawmakers, raising the level of knowledge and ethical and business standards, and creating a system for exchanging information about consumers³⁵. In 2018, no goals are listed on the Association's website, and its mission is based on the promotion of the highest ethical standards³⁶.

In 2015, the ZFP, which did not represent most of the entities in the market, created the register of loan companies Rejestr Firm Pożyczkowych sp. z o. o., intended as the still non-existent national register. It was an expression of opposition to insufficient regulation in the Anti-Usury Act (2015). In addition to its public usefulness, the project was also a good publicity move. It collected information about companies that met required standards and provided access to the database free of charge. In March 2018, the link to the ZFP's former register on the organization's website redirects users to the KNF's national register.

- The list of the Association's members allows an analysis of the changes that took place in the non-banking sector between 2015 and 2018 (see the Appendix for details):
- 10 companies and the brands they own have not changed,
- in four cases, the company names changed, but the brands remained the same,
- in one case, the brands within one company changed,
- seven new companies and their brands joined the Association, and one company left.

The Foundation of Financial Market Development [FRRF] is the youngest organization. It was founded in 2016 with a view to promoting comprehensive legal regulation in the market of non-bank lending, eliminating market abnormalities, and creating a favorable legal and financial framework for the development of the financial sector³⁷. In 2016, the Foundation also placed emphasis

³⁵ <http://zfp.org.pl/statut/>, dostęp 3.01.2017

³⁶ <https://pzip.pl/misja/>, dostęp 27.03.2018

http://www.kredytjuz.pl/szybkiepozyczkiotowkowe/pozyczka-gotowkowa_Pozyczkomat.html, dostęp 2.03.2017

³⁷ <http://frrf.pl/o-nas/>, dostęp 3.01.2017

https://www.knf.gov.pl/knf/pl/komponenty/img/knf_49957_Rekomendacja%20T_18474.pdf, dostęp 24.03.2018

https://www.knf.gov.pl/dla_konsumenta/ostrzezenia_publiczne, dostęp 5.04.2018

<https://loan-magazine.pl/wartosc-portfela-firm-pozyczkowych-przekroczyla-4-mld-zl/>

on the mission of building the sector's good reputation. Its president is Monika Zakrzewska.

Supporting entities include three loan companies whose dominant channel is direct selling. Its leading member is Provident. The Foundation can therefore boast that its members are the largest entities in the market of loan companies in terms of the value of assets.³⁸ [See the list of the companies in the Addendum.]

The FRRF was established in response to the ZFP's activity and represented a different business model. Its additional objectives included regulatory and legal issues related to the work of field agents (a total of around 20,000 people in the companies that were members of the Foundation in 2016).

As a result of consolidation, loan companies finally started to exchange information about customers and their financial situation, which is beneficial both to such companies (a reduced risk of losses) and to customers (protection against overborrowing). The year 2016 witnessed the launch of the information exchange platform CreditCheck. It was created thanks to the consolidation of smaller databases that had not been in existence for long: the Loan Information Sharing Platform, run by the ZFP, and the Reliable Information Sharing Forum, created by the FRRF. At the end of March 2018, the list of members comprised a total of 50 companies³⁹.

REGULATION AND SOCIAL CHANGE (2015–2018)

The Anti-Usury Act (2015)

The amendment to the Financial Market Supervision Act marked a turning point in the development of the sector of loan companies [The Act Amending the Financial Market Supervision Act and Certain Other Acts of 5 August 2015, *Journal of Laws* of 2015, Item 1357]. It introduced the first solutions of a truly regulatory nature.⁴⁰ Its political source lay in the recommendations issued by the Financial Stability Committee following the Amber Gold scandal.

- 1) Non-interest loan costs were reduced: the total cost of all non-interest fees could not exceed 100% of the value of a loan [Article 36a].

³⁸ In 2015, Provident was a leader in the market (48% of total revenue and 38% of the value of loans granted). Each year, however, it lost several percentage points to its largest rivals from the online segment, which in turn reported a 30–40% rise in revenue [Milinski 2016].

³⁹ <http://www.credit-check.pl/wp-content/uploads/2018/03/Lista-Uczestnik%C3%B3w.pdf>, dostep 27.03.2018

⁴⁰ See Maria Bernat's article for more information.

- 2) Loans could no longer be rolled over: it was no longer possible to extend the due date for an additional fee [Article 36b].⁴¹
- 3) Loan companies were required to have the minimum capital of PLN 200,000 [Article 69a(2) and (3)] and to operate as commercial companies i.e. either limited liability or joint-stock companies [Article 59(1)].

Before the amendment was enacted, two groups in the market of non-bank loans, namely the online lobby and the offline lobby, engaged in intensive lobbying motivated by differences in costs and work organization.⁴² The final wording of the amendment tipped the scale in favor of online companies. Shortly after the amendment was enacted, Provident, a leader in the market of offline loans, introduced a line of “self-service” products: online loans under the new brand Hapi Pożyczki.

However, the Act did not introduce any register of loan companies, reporting obligations, supervision,⁴³ creditworthiness assessment standards,⁴⁴ principles governing home credit loans⁴⁴ or more stringent provisions on advertising, nor did it ban lending to over-indebted customers. It was argued that the amendment was based on data from the years 2012–2013 yet it was intended to take effect in 2016, which was an entire epoch in the FinTech sector, no expert opinions had been commissioned, and the lawmakers relied only on data from the reports provided by the lobby groups⁴⁵. The practice of rolling over loans was prohibited, but the ban did not take into account the possibility of offering repayment in the form of a new loan extended by a company linked to the original lender in terms of capital.⁴⁶

⁴¹ A survey taken in June 2016 among the members of the ZFP and the FRRF revealed that the share of customers rolling over their loans fell by over 60% over the three months since the Act came into force [Dobra zmiana na rynku... 2016].

⁴² The amendment introduced a more precise definition of non-interest loan costs as all the costs that a consumer incurs in connection with a consumer credit agreement, excluding interest (Article 5(6a) of the Consumer Credit Act of 12 May 2011). Several years earlier, Provident had lobbied in favor of the qualification of home credit service costs as separate costs not included in the cost of loans. In 2013, the company was punished by the UOKiK for that practice and for the refusal to disclose such costs in the summary of loan costs. The UOKiK additionally imposed a record fine of PLN 12.3 million [Walka o polski rynek pożyczkowy... 2015].

⁴³ For example, Lithuania’s Central Bank issues paid licenses that are renewed annually, and their public list is available online [Ryba 2015b].

⁴⁴ Slovakia, for example, banned the delivery of home credit loans in cash [Jak wypada rynek pożyczek... 2017].

⁴⁵ Ryba Jarosław (2015a), Słomiana pararegulacja, “Promeritum” 3/2015, za: <https://crediteo.pl/news/jaroslaw-ryba-slomiana-pararegulacja/>, dostęp 27.03.2018

Ryba Jarosław (2015b), *Ustawa antylichwiarska: słomiana pararegulacja*, 28.08.2015, źródło: <http://www.forbes.pl/ustawa-antylchwiarska-slomiana-pararegulacja,artykuly,198536,1,1.html>, dostęp: 17.03.201

⁴⁶ In March 2017, one loan company posted the following offer on its website: “The Borrower may refinance the Loan by taking out a Refinancing Loan extended by one of the Lenders from the Friendly Finance capital group on the terms specified by that Lender” [http://www.kredytjuz.pl/szybkiepozyczkigotowkowe/pozyczka-gotowkowa_Pozyczkomat.html].

In order to highlight that the solutions were insufficient, the ZFP launched a private and voluntary Register of Loan Companies to continue to reinforce the positive image of its members. Shortly after that, 21 companies were removed from the register (17% of all entities in the database) for failing to meet the minimum capital requirement. Such companies either suspended their activity or closed down⁴⁷. The respondents who represented the largest loan companies stressed that PLN 200,000 was not enough to run a lending business.⁴⁸

Representatives of the consumer protection authorities were somewhat more lenient in their assessment of the amendment—they praised the cap on loan costs and the small capital threshold as protecting competition and preventing oligopolies. However, they were critical of the lack of state supervision solutions.

Register of loan companies (2017)

Decades of the absence of supervision resulted in abusive lending practices. It was not until 2017 that a register of loan companies was introduced [The Act on Mortgage Loans and Supervision of Mortgage Loan Intermediaries and Agents, which came into force on 22 July 2017, *Journal of Laws* of 2017, Item 819, and amended the Consumer Credit Act (*Journal of Laws* of 2016, Item 1528)]. The KNF runs the obligatory Register of Loan Institutions, which is publicly available online.⁴⁹ The purpose is to verify and eliminate the companies that fail to meet the required criteria. In this sense, the register plays the role of a licensing system. In addition, it allows data analyses. Previously, any attempts to regulate the sector had been made “in the dark.” One simple tool translated into credibility for companies, supervision for the sector, and protection for consumers.

⁴⁷ Biuro Prasowe ZFP (2016), *Już 21 firm pożyczkowych zniknęło z rynku w trzy miesiące po regulacji*, 9.06.2016, <http://zfp.org.pl/komunikaty-prasowe-zfp/2016/6/9/ju-21-firm-pozyczkowych-znikno-z-rynku-w-trzy-miesiace-po-regulacji>, dostęp 3.01.2017

Borowiecki Marcin, Grzywińska Ilona, *Zgłoszenie zainteresowania pracami nad projektem ustawy...*, 3.02.2015, <https://legislacja.rcl.gov.pl/docs/2/262790/262809/dokument148694.pdf>, s. 2, dostęp 2.03.2017

Dobra zmiana na rynku firm pożyczkowych, Redakcja przy współpracy ZFP i FRRF, 15.06.2016, “Rzeczpospolita, źródło: <http://www.rp.pl/Finanse/306159879-Dobra-zmiana-na-rynku-firm-pozyczkowych.html#ap-1>, dostęp: 8.03.2017

Dobrowolski Jeremi (2016a), *Bankowość jest potrzebna – banki już nie. Marketplace banking, czyli urynkowanie bankowości*, 20 maj 2016, źródło: <https://midas24.pl/pozyczki/134-marketplace-banking>, dostęp: 9.03.2017

⁴⁸ For example, the company Wonga.com contacted the Government Legislation Center proposing a minimum capital threshold of PLN 1 million and presenting a simulation that showed that a company that has PLN 200,000 could generate a profit of no more than PLN 11,000 a month, which was not enough to meet regulatory requirements, including the implementation of a “flexible debt collection policy” in a situation in which the repayment of every loan determined the company’s ability to maintain financial liquidity [Borowiecki, Grzywińska 2015].

⁴⁹ The launch of the register did not place loan companies under the supervision of the KNF, which merely runs and updates the register.

As at 25 March 2018, the register listed 268 entities. It was the full list of legally operating loan companies.

Program 500 Plus (since 2016)

The final factor that impacted visibly on the sector was the government program Family 500 Plus, launched in April 2016. Under the program, parents receive a tax-exempt benefit of PLN 500 for the second and each additional child without any further conditions and for the first child provided that they meet income criteria. After the first several months of the program, Poland's Central Statistical Office (GUS) reported a positive impact on the reduction of poverty in families, in particular among children⁵⁰. Unfortunately, at the time this chapter was written, no data for 2017 were available that would offer greater insight, especially in terms of emerging trends.⁵¹

In light of the timing of the qualitative surveys, we did not manage to ask all of our respondents about the impact of the program on loan companies.⁵² The respondents who were asked such questions confirmed the existence of the link already in the first months of the program, because those who received regular, additional cash benefits under the Program 500 Plus were less likely to seek additional funding to finance their daily needs ("payday loans"). That resulted in the collapse of at least two⁵³ loan companies in that customer segment⁵⁴.

CONCLUSIONS: FURTHER DEVELOPMENT PROJECTIONS

It was not until several years ago that Poland's rapidly changing sector of loan companies and non-bank financial services for customers entered a period of relative stability, determined by legal and social factors.

⁵⁰ Ubóstwo w Polsce w latach 2015 i 2016 (2017), GUS (oprac.), Warszawa, źródło: <https://stat.gov.pl/obszary-tematyczne/warunki-zycia/ubostwo-pomoc-spoleczna/ubostwo-w-polsce-w-latach-2015-i-2016,1,8.html>, dostęp: 24.04.2018

⁵¹ Data for 2017 will be reportedly available at the end of 2018, which means after this chapter is submitted for publication.

⁵² The in-depth interviews started in April 2016, which was when the government launched the Program 500 Plus. However, we started to ask questions about the impact of the benefits in fall 2016, when the respondents started to signal changes in demand for some of their products. Importantly, not all loan companies reported similar changes in the behaviour and needs of their customers.

⁵³ The number may be higher, but that was simultaneously a natural consequence of the changing regulatory risk and environment.

⁵⁴ Rudke Maciej (2018) Firmy pożyczkowe ucierpiałły przez 500+, 7.03.2018, Rzeczpospolita (Banki), <http://www.rp.pl/Banki/303079880-Firmy-pożyczkowe-ucierpialy-przez-500.html>, dostęp: 26.03.2018

When asked about the directions of the further development of the market of non-bank loans, the respondents from the sector listed several possibilities:

1. Loans will continue to grow in popularity, also in connection with the expected rise in income levels in Poland. The respondents opined that the only thing that would change would be the purpose of lending: from the satisfaction of basic needs to consumption and aspirational needs (for example training, language courses).
2. The sector will continue to develop in the field of online activity and Fin-Tech, which offers easier access to non-bank products. Interest in the offer of offline companies will dwindle in light of the growing use of banking services by the Poles and their improved digital literacy.
3. The positive image of loan companies will be reinforced, and the sector will continue to improve its practices, also in terms of services for customers with financial problems.
4. A clear segment will emerge in which loan companies will compete against banks on an equal footing. Such situations have already taken place, but they are expected to become the norm in the future, at least in the field of consumption.
5. Lawmakers may overregulate the market, which will cause the gray area to expand. It will be used by the customers excluded both from the banking market and from the sector of non-banks (double exclusion).
6. In the long term, the line dividing banks and loan companies will become blurred. In one scenario, it will no longer pay to loan companies to remain outside the banking sector, privileged in terms of taxation, if the bank tax is levied at a rate that is too low in relation to the excess of total assets over a specified sum. A loan company licensed as a bank could continue to specialize in consumer finance.⁵⁵ For the past several years, the largest loan companies have been analyzing the profitability of obtaining a banking license. Since they meet the KNF's requirements regarding data processing and the transparency of terms, the transformation would be virtually automatic. Having a banking license would allow them to accept deposits as the least expensive source of capital.

⁵⁵ Examples of such transformations include Ferratum Bank, which can be described as a financial institution operating on the border between the banking and non-banking sector. Ferratum Bank was licensed as a bank in Malta in 2012, and the license is valid in all the EU member states. However, its offer and profile are more likely to rank it among non-bank companies. It has its branches in Poland, Sweden, Finland, Spain, Russia, Denmark, Slovakia, Slovenia, Lithuania, Bulgaria, Belgium, Estonia, and the Czech Republic as well as outside the EU in New Zealand and Australia.

ANNEX

Membership of the Association of Loan Companies (Związek Firm Pożyczkowych) as of December 2015 and of the Polish Association of Loan Institutions (Polski Związek Instytucji Pożyczkowych) as of 5 March 2018:

No.	Year	Company	Brand
No change between 2015–2018			
1.	2015 2018	Net Credit sp. z o.o. Net Credit sp. z o.o.	Net Credit Net Credit
2.	2015 2018	Vivus Finance sp. z o.o. Vivus Finance sp. z o.o.	Vivus.pl Vivus.pl
3.	2015 2018	Creamfinance Poland sp. z o.o. Creamfinance Poland sp. z o.o.	Lendon.pl Retino.pl Extraportfel.pl Lendon.pl Retino.pl Extraportfel.pl
4.	2015 2018	ViaSMS.pl sp. z o.o. ViaSMS.pl sp. z o.o.	ViaSMS.pl ViaSMS.pl
5.	2015 2018	Mini Credit sp. z o.o. Mini Credit sp. z o.o.	Mini-Credit Mini-Credit
6.	2015 2018	Friendly Finance Poland sp. z o.o. Friendly Finance Poland sp. z o.o.	Pożyczkomat Kobieta z Kasą Pożyczkomat Kobieta z Kasą
7.	2015 2018	GetBucksPoland sp. z o.o. GetBucksPoland sp. z o.o.	BetBucks.com BetBucks.com
8.	2015 2018	Pol Credit sp. z o.o. Pol Credit sp. z o.o.	Łatwy Kredyt.pl Łatwy Kredyt.pl
9.	2015 2018	Zaplo sp. z o.o. Zaplo sp. z o.o.	Zaplo.pl Zaplo.pl
10.	2015 2018	Nordecum sp. z o.o. Nordecum sp. z o.o.	Credit.pl Credit.pl
Company change but no brand change in 2015–2018			
11.	2015 2018	Regita sp. z o.o. Midway Invest sp. z o.o.	SMS365 SMS365 (pośrednictwo kredytowe)

No.	Year	Company	Brand
12.	2015	Mala Pożyczka	Modna Pożyczka Smart Pożyczka
	2018	Aventus Group Sp. z o.o.	Pożyczka plus Modna Pożyczka Smart Pożyczka Pożyczka plus
13.	2015	InCredit Sp. z o.o.	Incredit
	2018	NetCredit Spz o.o.	Incredit
14.	2015	ID Finance Poland	MoneyMan.pl
	2018	MoneyMan.pl	MoneyMan.pl
Same company but brand change in 2015–2018			
15.	2015	Kreditech Polska sp. z o.o.	Kredito24.pl Panda Money Flexinero
	2018	Kreditech Polska sp. z o.o.	Zaimo MonedoNow
New companies and new brands			
16.	2015	-	-
	2018	Primus Finance sp. z o.o.	Chwilówkomat.pl
17.	2015	-	-
	2018	YesFinance S.A.	Banknot.pl
18.	2015	-	-
	2018	SOLVEN Finance sp. z o.o.	Pożyczka.pl Solven.pl
19.	2015	-	-
	2018	Credissimo	Credissimo
20.	2015	-	-
	2018	Creditstar Poland	CreditStar
21.	2015	-	-
	2018	Miloan sp. z o.o. bd.	Miloan
22.	2015	-	-
	2018	Easy Money sp. z o.o.	Easy Money
Company and brand that ceased membership			
23.	2015	Novum Bank LTD z/s na Malcie	Cashper
	2018	-	-

Membership of the Foundation of Financial Market Development (Fundacja Rozwoju Rynku Finansowego) as of 5 March 2018:

LP.	FIRMA	MARKA
1	Everest Finanse S.A.	Bocian pożyczki Finan.pl
2	Provident Polska S.A.	Provident
3	PROFI CREDIT Polska S.A.	Profi Credit

Membership of the Foundation of Financial Market Development (Fundacja Rozwoju Rynku Finansowego) as of 5 March 2018:

No.	Company	Brand
1	Aasa Polska S.A.	Aasa
2	Aventus Group Sp. z o.o.	Aventus
3	Axcess Financial Poland sp. z o.o.	Axcess
4	Bizon Capital sp. z o.o.	Bizon Capital
5	Capital Service S.A.	Kredyt Ok
6	Cross Loan sp. z o.o.	?
7	Everest Finanse S.A.	Bocian Pożyczki Finan.Pl
8	Id Finance Poland sp. z o.o.	Moneyman
9	Ipf Polska sp. z o.o.	Hapi Pożyczki
10	Iwoca Poland sp. z o.o.	Iwoca
11	Mash Poland sp. z o.o.	Euro Loan
12	Mikrokasa S.A.	Mikrokasa
13	Mogo sp. z o.o.	Mogo
14	Monument Fund S.A.	Monument Fund
15	Property Secured Fund S.A.	Pożyczka Psf
16	Sms Kredyt sp. z o.o.	Sms Kredyt
17	Takto Finanse sp. z o.o.	Takto
18	Vippo sp. z o.o.	Vippo
19	Visset sp. z o.o.	Visset.Pl
20	Wonga.Pl sp. z o.o.	Wonga

Press image of quasi-banks (*parabanki*) and short-term loans (*chwilówki*)

Introduction

When characterizing the changes in the contemporary Polish society – including those related to the development of modern banking technologies – Zygmunt Bauman drew attention to the visible clash of two philosophies of life, two opposite cultures. The first one, well-established during the communist era, is based on the ethos of saving and limited or postponed consumption (“the culture of the savings book”). The second one, strengthened by the expansion of transformational market mechanisms, is based on increased consumption and meeting needs “here and now” (“credit card culture”). “And it’s at exactly this moment”, Bauman writes, “that two philosophies of life collide. [...] One is to attempt to seek further credit, the second is to escape from credit, that is to tighten one’s belt. To put it another way, the culture of the savings book and the culture of the credit card have met head-on. Two opposite cultures. In my youth, you were taught to save for a flat, for a car. If you want a car, get a savings account at PKO! If you want a flat, get another savings account at PKO! Then came the era of the credit card, when young people were lured and forced into debt.”¹

The credit card culture, which is based on postponing financial liabilities for the future, reinforces the pressure to spend money and take out all kinds of loans and credit facilities. Sometimes the “credit orgy” is fuelled and justified by the patriotic context of borrowing (credit patriotism), where individual (over)consumption is an act of sacrifice for the common good: “If you love your country, do stimulate the economy! In other words, spend more money. If you don’t have any, then borrow and spend. These days young people are indoctrinated with such ideas,” concludes Bauman.² The anxiety related to the

¹ Bauman: koniec orgii, “Gazeta Wyborcza”, 10/02/2009. Access: 02/06/2017.

² *Ibidem*.

inability to pay off the debts *in spe* is rationalized and weakened in many ways, e.g. by the politicians ensuring that the victims of credit traps (loops) can count on the protection of the state; a good illustration of their concern for the debtor are the disputes over *frankowicze*, i.e. borrowers who took out their loans in Swiss francs, politicized for the purposes of parliamentary and presidential elections held in 2015. A significant role in making the “debt culture” more friendly is played by the banks’ and quasi-banks’ incentives to take out loans and borrowings, as well as by their assurances that customers who have difficulty settling their liabilities will receive assistance. When browsing through the websites, you can find dozens of advertisements that encourage you to benefit from a “credit for the debtors”, “loans to repay a loan”, a “debt repayment loan”, a “short-term loan for the debtors”, etc.³

Offers from the banking and quasi-banking sectors do not end up in a vacuum. Research shows that the level of indebtedness of Polish households has been steadily increasing for several years⁴ now. Taking out loans has become comfortable for many families, and sometimes it is the only way to meet different needs and reach for goods that were previously unavailable. The factors contributing to an increase in debt, be it economic, socio-demographic, psychological or institutional-legal, include dynamic development of financial institutions and the growing popularity of credit cards.⁵ Credit cards have not only revolutionised the shopping market by facilitating access to money, but have also given an illusory sense of financial security and control over expenses. “Enjoy now and pay later! A credit card allows you to manage your own needs; you get the item whenever you want it, not just when you earn for it,” writes Bauman while analyzing the traps of contemporary capitalism.⁶ The acquisition of additional resources, going beyond the household budget, is less and less accompanied by thinking in terms of reducing consumption or refraining from excessive spending. Even in the case of financial problems, saving (“tightening the belt”) is no longer a solution. Borrowing from relatives, friends and acquaintances or from a bank is the main way to solve a financial problem.⁷

³ <https://www.zadluzenia.com/artukul/405,kredyt-dla-zadluzonych/> Access: 2/06/2017.

⁴ Tomasz Zalega, *Upadłość konsumencka a zadłużanie się miejskich gospodarstw domowych w Polsce w okresie kryzysu*, [in:] “Nierówności Społeczne a Wzrost Gospodarczy”, Zeszyt Nr 38 (2/2014), p. 160-161. See also: *Polacy o swoich długach i oszczędnościach*, CBOS Research Report, April 2014, p. 3.

⁵ *Ibidem*, p. 160.

⁶ Zygmunt Bauman, *Kapitalizm się chwieje*, “Le Monde Diplomatique. Edycja Polska”, March 2009, <http://monde-diplomatique.pl/LMD44/index.php?id=19>

⁷ *Korzystanie z kredytów i pożyczek*, TNS OBOP opinion poll for UOKiK, September 2003, p. 2.

A few years ago, a media storm was triggered by a series of articles published in *Gazeta Wyborcza*, depicting the dramas of borrowers who took out loans and credit facilities and were unable to repay them.⁸ The clash of the two philosophies of life described by Bauman emerged in the readers' press debate with a force that surprised the editorial board. Some readers, who were sympathizing with the heroes of the dramas, strongly condemned the irresponsible incurrence of debts, blaming the borrowers for failing to fulfil their financial obligations. Some people accused primarily the banks and quasi-banks of the debtors' dramas as these institutions are dishonest, merciless, they prey on customers and harass them. There have been voices that the society and the state are not prepared to assist people who have fallen into debt or into a spiral of debt. Various institutional solutions have been proposed, e.g. establishment of psychological assistance and support centres for bank victims (the first support group for Anonymous Debtors was established in Poznań in 2013). The "debt spiral" and "over-indebtedness" are terms that often appear in analyses devoted to the financial standing of Poles⁹.

When writing about financial obligations as a natural, even mandatory stage of households' development, some authors stress at the same time that financial obligations become a threat when they lead to over-indebtedness, i.e. a situation when debt repayment is no longer possible for various reasons¹⁰. The entities responsible for household over-indebtedness include banks and quasi-banks.¹¹

Media – the press, radio, television, internet – play a key role in disseminating and promoting the "credit card culture". They shape desired consumption patterns and constitute a kind of agora for sharing information on financial market entities extending loans or credit facilities. They are also becoming, as in the case of the internet, a convenient tool for meeting financial needs; loans and credits are available online for internet users. The image of the banking and quasi-banking sector created by the media affects the economic attitudes of Poles and their trust in financial institutions.

⁸ Joanna Blewąska, *Odpowiedzialność finansowa*, "Gazeta Wyborcza" 02/04/2010, *Polacy ukredytowani – listy*, "Gazeta Wyborcza" 7/04/2010, *Nabroilem, Polsko, ratuj!*, "Gazeta Wyborcza" 10/04/2010, *Ukredytowani staruszkowie*, "Gazeta Wyborcza" 3/04/2010.

⁹ Paweł Kubicki (ed.), *Osoby starsze na rynku usług finansowych. Analiza i zalecenia*, "Biuletyn Rzecznika Praw Obywatelskich" no 4/2013, Beata Świecka, *Niewypłacalność gospodarstw domowych. Przyczyny, skutki, przeciwdziałanie*, Difin, Warsaw 2009, Tomasz Zalega, *Upadłość konsumencka a zadłużanie się miejskich gospodarstw domowych w Polsce w okresie kryzysu*, "Nierówności Społeczne a Wzrost Gospodarczy", no 38/2014.

¹⁰ Beata Świecka, *Niewypłacalność gospodarstw domowych...*, p. 93.

¹¹ *Ibidem*, p. 94.

This paper focuses on the press image of quasi-banks that have evoked and generated several myths, stereotypes and negative opinions, e.g. one of the websites publishing the list of quasi-banks operating in Poland has assumed the name of “Judaszowe Srebrniki”¹² (Judas’ Silver). In the study, based on the analysed press materials, we show the image of quasi-banks created by the media, the topics that dominate and are spread among the public, and the way ideas about the non-banking sector are constructed and disseminated. The study covers press articles published in *Gazeta Wyborcza*, one of the most important opinion-forming dailies on the press market with the largest circulation. The analysis comprises 480 press releases published between 1989 and May 2017 on quasi-banks and *chwilówki*, i.e. short-term loans, which are most often associated with their operations.

The paper is divided into two parts. The first one focuses on the definition problems associated with the word “parabank”, i.e. “quasi-bank”. The review of definitions, terms or characteristics, which is shortened due to the nature of the study, serves to show how the term can be understood, in which contexts it appears in the press and which institutions it refers to. We do not indicate which definitions reflect the meaning of the term better or more fully, nor do we resolve the disputes and legal issues associated with the interpretation of the notion of “parabank”, i.e. “quasi-bank”. The second part analyses press statements. It demonstrates how quasi-banks and *chwilówki*, the short-term loans, are presented, which topics were covered by the press, and also how people using the services of non-banking institutions were described.

1. Quasi-banks and ways of defining them

For over a decade, the activities of quasi-banks have attracted interest from the representatives of science, society and the media. Newspaper articles are accompanied by an increasing number of TV and radio commercials, leaflets and billboards in urban space. There are also websites containing information about quasi-banks and advertising online loans. A popular internet search engine spits out 250 thousand texts associated with the keyword “quasi-bank” in 30 seconds and takes only a minute to display over one million links associated with the keyword *chwilówka*, the short-term loan. Although impressive, the number of press articles, online information, advertisements and commercials exacerbates the conceptual chaos associated with the notion of the quasi-bank. This term is not only ambiguously defined, but is also used interchangeably with terms such as “non-banking sector”, “parallel banking”, “loan company”,

¹² <https://judaszowesrebrniki.pl/lista-parabankow-dzialajacych-w-polsce>. Access: 2/06/2017.

“shadow banking”, “non-banking” or “secondary bank”.¹³ The term “shadow banking”, as a term for the non-banking financial services sector, appeared relatively recently, in 2007.¹⁴ However, entities which provide financial services but are not banks have a long tradition. Those borrowing from a welfare fund or from a pawnshop would probably be surprised to find out that they have been customers of a shadow-banking institution.

A search of scientific papers and an analysis of press articles reveal that the conceptual confusion associated with quasi-banks is not only the result of lack of knowledge or information, but most of all, of the ambiguity of applicable regulations and the absence of a legal definition of a quasi-bank.¹⁵ This allows some authors to include and others to exclude quasi-banks from the system of banking institutions. It enables them to describe quasi-banks as legal entities providing services similar to banks, but under regulations other than the banking law, or to characterise them as quasi-legal institutions operating without legal regulations, often on the verge of the law or in violation of the law. The prefix “para”, i.e. “quasi” for quasi-banks does not evoke positive connotations, either, because if “quasi” is used to show that something is almost, but not completely, the thing described, then “not completely a bank”? Andrzej Markowski explains that “the term parabank sounds alarming because <para> implies for more educated people something incomplete, so untrue or deceitful. [...] the mysterious word “para” that sounds [in Polish] like “parawan”, a screen, a partition, something that serves to cover something (certainly evil).”¹⁶ Jerzy Bralczyk, in turn, emphasizes that “this word has been absent in our speech so far, but it is important, drawing attention to various <para> and influencing the degree of general trust.”¹⁷ Semantic ambiguity is sometimes used to emphasize that these are pseudo-banks or quasi-banks, thus entities that are similar to banks, but, in fact, worse.¹⁸ A refer-

¹³ Krzysztof Markowski, *Shadow banking w Polsce: dyskusja nad równoległym systemem bankowym*, “Bank”, no 7-8/2012, p. 54-55. See also: *Działalność instytucji niebankowych (tzw. parabanków) oraz regulacje prawne w tym zakresie w wybranych krajach - Łotwa, Niemcy, Szwecja, Wielka Brytania i Stany Zjednoczone Ameryki*, Senat Office, Warsaw, 5/11/ 2012, p. 2-3., Beata Domańska-Szaruga, Anna Maria Rak, *Shadow banking na rynku usług finansowych*, “Prace Naukowe UE we Wrocławiu”, no 311/2013. Piotr Masiukiewicz, *Regulacje a rynek shadow banking w Polsce*, http://zif.wzr.pl/pim/2012_4_2_1.pdf. Access: 2/06/2017.

¹⁴ First use: Paul McCulley at a conference in Jackson Hole in 2007; see: Beata Domańska-Szaruga, *Rynek firm pożyczkowych w Polsce i propozycje jego uregulowania*, [in:] Janusz Ostaszewski (ed.) *Nowy ład finansowy w Polsce. Rekomendacje dla animatorów życia gospodarczego*, SGH Warsaw 2015, p. 20.

¹⁵ See: Maria Bernat, *Analiza regulacji prawnych dotyczących sektora parabankowego firm pożyczkowych...*

¹⁶ Marek Łaziński, *Słowa klucze prasy polskiej. Słowa dnia i słowa roku UW*, <http://www.slowanaczasie.uw.edu.pl/wp-content/uploads/klucze.pdf> Access: 2/06/2017.

¹⁷ *Ibidem*.

¹⁸ Alicja Hass, *Uważaj na parabanki*, Texts published in cooperation with the National Bank of Poland in an effort to promote economic literacy in partnership with WWW.POLKI.PL https://www.nbp.pl/edukacja/dodatki_edukacyjne/Edipresse_Polska_SA/PD_7.pdf. Access: 2/06/2017.

ence to the English original does not make it easier to solve the language dilemma. The term “shadow banking” means conducting business similar to banking activity, but without regulations or control typical of the banking system.¹⁹ Adopted by the Polish language as “szara bankowość”, “grey banking”, or “bankowość cienia”, “shadow banking”, it does not evoke positive associations. By the way, it tends to be translated as the darker, worse side of the banking system, e.g. one of the articles on quasi-banks was entitled “Shadow banking – the dark side of banking”.²⁰ Ambiguity and non-transparency may not have a decisive impact on the negative associations and a rather cautious (distrustful) approach of the Poles to the quasi-banking sector, but it does not facilitate building trust in this institution, either. There are opinions that this word used to be neutral for quite a while, and its pejorative meaning only evolved in the context of the Amber Gold scandal.²¹ In 2012, when the fund was declared bankrupt, the term “quasi-bank” truly gained popularity; it even won a plebiscite of the Institute of Polish Language at the University of Warsaw for the most popular word of the year, which attracted the attention of the media and the public the most.²²

Whenever the issue of quasi-banks is addressed in most publications on banking law or financial institutions, it is stated that there is no legal definition of the term: “The provisions of legal acts do not use the concepts of a quasi-banking institution or a quasi-bank, nor do they define those concepts. [...] Apart from linguistic aspects, there are no strict criteria that would make it possible to determine the content and scope of these concepts conclusively and definitively.”²³ There are also similar explanations in the analysed press articles and on the websites: “The concept of the quasi-bank²⁴ itself has not been precisely defined in Polish law...”²⁵ Sometimes it is emphasized that due to the size and diversity of the entities in the non-banking sector, as well as various regu-

¹⁹ Amias Gerety, *Clarifying the shadow banking debate: application and policy implications*, Institute of International Economic Law Georgetown University Law, Issue Brief 01/2017. <http://iIELaw.org/wp-content/uploads/2015/08/IIEL-Issue-Brief-Amias-Gerety-Shadow-Banking.pdf>. Access: 2/06/2017.

²⁰ Agnieszka Łukasiewicz-Kamińska, *Shadow banking, czyli ciemna strona bankowości*, “BDO Spółki Giełdowe” no 10/ 2012. <http://www.biuletyn.bdo.pl/biuletyn/spolki-gieldowe/bdo-spolki-gieldowe/Bankowosci-finance/shadow-banking-czyli-ciemna-strona-bankowosci5406.html>. Access: 2/06/2017.

²¹ Mirosława Szakun, Mirosław Bieszki, *Analiza regulacji dotyczących funkcjonowania niebankowych instytucji finansowych pod kątem należytej ochrony interesów ekonomicznych i prawnych ich klientów*, “Opinie i Ekspertyzy”, Senta Office, February 2013, p. 4.

²² Marek Łaziński, *Słowa klucze prasy polskiej...*, <http://www.slowanaczasie.uw.edu.pl/wp-content/uploads/kluce.pdf>. Access: 2/06/2017.

²³ Witold Srokosz, *Instytucje parabankowe w Polsce*, Warsaw 2011, p. 76.

²⁴ M. Suwik, *Różnica między instytucją parabankową a parabankiem*, 18.11.2016, <https://loando.pl/wpis/roznica-miedzy-instytucja-pozabankowa-a-parabankiem>

²⁵ Journal of laws of. 2013 Item 672, The freedom of economic activities Act of 2 July 2014. Journal of laws of 2014 Item 1497, the Consumer Credit Act of 12 May 2011

lations providing a basis for their business activity (e.g. the Civil Code, the Act on freedom of business activity, the Consumer Credit Act or the Code of Commercial Partnerships and Companies for a business entity being a commercial partnership or company)²⁶, it would be simply impossible to introduce legal regulations similar to those of the banking sector.²⁷

Although there is no legal definition, there are almost as many ways to define quasi-banks as there are authors of works dealing with this subject matter. Different clarifications have a common element; this is the juxtaposition of a quasi-bank and a bank which is a legal entity established in accordance with the provisions of the law, operating on the basis of permits authorizing it to perform banking activities that pose a risk to the funds entrusted under any return title (Article 2 of the Banking Law Act).^{28 29} There are definitions that cover quasi-banks narrowly and identify them exclusively with loan companies or entities that are not banks, but engage in deposit and lending activities. There are also approaches that include in the quasi-banking sector practically all entities providing services similar to those offered by the banks (broad definitions).³⁰ Some authors characterize quasi-banks by the description of³¹ their activities (subjective approaches), others introduce extensive typologies dividing the financial sector into banks (commercial, co-operative, savings banks), quasi-banks (e.g. co-operative savings and credit unions SKOK, credit intermediaries) and non-banking institutions (e.g. welfare funds, pawnshops, individuals)³², or create (closed) catalogues of entities which are quasi-banks.

Sometimes the definition of a quasi-bank includes *a priori* a negative assessment of this institution, which operates on the basis of applicable regulations, but with a dubious benefit for the customer.³³ The definition of quasi-banks by

²⁶ Ustawa z 2 lipca 2004 r. o swobodzie działalności gospodarczej, Dz.U. z 2013 r., poz. 672, ze zm., Ustawa z 12 maja 2011 r. o kredycie konsumenckim, Dz.U. z 2014 r., poz. 1497.

²⁷ *Działalność instytucji niebankowych (tzw. parabanków) oraz regulacje prawne w tym zakresie w wybranych krajach - Lotwa, Niemcy, Szwecja, Wielka Brytania i Stany Zjednoczone Ameryki*, Senta Office, Warsaw, 5 November 2012, p. 7.

²⁸ Adam Grzeszak, *Piramidalne ryzyko. Rozmowa z przewodniczącym Komisji Nadzoru Finansowego Andrzejem Jakubiakiem o tym, jak się nie pogubić w świecie banków, parabanków, firm pożyczkowych oraz w strefie euro*, "Polityka", no 40, 3/10/2012. <http://archiwum.polityka.pl/art/piramidalne-ryzyko,436031.html> Access: 2/06/2017.

²⁹ Krzysztof Waliszewski, *Instytucje parabankowe w Polsce – analiza SWOT ich działalności*, Artur Zimny (red.) *Współczesne wyzwania rozwoju przedsiębiorstw i regionów*, Konin 2014, p. 137.

³⁰ Anna Klein-Kaska, *Nadzór nad instytucjami parabankowymi w Polsce – tendencje ogólne*, p. 52. <http://www.bibliotekacyfrowa.pl/Content/38951/005.pdf> Access: 2/06/2017.

³¹ Piotr Masiukiewicz, *Regulacje a ryzyko shadow banking w Polsce*, "Zarządzanie i Finanse" no 4/2012, p. 13.

³² Beata Świecka, *Niewypłacalność gospodarstw domowych...*, p. 95.

³³ Alicja Hass, *Uważaj na parabanki*, Texts published in cooperation with the National Bank of Poland in an effort to promote economic literacy in partnership with WWW.POLKI.PL. https://www.nbp.pl/edukacja/dodatki_edukacyjne/Edipresse_Polska_SA/PD_7.pdf. Access: 2/06/2017.

indicating possible threats or negative consequences of their activity can also be seen in the characteristics presented by the Financial Stability Committee (FSC): “Quasi-banking institutions do not operate pursuant to the banking law, but at the same time offer financial services and products similar to banking services, and operate in the area not supervised by the Polish Financial Supervision Authority (KNF). Quasi-banking institutions are exposed to a high risk of losing funds entrusted by the customers.” According to FSC, the high risk and uncertainty of services provided by quasi-banks are caused, among others, by lack of legal regulations concerning financial supervision, lack of capital adequate to the scale of business activity, lack of a reliable guarantee system or institutions guaranteeing the payment of funds entrusted to them, lack of current and adequate financial reporting, as well as non-transparent ownership structure of companies.³⁴ Quasi-banks also include organizations that reserve this name exclusively for entities that conduct illegal activity, i.e. carry out operations traditionally and legally assigned to banks, but without the necessary permission or mandate.³⁵

For some authors, quasi-banks are an equal, legitimate and desirable player in the financial services sector,³⁶ whose presence proves the innovativeness and democratization of the financial market, for others it is an element complementing the banking system, but with a dubious reputation. Still others see them as a threat not only to the banking sector, but to the entire system of state finances. Quasi-banks are commonly understood as entities that offer products and services similar to those provided by banks, but are not banks. Most frequently, they are identified with loan companies which provide access to financial services to people for whom the bank’s offer is inaccessible for various reasons. Quasi-banks are described in broad and narrow definitions, professional terminology and common language, in objective definitions focusing on the characteristics of activities undertaken by them and subjective approaches supported by typologies of the entities being part of the quasi-banking sector.³⁷ Sometimes the same entity is either classified as a quasi-bank or not classified as

³⁴ *Ibidem*, p. 3.

³⁵ Lesław Góral, Legal opinion on the amendment to the acts governing the financial market and selected other acts (official print 992), Warsaw, 12 June 2013. [http://orka.sejm.gov.pl/RexDomk7.nsf/0/1FA4798C576B3EA9C1257B780022DAFA/\\$file/i1276_13.rtf](http://orka.sejm.gov.pl/RexDomk7.nsf/0/1FA4798C576B3EA9C1257B780022DAFA/$file/i1276_13.rtf). Access: 2/06/2017

³⁶ Jan K. Solarz, *Shadow banking: systemowa innowacja finansowa*, Społeczna Akademia Nauk, Łódź-Warsaw 2014, p. 11.

³⁷ Krzysztof Waliszewski, *Miejsce i rola parabanków w systemie finansowym i w gospodarce*, [in:] Krzysztof Waliszewski, Grzegorz Kotliński, *Instytucje parabankowe na rynku usług bankowych w Polsce*, Warsaw 2012, p. 69. Piotr Masiukiewicz, *Regulacje a ryzyko shadow banking w Polsce*, http://zif.wzr.pl/pim/2012_4_2_1.pdf. Access: 2/06/2017.

one. For example, co-operative savings and credit unions SKOK are classified by some authors as quasi-banks and by others – due to the supervision of KNF³⁸ – are excluded from this classification: “In a wider sense, an operator other than a bank or SKOK, supervised by the Polish Financial Supervision Authority and dealing with granting loans within the scope of its business or professional activity, is considered a quasi-bank.”³⁹

Chaos when it comes to a definition and lack of transparency of legal solutions prevent one from benefiting from the offer of quasi-banks in a conscious and, above all, safe manner. One of the forms of customer assistance is to be provided by the “List of public warnings”, which is available and updated on the website of the Polish Financial Supervision Authority (KNF⁴⁰). The list consists of entities suspected of carrying out banking activities without a permit. These entities’ cases were filed by KNF with the prosecutor’s office. In 2017 there were 68 such cases (it is possible to check on the website whether a given company is subject to KNF supervision).⁴¹ There are also other rankings published e.g. on various websites, which show quasi-banks in a much better light (e.g. feningi.pl).⁴² The websites present the most important, thus well-established and trusted institutions of the quasi-banking sector. The comparison of the two lists should be the “first step” for anyone who decides to use non-banking services.

In this paper, we use a common definition of a quasi-bank, i.e. an institution which engages in activities partly or entirely similar to those conducted by banks, but which is not a bank. Quasi-banks are described in the analyzed press articles in a similar manner and also included in opinion polls, such as TNS Polska. When asking the respondents about quasi-banks in 2012, TNS Polska defined them as companies that quickly and easily extend loans or accept money at a good interest rate, but are not a bank.⁴³ Just like many other authors, we use the term quasi-bank interchangeably with such terms as the quasi-banking sector, non-banking sector or a non-bank financial institution.

³⁸ At present, KNF has now power of inspection of loan companies, and is merely authorized to register them.

³⁹ Report on a study by Federacja Konsumentów, *Pożyczki – chwilówki na podstawie analizy wybranych wzorców umownych*, Federacja Konsumentów, Warsaw 2013, p. 4.

⁴⁰ https://www.knf.gov.pl/o_nas/ostrezenia_publiczne/lista_ostrezenia.html. Access: 2/06/2017.

⁴¹ https://www.knf.gov.pl/o_nas/ostrezenia_publiczne/lista_ostrezenia.html. Access: 2/06/2017.

⁴² <http://feningi.pl/lista-parabankow-najistotniejsze/>

⁴³ *Banki i parabanki*, TNS Polska, Warsaw, September 2012, p. 2.

2. A short-term loan – the popular *chwilówka*

To a large extent, quasi-banks are loan companies in Poland.⁴⁴ 2017 estimates indicated that there were about 1,000 large loan companies and about 1,000 small entities operating locally in the whole⁴⁵ country as sole traders. The number of customers using their services was estimated at approx. 3.5–4 million people.⁴⁶ The legal basis for the operation of loan companies is regulated by the provisions of the Civil Code and the Consumer Credit Act. A loan is not a consumer credit, although both terms are sometimes used interchangeably. The differences between them concern, among others, the right to extend a loan/credit facility, the repayment date, the form of an agreement and the purpose of the loan/credit facility. For example, a loan may be granted by institutions or natural persons being owners of the money, the repayment date does not have to be specified, an application does not have to be made in writing, it does not have to state the purpose of the loan, it may bear interest or not, and it may or may not be repayable. In the case of a consumer credit, it may be granted by banks only. In addition, the repayment date must be indicated, a written agreement must be made and the purpose of the credit must be provided; the credit must be interest-bearing and must be repaid.⁴⁷ The services of loan companies are often identified with *chwilówki*, i.e. short-term loans (usually up to 30 days), granted for relatively small amounts (usually up to 2.5 thousand zlotys, but there are companies that offer up to 3.5 thousand zlotys). Short-term loans also include “week-long” loans, which are characterized by weekly instalments and are generally extended for a period from 25 to 52 weeks, and loans repaid in monthly instalments, granted for a short-term period (usually for several months).⁴⁸

The customers’ interest in loan companies increased after 2010 when the banks’ financial policy was tightened, among others, by a more restrictive approach to granting consumer credits and loans (the restrictions accompanied the introduction of Recommendation T by KNF, intended to counteract over-

⁴⁴ In some studies, loan companies, i.e. entities operating on the basis of the Consumer Credit Act, are described as being non-banking institutions, but not quasi-banks. The criterion for their exclusion concerns: a) control – loan companies are supervised by the Association of Loan Companies, while in the case of quasi-banks there is no external control; b) capital – quasi-banks use deposits paid by customers, while non-banking institutions use the funds of their owners and shareholders who are burdened with the risk of their possible loss, and not private persons.

⁴⁵ Anna Szelągowska, *Determinanty rozwoju rynku firm pożyczkowych w Polsce*, “Zeszyty Prawnicze”, no 2/2015, p. 13.

⁴⁶ Anna Szelągowska, *Determinanty rozwoju rynku firm pożyczkowych...*, p.14.

⁴⁷ *Życie w kredycie. Przewodnik nie tylko dla zadłużonych*, UOKiK, Warsaw 2012, p. 4.

⁴⁸ *Oplaty stosowane przez instytucje parabankowe*, Raport UOKiK, Warsaw 2013, p. 12.

indebtedness of the society).⁴⁹ In 2015, the so-called anti-usury act⁵⁰ was also adopted to reorganize the quasi-banking services market and provide customers with better protection of their interests. The resurgence of short-term loans is also due to the internet, which has simplified and accelerated the application process. Online comparison sites of short-term loans enable quick verification of the offers of various quasi-banks in terms of their attractiveness. Most loan companies ensure that cash can be received “on the spot”, without leaving home, without any special formalities and within a short period of time. The decision to grant a short-term loan is sent in a few minutes via a text message or email. For example, KREDITO24 informs the customers that it takes only a few minutes to process the loan application. On the other hand, SZYBKAGOTÓWKA ensures that formalities and cash payment (transfer to the bank account) will take about 15 minutes. Practically any adult can take out a short-term loan. Sometimes age limits are imposed, e.g. 20–75 years. Occasionally, one can find information that the loan is available only to customers who meet certain income criteria, e.g. 1,600 zlotys for an employment contract or 800 zlotys for an old-age/disability pension. Most offers (advertisements and commercials) assure that cash can be received without any superfluous verification of documents (e.g. “an ID is just fair enough” by RATKA.PL) and without guarantees. If the advertisers are to be trusted, the lenders are not interested at all in the customers’ credit reports (e.g. “no verification of debtors’ databases” – FUNDUSZ KORONA; “no verification at BIK” – PROVIDENT; arrears in BIK/BIG acceptable – POŻYCZKA KOLIBER) or in their financial standing. Lack of creditworthiness, a bad credit history, negative entries in debtors’ databases or debt enforcement proceedings (e.g. “Also for persons subject to enforcement proceedings” – FUNDUSZ KORONA; “For persons with a negative BIK and subject to enforcement proceedings” – FENIKO.PL)⁵¹ do not interfere with receiving a loan. Incentives to use short-term loans are also addressed to debtors, as they are most frequently in dire need of cash. Some companies ensure that they grant loans without the customers ending up in a debt loop. Taking out a short-term loan is also profitable for other reasons, e.g. customers using such a loan can count on a big discount when they decide to take out another *chwilówka*

⁴⁹ *Rekomendacja T dotycząca dobrych praktyk w zakresie zarządzania ryzykiem detalicznych ekspozycji kredytowych Komisja Nadzoru Finansowego*, Warsaw, February 2010. https://www.knf.gov.pl/Images/Rekomendacja%20T_tcm75-18474.pdf

⁵⁰ Journal of Laws of 2015 Item 1357, The law introduced e.g. a cut-off for non-interest costs at 55% annually, a cut-off of all fees non-interest fees at 100% of the loan, and restricted the option of imposing fees that enforce repayment.

⁵¹ T. Miziak, *Chwilówki z komornikiem*, <https://www.zadluzenia.com/arttykul/chwilowki-z-komornikiem/> Access: 2/06/2017.

from the same company (e.g. “Large discounts on subsequent loans” – SZYBKAMONETA). Advertisements and commercials of quasi-banks will go to any lengths to convince the customers that the entire process of granting a loan takes place in the form of a professional service provided by experienced staff. Advertising communication also encourages the clients not to worry about refusals and to apply to several companies, as this increases the chances of obtaining a loan.⁵² *Last but not least*. Those who have problems with paying off a loan do not need to worry – they can always take out another loan to repay the previous one (e.g. “Short-term loan consolidation – A loan to repay a short-term loan” – KREDYT123.PL).

The optimistic picture arising from the advertisements and commercials of quasi-banks as presented above is spoilt by the results of the inspection conducted in 2013 by the Office of Competition and Consumer Protection (UOKiK – OCCP⁵³). The audit covered entrepreneurs who granted cash loans to consumers, and the entrepreneurs were not banks, cooperative savings and credit unions or entities providing financial intermediation services (a total of 37 companies were audited). OCCP examined advertisements and commercials published and broadcast by loan companies in electronic media (television, radio, the internet, teletext), in the press, as well as leaflets, posters and billboards. For 23 operators, various irregularities were identified, including unfair market practices (proceedings were brought against them on account of practices breaching the collective interests of consumers). Thus, OCCP questioned the practice of including in advertisements and commercials the slogans “without BIK”, “without verification at BIK” – implying, contrary to applicable regulations, that loan companies do not examine the creditworthiness of their customers at all. “Such advertising messages may mislead the consumers as to the scope of the entrepreneur’s offer, implying that a loan may be extended unconditionally, irrespective of the outcome of the credit risk assessment. For the average consumer, this may mean that their financial standing is completely irrelevant to the lender. It should be noted that such advertising messages are not used by banks, which may additionally reinforce the above-mentioned belief of a potential borrower.”⁵⁴ Unfair market practices also include providing false information and using slogans that indicate the uniqueness of the offer in comparison with competitors, e.g. advertisements and commercials by loan companies would mislead customers into believing that the offered loans were actually the

⁵² http://pożyczki-online.mozello.pl/pożyczki_online/ Access: 2/06/2017.

⁵³ *Reklama parabanków raport z kontroli reklam pozabankowych instytucji finansowych oferujących pożyczki konsumentom*, UOKiK Poznań 2013.

⁵⁴ *Ibidem*, p. 21.

cheapest on the market, the cheapest in terms of costs or the cheapest in terms of interest rates. Most of the information provided turned out to be incorrect, which was confirmed by the analysis of the documents submitted by the lenders to OCCP. It was also considered misleading for customers to include information on loan costs in very small, even illegible font, which prevented the customers from studying the offer in detail. There were also infringements consisting in using the “RZETELNA firma” (RELIABLE company) certificate in advertisements without appropriate authorisations, and in presenting the rights vested in consumers by law as a distinguishing feature of a given offer and company. The report, in addition to presenting the results of the inspection, was intended to serve educational and preventive purposes.

Despite OCCP’s warnings and experts’ opinions stating that loan companies should be approached with caution and sound judgment, that loans in quasi-banks bear high interest rates, that every delay in the repayment of an instalment entails new costs, that a short-term loan can be obtained in no time at all, but it is difficult to repay, that the ease of borrowing is an asset, but only when *chwilówka* can be repaid on time – otherwise the risk of falling into a debt spiral increases, etc., there is no shortage of people vividly interested in quasi-banks’ offer. Actually, the advertisements and commercials of loan companies sound very convincing and leave an impression that those not taking out short-term loans lack sound judgment. You simply have to take out a loan or credit facility and just repay it. Customers are not always aware that quasi-banks (just like banks) do not necessarily care about the loans being repaid conscientiously. “Customers paying their debts on time would not be indebted, and debtors are fixed assets that make a real difference to quasi-banks and banks,”⁵⁵ wrote Bauman.⁵⁶ The prospect of “ongoing customer service” and the benefits it brings to lenders make “borrowers”, especially those who do not pay their debts on time, an attractive target for quasi-banks to which they direct their advertisements.

3. Quasi-banks and short-term loans – the perspective of the media

Quasi-banks are often associated with “usury” and misleading their customers into taking out loans.⁵⁷ Few would agree that a quasi-bank is tantamount to a safe financial service or a place where one can obtain a loan or borrow money under

⁵⁵ Zygmunt Bauman, *Kapitalizm się chwieje*, “Le Monde Diplomatique. Edycja Polska”, March 2009, <http://monde-diplomatique.pl/LMD44/index.php?id=19> Access: ending on 02/06/2017.

⁵⁶ *Ibidem*.

⁵⁷ *Dla kogo „chwilówki”? Czyli między zwykłym lichwiarstwem a zdrowym rozsądkiem przy pożyczaniu*, <http://matemat.pl/65237,dla-kogo-chwilowki-czyli-miedzy-zwyklym-lichwiarstwem-a-zdrowym-rozsadkiem-przy-pozyczeniu>. Access: 2/06/2017.

transparent conditions.⁵⁸ The material presented in this section is treated on the one hand as a kind of reflection of anxieties and fears related to the functioning of the quasi-banking sector in Poland, and on the other hand, we look at the press as a tool for creating and shaping social knowledge about these institutions. We have also made an attempt to recreate the press image of quasi-banking customers. The common belief is that they are naive, gullible and vulnerable in life. Such ideas are reinforced by the statements of quasi-bank employees quoted in the press,⁵⁹ as well as by the statements of former employees who, through media expiation acts, wish to atone for hurting their customers.⁶⁰ Among 480 articles about quasi-banks published in “Gazeta Wyborcza”, 191 (almost 40%) informed about their activities exclusively in connection with scandals, offences, and initiated or pending litigation against quasi-bank owners.

a) Quasi-banks – suspicious financial market operators

Gazeta Wyborcza published its first articles on fraud and cheating customers in the early 1990s. The articles described violation or circumvention of the law, criminal proceedings and a large number of victims who trusted quasi-banks and lost their money.⁶¹ The use of quasi-banking services was not adversely affected by the scandal with Lech Grobelny’s *Bezpieczna Kasa Oszczędności*, which was widely reported by the media in 1990, nor by the bankruptcy of such companies as the capital and investment trust *Galicyjski Trust Kapitałowo-Inwestycyjny*, *Biofermem* or *Maadem*. Potential customers were not discouraged, either, by press titles almost shouting about the abuse of law (e.g. “Sprawa parabanku w Lesznie. Proces będzie, pieniędzy nie”, *GW* 16/01/1995, “Więzienie dla Parabanku”, *GW* 13/01/1999). Press articles on the dynamically developing quasi-banking sector were accompanied by descriptions of threats resulting from the activities of the involved entities.⁶² The negative picture was complemented by publications about the repressive measures against individuals who decided to fight against dishonest companies. One of the articles contained the following information:

⁵⁸ Rafał Tomkowicz, *Wizerunek polskich firm udzielających pożyczki*, “LoanMagazine”, 29/07/2015. Access: 2/06/2017.

⁵⁹ Dłużnik osobny gatunek człowieka, “Gazeta Wyborcza”, 14 maja 2013 (2.06.2010); za kulisami parbanków. Klienci naiwni. Podatni na metodę na wnuczka. Spłacanie to ich sprawa, “Na Temat”, ...

⁶⁰ Anna Dudzińska, Aldona Minorczyk-Cichy, *Tak działają parabanki. Spowiedź człowieka, który doprowadził do ruiny całej rodziny*, “Dziennik Zachodni”, 30/01/2014. <http://www.dziennikzachodni.pl/artykul/3315928,tak-dzialaja-parabanki-spowiedz-czlowieka-ktory-doprowadzal-do-ruiny-cale-rodziny,id,t.html>. Access: 2/06/2017; *Nawet pies mógłby dostać kredyt*, “Fakt”, <http://www.fakt.pl/wydarzenia/polska/skruszony-pracownik-jednego-z-parabankow-spowiada-sie-ze-swojej-pracy/bterr3p>. Access: 2/06/2017.

Dłużnik – osobny gatunek człowieka, “Gazeta Wyborcza”, 14 maja 2013 (2.06.2017); Za kulisami parbanków. Klienci naiwni. Podatni na motyw na wnuczka. Spłacanie to ich sprawa, “NaTemat”, <http://natemat.pl/28701,za-kulisami-parabankow-klienci-naiwni-podatni-na-motywna-wnuczka-spłacanie-to-ich-sprawa> (2.06.2017).

⁶¹ *Holdring oszusta. Wierzycciele przy nadziei.*, “Gazeta Wyborcza” 3/11/1994.

⁶² Małgorzata Kolińska-Dąbrowska, *Szybka gotówka*, “Gazeta Wyborcza” 17/08/2009.

“The District Prosecutor’s Office in Płock decided not to bring a case against Damian Archita, who on 21 August put up posters with a ‘black list’ of the Polish Financial Supervision Authority in front of a quasi-bank on Tumska St. The quasi-bank is blacklisted. The case has not been finally and non-appealably decided yet.”⁶³

The Amber Gold scandal gave publicity to the quasi-banks by revealing the ineffectiveness of the state in dealing with the quasi-banking sector and the impunity of their owners. *Gazeta Wyborcza* published 90 articles devoted to the Amber Gold affair (2012 – May 2017). Four thematic blocks were dominant. The first one focused on the activities of the company which led to the financial ruin of nearly 19 thousand people. Most of the articles described the scope of services provided by Amber Gold, including (suspiciously) high-interest deposits; the company’s organization and expansion of its branches in the domestic market, which ended in a spectacular bankruptcy in 2012. The second block consisted of articles about the investigation into the case of Amber Gold, the instituted criminal proceedings, as well as action brought by the deceived customers against the company. The third one included publications raising the topics of the political scandal which climaxed with the establishment of a parliamentary investigating committee. This block also included articles attributing responsibility for the Amber Gold affair to specific political groups, including the lack of state control over quasi-banks. The last block featured publications concentrating on the omissions (ineptitude) of the state, which in connection with Amber Gold failed not only by poor supervision over the financial market, poorly conducted investigation and litigation, but above all, failed to protect its citizens from the loss of their savings.⁶⁴ The articles stressed that the activities of Amber Gold could have been stopped earlier since doubts arose long before its bankruptcy. For example, in 2010, the Polish Financial Supervision Authority entered Amber Gold on the “black list of warnings” and filed a notification of a suspected offence, committed by the company, with the public prosecutor’s office. For two years, the public prosecutor’s office failed to take any steps, and neither did OCCP find any irregularities in the company’s practices. The omissions were followed by ongoing lawsuits and class actions by customers who demanded reimbursement of their lost money from the state treasury.

⁶³ *Prokurator w sprawie Damiana*, “Gazeta Wyborcza” 28/08/2012.

⁶⁴ The Financial Stability Committee had pointed out the need for earlier reaction from the authorities that could have prevented the losses to Amber Gold clients, see “Analiza działań organów i instytucji państwowych w odniesieniu do Amber Gold sp. z o.o.”, http://www.mf.gov.pl/documents/764034/1159297/20130321_raport.pdf Access: ending on 02/06/2017.

The articles on Amber Gold also referred to the role of the state in taking responsibility for individual (financial) choices of the citizens. Two different visions were clashing here; in the first one the state, according to the Smith's concept, was supposed to refrain from actions that would restrict individuals or interfere with their economic activity. This vision presents a citizen who consciously takes financial risks (e.g. takes out a loan, invests money) and responsibly bears the consequences of his decisions in the event of failure. In the second vision, the role of the state was to interfere in the economic sphere and protect citizens in a situation of financial risk. Those who had experienced financial investment failure had the right to expect assistance from the state in solving the problem and reducing the burden of their losses.

To conclude the press lead of Amber Gold, several articles should be mentioned that described the scandal as the tip of the iceberg, hiding other equally appalling abuses in the quasi-banking sector. In this context, co-operative savings and credit unions SKOK were mentioned most frequently.⁶⁵ This is what can be found in one of the articles:

“Compared to what is going on in SKOKs, Amber Gold is next to nothing. Marcin P.'s quasi-bank tempted naive people with high-interest deposits in gold. But there were no deposits, just a financial pyramid.”⁶⁶

Amber Gold was not referred to as the largest financial scandal related to the operation of quasi-banks in Poland (e.g. “Pomocna Pożyczka” wheedled money from 80 thousand customers), but it has been an example of “the most blatant scam since the famous Lech Grobelny's savings bank Bezpieczna Kasa Oszczędności”.⁶⁷ Certainly, it was a scandal connected with the activity of quasi-banks, which attracted the interest of the press (*Gazeta Wyborcza*) most often.

The scandals relating to large companies, especially the Amber Gold case, prevail in the publications on the quasi-banking sector. On the other hand, there were relatively few texts about dishonest companies offering short-term loans, a total of 21 texts. This fact is surprising insofar as the warnings against companies offering short-term loans were the leading topic of the articles about *chwilówki* (66 texts). Perhaps loan companies are simply doing better than is generally thought? Representatives of loan companies argue that this is the case and emphasize the difference between the lawfully operating business that they

⁶⁵ P. Głuchowski, M. Kowalski, Dni twoje są policzone, “Gazeta Wyborcza”, 11/09/2016. B. Wróblewski Amber Gold to przycz, “Gazeta Wyborcza”, 20/10/2012; SKOK-om nie w smak nadzór, “Gazeta Wyborcza”, 28/08/2012; W. Czuchrowski, PiS nie chce się tłumaczyć, “Gazeta Wyborcza” 4.11.2016

⁶⁶ Maciej Bednarek, *Amber Gold. Co ze SKOK-AMI*, “Gazeta Wyborcza” 22/07/2016.

⁶⁷ Maciej Samcik, *Rekord Bezczelności. Historia afery Amber Gold*, “Gazeta Wyborcza” 7/09/2016.

represent and the quasi-banks that they are considered to be by the OCCP. They also decisively cut themselves off from quasi-banks.⁶⁸

b) “Victims” of quasi-banks?

It is difficult to find articles about quasi-banks in “Gazeta Wyborcza” without their customers. Most often, the customers form a specific background of legal, economic or organizational investigations carried out by journalists focused on (non)functioning of quasi-banks. Customers are generally described in terms of figures that illustrate the representation of victims or reveal the scale of their financial losses. For example, “Finroyal was active for several years. The outcome? One thousand and seven hundred affected customers, mainly from Wrocław, and losses well over 100 million zlotys. The head of the company defended himself: The customers knew we were not a bank⁶⁹” – the next paragraphs are focused on the company and its practices. There were 121 publications in total dedicated exclusively to quasi-banking customers, taking on board their perspective, opinions and assessments, 72 of which concerned individuals using short-term loans.

In the analyzed texts, the word “customer” included two groups of entities – natural persons (the so-called ordinary customers) and public institutions, e.g. offices, hospitals or local government units (communes, municipalities and poviats). When it comes to “ordinary” citizens, the term “customer” usually meant a “victim”, i.e. the aggrieved party, an individual harmed by quasi-banks.⁷⁰ Institutions that borrowed from quasi-banks, often ensuring that a loan or credit facility was their “last resort”, did not have the status of a “victim”, neither did they arouse sympathy.⁷¹ Information was provided mainly about their mismanagement, extravagance, poor investment of public funds, as well as the penalties imposed on them, e.g. the establishment of acting administration in communes and municipalities which had been granted loans by quasi-banks⁷²). It should be added that the Ministry of Finance informed about local government

⁶⁸ Dla kogo „chwilówki”? Czyli między zwykłym lichwiarstwem a zdrowym rozsądkiem przy pożyczaniu, <http://matemat.pl/65237,dla-kogo-chwilowki-czyli-miedzy-zwyklym-lichwiarstwem-a-zdrowym-rozsadkiem-przy-pozyczeniu>. Access: 2/06/2017.

⁶⁹ Izabela Żbikowska, *Finroyal. Drugi Amber Gold? Mnóstwo Polaków potraciło oszczędności życia*, “Gazeta Wyborcza” 6/11/2015.

⁷⁰ B. Wróblewski “W kolejce po sprawiedliwość”, GW 31/03/2003, K. Katka “Klientka wygrała z Pomocną Pożyczką”, GW 2/02/2015.

⁷¹ T. Cylke “Szpital pożyczył 20 mln w parabankach”, GW 9/11/2012, P. Kozłowski “Dyrektorzy szpitali pukają do parabanków”, GW 8/07/2015, J. Watola “Marszałek chce bronić szpitale przed parabankami”, GW 4/05/2017).

⁷² G. Walczak “Gmina poszła do parabanku”, GW 15/05/2015, M. Rebenda “Przyjdzie komisarz i zamknie gminę”, GW 29/01/2016, “Gminy pożyczają w parabankach”, GW 28/01/2016

units borrowing from quasi-banks and exposing communes, municipalities and poviats to budget losses by recommending a change of the regulations in 2016 so as to curb the indebtedness of local authorities⁷³. Interestingly enough, the analysed articles practically featured no private business owners or owners of small businesses, to whom the quasi-banks' offer is also addressed. The only exception were the texts on Amber Gold, where small businesses were mentioned among the aggrieved parties, but were not treated as "victims".

Most of the articles with the "customer" as the main object of interest were warnings and calls to use quasi-banking services wisely and sensibly.⁷⁴ When it comes to *chwilówki*, warnings against loan companies accounted for more than half of the analyzed articles. Great emphasis was placed on the need to vet the company the customer wishes to use, the obligation to read the agreements and check the information on the total cost of the loan; the option to withdraw from the agreement or repay the loan early was stressed. The articles also warned against unfair and misleading advertisements and commercials of quasi-banks. Warnings were also issued by banks informing about the risks from quasi-banks and assuring their customers that the same offer, e.g. a quick loan, was available in a traditional, "safe" bank on equally convenient terms. In the competition between banks and quasi-banks for people taking out short-term loans, the quasi-banking sector – more flexible, quicker to respond to customers' needs, with less red tape and relying on online services – seems to have come to the fore.

Some of the articles mentioned dramatic stories of people who had lost their savings or all their property by falling into the debt loop. There were also publications about those "killed by credit" (*ukredytowani*), i.e. people who, being unable to cope with their debts, made desperate attempts to commit suicide or actually committed it.⁷⁵

On the other hand, articles which drew attention to positive aspects of quasi-banking activities were an exception. The listed benefits, especially of loan companies, included easy access to cash for those who needed it immediately, as well as the possibility for customers excluded from the banking sector to take advantage of this offer. The following quotation demonstrates the portrait

⁷³ MF: *Samorządy są zadłużone w parabankach na ponad 164 mln złotych. Będą nowe przepisy*, http://samorząd.pap.pl/depesze/wiadomosci_centralne/173473/Zmiany-w-zadluzaniu—MF-szykuje-nowa-ustawe—ktora-wyeliminuje-patologie-w-tym-obszarze Access: 2/06/2017.

⁷⁴ M. Bednarek "Święta na kredyt i co dalej", *GW* 18/12/2012, "M. Ssałwacha, Gorączka Świętecznych zakupów. Prokurator ostrzega przed parabankami, *Gazeta Wyborcza*", *GW* 10/12/2012).

⁷⁵ J. Błęwska "Odpowiedzialność finansowa", *GW* 2/04/2010, "Polacy ukredytowani – listy", *GW* 7/04/2010, "Nabroiłem Polsko ratuj!" *GW* 10/04/2010, "", *GW* 30/01/2015.

of an “ordinary” customer of a loan company and the motives of using quasi-banking services, presented in the press:

“That’s how I fix my household budget. I don’t work, my husband will no longer get his 500 zlotys welfare allowance, and there are three children at home. We get 120 zlotys from social care. My husband earns money in a grey zone, and he makes a thousand zlotys per month. No bank would ever give us a loan,” says 28-year-old Joanna, a regular customer of a loan company. “A quasi-bank representative came home. One signature and in two days we had 400 zlotys. It was a year ago, before Christmas. It was enough for Christmas, a bit was left until January. Already after a week, the first instalment, 40 zlotys, had to be paid. And so every week, there were 14 or 15 of them altogether, in total over 550 zlotys.” She admits that the cost of the loan is high (120% per annum), but, on the other hand, ‘40 zlotys per week is not so much’. Regular repayments were rewarded with another loan – one thousand zlotys. They were paying the loan off until mid-November, in total almost 1.5 thousand because the interest amounted to 470 zlotys⁷⁶.

The employees of loan companies described their customers in a similar manner as poor or not very well-off, pensioners, the unemployed, sole traders with minimum income who cannot count on a loan or credit from a bank.⁷⁷ Advice and explanations on how to deal with debts that are difficult to repay, how to manage the household budget to avoid loans and indebtedness, where to look for information and assistance in case of problems with quasi-banks were targeted mainly at such people.⁷⁸

This portrait and the characteristics of “ordinary” customers are contrasted with another image that can also be recovered from press materials. It is made up of stories of people who have been harmed by quasi-banks, but they themselves do not want to be seen as “victims”, let alone classified as vulnerable, imprudent or even worse – greedy, who have been deprived of the ability to make a proper assessment of the situation because of their desire for profit. One of Amber Gold customers who invested over 20 thousand zlotys in the company explained his decision in the following way:

“Amber Gold customers have been shown as idiots in the media, so nobody wants to talk about themselves. I invested part of my money in Amber Gold and lost 20 thousand zlotys. I was mad that the state had abolished one-day

⁷⁶ M. Jaremko-Siarska, Parabankowa ława, GW 22/12/2004.

⁷⁷ A. Twardowska, M. Czejkowska, A. Lewińska “Emeryt tonie w długach”, 29/09/2014, K. Klukowska “W pętli długów – Zofia emerytka spłaca sześć pożyczek”, GW 2/08/2011, M. Semic “Chwilówka: Emerycie uważaj na finansowe pułapki”, GW 3/03/2011, “Dług emeryta”, GW 18/04/2009.

⁷⁸ “Jak sobie radzić z długami”, GW 19/02/2015, J. Błęwska “Jak zrobić porządki w budżecie seniora”, GW 2/02/2015, “Nie daj się długom”, GW 28/09/2009, “W spirali długów”, GW 3/04/2010, “Dług to nie jest wyrok”, GW 9/11/2015).

deposits with banks that had made it possible to avoid the Belka tax. Amber Gold advertisements were everywhere, hitting everyone in the eye, the company seemed credible, and the price of gold was soaring.”⁷⁹

It was reported in the press that the victims of Amber Gold included “small savers” who paid a few thousand zlotys each, the so-called “medium savers” ready to invest 10+ thousand (the most) and wealthy investors who contributed more than one million zlotys to Amber Gold: “There were about one thousand contributions for the amount of 100 thousand zlotys and higher, including a few for a million each.”⁸⁰ Some of Amber Gold customers included entrepreneurs, craftsmen, lawyers, university staff and heads of companies, thus people whose knowledge of economics might have been expected to be slightly better than average. They form a “different” group of quasi-bank customers from those who borrow from loan companies or take out consumer credits to “make ends meet”. They share a common experience of using quasi-banking services, but their motivation is different; for some of them this is a chance to multiply profits, for others it is a vital necessity.

c) Quasi-banks – an unsupervised financial sector?

A smaller group than the texts discussed above included publications on the legal aspects of the functioning of quasi-banks (34 publications). The group consists of articles devoted, among others, to: legal solutions concerning the non-banking sector, parliamentary debates in which attempts were made to “civilize” the quasi-banking sector, including extended control over it and legal restrictions.⁸¹ This group also includes press statements on legal solutions in force in other countries (e.g. “Londyn walczy z lichwą”, GW 4.10.2013). Articles arguing that the applicable law was good were an exception (e.g. “Prawo jest jasne, wystarczy je egzekwować”, GW 23.08.2012). The majority stressed the need for change and positively assessed the ideas of “sealing” the non-banking system, e.g. increasing the powers of OCCP (the possibility of banning product advertisements and commercials which the OCCP considers suspicious or using controlled purchases); publishing a list of public warnings by the Polish Financial Supervision Authority with a list of companies suspected of illegal practices, as well as a list of entities which are supervised by the Polish Financial Supervision Authority; combining the National Criminal Register database with the register of businesses to ensure that persons convicted of criminal offences

⁷⁹ Maciej Samcik, *Rekord Bezczelności. Historia afery Amber Gold*, “Gazeta Wyborcza” 7/09/2016.

⁸⁰ *Ibidem*.

⁸¹ M. Samcik “Niech nadzór dociśnie parabanki!”, GW 8/08/2012, M. Samcik “Jak ogarnąć parabanki”, GW 31/08/2012, M. Samcik “Jak pilnować parabanków?”, GW 27/08/2012, M. Bednarek “Bat na parabanki”, GW 18/12/2013.

could not set up new businesses by submitting untrue crime record certificates; establishment of specialized units in the prosecutor's office to deal with quasi-banks; more effective enforcement of the obligation to submit financial statements by companies or the introduction of the so-called anti-usury act.⁸² Information on changes in the regulations or practices of institutions responsible for supervision and control over the quasi-banking sector actually documented and revealed the state's incompetence which allowed quasi-banks to operate according to their own rules for quite a while.

Conclusion

Taking out credit facilities and loans – or, more generally speaking generally, indebtedness – is more and more often described not only as a phenomenon of an economic nature, but above all as a social and cultural one. It is perceived and studied as a problem that affects an increasing part of the society.⁸³ The report *Social Diagnosis 2015. Objective and Subjective Quality of Life in Poland* notes that one third (34%) of the Polish households declare that they use loans and credits; similarly, one third admit that their debt exceeds the amount of their annual income (33%).⁸⁴ Poles are mainly indebted to banks, believing that in this way they take out loans in or borrow money from a trusted, secure institution. The rational belief of the majority in the security of banking services is increasingly accompanied by opinions that the financial market does not stand for traditional banks alone and that quasi-banks are also likely to have attractive offers, e.g. for people who constitute a “risk group” for banks or who do not find the necessary “products” in the banks' product range. The quasi-banking⁸⁵ sector is developing despite warnings that, unlike traditional banks, it is not subject to regulation and supervision, that it generates an increased risk of losses, and finally that citizens' money is not safe there. In the media, quasi-

⁸² M. Samcik “Refleksje po Amber Gold”, GW 26/03/2013, W. Czuchnowski “Parabanki padają”, 24/09/2012, A. Popiołek “PiS chce ustawy antylichwiarskiej. Firmy pożyczkowe głośno protestują”, GW 8/08/2013, “Aby nie zostać z pożyczką na całe życie”, GW 14/12/2013, M. Bednarek “Chwilówki w końcu pod nadzorem”, GW 30/08/2013, M. Samcik “Trybunał wciąż дума nad SKOK-ami”, GW 31/07/2015, M. Bednarek “Apelujemy do rządu: zróbcie w końcu porządek z chwilówkami!”, GW5/06/2015.

⁸³ Arkadiusz Gruszczyński, *W sidłach kredytu. O frankowiczach, którzy chcieli żyć dobrze tu i teraz – rozmowa z Mateuszem Halawą*, GazetaPL, <http://weekend.gazeta.pl/weekend/1,152121,19574264,w-sidlach-kredytu-o-frankowiczach-ktorzy-chcieli-zyc-dobrze.html>. Access: 2/06/2017.

⁸⁴ Janusz Czapiński, Tomasz Panek (ed.) *Diagnoza społeczna 2015. Warunki i jakość życia Polaków*, Warsaw 2015, p. 59-61.

⁸⁵ The one exception is the credit unions (SKOKs) governed by the act on SKOKs and also, since 2012, subject to supervision by the Financial Supervision Commission.

banks are presented mainly with scandals and abuse in the background, and their negative image is strengthened by the stories of customers who lost their savings, fell into debt, for example tempted by advertisements of attractive loans or quick profits. The press image of customers, or rather “victims” of quasi-banks, forms a very capacious category – from “ordinary” citizens to state institutions and offices. For some, the services of quasi-banks are a chance for quick (although usually unsuccessful) proliferation of capital, for others, a life necessity – the last resort, when money is needed, and you cannot count on your family or friends or take advantage of the bank’s offer. Had it not been for the quasi-banks, these people would have been completely excluded from the financial market. It is difficult to answer unambiguously the question whether the negative image of the non-banking sector created by the media reflects or creates reality. In the analysed press materials, there are practically no positive examples, which is additionally emphasized and authenticated by one-sided narration, focused on dysfunctions and the customers’ bad experiences.

In the wave of warnings from the media, the results of opinion polls are hardly visible. However, they allow us to look at the specific media panic related to quasi-banks from a slightly broader perspective. Firstly, surveys repeated every couple of years show that the majority of citizens are very cautious when it comes to quasi-banks. A vast majority of Poles (85%) do not trust quasi-banks and regardless of whether this mistrust is based on media reports about offences and lawsuits of quasi-bank owners, information about unfair practices of loan companies, bad customer opinions or expert warnings, only a relatively small percentage of Poles decide to use quasi-banking services.⁸⁶ Secondly, opinion polls show that quasi-bank customers are not as homogeneous a group as one might judge by press articles and the “confessions” of loan company employees cited in them. Although older people (pensioners), people on low incomes or those in poor financial standing prevail among the customers of quasi-banks, especially in the group interested in *chwilówki*, i.e. the short-term loans, the market sees – as research shows – a new type of customer emerge for whom the growing mobile services market (the internet and mobile phones) is, in a way, tailor-made, for instance students, people working on the basis of job performance contracts or contracts for a specific task, small business owners, people with irregular incomes and unable to document them, thus to a large extent people with a good financial standing, but not treated as well by banks

⁸⁶ *Polacy o korzystaniu z usług parabanków*, CBOS Research Report, Warsaw, August 2012. <http://www.cbos.pl/PL/publikacje/news/2012/25/newsletter.php>

as the holders of stable jobs.⁸⁷ They are not “excluded” by the banking sector (people on low incomes, with difficulties in repaying their financial debts, unemployed) and are not “doomed” to quasi-banks. These are often borrowers who cannot find a good (adequate) offer for themselves on the list of banking services.

The customers also include people who use quasi-banks to increase their capital. It is probably not a large group, as indicated by the declarations of Poles when it comes to saving and their savings. For example, majority of the Poles admit that they have no savings, and a little less than a third declare that they have some money put aside – usually in the amount of 1–5 thousand zlotys (28%⁸⁸). For those who can afford risky financial decisions, as well as for “small savers” who count on multiplying their savings, cases like Amber Gold or the crash of Lech Grobelny’s Bezpieczna Kasa Oszczędności earlier on should be a warning. It turns out that no lessons have been learnt, which is proved by subsequent victims of quasi-banks, such as Finroyal, Centrum Inwestycyjno-Oddłużeniowe (CIO) from Stargard Szczeciński, Pożyczki Gotówkowe or Baltic Money.

The quasi-banking sector is said not to be regulated or transparent enough in Poland. It is pointed out that systemic solutions are necessary; however, they are difficult to find, especially since discussions on quasi-banks are often politicized and used in political struggle (for instance the ongoing work of the parliamentary committee on Amber Gold). Certainly, thanks to the regulations introduced in recent years (e.g. limiting the commission on loans or hindering their rollover), the quasi-banking sector is more “civilized” than it was the case before, but has it become safer for customers? “Full consumer pleasure means a full life. I buy, therefore I am... ”⁸⁹ – Bauman wrote when characterizing the contemporary culture subordinated to (more and more impulse-based) purchases of new (and newer) objects.⁹⁰ For those for whom buying and borrowing are the meaning of life, for Baumanian “non-owners” of today, who are focused on (over)consumption, even the best offers of quasi-banks (and banks) may pose a genuine risk.

⁸⁷ *Rynek pożyczek pozabankowych*, Centrum Grabskiego, Warsaw, May 2015, p. 4.

⁸⁸ *Stan wiedzy finansowej Polaków*, Raport Fundacji Kronenberga przy Citi Handlowy, Dom Badawczy Maison, Warsaw, September 2009, p. 68.

⁸⁹ Zygmunt Bauman, *O zamieszkach londyńskich, czyli konsumeryzm zbiera swoje owoce*, “Krytyka Polityczna” 9.08.2011, <http://www.krytykapolityczna.pl/Opinie/BaumanOzamieszkachlondyńskichczylikonsumeryzmbieraswojeowoce/> menuid-431.html

⁹⁰ *Ibidem*.

Methodology

Our research was carried out in several stages, including both quantitative and qualitative research.

In the first phase of the research, we conducted a quantitative survey on a representative nationwide research sample. The survey was conducted by CBOS in January 2016. The survey covered a wide range of issues; we asked whether respondents or their families, friends and acquaintances used the services of loan companies, what their opinion was about loan companies, whether they had financial problems, whether they had fallen into a debt spiral, how they perceived loan companies and, finally, how they perceived loan companies in the legal system and whether they felt they needed them and whether they trusted them.

In the second phase of our research, we completed a “mystery client” survey (200 interviews), involving loan companies. Researchers took on the role of customers to obtain information on service standards, loan conditions, etc.

In the third stage of the study, we planned to conduct qualitative research and in-depth interviews with managers of loan institutions providing quick loans and representatives of debt collection companies, persons who used the quick loan services, representatives of banking, financial, competition and consumer supervision agencies, and actors representing organizations launching public awareness and education campaigns against the so-called usurious interest rate. As is usually the case in the course of a study, it turned out that a large part of the entities selected for the survey, first of all those running loan companies, but much to our surprise also representatives of state institutions, refused to take part in the interview despite our guarantee of full anonymity. Eventually, we managed to conduct interviews with representatives of the eight large loan companies operating on the Polish financial market (not identified here due to the guarantee of anonymity). We also conducted in-depth interviews and numerous conversations with Andrzej Rotter, President of the Management Board of the Conference of Financial Companies in Poland – Association of Employers, from whom we received other valuable research material too. We conduct-

ed in-depth interviews with Jarosław Ryba, President of the Management Board of the Association of Loan Companies in Poland (formerly Związek Firm Pożyczkowych, now Polski Związek Instytucji Pożyczkowych) and with Monika Zakrzewska, President of the Foundation for the Development of the Financial Market in Poland. All our interlocutors provided us with extremely valuable information that helped us understand the loan market sector in Poland. Furthermore, we managed to secure and conduct interviews with the Financial Ombudsman, the Consumer Federation, a representative of the PKO BP bank, the Office of Competition and Consumer Protection (UOKiK – OCCP), a representative of co-operative banks, the Municipal Consumer Ombudsman for the Capital City of Warsaw, and a representative of the Credit Information Bureau. Finally, we also interviewed Maciej Samcik and Maciej Bednarek, prominent economic journalists.

Due to the large number of refusals to participate in our study, we decided to supplement the research project with a case study. During an interview with the Municipal Consumer Ombudsman for the Capital City of Warsaw we were told that, based on the complaints filed with District Consumer Ombudsmen, cases of spiralling into debt as a result of entering into a quick loan agreement occur most frequently in the Warmia-Mazury Province. Therefore, we decided to conduct an in-depth interview with one of the Consumer Ombudsmen in the Warmia-Mazury Province. Data from the Central Statistical Office (GUS) suggest that the highest unemployment rate and the highest percentage of people receiving social assistance in 2016 is in the Kętrzyn powiat (30.1% and 17.5%, respectively). We contacted the Ombudsman in Kętrzyn, but he had only been appointed a few weeks earlier and was unable to provide us with a comprehensive review of the situation. In result, we opted for the next powiat in terms of the highest unemployment rate and the number of beneficiaries of social assistance, the Ełk powiat (22.3% and 10.8%, respectively). We interviewed the Consumer Ombudsman in the Warmia-Mazury Province and the Powiat Consumer Ombudsman in Ełk. In Ełk, we also conducted comprehensive field research aimed at describing the structure of loan companies in Ełk and, above all, gathering information on the profile of customers of these companies, the level of debt, etc.

Personal data protection regulations meant that we were unable to reach borrowers who had problems paying off their debts or who had a conflict with a loan company. Therefore, we decided to abandon the idea of interviews with borrowers and instead focus on the borrowers' complaints filed with institutions established for this purpose. Courtesy of the Financial Ombudsman, we gained access to 19 complaints, and courtesy of the President of the Office of

Competition and Consumer Protection – to 71 complaints. The complaints did not contain personal data or data concerning loan companies. We present a full analysis of these complaints in the research report.

Our desk research included a review of reports and research on the subject of loan companies, as well as a detailed legal analysis of the way loan companies operate on the Polish financial market. We conducted a full analysis of the changing image of loan companies in selected press titles over time.

We hope that we have managed to discuss the issue comprehensively and thoroughly. This was all the more difficult because the research period covered the time of a real revolution in the principles of functioning of the non-banking sector of loan companies in Poland. Not all selected respondents agreed to the interviews, but we hope that it did not adversely affect the outcome of our work.

Operation of loan companies on the Polish financial market. Results of “mystery client” survey

Introduction

This paper presents the results of an empirical study on the operation of credit institutions on the Polish financial market. The aim of the study was to describe the internal mechanisms and general operations of loan companies on the basis of a case study of companies providing loan and credit services in Poland. The first part presents the research method used, followed by the results and main survey findings. The paper also presents limitations and issues encountered during the study. The last part of the paper presents the questionnaire used for the survey.

Methodology and description of the study

The target research sample consisted of loan institutions providing loan and credit services in Poland.

The sample was initially divided into two types of businesses. The first one comprises companies providing loan services online. The second one is companies that advertise their loan and credit services in a more traditional way, i.e. by putting up their advertisements and announcements in places prepared for this purpose (e.g. on poster pillars, information boards etc.), in any places in the public space (power poles, street lights, traffic lights next to pedestrian crossings), as well as through direct marketing, i.e. by distributing various types of leaflets to individual mailboxes in the places where their potential clients live.

When it comes to the first type of business, 100 entities were identified.¹ Thirty of them were members of the Association of Loan Companies (Związek Firm Pożyczkowych, now Polski Związek Instytucji Pożyczkowych), an association of companies providing non-bank loans. As for the second type of busi-

ness, also 100 entities were identified. They were selected on the basis of collected advertising leaflets placed on poster pillars, information boards, e.g. in apartment blocks, on road signs or traffic lights next to pedestrian crossings. In order to diversify the sample selection, the following districts of Warsaw were included in the survey: Ursynów, Praga, Mokotów, Sadyba, Wola, Żoliborz, Powiśle and Ochota. Due to the insufficient number of identified announcements, the sample was additionally extended to include two other Polish cities, Częstochowa and Ostrów Wielkopolski.

The internet sample was selected first of all by incorporating all the companies associated in the then *Związek Firm Pożyczkowych* (32 entities at that time). Another 66 loan companies were selected for the survey via the Google search engine in the following way: keywords were entered into the search engine (the order of keywords corresponded to the order of searches) - *chwilówki*, i.e. short-term loans, quick loans, easy loans, loans without BIK, a loan of 500 zlotys – with the additional qualifier: “online”. In each case, the sample consisted of the first fourteen consecutive search results obtained from the Google search engine (using the last variable of ten). If the fourteen highest ranked entities included companies already qualified for the survey (*Związek Firm Pożyczkowych* – ZFP) or entities from the previous cohort were repeated, then loan companies ranked next in the Google search were qualified: the fifteenth, sixteenth, etc.

The survey was conducted between December 2015 and February 2016. In addition, the identified entities were characterized by the use of different sales channels for their services. As a consequence, the sample encompassed three types of businesses: those providing their services exclusively online, those providing their services exclusively in a traditional way (either via their sales outlets or via an employee paying a visit to a client’s home) and those combining these two sales channels.

As part of the survey, two hundred short telephone interviews were conducted with representatives of credit institutions using the “mystery client” technique. This technique is an observation method in which the researcher plays the role of a client and observes the process of providing the service from this perspective.

Research by means of the “mystery client” technique can be described with three main features of the conducted observation:

- a. It is hidden – the employee of the surveyed company does not know that he/she is dealing with a mystery client;
- b. It is controlled – the interviewer follows a specific scenario;

c. It is standardized – the mystery client draws attention to specific aspects that he/she remembers and takes notes of in the prepared questionnaire.

In the case of the internet sample, three possibilities of telephone contact with a loan company were identified:

- client – company (on condition that the data are entered or registered in the system);
- company – client (after filling in the application form containing basic contact details to enable the company to contact the client);
- company – client (after filing a loan application, the company contacts the client in order to verify the details provided in the application).

The survey was carried out in three stages. The number of participating companies is shown in Table 1. The first stage consisted in identifying entities providing loan services in the above-mentioned districts of Warsaw and online. The stage resulted in the identification of 182 lenders. In the second stage of the survey, the research sample was supplemented by the announcements of companies providing information on their loan and credit services on poster pillars in Częstochowa and Ostrów Wielkopolski. These locations were chosen because the members of the research team knew the markets very well. During this stage, another 18 entities were identified. The third stage of the survey involved 200 attempts to conduct short telephone interviews with the representatives of the companies by means of the “mystery client” technique. During the conversations, the interview questionnaire was used, which is an attachment to this chapter.

Table 1. Summary of the stages of the conducted studies

Stage	Objective/Result of the research	Number of businesses
I	Desk research review of entities granting loans in selected districts of Warsaw and online	182
II	Supplementing the research sample with desk research analysis of entities granting loans in the cities: Częstochowa and Ostrów Wielkopolski.	18
III	Conducting short telephone interviews using the “mystery client” technique	119

Source: Authors' own compilation.

Table 2 presents the structure of the research sample divided into three loan distribution channels. The first group consisted of businesses providing services online; 98 were identified, out of which 56 were interviewed. The next group of companies using the traditional distribution channel included 82 entities, 47 of which provided information during a telephone call. Of the remaining 20 companies using both distribution channels 16 were interviewed. As regards unsuccessful interviews, the main reason for refusal was reluctance to provide detailed information about the products on offer over the phone or failure to contact the company despite three attempts made. Ultimately, 119 interviews were conducted. The percentage of responses obtained, broken down by individual distribution channels, was taken as the basis in further data presentation.

Table 2. Structure of research sample by service distribution channel

Distribution channel	Number of entities selected in accordance with the method	Number of interviews held	Efficiency
Internet	98	56	57.1%
Sales outlets	82	47	57.3%
Mixed	20	16	80.0%
Total	200	119	59.5%

Source: Authors' own compilation.

The research sample of 200 entities consisted of 88 loan companies, 45 financial intermediaries and for the remaining 67, the nature of their activities could not be confirmed (cf Table 3). For the entities interviewed by telephone, 71 were loan companies, 33 were financial intermediaries and for the remaining 15 the nature of the activities could not be confirmed.

Table 3. The structure of the research sample by the nature of business activity

Distribution channel	Number of entities selected in accordance with the method	Number of interviews held	Efficiency
Loan companies	88	71	80,7%
Financial intermediaries	45	33	73,3%
Failure to confirm the nature of business activity	67	15	22,4%
Total	200	119	59.5%

Source: Authors' own compilation.

The client's profile used to conduct the survey is presented in Table 4. The survey assumes that the client is 30 years old, employed on the basis of a fixed-term employment contract until the end of 2017 without prior credit history.

The amount of earnings was set at the level of 2700 zlotys net per month, similar to the average net salary in Poland in 2015. The client’s other characteristics include no family obligations, rented accommodation and no car. During the calls, the client wanted to obtain information about a loan in the amount of 1,000 zlotys.¹

Table 4. The profile of the “mystery client”

Age	30 years old
Employment	fixed-term employment contract, until the end of 2017
Marital status	single
Earnings	2,700 zlotys net / month
Property status	rented accommodation, no car
Credit history	has not had any credit facility or loans from a bank so far, has a debit card only

Source: Authors’ own compilation.

Discussion of survey results

The survey shows that the vast majority of loan companies surveyed (66.07% operating exclusively online, 85.10% in the group of companies offering their products in sales outlets, 68.75% in the group of entities using the mixed distribution channel) offer a loan above 1,000 zlotys (cf Table 5). It is also worth noting that loans at lower amounts are more frequently available via the online sales channel (19.64% of businesses compared to 4.26% operating exclusively in outlets and 6.25% with a mixed profile) than in the case of the traditional distribution method, i.e. via a sales outlet.

Table 5. Amount of the loan granted by sales channel

Amount	Internet	Sales outlets	Mixed distribution channel
a. Less than one thousand	11 (19.64%)	2 (4.26%)	1 (6.25%)
b. One thousand and more	37 (66.07%)	40 (85.10%)	11 (68.75%)
c. No information	8 (14.29%)	5 (10.64%)	4 (25.00%)
Total	56 (100.00%)	47 (100.00%)	16 (100.00%)

Source: Authors’ own compilation.

¹ The questionnaire used to conduct the survey is presented in Annex I.

As can be seen from the data presented in Table 6, in the case of entities operating on the internet and using various sales channels, the loan repayment period usually does not exceed 30 days for an amount up to 1,000 zlotys. In the case of companies using the traditional distribution channel, such a loan is usually also extended for a period of up to 30 days or up to 6 months. In each of the analysed distribution channels, the possibility of repaying a loan of up to 1,000 zlotys within 3 months or over 6 months is offered the least frequently.

Table 6. Loan repayment periods up to 1,000 zlotys depending on the loan distribution channel

Repayment period	Internet	Sales outlets	Mixed distribution channel
Up to 30 days	14 (25.00%)	16 (34.04%)	9 (56.25%)
3 months	10 (17.86%)	0 (0.00%)	2 (12.50%)
6 months	3 (5.36%)	16 (34.04%)	1 (6.25%)
Over 6 months up to 1 year	4 (7.14%)	6 (12.77%)	2 (12.50%)
Over 1 year	5 (8.93%)	4 (8.51%)	1 (6.25%)
No data available	20 (35.71%)	5 (10.64%)	1 (6.25%)
Total	56 (100.00%)	47 (100.00%)	16 (100.00%)

Source: Authors' own compilation.

It is also worth noting that free loans are offered almost exclusively by companies providing services online (28.57% of indications). In the case of lenders distributing their services in outlets, only 2.13% of the companies offered a free loan (Table 7). None of the companies using mixed channels had such a loan in their offer. The main objective of a free loan is to attract new clients. Such a service is intended to give the client the opportunity to try it out without incurring additional costs and to encourage the client to use it again. In the case of free loans, the potential source of profit for the creditor is the income from granting further loans to these clients. However, subsequent loans are subject to standard terms and conditions.

Table 7. Number of entities providing free (first) loans

Free (first) loan offered	Internet	Sales outlets	Mixed distribution channel
Yes	16 (28.57%)	1 (2.13%)	0 (0.00%)
No	29 (51.79%)	31 (65.96%)	6 (37.50%)
No data available	11 (19.64%)	15 (31.91%)	10 (62.50%)
Total	56 (100.00%)	47 (100.00%)	16 (100.00%)

Source: Authors' own compilation.

It should be noted that companies providing loans online are mainly focused on benefiting from the interest rate (39.29%) and commission (17.86%), and to a lesser extent from additional services such as insurance, the preparatory fee and the loan fee. Among the fees and costs accompanying the granting of loans by companies providing services through traditional channels, the most frequent ones are interest rates (70.21% of indications) and insurance (19.15% of indications). In the case of companies granting loans via a mixed distribution channel, the interest rate prevailed too (31.25% of indications), and a preparatory fee was sometimes required (12.50% of indications); (cf Table 8).

Table 8. Types of costs and fees associated with granting a loan, by distribution channel

Type of cost/fee	Number of indications by distribution channel		
	Internet	Sales outlets	Mixed distribution channel
Interest rate	22 (39.29%)	33 (70.21%)	5 (31.25%)
Commission	10 (17.86%)	0 (0.00%)	1 (6.25%)
Insurance	5 (8.93%)	9 (19.15%)	0 (0.00%)
Preparatory fee	4 (7.14%)	1 (2.13%)	2 (12.50%)
Fee for granting the loan	2 (3.57%)	0 (0.00%)	0 (0.00%)
Fee for a flexible repayment plan	0 (0.00%)	0 (0.00%)	1 (6.25%)

Source: Authors' own compilation.

In each of the analysed distribution channels, it was possible to spread the repayment of the loan into instalments. In the case of companies operating online and using mixed distribution channels, the percentage of companies offering spread repayment was 25.00%. When it comes to entities providing services in outlets, 44.68% of them declared this option.

Table 9. The option to spread the repayment of the loan into instalments depending on the sales channel

Option to spread the loan into instalments	Internet	Sales outlets	Mixed distribution channel
Yes	14 (25.00%)	21 (44.68%)	4 (25.00%)
No	33 (58.93%)	11 (23.41%)	5 (31.25%)
No data available	9 (16.07%)	15 (31.91%)	7 (43.75%)
Total	56 (100.00%)	47 (100.00%)	16 (100.00%)

Source: Authors' own compilation.

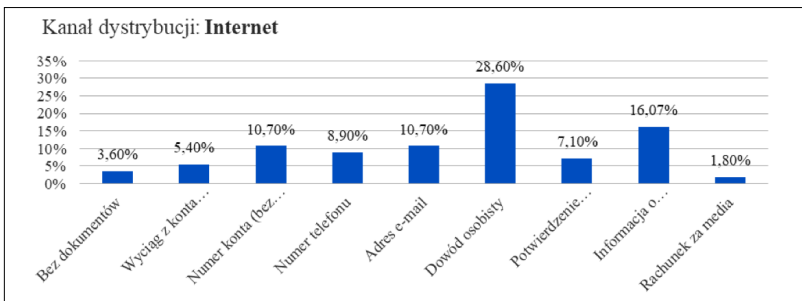
Another issue analysed in the course of the research by means of the mystery client technique was the type of documents and data required by loan companies to enable them to take out a loan. The results of the research indicate that the vast majority of businesses require the submission of documents when signing the agreement. Only 3 entities offered the possibility of granting a loan without any documents confirming the client's identity, property status, place of employment, etc. In the case of the internet sample, the most frequently required document was an identity card (28.57% of indications); another important element necessary to obtain a loan was information on income (16.07% of indications), followed by the account number and email address (10.71% of indications). Moreover, the lenders requested a telephone number (8.93% of indications), a confirmation of employment (7.14% of indications) and a bank statement (5.36% of indications). The lenders declared that they could grant a loan without any documents in two cases only (3.57% of indications). In one case, our application was to be examined on the basis of a utility bill. Among the entities offering their services in sales outlets, the most frequently required document was an identity card (59.57% of indications), a bank account statement (42.55% of indications), a confirmation of employment (29.79% of indications) and a utility bill (23.40% of indications). However, the account number (without a statement) was not required at all or the least frequently (6.38% of indications), just like the telephone number (6.38% of indications) and email address (0.00% of indications). In the case of entities using mixed sales channels, the most frequently required were the client's telephone number (81.25% of indications), identity card (43.75% of indications) and income information (31.25% of indications). In this group, the clients were the least frequently asked to confirm their employment (6.25% of indications) and to produce a utility bill (6.25% of responses); (cf Table 10 Fig. 1, Fig. 2, Fig. 3).

Table 10. Required document types and data before granting the loan

Type of documents/data	Internet	Sales outlets	Mixed distribution channel
No documents	2 (3.57%)	0 (0.00%)	1 (6.25%)
Bank statement	3 (5.36%)	20 (42.55%)	2 (12.50%)
Account number (without a bank statement)	6 (10.71%)	3 (6.38%)	2 (12.50%)
Telephone number	5 (8.93%)	3 (6.38%)	13 (81.25%)
Email address	6 (10.71%)	0 (0.00%)	2 (12.50%)
Identity card	16 (28.57%)	28 (59.57%)	7 (43.75%)
Confirmation of employment	4 (7.14%)	14 (29.79%)	1 (6.25%)
Information on income	9 (16.07%)	4 (8.51%)	5 (31.25%)
Utility bill	1 (1.79%)	11 (23.40%)	1 (6.25%)

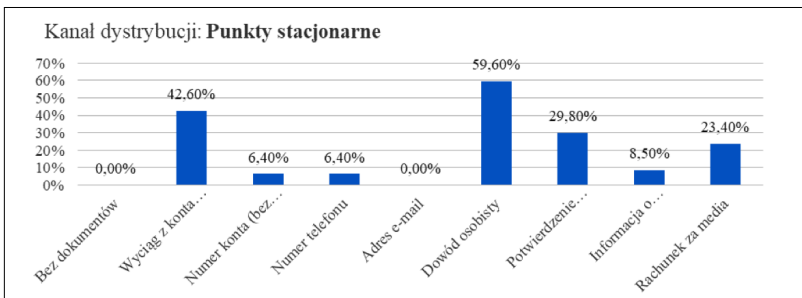
Source: Authors’ own compilation.
*of all responses received

Fig. 1. Respondents’ answers on the type of documents and data required before granting a loan online



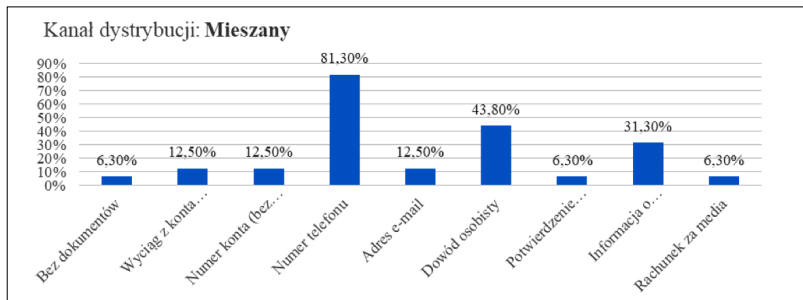
Source: Authors’ own compilation.

Fig. 2. Structure of respondents’ answers on the type of documents and data required before granting a loan in a mixed distribution channel



Source: Authors’ own compilation.

Fig. 3. Structure of respondents' answers on the type of documents and data required before granting a loan at sales outlets



Source: Authors' own compilation.

In terms of additional costs for the extension of the loan repayment period, all entities which answered this question, irrespective of the distribution channel, indicated that the costs were a must (83.93% of indications in the internet group, 57.45% of indications in the traditional distribution channel, 56.25% of indications in the mixed group). In the case of one entity granting loans at a sales outlet, no additional costs were charged to the client for extending the loan repayment period to 7 days. However, after passing the deadline, the company charged interest, the amount of which depended on the terms of granting the loan, which were set out in the agreement (Table 11).

Table 11. Costs of extending the repayment period of a loan granted by a credit institution

Costs upon extension	Internet	Sales outlets	Mixed distribution channel
Yes	47 (83.93%)	27 (57.45%)	9 (56.25%)
No	0 (0.00%)	0 (0.00%)	0 (0.00%)
No data available	9 (16.07%)	20 (42.55%)	7 (43.75%)
Total	56 (100.00%)	47 (100.00%)	16 (100.00%)

Source: Authors' own compilation.

As for the need for additional fees before making the loan agreement, the information provided by the loan companies varies and depends to a large extent on the distribution channel of the service. As regards entities distributing their services online, over 60.71% of the respondents confirmed the need to pay such fees. However, it should be noted that this fee is in many cases a token fee reflecting the requirement to make a transfer to the lender's account in the amount of 1/100 zloty (a grosz) in order to verify the borrower's bank account. Among the respons-

es received from entities providing loan services both online and at sales outlets, the need to pay an additional fee before granting a loan was indicated by 18.75% of them. With regard to companies providing loans exclusively at sales outlets, only one entity confirmed the charging of fees prior to entering into the loan agreement. Just like in the case of companies providing loans online, the client had to make a transfer in the amount of one grosz to the lender’s account (Table 12).

Table 12. Charging a fee prior to entering into a loan agreement with a loan institution

Fees before entering into the agreement	Internet	Sales outlets	Mixed distribution channel
Yes	34 (60.71%)	1 (2.13%)	3 (18.75%)
No	2 (3.58%)	35 (74.47%)	9 (56.25%)
No data available	20 (35.71%)	11 (23.40%)	4 (25.00%)
Total	56 (100.00%)	47 (100.00%)	16 (100.00%)

Source: Authors’ own compilation.

As can be seen from the data presented in Table 13, the dominant form of cash transfer after entering into the agreement with a client is a transfer for each type of the loan company. When it comes to companies distributing their services through sales outlets, 15 entities (31.92% of indications) also offered payments at client service outlets, post offices or banks. Among the companies using mixed distribution channels, 25.00% declared that such an option was available. It should be noted that in the case of payment at the post office or bank, the client usually incurs an additional cost of 15–20 zlotys. When it comes to companies providing their services online, the vast majority of respondents declared that the loan would be made available via a bank transfer (89.29% of indications). It was indicated only in one case that money could be delivered to the borrower in cash.

Table 14. Form of loan transfer by the lender to the client

Form of loan transfer	Internet	Sales outlets	Mixed distribution channel
Bank transfer	50 (89.29%)	20 (42.55%)	6 (37.5%)
Cash	1 (1.78%)	15 (31.92%)	4 (25.00%)
No data available	5 (8.93%)	12 (25.53%)	6 (37.5%)
Total	56 (100.00%)	47 (100.00%)	16 (100.00%)

Source: Authors’ own compilation.

In the case of entities offering their products through a traditional distribution channel, the loan agreement is usually signed physically by the borrower (68.09% of indications), e.g. at the sales outlet, or a representative of the company visits the client at his home. In addition, some companies send the agreement by snail mail, and the client is obliged to sign it and return it to the lender. On the other hand, entities providing their services online or using mixed distribution channels also allow for the possibility of entering into an agreement online by accepting the terms of the agreement on the client's internet account (75.00% of indications in the internet group, 18.75% of indications in the mixed group) (cf Table 14).

Table 14. Method of signing the loan agreement

Method of signing the agreement	Internet	Sales outlets	Mixed distribution channel
Bank transfer	12 (21.43%)	32 (68.09%)	9 (56.25%)
Cash	42 (75.00%)	0 (0.00%)	3 (18.75%)
No data available	2 (3.57%)	15 (31.91%)	4 (25.00%)
Total	56 (100.00%)	47 (100.00%)	16 (100.00%)

Source: Authors' own compilation.

As regards offering the possibility to study the terms and conditions of the agreement in advance, all entities which answered this question declared such an option. The form in which model agreements are made available depends largely on the distribution channel of the service. In the case of entities using the traditional distribution channel, it is possible to study the terms and conditions of the agreement mainly at sales outlets (63.83% of indications), while companies operating online make model agreements available on their websites (41.07% of indications). Entities using different distribution channels make it possible to study the agreement both on the internet and at sales outlets (cf Table 15).

Table 15. Possibility to read the terms and conditions of the agreement in advance

Possibility to read the terms and conditions of the agreement in advance	Internet	Sales outlets	Mixed distribution channel
No	0 (0.00%)	0 (0.00%)	0 (0.00%)
Yes, including:	24 (42.86%)	31 (66.96%)	11 (68.75%)
- on the company's website	23 (41.07%)	1 (2.13%)	5 (31.25%)
- physically, at the sales outlet	1 (1.79%)	30 (63.83%)	6 (37.50%)
No data available	32 (57.14%)	16 (34.04%)	5 (31.25%)
Total	56 (100.00%)	47 (100.00%)	16 (100.00%)

Source: Authors' own compilation.

As can be seen from the data presented in Table 16, the vast majority of entities participating in the survey give the client the right to withdraw from the agreement within 14 days. In the group of companies offering their services at sales outlets there were 61.70% of indications. Only in the case of one entity using different channels of service distribution, the offer did not provide for the possibility of withdrawal from the agreement. In the case of entities using mixed sales channels, 37.50% of the companies declared such an option. As regards companies offering their products online, it should be pointed out that there were no cases where the client was denied the right to withdraw from the agreement. The vast majority of lenders provide for such a possibility (82.14% of indications).

Table 16. Possibility of withdrawing from the agreement

Possibility of withdrawing from the agreement	Internet	Sales outlets	Mixed distribution channel
Yes	46 (82.14%)	29 (61.70%)	6 (37.50%)
No	0 (0.00%)	0 (0.00%)	1 (6.25%)
No data available	10 (17.86%)	18 (38.30%)	9 (56.25%)
Total	56 (100.00%)	47 (100.00%)	16 (100.00%)

Source: Authors' own compilation.

The limitations and issues encountered during the “mystery client” survey are presented below:

1. As regards some telephone numbers selected for the sample, it was not possible to make a connection despite repeated attempts at different intervals. Some numbers turned out to be inactive.
2. In order for the client to obtain detailed information on the terms of the loan, some companies required detailed personal data, such as the personal identification number PESEL, for the purpose of verifying the interlocutor, which resulted in the interviewer ending the telephone call.
3. In other cases, it was possible to obtain detailed information at a face-to-face meeting with a representative of the company. Only general information was provided by telephone.
4. Asking specific questions raised suspicions with the representatives, who were reluctant to give specific answers.

Conclusions and recommendations

The aim of the study was to describe and analyse the internal mechanisms and general operations of loan institutions on the basis of a case study of companies

providing loan and credit services in Poland. The research group consisted of 200 companies which provided loan services online and those which advertised their loan and credit services on poster pillars in selected districts of Warsaw, Częstochowa and Ostrów Wielkopolski. Ultimately, the research group included 119 entities, i.e. this many companies were successfully interviewed by means of the “mystery client” technique.

The main conclusions of the study are presented below:

1. In the companies participating in the survey, a loan or a short-term loan, *chwilówka*, of up to 1,000 zlotys can usually be taken out for up to 30 days. The loan is repaid in a one-off payment at the end of the period. Most companies offer the possibility of extending the repayment period, which means that additional costs must be incurred by the client.
2. The study also identified companies providing loans for a minimum period of 6 months. Such companies usually allow the client to repay the debt earlier, and the borrower is reimbursed for insurance costs.
3. In order to make a detailed calculation of the cost of granting a loan, both by telephone and on the internet, in most cases the companies require the clients to provide detailed personal data.
4. The study also identified financial intermediaries operating on the basis of agreements made with various lending institutions who, having obtained relevant personal details, presented the clients with possible borrowing options and offered assistance in selecting the best offer for them.
5. Increasingly, companies that are more active on the internet have loyalty programmes for their regular clients. Loan companies also offer various discounts or promotions, e.g. after entering the appropriate promotion code, the preparation fee is reduced by 50 zlotys.
6. Entities operating online very often require the client to pay a fee in the amount of between 1 grosz and 1 zloty in order to verify the personal details provided by the potential borrower in the loan application.
7. Interest, commission and insurance fee were the most frequently mentioned costs related to borrowing. Fees for preparing the paperwork or delivering the loan amount home in cash were rare.
8. In the case of companies operating online, the loan amount is usually transferred to the client’s account. Some companies offer the possibility of obtaining the loan at the post office or at the bank’s cash desk (however, the cost of the loan increases as both the post office and the bank charge a commission of approx. 20 zlotys for withdrawing cash). Some companies, mainly entities with offices or sales outlets, offer the possibility of physical collection of the loan amount.

9. For businesses operating on the internet, the client has access to the framework agreement form on the website. In the case of other companies, the client reads the agreement before signing it in the company’s office or during the visit of the company’s representative to the client’s home.
10. In order to sign the agreement, the client has to produce such documents as an ID card, a bank statement to prove income or a copy of a utility bill which makes it possible to verify the place of residence. If the accommodation is rented, the place of residence is verified by the loan company employee’s visit at the address indicated by the client. In some cases, the loan company requires an employee’s statement of employment at the indicated workplace. Sometimes a loan company contacts the client’s employer to confirm the employment relationship.
11. If the client defaults in the payment of the instalment, in some loan companies it is possible to adjust the repayment schedule to the current financial capacity of the client. In other loan companies, interest is charged for late payment of the instalment at four times the lombard interest rate of the National Bank of Poland. One company reported that in case of late payment not exceeding 7 days, there are no financial consequences for the client.
12. If the client is unable to repay the loan, the creditor may refer the case to a debt collection agency, transfer the claim to another entity which will settle the matter in court or take the case to court by itself.
13. The client has the right to withdraw from the signed contract within 14 days. In such a case, the borrower is obliged to repay the loan with interest calculated from the date of receipt of the loan until the date on which it is repaid. The borrower is obliged to repay the amount immediately, not later than within 30 days from the date of submitting the withdrawal form.
14. In the course of the survey, several entities stressed in the conversation that their cost of borrowing was much higher than from a bank. Some respondents were straightforward in informing us that it might be more advantageous to apply for a loan from a bank where the client already has an account.
15. The websites of some companies indicate that their offers are addressed in particular to persons registered with BIK and KRD, so persons who have problems with their creditworthiness. Other companies indicate that their loans should not be used to repay other debts or extended in case of financial distress.

Annex I. Questionnaire for short telephone interviews conducted by means of the “mystery client” technique

I have a problem, I need money...	
1.	What is the biggest amount that I can borrow?
2.	I would like to borrow 1000 zlotys (or a maximum amount below 1000 zlotys).
3.	For how long can I borrow this money? (I would like a loan for 3 months or the maximum period below 3 months)
4.	How much will I have to pay back?
5.	Can I pay the loan back in instalments?
6.	What is the instalment amount?
7.	How many instalments?
8.	What is included in the cost of this loan?
8.1	- %
8.2	- processing fees
8.3	- fee for delivering the loan home
8.4	- preparation fees
8.5	- insurance
8.6	- other costs, what are they, if any?
9.	Do I have to pay anything before entering into the agreement?
10.	How long do I have to wait for the money?
11.	Do you make a bank transfer or is it a cash payment?
12.	Do I need any documents?
13.	Can I read the agreement before I sign it?
14.	How do I sign the agreement (internet)?
15.	What if I am late in paying the instalment?
16.	And what if something happens and I can't repay the loan?
17.	Can I withdraw from the agreement at no cost if I get hold of some money?
18.	If so, how many days do I have for this?
Comments:	

Loan company client profile

CBOS survey results (2016)

Information about the survey

The survey was carried out by Fundacja Centrum Badania Opinii Społecznej (Public Opinion Research Centre Foundation) at the commission of Poczta Polska S.A. as an omnibus survey (2016/03). The survey was carried out on 21-28 January 2016 on a random sample of 992 adult Poles, representative for the entire country, drawn from the PESEL (Polish Resident Record System) register. The maximum sampling error is ± 3.11 . Interviews with respondents were carried out by qualified CBOS interviewers in the form of computer assisted personal interviews (face-to-face). In the process of carrying out the survey, interviewers were not allowed to replace unavailable respondents. They were obliged to attempt contact with the drawn respondents at least three times. Pursuant to Polish Association of Public Opinion and Marketing Research Firms (OFBOR) standards, upon the completion of the survey it was subject to control which covered 10% of interviews. The control was overseen by the CBOS interviewer control section. Upon survey completion, its results were weighted against the data of the Central Statistical Office. The applied weight accounts for the response rate difference in classes of localities and response rate difference in groups of chosen socio-demographic variables, such as:

- gender,
- age group,
- education,
- socio-professional group,
- country region (NTS-2).

Results

The analysis presented in the first part of this chapter covered six questions concerning how frequently the respondents take advantage of financial services and addressing their financial condition.

The first of the discussed questions was: What financial products have you used in the last five years? This was a multiple choice question.

1. Bank credit/loan	25.2%
2. Quick loan (<i>chwilówka</i>)	
from a loan company	6.7%
3. Loan from friends/family	3.9%
4. Loan on pawn/ Lombard loan	1.0%
5. Instalment purchase	16.3%
6. None of the above	58.0%
7. Others	0.7%
8. Hard to tell	0.1%
9. No answer	0.4%
Total 992 respondents	100.0%

The most respondents, 58.0%, have not used any of the listed financial products. 25.2% of respondents have used a bank credit or loan, 16.3% have made instalment purchases, only 6.7% take out quick loans, 3.9% borrow money from friends or family.

Bank credits/loans are most frequently used by respondents aged 35-44 – 39.8%, more often residing in urban than rural areas (rural residents – 21.2%, city residents – 30.4%), most often respondents with university level education – 35.9% (elementary and junior high school education: 18.3%), self-employed – 46.2%, administrative and office employees – 43.2% and disability pensioners – 33.6%, from families with income ranging from PLN 1000 to 1399 per person – 30.6%. Credits and loans at bank are taken out least frequently by respondents who perceive their financial situation as bad – 20.9%, and by the unemployed – 9.9%, as well as by pupils and students – 1.3%, which is most likely caused by the fact that representatives of these social groups do not have the necessary credit capacity.

Quick loans from loan companies are most frequently used by respondents who perceive their financial situation as bad – 21.2%, from families with income up to PLN 649 per person, working at private agricultural farms – 20.5%, farmers – 13.8% and disability pensioners – 13.1%, as well as respondents with elementary and junior high school education – 8.9% or basic vocational education – 8.3%. Quick loans are most frequently used by older respondents, aged 55-64 – 9.6% and by residents of cities with populations of 500 000 and over.

Loans from family and friends are most often taken out by respondents aged 25-44 – 7.2%, the unemployed – 9.3%, and unqualified labourers – 6.9%, by people with lowest income (up to PLN 649 per person in household) – 7.0%, and those who perceive their financial situation as bad – 8.1%.

Lombard services are most frequently used by residents of the largest cities – 7.9 and by respondents who perceive their financial situation as bad – 6.0%.

Instalment purchases are popular among all respondent groups, but they are most frequently made by young people (aged 25-34) and middle-aged people (35-44) – 20.7% and 21.8% respectively. Instalment purchases are made least frequently by the unemployed – 2.7%, by respondents with lowest income (up to PLN 649 per person in household) – 9.7 and by respondents with elementary and junior high school education – 8.4%.

Next question: What other financial products have you used over the last five years?

1. Line of credit (overdraft)	9.8%
2. Savings and loan scheme	37.6%
3. Short-term deposit, forex	13.1%
4. Loan from workplace	39.5%
5. Total	100.0%

The most respondents have taken out a loan from their workplace – 39.5%, from a savings and loan scheme – 37.6%. 13.1% have set up short-term deposits and forex accounts, and 9.8% have used lines of credit.

The next question directly concerned respondents' financial difficulties. We asked whether the respondents have ever been caught in debt spiral. 6.0% of respondents said "yes" and 93.9% said "no".

1. Yes	6.0%
2. No	93.9%
3. Hard to tell	0.1%
4. No answer	0.0%

Respondents who perceive their own financial situation as bad were the ones most frequently caught in debt spiral – 26.4%, respondents from households where income per person is up to PLN 649 – 9.6%, unemployed – 15.9%, unqualified labourers – 12.1%, disability pensioners – 10.9%, respondents with basic vocational education – 11.0% and respondents aged 55-64 – 9.7%. Young respondents, aged 18-24, were most successful in getting out of the debt spiral – 80.7%, pupils and students – 100%, unemployed – 71.4%, respondents who perceive their own financial situation as bad – 68.4%, and respondents with household income of up to PLN 649 per person – 66.1%. Only 56.5% of respondents declare that they have managed to escape the debt spiral, while 38.0% of respondents answered negatively. Those who managed to escape the debt spiral did so primarily thanks to: help from family – 38.5%, finding stable

employment – 15.1%, finding extra employment – 9.5% and help from friends – 6.0%. The category “others” is particularly well-represented as regards this answer – 41.0% and it is difficult to interpret what ways out of the debt spiral the respondents may have found other than the listed options. Certainly not more loans, as they are what contribute to the spiral, and not a solution to it. 62.7% of respondents stated that getting out of the debt spiral took them more than a year, 15.5% said that it took them between six months and one year, and in the case of 21.8% this process lasted less than six months.

Next question: Have you ever been listed in the National Debt Register?

1. Yes	6.4%
2. No	92.9%
3. Hard to tell	0.7%
4. No answer	0.0%

6.4% of respondents have been listed in the National Debt Register (92.9% declare that they have never been recorded in this register). Respondents who perceive their own financial situation as bad are the ones who most frequently end up listed in the debt register – 24.1%, respondents from households with income of up to PLN 649 per person – 10.4%, unemployed – 20.6%, qualified labourers – 13.2%, unqualified labourers – 11.4%, respondents with basic vocational education – 10.8% and respondents aged 35-44 – 11.7%.

We also asked whether the respondents have ever been subject to court proceedings for unpaid debt.

1. Yes	4.2%
2. No	95.6%
3. Hard to tell	0.1%
4. No answer	0.0%

4.2% of respondents have been subject to court proceedings concerning unpaid debt (95.6% declare they have never been subject to such proceedings). Court proceedings in cases concerning unpaid debt most frequently regarded respondents who perceive their financial situation as bad – 18.2%, respondents from households with income of up to PLN 649 per person – 6.6%, unqualified labourers – 12.1%, unemployed – 10.5% and respondents with basic vocational education – 6.6%.

Assuming that the survey sample is representative, the presented data offers rather optimistic conclusions about the financial condition of the Polish society. 52% of respondents have not used any financial products whatsoever, only 25% of them have taken out credits and loans at banks, 16% make instalment pur-

chases and only 6.7% use loan companies. Only 6.4% of respondents have ever been caught in a debt spiral or listed in the National Debt Register and 4.2% have been subject to court proceedings for unpaid debts.

Survey results indicate that about 7% of respondents are in serious financial trouble, and they are usually respondents without permanent employment, in a long-term difficult financial situation, with elementary education or just above, unqualified labourers. Within the context of the sample size, this group seems relatively small. Assuming that the sample is representative for the population of Poland, given that the adult population in 2016 was, according to the Central Statistical Office, 31537114 people, the point estimator for the 7% is 2 207 598 people. Since this is a survey, the result must be given in a range, which in this case is between 2 172 546 and 2242650 people (for a confidence level of 95%). Our final conclusion is that ca. 2 200 000 Poles are in serious financial trouble.

Let us take a closer look at which respondents have financial difficulties. Those who get caught up in the debt spiral most often are respondents who take out quick loans at loan companies – 35.5%, or who use bank credits and loans – 30.8%. Also those who make instalment purchases fall into the debt spiral – 19.7%, those who borrow from family and friends – 15.5%, those who pawn their possessions and who take out lombard loans – 8.8%. Also 36.5% of respondents who have not used any of the listed financial products over the past five years have been caught in the debt spiral.

Table 1. Financial products/ debt spiral (in %)

	Yes	No
Credit, bank loan	30.8	24.9
Quick loan from a loan company	35.5	4.8
Loan from friends, family	15.5	3.2
Loan on pawn, lombard loan	8.8	0.5
Instalment purchase	19.7	16.1
None of the above	36.5	59.5
Others	0.0	0.8
Hard to tell	0.0	0.1
No answer	0.0	0.2
Total	100.0	100.0

Source: based on the completed survey.

Respondents listed in the National Debt Register were most frequently those who have taken out bank credits or loans – 38.3%, who have taken quick loans from loan companies – 34.4%, who made instalment purchases – 17.8%, who pawned their possessions or took out lombard loans – 10.5% and who loaned money from friends and family – 8.5%. Also 30.7% of respondents who have not used any of the listed financial products over the past five years have been recorded in the National Debt Register.

Table 2. Financial products/ National Debt Register (in %)

	Yes	No
Credit, bank loan	38.3	24.5
Quick loan from a loan company	34.4	4.8
Loan from friends, family	8.5	3.6
Loan on pawn, lombard loan	10.5	0.3
Instalment purchase	17.8	16.2
None of the above	30.7	59.8
Others	0.0	0.8
Hard to tell	0.0	0.1
No answer	0.0	0.3
Total	100.0	100.0

Source: based on the completed survey.

Court proceedings for unpaid debts concerned 36.3% of respondents who have taken out quick loans from loan companies, 32.4% who have made instalment purchases, 20.6% of those who have used bank credits and loans, 15.9% of lombard clients and 10.5% of respondents who borrowed money from friends or family. Also 38.5% of respondents who have not used any of the listed financial products over the past five years have been subject to court proceedings concerning unpaid debts.

Table 3. Financial products/ court proceedings concerning unpaid debts (in %)

	Yes	No
Credit, bank loan	20.6	25.5
Quick loan from a loan company	36.3	5.4
Loan from friends, family	10.5	3.7
Loan on pawn, lombard loan	15.9	0.3
Instalment purchase	32.4	15.6
None of the above	38.5	58.8
Others	0.0	0.8
Hard to tell	0.0	0.1
No answer	0.0	0.3
Total	100.0	100.0

Source: based on the completed survey.

We have also asked the respondents how frequently they use loan companies.

- | | |
|---------------------------------------|-------|
| 1. More or less once a month | 0.0% |
| 2. More or less once every 2-3 months | 0.0% |
| 3. More or less once every six months | 0.1% |
| 4. More or less once a year | 0.7% |
| 5. Less than once a year | 5.8% |
| 6. Never | 93.2% |

Note: 6.6% (6.7%) = 66 people out of a sample of 992 people.

In the respondent group using the services of loan companies, quick loans were most often taken less than once a year – 5.8% of all respondents, more or less once a year – 0.7% of all respondents, more or less once every six months – 0.1% of all respondents.

Table 4. Frequency of using loan companies/ debt spiral

	Yes	No	Total
More or less once every six months	100% (1 person)		100% – 1 person
More or less once a year	42.9% (3 people)	57.1% (4 people)	100% – 7 people
Less than once a year	28.6% (16 people)	71.4% (40 people)	100% – 56 people
Never	4.2% (38 people)	95.6% (857 people)	100% – 896 people
Hard to tell	100% (1 person)		100% – 1 person
No answer	100% (1 person)		100% – 1 person

Source: based on the completed survey.

One person who took out quick loans more or less every six months got caught in the debt spiral, 42.9% of respondents who took out quick loans more or less once a year, 28.6% of respondents who took out quick loans less than once a year.

71.4% of respondents who took out quick loans more or less once a year have been listed in the National Debt Register and 26.8% of respondents who took quick loans less than once a year.

Table 5. Frequency of using loan companies/ National Debt Register

	Yes	No	Total
More or less once every six months		100%	100% – 1 person
More or less once a year	71.4% (5 people)	28.6% (2 people)	100% – 7 people
Less than once a year	26.8% (15 people)	73.2% (41 people)	100% – (56 people)
Never	4.7% (42 people)	94.4% (847 people)	100% – 897 people
Hard to tell	100% (1 person)		100% – 1 person
No answer	100% (1 person)		100% – 1 person

Source: based on the completed survey.

57.1% of borrowers who take out quick loans more or less once a year and 17.9% of those who do it less than once a year have been subject to court proceedings in relation to unpaid debt.

Table 6. Frequency of using loan companies/ court proceedings in relation to unpaid debt

	Yes	No	Total
More or less once every six months		100%	100% – 1 person
More or less once a year	57.1% (4 people)	42.9% (3 people)	100% – 7 people
Less than once a year	17.9% (10 people)	82.1% (46 people)	100% – 56 people
Never	3.0% (27 people)	96.8% (867 people)	100% – 896 people
Hard to tell	100% (1 person)		100% – 1 person
No answer	100% (1 person)		100% – 1 person

Source: based on the completed survey.

Let us sum up: respondents who use the services of loan companies:

- are in the group that most frequently gets caught up in the debt spiral (35.5%),
- more than one-third of them (34.4%) has been or is listed in the National Debt Register,

- are most often subject to court proceedings concerning unpaid debts.

The respondents who have used the services of loan companies usually take out loans from PLN 1000 to PLN 2501 (last quick loan at this amount – 32.3% of respondents) and from PLN 500 to PLN 1100 – 25.7% (last quick loan at this amount – 20.5% of respondents), above PLN 3000 – 10.9% of respondents (last quick loan at this amount – 18.5%). Only 72.7% respondents were able to pay the loan off on time, 18.6% were not able to do so owing to insufficient funds, 4.5% of respondents did not pay off the loan on time due to a dispute with the creditor.

44.5% of respondents decided to take out a loan from a loan company instead of a bank credit owing to lack of credit capacity, which means they had no access to traditional bank services. 22.0% cite no formalities, not having to present any documents confirming income or spouse's consent as their reason for using loan companies. 8.6% admit that such loans are very expensive, but the process of obtaining them is very quick. Only 4% do not think that these loans are expensive, and they appreciate the fact that they are able to get them so quickly.

Respondents who have no credit capacity cite as the reason for this: no permanent income, work in the grey zone – 44.6%, low income – 29.6% and debt in other banks, which precludes them from obtaining a bank loan – 14.9%. Most respondents – 64%, do not accept loan costs (33% of respondents do accept them), but use them anyway out of necessity.

The respondents used their last quick loan money for:

- purchasing food – 17.4%,
- payment of bills – 14.6%,
- payment for costs of medical treatment, purchase of medications – 13.1%,
- planned renovations, for example of apartment – 10.3%,
- sudden, unexpected expenses, for example repairs – 6.8%,
- children's education, i.e. purchase of textbooks, school fees – 6.6%,
- travel, holidays – 6.2%,
- purchase of basics for family members, e.g. clothing for children – 4.9%.

The other choices represented less than 4 percentage points, but it is worth pointing out that 3.1% of respondents take out quick loans to satisfy their ongoing needs, which they cannot finance because they are paying off loans, and 2.3% of respondents use them toward repayment of debts taken out by family members. Only 3.9% respondents declared that they had taken out quick loans to finance luxury items, for example an expensive mobile phone.

The presented structure of needs that “quick loans” serve to satisfy is a sad-denning one, and it is without a doubt that these expensive loans are used toward basic, and not exclusive needs.

64% of borrowers do not accept the costs of loans, considering them too expensive, and 33% do accept them.

Most respondents who use the services of loan companies do not trust them – 57.8%, while 32.5% of respondents declare that they trust them. Half of respondents – 50.8% are of the opinion that the operations of these companies are not fair, while 26.8% see their operations as fair and nearly one-fourth (22.4%) have no opinion in this regard. Despite this, nearly half of respondent borrowers were satisfied with loan company services – 47.7%, and the other half were not – 48.9%. 68.2% are of the opinion that information provided by the loan company was transparent and 30% are of the opposite opinion.

More than half of respondents – 53.6% of borrowers would not recommend the services of a loan company to their friends and family, but 46.6% would do so.

Of some concern is the fact that only 51.6% of borrowers read the terms and conditions of the loan agreements, while 29.5% did not ask for them. In general, 49.9% of borrowers declare that they always read agreements before signing them, 9.1% only do so when investing or borrowing large amounts, 30.1% do not read agreements if the company employee explains the contents, and 5.3% never do it. 13.1% were declined the option of reading loan agreements in advance. 27% (!) were not able to tell what the total cost of their last loan was, 14% of respondents estimate the cost of loan at between 10% and 20%, and 10.4% of respondents at 90% to 100% of the loan's amount.

When choosing the loan company, the respondents usually followed the recommendation of friends and family – 27.9%, chose the loan company whose office was the closest or most accessible – 25.2%, chose the loan company that advertised its services on ad columns, bus stops and flyers – 19.7%, that advertised in the media (TV, Internet, press) – 19.2%, communications from the Office of Competition and Consumer Protection or other institutions that issue warnings against unfair companies – only 1.6%.

The offer of loan companies is addressed to two target groups. Brick-and-mortar companies address their offer primarily to non-wealthy, older people who have lower competences in using electronic media. Companies that grant loans on-line, in turn, target young and very young people, with good electronic literacy. The survey results allow us to conclude that regardless of the method of functioning of company loans, their clients usually have no credit capacity (have a poor credit rating) owing to poverty or lack of a permanent job. These people are excluded from the market of traditional banking services, because they do not have the required credit capacity. In this way, lack of credit capacity results in yet another form of exclusion, that is exclusion from the market of cheaper bank loans.

This is also the opinion of our respondents. In response to the (multiple choice) question about who, in their opinion, are the clients of loan companies, 72.8% of respondents answered that they are people with no money and credit capacity, who would not obtain a bank credit or loan, and 53.5% of respondents answered that they are ordinary people who need quick access to money. Only 1.8% of respondents describe borrowers as “modern” consumers.

In response to the question about why, according to the respondents, many people choose to take out a quick loan from a loan company instead of a bank credit (multiple choice), as many as 69.9% chose the answer which stated that they don't have the required credit capacity and access to traditional banking services, because loan companies do not verify credit capacity. 46.6% were of the opinion that this is because of no formalities, not having to present any documents, such as confirmation of income or spouse's consent. Only 22.3% chose the answer which stated that this is because the loan procedure is much quicker than at banks. Interestingly, (as many as?) 4.6% were of the opinion that a loan from a loan company is easier not to pay off.

According to the respondents, many people decide against taking out a quick loan despite having a need for it owing to the excessively high loan costs – 52.2%, 10.3% are of the opinion that it's better to borrow from family, 6.5% that it's better to take out a bank credit. 25.1% of respondents do not trust loan companies and feel that they cheat their clients. Yet a large part of our respondents does not trust traditional banks either – 36.4% (versus 54.7% who do trust them).

We have asked a question that is interesting in our opinion, although somewhat removed from our core focus. The question was: Considering your knowledge and experience concerning loans, would you be willing to grant a loan to someone in need if you had extra money? Most respondents – 65.2% declared such willingness, while 25.2% answered negatively. What conclusions follow from the presented data? About one-fourth/ one-third of respondents stated that they trust neither loan companies, nor banks, nor private persons.

In summary, it may be stated that the great majority of respondents who use the services of loan companies is in serious financial trouble. We should not be optimistic about the fact that “only” 6.7% of respondents take advantage of this type of financial products. We may surmise that the number of their clients is much higher than the result obtained in our survey (6.7% of respondents). We have asked all of our respondents how often their friends and family use the services of loan companies. Almost 10% (9.7%) of all respondents declare that their family members use the services of loan companies (while 80.6% answered negatively); almost 15% (14.7%) declare that their friends use the services of loan companies.

Ełk – case study

The research team has decided to complete supplementary research consisting in a case study in Ełk. The choice of Ełk was not accidental. The analysis of complaints lodged with Consumer Ombudsman indicated that the most cases of falling into the debt spiral, the highest unemployment rate and the greatest percentage of people using the help of welfare services were recorded in the Warmińsko-Mazurskie voivodeship. Since the Powiat Consumer Ombudsman in Ełk expressed a willingness to collaborate with us, we have chosen this city.

Survey description

On 19-20 May 2017 we conducted a field survey in Ełk, aiming to diagnose the local market of quick loans (*chwilówki*). As a result of preliminary market overview, we identified 17 entities whose business consists in granting short-term loans. Upon a thorough analysis, we excluded from our target research group all entities that grant loans on pawns, lombard lenders, cooperative savings and credit unions and financial agents offering bank loans. This way, the target research group was limited to 8 entities, with whose representatives we conducted in-depth interviews. The purpose of the research was to obtain information about the local market of services, client profile and products offered by the individual entities.

Information obtained in the course of interviews with representatives of all entities are presented below. It concerns client profile and the characteristics of most popular products offered by the individual entities. Not all respondents felt at liberty to disclose all information, and thus it is incomplete in the case of some companies. Owing to the fact that we guaranteed anonymity to our respondents, we do not disclose the names of companies.

Company 1

Client profile: mostly seniors and retirees; both women and men; with high-school education; regular clients; they do not usually disclose the purpose of the loan; most already have other loans and the loan taken out at this company is for paying them off. Clients usually take out loans at the amount of PLN 1000-2000 for a period of 24 months. Clients usually do not read the terms and conditions of loan agreements. Required documents: personal identification document, employment contract for a period of at least 2 months and a confirmation of employment and income verified by the company's analytical department. The company grants between 100 and 150 loans every month.

Company 2

Client profile: mainly seniors, retirees and single people; mostly women; high-school and vocational education; mostly regular clients; the loan purpose is usually to satisfy everyday needs. Clients usually take out loans at the amount of PLN 1000-2000 for a period of 24 months. Clients do not usually read terms and conditions of the loan agreements, they are interested in getting money rather than in knowing the costs of the loan. Required documents: personal identification document, confirmation of employment and income, employment contract for a minimum of 3 months or a contract of specific work for at least 6 months. The company grants about 80 loans every month.

Company 3

Client profile: diverse in terms of both age and gender; usually with high-school and vocational education; the loan purpose is usually renovation, small household repairs and unexpected expenses. Clients usually take out loans at the amount of PLN 4000 for a period from 24 to 36 months. They do not usually read the terms and conditions of the loan agreement. Required documents: personal identification document, confirmation of employment and income, employment contract or contract of specific work for at least 2 months. The company grants about 100 loans every week.

Company 4

Client profile: diverse in terms of age, but most often seniors; with vocational education; usually regular clients; usually in debt. Clients most often take out loans at the amount from PLN 100 to PLN 1000 for a period of 30 days. Purpose: for everyday expenses. As regards the effect of the government-funded programme Family 500+, at first debtors paid off their liabilities and stopped taking out new loans, but after 2-3 months they returned because, for example, they had purchased a car and now need money for parts. They usually don't read the terms and conditions of agreements. Required documents: they do not check the database of the Credit Information Agency (BIK), because they would not be able to grant any loans if they did.

Company 5

Client profile: usually single seniors, diverse in terms of gender, vocational education; usually regular clients, already in debt. Purpose: most do not disclose it, but usually for everyday needs. Clients usually take out loans at the amount of PLN 500 to PLN 1500 for 12/24 months. Required documents: personal identification document, employment contract for a minimum of 2 months, they don't check the BIK database.

Company 6

Client profile: the loan company offer is very popular owing to the fact that most clients do not have the documents necessary to obtain a bank credit; clients cannot be narrowed down in terms of age or gender, it's "pretty much everyone", from business owners to people addicted to alcohol and hazard. Clients usually do not read the terms and conditions of the agreements.

Company 7

This is not a classic loan company. It grants short-term loans based on sale-purchase agreements of promissory notes. Such transactions are done with anyone who can prove any income from a legal source (taxed). The basis of the transaction is the confirmation of income. The amount on the promissory note is discretionary and it depends on the collateral, from PLN 50 to PLN 500 000. Client profile: the company has its regular clients, "with a structure similar to that on the market of quick loans", above 25 years of age, ca. 30% of clients are retired. Clients do not read the terms and conditions of agreements, they don't ask about them; many do not request the promissory notes upon repayment of the loan.

Company 8

Client profile: about 50% of borrowers are economically active, aged over 35; 20% are young people, but with enough income to obtain a loan; about 30% are retired. The company processes the obtained information and makes a decision on whether or not to grant the loan.

General research conclusions

The conducted research shows that the market of *chwilówki* in Ełk is based primarily on regular clients. Each of the entities that participated in the survey has a certain group repeat clients who had used the services of the company before. They constitute ca. 80% of all clients. One of the factors behind the demand for this type of products is the low average remuneration in this region as compared to other parts of Poland – PLN 1 500, which is not sufficient to cover unexpected expenses or to save money, as well as the difficult situation on the labour market. Another factor driving the demand for short-term loans is the difficulty with finding stable work based on an employment contract. Most people are hired based on civil law contracts, which restricts their credit capacity, thus excluding them from the market of bank credits and loans. Of concern is the fact that most borrowers do not read the terms and conditions of loan agreements. It must also be noted that the recent changes in law, including

for example the introduction of the capital requirement, have driven many small loan companies off the market. The information from interviews indicates that the greatest boom of this market took place in the years 2010-2014. Currently, the local loan market is saturated.

The research team have also interviewed the Poviats Ombudsman in Ełk.

The Poviats Ombudsman Office in Ełk has been chosen for our research owing to information we have received during an interview conducted at the Municipal Consumer Ombudsman Office in Warsaw and concerning the most frequent cases of customers of quick loan companies getting caught in the debt spiral. As a result, we selected three Consumer Ombudsman Offices in localities with a high unemployment rate and a large portion of population taking advantage of welfare services. Since the person holding the function of the Consumer Ombudsman in Kętrzyn, our first choice, changed a few weeks before the planned interview, we requested an interview from the Consumer Ombudsman in Ełk instead.

According to the Consumer Ombudsman in Ełk, the clients of loan companies in this city are mostly people who struggle to “cope with everyday life”. This inability to cope has to do with both mental and physical reasons. They are mostly unemployed people, without regular income, who cannot extend any guarantees to banks and cooperative savings and credit unions. Since the region of Warmia and Mazury is largely dominated by former state-administered collective farms, this problem concerns rural areas rather than cities. According to the Consumer Advocate, no one there is able to pay off loans on time, interest and fees accrue, giving rise to more problems, so clients take out another loan to pay off the previous one, but every subsequent loan means more and more expenses. “It’s a snowball effect. But when someone has no money whatsoever and has to feed their children, then obviously these children will be their priority, and not the needs of the loan company”¹. People in the regions of former state-administered collective farms have been left to their own devices. The Family 500+ programme alleviated this problem to some extent, but it did not resolve it. Loan company clients are usually vulnerable, poorly educated, with elementary or vocational education, whose attitudes are far below those of an average consumer. They don’t usually think ahead and do not consider the consequences of their decisions. Such attitude is also exhibited by farmers who do not meet bank criteria. To sum up, according to the Consumer Ombudsman, loan company clients are unindustrious residents of re-

¹ Quote from the interview.

gions formerly occupied by collective farms, aged 20 to 80 years old, with little education, who do not read agreements and “will sign just about anything”. Our respondent, however, does not refute the sense and purpose of loan companies. Nevertheless, he did emphasize multiple times that it is necessary to introduce a mechanism of state’s full legal control over the functioning of these companies. He regrets the fact that his office has no powers in this regard, and assesses the existing control measures as absolutely ineffective. Even if loan companies conduct their business theoretically lawfully, there is no oversight over them. “Before the official machine takes off, because their e-mail inboxes get filled to the brim with complaints, these companies will cheat people out of unbelievable amounts of money”². According to the respondents, all the Consumer Ombudsmen would be willing to help in such an endeavour, managed for example by the local branches of the Office of Competition and Consumer Protection. The Consumer Ombudsman receives a lot of complaints against loan companies and he often intervenes, or advises borrowers what steps to take. Complaints usually regard harassment by debt collectors of borrowers who don’t pay. Later on, the costs of debt collection activities are charged on top of the loan costs. Unrequited visits at home, threats of property loss – is what the Consumer Ombudsman hears from the complainants. When asked if the banks will take over the functions of loan companies, the respondent expressed his doubt. Even the recent, attractive loan offers of banks are addressed to employed prospective clients. A bank is a type of company that prefers to avoid risk, it does not grant loans/credit to clients who may have difficulties with repayment. Loan companies, even if they require any types of documents, do not care much about them.

Complaints lodged by loan company clients

Financial Ombudsman

In the course of our research, we also sought an answer to the question of what is most frequently the object of complaints lodged by loan company clients. Courtesy of the Financial Ombudsman for the city of Warsaw, we have received 19 complaints for analysis, cleared of any information concerning either the complainants or the companies against which complaints were lodged. The institution of the Financial Ombudsman has been established under the act of 5 August 2015 on examination of complaints by financial market entities and on

² Quote from the interview.

Financial Ombudsman³. The fundamental task of the Ombudsman is to conduct the complaint procedure in a situation of dispute between financial market entities, taking up actions to protect clients of financial market entities, whose interests the Ombudsman represents. We were interested in disputes with loan companies. Below is an outline of complaints lodged against loan companies, along with the context concerning the complainant, if it is relevant to the case. Whether or not the complaints are justified is not analysed here. All the complaints were lodged in 2016.

Object of complaints:

Loan extortion with the use of the complainant's ID. Reported to the loan company and to the police. The company has not accepted the complaint and demands that the loan be paid off, even though the prosecutor's office has initiated proceedings.

Dispute with a loan company concerning unreliable (oral) information regarding the possibility of delaying an instalment payment with no charge, the company sending "some guys" that harass the complainant, threatening her with debt collection and court bailiff. Moreover, the company charges PLN 20 for each such "visit". The complainant claims that she failed to pay one loan instalment on time, and now the company is charging interest.

A senior, 75 years old, took out a loan of PLN 3 800 and paid off about PLN 5 000. The company claims that she has failed to pay off a revolving loan and has notified a court bailiff, who is now seizing a part of the debt from the complainant's retirement pension. The complainant claims that she has not taken out such a loan, she clearly does not understand what this is about. She writes that she is old and in ill health and would like for the court bailiff to return her money, as she can't afford to pay for her everyday needs.

The complainant took out a loan of PLN 200 and, as per the agreement, was to pay off PLN 280. The company representative has picked up the amount of PLN 280, gave the complainant a receipt, and then threatened her with loan and debt, told her to sign "a yellow piece of paper" which turned out to be another loan, but the complainant did not receive any more money from the company. Regardless of the above, the company threatens her with court bailiff and started the procedure to recover its debt. In total, the complainant has already paid PLN 1840 for a loan of PLN 200. Allegedly the documents were attached to the complaint.

The complainant took out a loan of PLN 4 200, as per the agreement he was to pay back PLN 7854. In the last year of repayment, the complainant had

³ Journal of Laws of 2015, item 1348.

health problems and stopped paying on time. He approached the company with a request to renegotiate the repayment terms, but the company refused and continued to charge interest. The complainant is a “sick pensioner, completely unfit for work, under the care of medical specialists”⁴.

The complainant applied on-line for a loan of PLN 1000 for a period of 45 days. She paid 1 grosz to the company account. At first the company refused to grant her the loan, but later a company representative called and told her that there had been a mistake and that the complainant may agree to the loan by phone, which she did. The loan was granted for a period of 45 days with no additional commission or charges, as the representative assured her. The complainant did not receive the agreement. She was paying the loan off in instalments, on time, until she was admitted to hospital. Then she began to have delays. All the payments were confirmed with text messages. The company began to charge interest, to send debt collection messages (starting from 6 a.m.), to threaten her with court bailiff, records in KRS and BIK. The complainant writes: “I am a sick pensioner with 2nd disability group, and I have worked hard for 38 years. Sometimes I don’t have enough money for medications, but I always return the money I borrowed, so I can’t fall prey to wise guys unlawfully charging interest and getting rich off the most vulnerable”⁵. The documents are allegedly attached to the complaint.

The complainant has requested that the company cancel a loan which, as he claims, he received in 2009, but “since no one asked me to pay back, I was not aware of any debt”⁶. The company involved a court bailiff, who deduces a monthly amount of PLN 700 from the complainant’s pension. The complainant is disabled, his leg has been amputated, he is not fit for work. He requests that his case be withdrawn from the bailiff, he can’t afford a living, medicines, prosthetic leg and wheelchair.

The case concerns misleading information and extortion of PLN 3 540 toward an alleged loan. The complainants (a married couple) have applied for a loan of PLN 60 000. The application was approved under the condition that the complainants pay the aforementioned amount as security deposit, which they did. The company was delaying its positive decision, so the complainants decided to withdraw from the agreement and demanded their security deposit back. The company refused. The case has been reported to the prosecutor’s office. Since then, the case has been sent from one district prosecutor’s office to another, but there is still no decision.

⁴ Quote from the interview.

⁵ Quote from the interview.

⁶ Quote from the interview.

Complaint concerning loan repayment. The complainant is paying instalments of PLN 316. She had been repaying her debts regularly until she was diagnosed with metastatic cancer. She has had a breast amputated, has gone through multiple chemotherapies, she has been declared unfit for work and lives on benefits. She has applied with the insurer to pay off her debts, but to no avail.

The complaint concerns a quick loan for the amount of PLN 150 + commission of PLN 25.20. The loan, at the amount of PLN 175.81, has been paid off along with interest a few days late (9 days). The company began to charge high fees for requests for payments, text messages, e-mail and phones (PLN 35.01). Now the company is also charging interest for unpaid requests for payment and keeps sending new requests, also against charge.

The complaint regards the method of charging interest and underpayment of loan costs. According to the complainant, she has paid all the instalments, but the company refuses to return her promissory note, harasses her with night-time phone calls and visits at home, at work, threatens her with involving a court bailiff. Allegedly the documents are attached to the complaint.

The complaint concerns a controversy around loan repayment. The complainant claims that she has paid off all the instalments, while the company continues to charge interest. The documents are allegedly attached to the complaint.

The complaint concerns a business loan agreement. The complainant wanted to withdraw from the business loan agreement within the statutory time limit of 14 days. The company did not react to messages from the complainant (phone, e-mail), and finally responded that withdrawal from agreement is not justified given that the time limit of 14 days had lapsed.

The complaint concerns a cash loan for an amount of PLN 1 500. The complainant has repaid the loan by bank transfer made at a post office. The company claims that it has not received the money and continues to charge interest. The post office has confirmed the transfer.

The complaint is incoherent and unclear, it is difficult to ascertain what it concerns.

The complaint concerns harassment by loan company. A company representative has trespassed on the borrower's property by breaking through the entrance gate and told the family members he'd be back for money on the next day, he threatened them with a court bailiff and was very aggressive. The harassment continued later on through the phone, the representative also harassed the borrower's family members, told them their house would be auctioned off and their property seized. The complaint concerns a business loan, so we may surmise that the amount in question may have been high.

An elderly female complainant with numerous health issues, lives with her sick husband and disabled son. They live on very small retirement pensions. The complainant has received a loan of PLN 5 000, the total cost of loan was PLN 11 693. The complainant has paid off PLN 16 704, but the company still demands more money. The complainant does not understand why.

The complainant has taken out a loan of PLN 2 000 for four years, paid off in monthly instalments of PLN 140. The complainant has paid all the instalments on time, but received a letter from the loan company, demanding another PLN 2 714. In total, she has paid, on time, the amount of PLN 6 720 for a loan of PLN 2 000. Allegedly the documents are attached.

The complainant is elderly, and the manner in which she formulates her thoughts suggest she is very poorly educated. In 2013, she took out a loan of PLN 2 000, of which she received PLN 1 900 (the costs were deducted up front). She paid off PLN 2 000, but the company demands that she continue paying and the complainant does not understand why. A court bailiff seizes a part of her retirement pension and she claims she does not have enough money left to live on.

The complainant took out a loan in 2011. He did not pay the instalments for some time, he was abroad. Upon his return, he agreed on a repayment schedule with a company representative and managed to pay it off by 2015. Suddenly he found out that a court hearing was held in 2012, of which he did not know, and as a result of which a court bailiff began enforcement proceedings.

Several complaints are formulated in a very incoherent and unclear way, which points to the low education of the complainants and indicates that often they have no understanding of the mechanisms of functioning of the non-bank loan sector. Most of the cited cases are very dramatic case studies. The complainants feel that they have been wronged, cheated by loan companies, they are helpless and lost. Most complaints are handwritten and desperate in their tone. I do not know what happened later in these cases, nor whether the Consumer Ombudsman intervened. Likely not, seeing as in most of these cases it may be said that the complainants “only have themselves to blame”: they should have taken rational decisions and considered the consequences of their actions. Yet it is difficult to resist the sensation that loan companies whom the complaints concern (we do not know which ones they are) manipulate their clients, ruthlessly taking advantage of their lack of knowledge and vulnerability.

Office of Competition and Consumer Protection (UOKiK)

Courtesy of the President of the Office of Competition and Consumer Protection, we have been able to access some of the complaints lodged with UOKiK against loan companies. The agreement we have made obliges us to maintain all

the particulars of both complainants and loan companies in strict confidence. For this reason, I will only address the subject matter of the complaints. I have analysed 71 complaints.

The complaint concerns the fact that insurance and others costs were not deduced even though the loan was paid off early.

Excessively high cost of loan: the complainant borrowed PLN 3 000, the repayment amount was PLN 9 256.77; the complainant is insolvent, he lives on PLN 440 in benefits.

Excessively high cost of loan: the complainant borrowed PLN 300, the repayment amount was PLN 1 170.

Excessively high cost of loan: the insurance of the amount of PLN 4 000 was PLN 820. The complainant was supposed to receive a tablet as part of a Christmas loan promotion, and she did not.

The political party Razem has reported suspected violation of collective consumer interests by loan companies.

Commission was not reimbursed after refusal to grant a loan.

Loans were granted by four loan companies based on a stolen ID of the complainant; the complaint regards lack of identification of a natural person. The companies demand that the debts be paid off.

Refusal to return fees paid prior to entering into loan agreement, event though the loan was not granted.

Excessively high cost of loan – 134.5%.

No information about additional costs at the time of entering into the loan agreement – the complainant cannot afford to pay.

Excessively high cost of loan: loan amount of PLN 750, repayment of PLN 2 103.34, the complainant was not allowed early repayment.

Debt spiral: the company representative visits the complainant and tries to convince him to take out more loans to pay off the previous ones. High costs.

No information about additional costs at the time of taking out the loan. The complainant is an elderly man, he can't afford to pay.

Excessively high loan cost: 73.45%

Excessively high cost of loan: loan amount of PLN 1 000, repayment of PLN 4 250.

Harassment by the loan company when instalment payments are delayed: telephone calls at all times of day, text messages, name cards left at the workplace.

Excessively high cost of loan: loan amount of PLN 4 000, repayment of PLN 13 248

Excessively high cost of loan – about 200%.

Excessively high cost of loan – about 300%.

The complainant wanted to withdraw from the loan agreement one day late, the company refused and charges fees.

Excessively high cost of loan: 100% more in a year.

The complainant has been caught in debt spiral, he was not aware of the high additional fees.

Excessively high cost of loan: loan amount of PLN 6 000, repayment of PLN 13 742.42.

Excessively high cost of loan: about 200% of the loan amount.

Excessively high cost of loan: consolidation loan agreement for repayment of liabilities at the amount of PLN 41 631, repayment amount of PLN 63 271.25.

Violation of the duty to inform the client of the fees amount.

Excessively high cost of loan – about 150%.

The complainant was not able to pay off the loan, a debt collector has been involved. He is asking for help.

The company representative has trespassed on the complainant's property, he threatens him when instalment payments are late.

Not allowing the borrower to repay the loan early.

A company representative has unlawfully entered the complainant's apartment and took his TV.

Someone stole impersonated the complainant and took a loan. The company has involved a debt collector and the prosecutor's office is not reacting.

A loan was taken out with the complainant's stolen ID. The company has involved a debt collector.

Excessively high cost of loan – about 200%.

Incomplete information concerning additional loan costs at the time of entering into the agreement.

Incomplete information about the total loan cost; harassment by the company: telephone calls, text messages, threats.

Excessively high costs of loan.

Unlawful charging of interest despite agreement termination.

Excessively high cost of loan: loan amount of PLN 3 000, repayment of PLN 7 032.

The company charged the complainant with a preliminary fee for a cash loan at the amount of PLN 4 720 and took a blank promissory note from him. Afterwards the company ceased all contact and refused to return the fee and the promissory note.

Excessively high cost of loan: loan amount of PLN 4 805, loan cost PLN 2 457.

Excessively high cost of loan: the interest has ruined the complainant.

A company representative harasses the complainant and his family, he has been discredited at his workplace.

Excessively high costs of loan.

The complainant has not been allowed to withdraw from the loan agreement.

Excessively high costs of loan insurance: loan amount of PLN 1 500, insurance costs of PLN 1 389.

Excessively high costs of loan.

The company has changed its name and the complainant is not able to contact them.

The complainant is harassed by a company representative when late with the payment of instalments.

The company has refused to accept the complainants request for extension of the repayment period although the complainant is seriously ill.

A borrower has falsified a lease agreement of the apartment that belongs to the complainant. The complainant has been burdened with costs.

The complainant has entered into an oral agreement with the company through the phone, he issued a blank promissory note and made a payment of PLN 3 600. The company refused the credit and the return of the paid amount and of the promissory note.

Harassment, disclose of information to neighbours when the instalment payments are late.

Excessively high cost of loan: loan amount of PLN 3 545, repayment amount of PLN 11 225.

Someone has impersonated the complainant and extorted a loan. The company demands payment.

Lack of information about the total loan cost.

Refusal to renegotiate the loan agreement when the borrower's financial situation deteriorated.

Excessively high loan cost: loan amount of PLN 4 000, 12 000 zł.

Excessively high cost of loan: loan amount of PLN 1 437, repayment of PLN 6 584.

Excessively high cost of loan: loan amount of PLN 4 000, repayment of PLN 22 000.

Excessively high cost of loan: loan amount of PLN 4 000, repayment of PLN 17 000.

Excessively high cost of loan; the complainant has been caught in a debt spiral.

Failure to make the agreement available to the complainant, misleading oral information concerning the time limit for the repayment of the loan (30 days).

Excessively high cost of loan: loan amount of PLN 4 600, loan cost PLN 8 000. The company refuses to return the blank promissory note.

The company unlawfully demands that the complainant repay a loan he did not take out.

Excessively high cost of loan: loan amount of PLN 2 000, loan cost PLN 7 011. Refusal to withdraw from the loan agreement, no contact with the company, debt taken over by a new entity.

Lack of information about the total loan cost.

Excessively high cost of loan: loan amount of PLN 3 974, loan cost PLN 13 248.

The company refused to return the blank promissory note upon repayment of the loan.

Even though a court has ordered termination of agreement with the company, the company still demands payment. Insurance premium was not returned after termination of agreement.

Excessively high cost of loan: loan amount of PLN 2 250, loan cost PLN 7 536.

Excessively high costs of loan: about 200%.

Nearly half of the complaints (33 out of 71) concern excessively high costs of loans taken out by complainants. The costs cited by complainants are shocking. Yet these complaints also show that the complainants were not aware of the cost of loans at the time of entering into agreements, which likely results from their carelessness and excessive trust in loan companies. Research results presented in the previous part of the chapter prove that most respondents do not read agreements prior to signing them, nor requests to read them in advance. This certainly points to lacking legal and economic education of a part of Polish society. The complaints cover the period 2014-2016. We may expect that once anti-usury legal regulations from 2016 enter into force, there will be fewer complaints regarding this problem. This, however, does not change the fact that there is need of a broad educational campaign addressed to the society, promoting the necessity of always reading terms and conditions of agreements before signing them. A part of loan companies use, and will likely continue to use, their advantage over clients who find themselves in a bad financial situation and who need their help. The only way of preventing such situations is to put these companies under a system of state control and to reign them in with provisions of law. Loan companies play a socially useful role, their services are often the last resort for people excluded by the banking system, with no credit capacity, and thus usually in a bad or very bad financial situation. All the more, covering these companies not only with legal regulations but also oversight is a necessary requirement in a state of law.

Loan company client profile

Interviews with loan company managers

We have conducted in-depth interviews with loan company managers. Unfortunately, not all those we have chosen for the survey agreed to participate in these interviews, but we have been able to obtain information from entities that play a significant role on the market of loan companies. As always in the course of our research, we have guaranteed our respondents anonymity, and for this reason, the names of the companies they represent are not given.

We have asked our respondents what functions the loan company sector plays on the financial market. Our respondents agreed in this respect, they all underscored the positive functions of the loan company sector. They are of the opinion that the loan company sector supplements the bank offer and satisfies the needs of those consumers who do not fit the bank client profile owing to the specificity of bank operations. Below we present some examples of such opinion:

“The loan company sector fulfils the needs of consumers who are in need of money for all kinds of purposes. Thanks to the fact that it specializes solely in lending money, it can satisfy those needs **quicker and better** than banks, whose business entails many other activities. Banks are wholesalers and loan companies are retailers, a consumer-oriented type of business”⁷. “We usually grant loans to **borrowers who were unable to get them from banks**. You could say that such clients have been left alone with their problems or needs [by banks]. This is where demand comes from. Some years ago, when the first loan companies were being established, they noticed this situation and decided to grant loans to these clients. They are often referred to as **excluded clients**. It is a big group of people, often from smaller towns and rural areas, where access to financial products is limited”⁸. “The basic function of our sector is to satisfy the **need for financial liquidity on the micro scale**. Very often clients are able to pay an instalment for their apartment or car thanks to us. Another very important factor is the fin-tech boom, we are able to react to market feedback much quicker, thanks to which we are becoming competitive as regards other sectors”⁹. “We mainly provide financing to representatives of two social groups. The first are people **excluded from bank financing**, and the other group are all those who choose our product for some other reason (such as **availability or the short time** of waiting for money). We certainly provide the financing of everyday household needs”¹⁰. “The loan sector

⁷ Quote from the interview.

⁸ Quote from the interview.

⁹ Quote from the interview.

¹⁰ Quote from the interview.

supplements the bank sector, because it is not profitable for banks to loan amounts such as two or three thousand zlotys. Such clients are usually sent off by banks, because the costs of verifying them is much higher for the bank than what it can make on interest. Besides, loan companies are able to grant loans to people with no **credit capacity**. These clients are often in debt, or they have no credit history”¹¹. “Loan companies that we perceive as fin-tech grant loans much quicker than banks, for example without calling the employer, without requesting any documents. For this reason, clients choose to pay a bit more for the **convenience**”¹².

All of our respondents perceive and define the loan company sector as functional and complementary to the strictly banking area of operations. According to them, the loan company sector caters to a different group of clients than the banking sector. These are primarily people **excluded from the banking financial market**, as well as people willing to pay more for the convenience of less formalities and shorter waiting time. There has also been an argument about financial liquidity in the micro scale, consisting in providing small amounts in short time for everyday needs. The needs of either of these groups cannot be satisfied by banks, which grant credits and increasingly also loans out of deposits, and thus they are obliged to carefully check the credit capacity of a potential borrower.

There are various reasons for exclusion from the banking financial market. The dominant reason is lack of credit capacity caused by very low income. Others may be excluded because they do not meet the formal requirements of banks – such as those employed in the grey zone, employed on the basis of short-term contracts of mandate (called “garbage contracts”) or those who are unable to formally document their income. Another reason is bad credit history, permanent or temporary. In such cases, a problem with the payment of even a few instalment automatically excludes a client. Another reason for exclusion are the infrastructure limitations of the financial structure in Poland. Less bank branches in small localities means that banks are not able to lend money to the target groups of loan companies. Besides, lending small amounts is not profitable to banks. This is why the loan company sector cannot be viewed as a threat to banks, as it only complements the supply of loaning services.

According to all of our respondents, the sector of loan companies should be not only strictly regulated by law, but also closely controlled. The loan companies that operate against the law “ruin the reputation” of the entire loan com-

¹¹ Quote from the interview.

¹² Quote from the interview.

pany sector, putting it at risk of losses, and harming the potential clients. For this reason, our interviewees support the legal regulations that came into force in March 2016. None of the respondents supported the idea of complete “liberalization” of the loan company sector. We have also asked our respondents what would be the consequences of delegating the loan company sector. All the respondents agreed that the effect would be catastrophic. The most vivid articulation of this opinion was: “Prohibition in the USA did not limit the amounts of consumed alcohol in any way, it just gave rise to the mafia, criminal organizations, and the sales of alcohol soared. After 10 years, prohibition was abolished, as it turned out that it was not a solution to the underlying problem”¹³.

Loan company client profile in other research

NWAI Dom Maklerski “Loan Company Market. Analytical Report”, 22 January 2016¹⁴.

The report authors emphasize that over the past five years, the Polish non-banking sector has experienced a boom. The sum of loans granted to clients in 2015 reached the value of ca. PLN 5.2 billion – more than twice the value from 2010. Intense marketing activities, broadening the product offer and the development of the Internet channel have led to a situation where currently, every year more than 1.5 million Poles incur debt outside of the banking sector. The report authors predict a diametrical change once the amendments of the acts on financial market supervision and consumer credit take effect (11 March 2016). The amendments aim to protect the interests of borrowers by introducing limits to costs and fees charges by non-banking companies.

They also underscore that earlier estimates may be burdened with error owing to the unregulated nature of the market. According to the report entitled *Social Diagnosis 2015*, loan institutions finance ca. 0.5% of Poles’ overall debt. Assuming that the value of household credits is PLN 622 billion, the portfolio of granted loans may be estimated at about PLN 3.3 billion. Industry organization reports, however, cite much higher figures. *Konferencja Przedsiębiorstw Finansowych (KPF, Conference of Financial Enterprises)* estimates their value at between PLN 4.8 billion and PLN 5.6 billion (2014), and the data of *Związek Firm Pożyczkowych (ZFP, Association of Loan Companies)* for the year 2015 indicate the amount of PLN 5.1 billion. The average value of a loan granted by

¹³ Quote from the interview.

¹⁴ Report authors: Piotr Miliński, analyst; Marek Żmudzin, analyst.

enterprises surveyed by KFP in 2015 stood at PLN 2 564 and the companies' preference to extend the lending periods was becoming more visible. 38% of loans granted in the time in question were for a period of at least two years.

The most dynamically developing market segment in the researched period were loans granted entirely through the Internet. In early 2014, the annual growth of the on-line category stood at about 150%. In this time, international companies built a dominant position. The clear leader was Vivus which, according to data for the first half of 2015, granted loans at a value of about PLN 630 million. The number of clients surpassed a million, and the number of granted loans was almost 3 million. The company revenues for the year 2014 were PLN 250 million, with a net profit of PLN 55 million. The Polish activity on the market of Internet loans is not as robust, but for example the Polish branch of Wonga reached PLN 13.7 million of revenues, and just a year later – PLN 32.5 million.

The traditional sector was much more consolidated in the period in question than its Internet counterpart. The dominant company was Provident, which grants medium- and long-term instalment loans. Company revenues for 2015 in Poland and Lithuania reached about GBP 280 million. The runner up in the traditional segment was Profi Credit, with branches all over Poland. In the final annual report for 2014, the company reported revenues of PLN 318 million and declared having granted loans at the value of PLN 481 million, with predictions for 2015 being even more optimistic.

According to the Social Diagnosis 2015, the percentage of households in Poland with credits and loans stood at 34% in 2015, which translated into ca. 4.6 million indebted families. The authors noticed a clear downward trend as regarded the number of households that declared being in debt since 2009. Despite the overall decrease of the indebtedness ratio, the value of liabilities of households due to bank credits and loans was constantly on the rise and by the end of the third quarter of 2015 it had surpassed PLN 622 billion. According to a National Bank of Poland survey concerning the changes in credit policy of that time, a part of banks introduced stricter conditions for granting consumer credits. The main reason behind this were decisions of the Monetary Policy Council regarding monetary policy and restrictions of credits to potentially risky clients. The credit history of loan company clients has show that 79% of them also have an active bank credit. The next 10% were people who had taken out a bank credit in the past. The remaining 10% was the group of clients who only had loans. Every sixth person was in the age group of 18-24. People aged 25-34 represented another 24%. According to the report authors, this data points to the exclusion of young clients owing to access barriers to consumer credits for

this group. Once refused by a bank, young clients turn to loan companies. Moreover, the existence of the loan company segment has a lot to do with the demand for small loans (up to PLN 1000). Polish banks did not offer this type of financing.

Polish households usually used the loaned money to finance a renovation or for everyday needs (53% and 39% respectively). Repayment of debts was the third most popular loan purpose, at 31%. According to the authors, this is a particularly dangerous phenomenon that points to rolling over liabilities, which in turn often leads to the debt spiral. The ultimate result is often the complete loss of ability to service one's debts.

Związek Firm Pożyczkowych "The Loan Company Market Three Months Since the New Regulation", June 2016.

The purpose of this research was to check the effect that new legal and institutional regulations (the so-called Anti-Usury Act, in effect since 11 March 2016) has had on the operations of loan companies in Poland in the period from 1 June 2015 to 31 May 2016. The study was conducted on 3-6 June via an Internet survey, filled out by 40 entities active on the loan market. Only companies listed in the Loan Company Register have been invited to participate. The research results cover the period since the introduction of the Family 500+ programme (introduced on 1 April 2016). Throughout the first quarter since the implementation of the regulations, every third company observed a decreased demand in loans of the lowest value and shortest repayment period. Moreover, the study showed clearly that 70% of loan companies noted a decline in the share of borrowers who "roll over" their liabilities in their client portfolio. The regulations directly addressed limitations to the possibility of rolling debt over/extending repayment period, and so it may be concluded that they have met the expectations of the legislator. One of the principal intentions of the legislators was to force loan companies to verify the credit capacity of their clients more thoroughly. The companies began to intensify their activities in this regard long before the regulation took effect, in order to improve the financial indicators by securing solid, safe client portfolios. Thus the noticeable rise in loan refusals – data show that only 3 out of 10 new clients obtains the loan. The conclusion from these studies is that combined with the decreased demand for short-term loans, the lower supply of clients has a momentous significance for the entire industry, which has shifted from the dynamic quantitative growth onto qualitative approach. 85% of the researched enterprises have reported lower debt collection costs incurred by their clients.

Polski Związek Instytucji Pożyczkowych (PZIP, Polish Association of Loan Institutions), Press Office, February 2017.

As follows from a study conducted by Ratka.pl, over 87% of borrowers over the age of 40 repay their debts on time. They represent more or less one-third of all Internet-based loan institution clients. Clients from this age group have a 51% higher credit capacity than representatives of Generation Y. 59% of them use the on-line channel when choosing a loan. Poles aged 40 and over usually borrow money for holidays, renovations and maintenance of children. The study also shows that 56% of borrowers incur another loan upon having paid off the first one. Clients over the age of 40 appreciate, among others, the broad access to loan products, which makes it possible to take out a credit quickly and with no formalities. Over 60% of borrowers aged 40 and over reside in rural areas. The option to take out a micro-loan over the Internet is additionally attractive to residents of non-urbanized regions because there are usually no stationary loan offices there.

Polski Związek Instytucji Pożyczkowych, Press Office, May 2017.

The annual report of the financial sector reputation, based on a survey conducted by Kantar TNS, shows that 17% of Poles trust loan companies (versus 66% who trust the NBP, 62% who trust banks operating on the Polish market, 44% who trust insurance institutions and 24% who trust Cooperative Savings and Credit Unions). The trust in loan companies has risen by 54% since March 2016. That was when the new provisions limiting the maximum credit costs took effect.

“Gazeta Finansowa”, 23–29 June 2017: “Cash Loan Market” Business Report.

According to the authors, 2017 marked a period of rapid growth for loan companies mainly due to the boom on Internet companies, which transfer money onto the client’s account within fifteen minutes from application. Each year, millions of Poles borrow money for everyday needs, holidays or Christmas gifts. Up to 25% of these loans are granted through the Internet or telephone. In the case of financing with a value below PLN 1000, the share of loan companies in the market is even higher, reaching 40%. As follows from the report of Ratka.pl, about 59% of borrowers over the age of 40 use the services of on-line loan companies. In this period, loan companies were perceived as solid financial institutions, extending safe short-term loans. 17% of respondents trust loan companies (Kantar TNS 2017). This is the effect of the Anti-Usury Act adopted in March 2016, which eliminated companies that charged horrendously high

interest from the market. The Act has set the maximum interest on quick loans at twice the amount of statutory interest, that is 10% per annum, and the non-interest costs at 100% of the loan principal. Non-bank loans are more expensive than strictly banking loans, but they are quicker and more accessible. As follows from BIK reports, the loan company clients are usually young people, who take out up to four times the number of loans incurred by seniors. Data also shows that nearly 80% of all loan company clients also have bank credits. For some of them, quick loans are the only possibility of financing unexpected family expenses. Money from cash credits is usually used toward paying for clients' on-going needs and those connected with renovation or purchasing home equipment.

“The Quick loan Market Is Faring Well”. Bankier.pl, 22 July 2017.

According to the data of PZIP, the average quarterly sales at loan companies in 2014 reached PLN 50.33 million. This means that the estimated number of clients processed by each of the researched companies hovered around 58.5 thousand people. A report by the Conference of Financial Enterprises in Poland revealed that 2016 was the fifth consecutive year of growth in terms of the amounts lent by the loan institution sector. Based on the data supplied by members of KPF from the sector of loan institutions, as well as on financial data published by Provident, it may be concluded that the YTY growth as compared to 2015 reached 7.5%. According to this data, in 2016 the value of granted loans was PLN 3 741 million, representing an increase by PLN 262 million in relation to 2015. Data published by PZIP in 2017 shows also that the value of incurred loans spikes significantly before holiday seasons, and that loans taken out through smartphones, like the ones incurred via the Internet, are becoming increasingly popular – their share has grown by 33% as compared to 2016.

The deadline for applying for a record in the register maintained by the Financial Supervision Authority expired on 29 January 2018. Failure to meet this deadline or to close up the business may result in fines of up to half a million zlotys. According to Jarosław Ryba, president of the PZIP, the register is the cornerstone of control over this sector. PZIP estimates reveal that businesses that only pretended to offer loans, which for example only promised them, but in reality made money off non-returnable commissions or highly priced telecommunication services, are disappearing from the market. After some time has passed since the inception of the register, information on unfair practices by such companies should be reported to the Office of Financial Supervision Commission (UKNF) by other market participants, such as customers or tax offices, said Jacek Barszczewski, acting director of the social communication

department at UKNF. The register may contribute to reaching such a level of market transparency that will provide more effective protection of consumers against new entrepreneurs who have no intention of operating within the boundaries of the law. According to Regina Stawnicka from the Conference of Financial Enterprises, the consumers and consumer organizations rendering advisory services in connection with protecting their rights will be able to quickly verify the reliability of an enterprise that consumers plan to approach with a credit application. The latest edition of the report on the situation of loan institutions in Poland, issued periodically by the Conference of Financial Enterprises, indicates that the value of loan portfolio surpassed PLN 3.8 million by the end of the first half of 2017. In this time, over 1.67 million Poles were clients of loan companies, 30 thousand more than at the end of 2016.

In light of these conclusions, it may be expected that trust in loan companies is on the rise, which will probably translate into a higher number of clients using their services and into the growth of this sector. According to “Perspectives of the Alternative Lending Market in Poland Against the European Background”, issued on 3 July 2017 by Digital Economy Forum (fintek.pl), which publishes the results of the first European edition of Alternative Lending Index created by TWINO in collaboration with KPMG, the report compares the lending environments that affect the development of the loan sector in various European countries. Data used in designing this index covers the years 2010-2016. **Alternative Lending Market is a term used to describe the market of non-banking loans, addressed to individual clients and small enterprises as an alternative to traditional banks.**

According to KPMG, which published the Spring 2017 Twino Alternative Lending Index (<https://fintek.pl/pozyczki-pozabankowe-zawojuja-polski-rynek-raport-kpmg-twino>), Poland is fourth out of twenty three studied countries in terms of the so-called Alternative Lending Index (ALI). This means an enormous potential of the Polish alternative lending market, which is a result of primarily two factors: high lending requirements of banks and relatively high credit interest in Poland as compared to other European countries. The Alternative Lending Index is calculated based on 9 parameters addressing the general lending environment and conditions on which clients may take out a loan, grouped into three areas: general lending environment, lending conditions for businesses and lending conditions for households. The index accounts for, among others, the overall indebtedness of the society, its “credit capacity” in relation to GDP, the competition among lenders, how easy it is for businesses and individuals to obtain a bank loan and how much it costs.

According to KPMG, the greatest potential for the development of alternative lending is in Hungary, Slovenia, Lithuania, Poland, Romania, Greece and

Ireland. In all these countries, the ALI value, on a scale of 1 to 10, surpassed 5 points (against the European average of 4.4). Poland came up fourth, with 5.8 points. Yet Poland, owing to the high index value and volume of loans is, along with Greece and Ireland, one of the three most promising European markets for fin-tech (companies that operate only on-line), that is the business sector that intends to take over a part of banks' clients. In countries where clients are served by the banking sector, there is little room for growth of loan companies and peer-to-peer lending platforms, and ALI does not surpass 3 points.

In preparation for the report, KPMG collected data about, among others, credit prices. The average interest on a household credit in Europe is 9.1% (in 2010 it was just above 12%), and the average annual interest on mortgage loans is 2.6%. In this area, Poland ranks as one of the most expensive countries for borrowers, with consumer credits costing on average 17% annually (in Czech Republic: 12%, in Denmark: 10%). Consumer credits are even more expensive in Hungary, with the average cost nearing 30% annually, or in Latvia (ca. 25%).

Banks in Poland grant PLN 120 billion in new household credits every year (of which PLN 80 billion in consumer credits and PLN 40 billion in mortgage loans), but according to the estimates of the ZFP for 2016, 73 million of the on-line and off-line segment clients finance their needs at the non-banking loan market, worth PLN 6.2 billion. The latest data shows that already every fourth small loan (up to PLN 4 000) is incurred by individual clients outside of banks. One of the factors favouring the growth of loan companies is the fact that banks in Poland are very conservative in estimating the payment reliability of their clients, continuously tightening formal requirements.

All the foregoing arguments make for a compelling prediction that the loan company market in Poland will continue to grow, satisfying the needs of clients who cannot turn to banks owing to their exclusion from their financial market, or those who prefer alternative lending due for reasons of convenience.

Payday loans in the context of behavioral economics and regulatory functions of the state

Introduction

One of the most pressing problems in the world's economy is the fast-paced accumulation of debt by states, institutions, businesses, and households. This growth of debt has serious global implications as the looming risk of creditor insolvency and payment backlogs may disrupt harmonious economic and social functioning, and potentially lead to a financial crisis. Poland is no exception in this respect. The above predicament also concerns short-term consumer lending, including so-called payday loans, although the latter largely elude statistical records. While the national data on household debt may be incomplete and contain gaps, they nevertheless point to some alarming trends that are economically and socially undesirable. The rise in consumer borrowing is accompanied by increasing delays in payments, which may eventually trigger a self-reinforcing spiral of debt.

These adverse phenomena are reflected, amongst others, in reports from the National Debt Register, which paint a rather complex picture of consumer loans in general, and payday loans in particular, revealing both their beauty and ugliness with a rather dramatic backdrop. On the one hand, there is considerable social demand for this type of credit, which is indispensable if no other options for financing everyday household expenses are available. On the other hand, if they get out of hand, payday loans may themselves cause grave life problems, especially when credit dries up or when basic economic principles are violated, including the commonsense rule of spending within one's means.

The question arises as to why the economically and socially useful instrument of payday lending becomes a crippling burden to the borrowers, who nevertheless continue to take out more loans to the point where they can no longer repay the lenders – and how this could be prevented. The literature study and empirical analyses presented in this chapter are hoped to shed light on these issues. The theoretical foundations of the paper are grounded in behav-

ioral economics, while its empirical considerations refer to specific characteristics of the socioeconomic system, including the regulatory functions of the state. These issues are discussed against the background of quantitative data on national and international debt characteristics.

Increasing debt levels as a potential source of crisis: Selected data and statistics

Analysis of the global economy indicates a number of threats and dysfunctions. Among them, of paramount importance is growing debt in many individual countries and around the world as a whole. This is compounded by a variety of socioeconomic asymmetries affecting entire nations, regions, or social groups. Spectacular examples of such asymmetries are increasing social inequalities, widespread poverty, and social exclusion, with hunger afflicting approximately 1 billion people, which stands in stark contrast to the extravagant overindulgence and wastefulness of the affluent economies. In addition, anomy wreaks havoc in the value system. These unfavorable phenomena are inconsistent with the findings of economics as a social science and with the theoretical foundations of economic activity, which by definition should be oriented at rational behavior and higher quality of life.

Ongoing and accelerating economic progress, manifesting itself in an ever-increasing volume of manufactured goods and services, has failed to translate into a satisfactory improvement of the living standards of the general population. Indeed, in some areas those standards seem to be on the decline. Even wealthy countries and communities are experiencing negative phenomena such as deteriorating social relations, a rise in addictions damaging not only health, but also social functioning, a spreading culture of loneliness and insecurity, terrorism, growing suicide rates, erosion of democracy, and more. Paradoxically, many pressing environmental hazards are far from being contained despite remarkable scientific and technological advances and despite the new opportunities for socioeconomic development afforded by the digital revolution. Internet technology has made it possible to uncover new possibilities and achieve a comprehensive, global visualization of socioeconomic (and consumption) models. The models promoted by the rich countries and affluent social groups spread quickly around the world leading to unbridled consumerism in permanent need of new sources of financing. Given the above, the rapid global growth of the financial sector with a variety of increasingly available products has spurred debt proliferation among both consumers and businesses. While reasonable borrowing may provide the necessary leverage to improve the quality of human

life and boost business productivity, many loans have little to do with rational choices.

Indeed, the unreasonableness of human decisions was noted back in the 1960s by the American psychologist and philosopher Erich Fromm in his damning remark that “twentieth-century man seems to be a miscarriage”¹. He wondered why everything seemed to be breaking down. In his opinion, “man became a collector and a user. More and more, the central experience of his life became I *have* and I *use*, and less and less I *am*. The means – namely, material welfare ... – thereby became ends. Earlier, man sought nothing but the means for a better life, one that was worthy of human dignity.”² Thus, “man is dead, long live the thing!”³ The aforementioned adverse trends were also aptly reflected in Albert Einstein’s 1946 observation: “I believe that the abominable deterioration of ethical standards stems primarily from the mechanization and depersonalization of our lives — a disastrous byproduct of science and technology. *Nostra Culpa!*”⁴

The numerous dysfunctions and asymmetries of the modern world corroborate the truth of such insights. Indeed, one could argue that those dysfunctions culminate in the public, corporate, and private debt burden in most countries as well as on a global scale.

According to data and estimates from the Washington-based Institute of International Finance (IIF), the aggregate public and private debt of the global financial and non-financial sectors (including household debt) amounted to \$237 trillion at the end of 2017, having increased by \$21 trillion nominally (9.72%) year on year. Since the beginning of the 21st century, global debt has nearly tripled, reaching almost three times the volume of global GDP (Table 9.1).⁵

¹ E. Fromm, *O byciu człowiekiem [On being human]*, Vis-a-Vis Etiuda, Cracow, 2013.

² *Ibidem*, p. 20.

³ *Ibidem*, p. 26.

⁴ Albert Einstein’s letter to Otto Juliusburger of April 11, 1946, quoted in: A. Calaprice, *Einstein w cytatach pełne wydanie [The Ultimate Quotable Einstein]*, Poltext, Warsaw 2014, p. 373.

⁵ IIF Quarterly Global Debt Monitor – Slide Deck – Thursday, May 17, 2018, https://www.iif.com/system/files/iif_gdm_may_2018.pdf (30.05.2018).

Tab. 1. Global public and private debt (as of year end)

Year	Non-financial sector (USD billion)	Overall debt (USD billion)
2001	62	86
2005	113	167
2015	156	209
2016	163	216
2017	178	237
Change 2001 = 100%	287.1%	275.6%

Thursday, May 17, 2018, https://www.iif.com/system/files/iif_gdm_may_2018.pdf (30.05.2018).

Global debt growth is thought to be responsible for the contagious nature of financial crises. This problem persists almost all over the world, albeit to varying degrees. Of special note is the fast-growing volume of household debt, which has been fueled by low interest rates maintained in many countries over the past years. This is especially true of the highly developed economies, where that ratio typically exceeds 50% of disposable income.

Poland has also seen a sharp increase in debt, although its levels relative to GDP are much lower than the world average (Table 9.2). The country's foreign debt exceeded \$378 billion at the end of 2017, up from \$ 337 billion the previous year (a 12% rise).⁶ When Poland joined the European Union in 2004, its foreign debt was \$130 billion, and so its amount increased 2.5-fold in the years 2004–2017.⁷ However, it should be noted that Poland's public and private debt-to-GDP ratios are much more favorable (lower) as compared to the EU and global averages (Table 9.2).

⁶ When expressed in Euro, Poland's foreign debt in 2017 amounted to almost 316 billion, down from EUR 319 billion in 2016 *Statystyka bilansu płatniczego. Zadłużenie zagraniczne Polski [Balance of payments statistics: Poland's foreign debt]* NBP, <http://www.nbp.pl/home.aspx?f=/statystyka/zadluz.html> (30.05.2018).

⁷ Ibidem.

Table 2. Public and private debt (including household debt) relative to GDP and disposable income

	2006	2008	2015	2016	2017
Public debt-to-GDP ratio (%)					
EU countries (19 member states)	67.4	68.7	89.9	89.0	86.7
EU countries (28 member states)	60.1	60.8	84.5	84.5	84.5
Poland	46.9	46.3	51.1	54.2	50.6
Aggregate corporate and private debt-to-GDP ratio in Poland (%)	47.6	67.3	78.9	81.6	76.4
Household debt-to-income ratio (%)					
EU countries (19 member states)	90.74	94.16	93.71	93.32	93.60
Poland	28.12	47.0	60.26	59.96	
Household saving-to-disposable income ratio (%)					
EU countries (19 member states)	na.	10.01	12.42	12.21	11.9
EU countries (member states at the time)	na.	11.19	10.89	10.82	9.97
Poland	na.	3.34	2.30	4.36	
Household investment-to-disposable income ratio (%)					
EU countries (19 member states)	11.23	10.81	8.20	8.46	8.76
EU countries (28 member states)	10.02	9.67	7.51	7.81	8.13
Poland	8.03	9.12	7.70	7.25	na.

Inhomogeneous data periods are attributable to incomplete statistical data.

Source: *Gross debt-to-income ratio of households*, Eurostat,

<http://ec.europa.eu/eurostat/tgm/table.do?sessionid=4NXBNIVyrBKRK340mw8UxofT9w27DnWEVYjrcx0sMUqQl8EVuX2!1989877910?tab=table&plugin=0&language=en&pcode=tec00104>

(30.05.2018); *Key indicator*, Eurostat, 28.05.2018, http://appsso.eurostat.ec.europa.eu/nui/show.do?dataset=nasa_10_ki&lang=en (30.05.2018);

Private sector debt, consolidated - % of GDP, Eurostat, <http://ec.europa.eu/eurostat/tgm/table.do?tab=table&init=1&language=en&pcode=tipspd20&plugin=1>

(30.05.2018); *Household investment rate*, Eurostat, <http://ec.europa.eu/eurostat/tgm/table.do?tab=table&init=1&language=en&pcode=tec00098&plugin=1>

(30.05.2018).

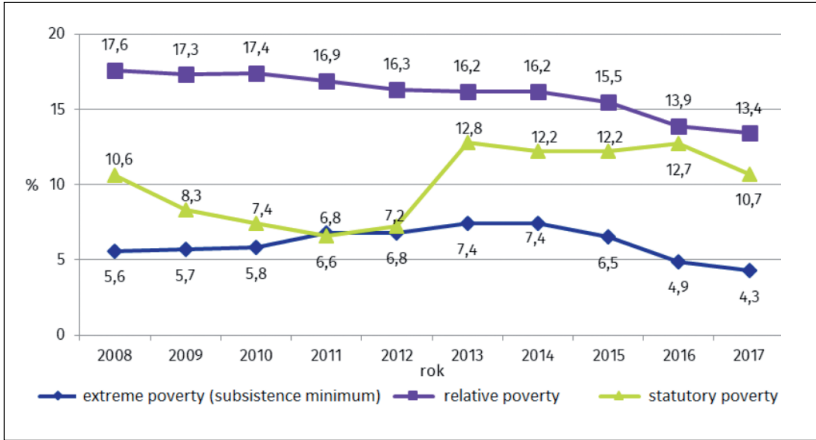
Although the overall picture of Polish debt against mean EU and global indicators is relatively good, detailed analysis of statistical data reveals some worrying trends, especially as concerns the substantial rise in foreign debt and payment backlogs in the country. This is exacerbated by the high dynamics of household borrowing: in the years 2006–2016 the aggregate debt of Polish households more than doubled in relation to their disposable income. In 2016, the debt-to-income ratio of households was 60%, up from 28% in 2006 (Table 9.2). Although this is still much below the EU average (93%), the saving-to-

income ratio of Polish households is significantly less favorable: although in 2016 it increased from 2.3% to 4.36%, it remains much below the EU average of approx. 10% (in contrast to Poland the aggregate EU saving rate has been on the decline). It should be mentioned that in some member states (e.g., Luxembourg, Sweden, and Germany) the household saving rate is markedly higher than the mean calculated for the EU-28, reaching approx. 20%. Nevertheless, the general trends of rising debt and decreasing saving rates across the EU mean that a greater proportion of new household borrowing is being spent on consumption. This is also true for Poland, where the household debt-to-income ratio is rising while the investment-to-income ratio remains lower than the EU average (and is declining). It is little consolation that differences in the investment rate between Poland and the EU average are lower than the differences in the saving rate (especially given the higher mean income in the EU). This does not alter the consumption-driven model of household borrowing in Poland, which may be primarily attributable to the fact that the country is “catching up” with the more affluent member states and to the relatively low household incomes, although it may also be treated as a symptom of burgeoning consumerism. To paraphrase Engel’s law, the lower the income, the higher the share of it that is spent on so-called first-order goods (consumer goods). Importantly, low incomes constitute a barrier both to saving and investment. Although since 2015 household incomes have markedly increased, they are still relatively low, especially as compared to the wealthier EU members. Nevertheless, data from the Central Statistical Office (GUS) show a major improvement in the financial situation of Polish households: in 2017 the mean disposable income per person was PLN 1598, which reflects a 6.3% rise on 2016 levels. In turn, in 2017 mean monthly expenditures per person amounted to PLN 1176, and were higher by 1.9% in real terms as compared to the year before. Finally, mean spending on consumer goods and services was PLN 1127, with a real increase of 2.1% on 2016.⁸ Thus, the dynamic of consumer spending was higher than that of overall spending.

Despite the significant upturn in household incomes, Poland continues to suffer from significant pockets of poverty. According to GUS data, as much as 4.9% of the population lives in extreme poverty, down from 6.5% the year before (Figure 1).

⁸ *Sytuacja gospodarstw domowych w 2017 r. w świetle wyników badania budżetów gospodarstw domowych* [Situation of households in 2017 in light of a household budget survey], GUS, Warsaw 2018.

Figure 1. Poverty rates in Poland in the years 2008–2017, according to the poverty thresholds adopted in a given year (percentage of people in households)



Poverty rate – percentage of people in households with expenditures (including the value of articles received free of charge and own consumption) below the officially adopted poverty threshold.

Source: *Zasięg ubóstwa ekonomicznego w Polsce w 2017 r.* [The scale of economic poverty in Poland in 2017], GUS, Warsaw 2018, p. 3.

According to data from GUS, in 2017 the percentage of people affected by material deprivation decreased from 8.1% to 6.7%, while the “at risk of poverty or social exclusion” category, which is one of the headline indicators of the *Europe 2020* strategy declined from 30.5% in 2008 to 23.4% in 2015 and 21.9% in 2016.⁹ It should be noted, however, that the income levels designated as poverty thresholds in Poland remain rather low despite the recent increases (Table 9.3).

⁹ Eurostat: *Polska na pierwszym miejscu w UE w walce z ubóstwem* [Eurostat: Poland is the leader of poverty reduction in the EU], PAP, 16.10.2017, <http://www.pap.pl/aktualnosci/news,1126693,eurostat-polska-na-pierwszym-miejscu-w-ue-w-walce-z-ubostwem.html> (29.05.2018).

Table 3. Poverty thresholds for selected household types in the years 2014–2017^a

Poverty indicator	Single-person households				Four-person households (2 adults + 2 children under 14)			
	2014	2015	2016	2017	2014	2015	2016	2017
Extreme poverty (subsistence minimum), PLN	540	545	550	582	1458	1472	1486	1571
Relative poverty, PLN	713	734	770	799	1926	1982	2080	2157
Statutory poverty, ^b PLN	542	634	634	634	1824	2056	2056	2056

^a Data for the fourth quarter of a given year.

^b The poverty threshold for single-person households was: from October 2012 to September 2015 – PLN 542, and since October 2015 – PLN 634. In multi-person households, that threshold per person was: from October 2012 to September 2015 – PLN 456, and since October 2015 – PLN 514.

Source, *Zasięg ubóstwa ekonomicznego w Polsce w 2017 r.* [The scale of economic poverty in Poland in 2017], GUS, Warsaw 2018, p. 9.

Thus, even though Poland stands out in terms of the most rapid poverty reduction in the region, it still remains high, with every fifth citizen being at risk of poverty or social exclusion. To those people, payday loans often appear to be the only solution of their financial problems. However, at the same time their dire situation may translate into repayment delays, potentially triggering a domino effect of payment backlogs in different socioeconomic spheres. Practice shows that short-term consumer loans may be taken out not only by consumers, but also by some businesses and institutions, as has been the case with one of the most indebted municipalities in the country.¹⁰ Indeed, according to data from Regional Chambers of Accounts and the Ministry of Finance, as of December 2016, as many as 38 local authorities borrowed money from non-bank financial institutions, for an overall amount of PLN 164.2 million.¹¹

These data point to the complexity of short-term consumer loans: their practical utility stands in sharp contrast with the risk they pose to creditors and debtors alike. Interestingly, payday loans provide numerous examples corrobo-

¹⁰ M. Kicka, *Zadłużenie gmin. Dane Ministerstwa Finansów o zadłużeniu poszczególnych gmin* [Debt of municipalities: Data from the Ministry of Finance for individual municipalities], 21.12.2017, http://samorzad.pap.pl/depesze/wiadomosci_pap/179893/ (30.04.2018). *Ta gmina ma największe długi w Polsce, brała nawet chwilówki. Teraz wójt prosi internautów o zbiórkę 3,3 mln zł* [This municipality has the biggest debt in Poland; it has even taken out payday loans. Now its head is asking Internet users to chip in PLN 3.3 million].

¹¹ *Samorzady są zadłużone w parabankach na ponad 164 mln złotych* [Local governments owe more than PLN 164 million to non-bank financial institutions], MF, “Gazeta Prawna”, April 4, 2017, <http://serwisy.gazetaprawna.pl/samorzad/artykuly/1032646,samorzady-sa-zadluzone-w-parabankach-ustawa.html> (30.04.2018).

rating the tenets of behavioral economy while undermining the *homo oeconomicus* assumption.

Payday loans and behavioral economy: *Homo oeconomicus* is no more?

Behavioral economics is a field of research stemming from critique of the fundamental tenet of neoclassical economics, that is, the *homo oeconomicus* assumption about rational agents, which underpins the principle of infallibility of free market mechanisms. This was observed, amongst others, by the Swiss economic historian Gilbert Rist, who wrote that “most economists, we must grant them that, admit that an autonomous rational *homo oeconomicus* is a fiction. Yet his ghost keeps coming back to haunt the economic imagination.”¹²

Behavioral economics combines psychology and economics in the context of rationality of economic decision making. This school of thought has gradually strengthened its position within economic theory, gaining the attention of increasing numbers of scholars and socioeconomic actors. The 2013 winner of the Nobel Memorial Prize in Economic Sciences, American scholar Robert J. Shiller, pointed out that the Nobel Prize had been already awarded to many behavioral economists, that is, George Akerlof, Robert Fogel, Daniel Kahneman, and Elinor Ostrom, as well as himself. After Richard H. Thaler joined that list in 2017, this accounts for 6% of all Nobel Prizes in economics ever awarded.¹³ Furthermore, Shiller’s list of Nobel laureates in the field of behavioral economics may be extended to encompass another three Americans: Gary Becker (1930–2014) awarded in 2012 “for having extended the domain of microeconomic analysis to a wide range of human behavior and interaction, including non-market behavior” and James J. Heckman and Daniel L. McFadden awarded in 2000 for “the development of methods of statistical analysis of individual and household behavior.” While behavioral economics has enjoyed growing interest over the past four decades or so, the foundations of that school of thought can be traced back to the works of the intellectual father of classical economics and classical liberalism, Adam Smith (1723–1790). The very title (as well as content) of his first book published in 1759, namely, *The Theory of Moral Sentiments*, has clear behavioral overtones, which were regrettably ig-

¹² G. Rist, *Urojania ekonomii* [*The Delusions of Economics*], Instytut Wydawniczy Książka i Prasa, Warsaw 2015, p. 57.

¹³ R.J. Shiller, *Richard Thaler is a Controversial Nobel Prize Winner – but a deserving one*, 11.10.2017, <https://www.theguardian.com/world/2017/oct/11/richard-thaler-nobel-prize-winner-behavioural-economics> (30.04.2018).

nored in 19th and 20th century neoclassical interpretations. Indeed, Smith made references not only to economic rationality, but also to emotions, feelings, and various systems of values embraced by individuals.

These issues were also addressed by Richard H. Thaler, who challenged the *homo oeconomicus* assumption by flatly stating: “If you look at economics textbooks, you will learn that *homo oeconomicus* can think like Albert Einstein, store as much memory as IBM’s Big Blue and exercise the willpower of Mahatma Gandhi. Really. But the folks that we know are not like that. . . . They are not *homo oeconomicus*; they are *homo sapiens*.”¹⁴

The very title of the Nobel Committee’s award citation, “Richard H. Thaler: Integrating Economics with Psychology” emphasized the integrative nature of Thaler’s work. The Committee also stressed the importance of his quest for more realistic research assumptions, focusing on the following areas of research:¹⁵

- cognitive limitations and bounded rationality,
- social preferences,
- self-control problems.

The Committee appreciated Thaler’s original concept of libertarian paternalism, a system that is supposed to “nudge” people into making more rational decisions despite their cognitive and self-control limitations without restricting their freedom of choice. Indeed, Thaler called for designing solutions subsumed under the term “choice architecture” to guide consumers towards reasonable decisions.

Thaler’s research on bounded rationality gave rise to the concept of mental accounting, a simple financial decision making model in which people create separate accounts in their minds focusing on the narrow effects of individual choices rather than on the overall outcomes, risk, or rationality. Considered one of the founders of behavioral finance, Thaler also identified a relationship between loss aversion and the endowment effect and explored how cognitive limitations affect financial decisions. In explaining the concept of mental accounting Thaler and Sunstein gave an example of two friends who were to

¹⁴ This quotations is derived from R.H. Thaler, C.R. Sunstein, *Impuls. Jak podejmować właściwe decyzje dotyczące dobrobytu i szczęścia* [Nudge: Improving Decisions About Health, Wealth, and Happiness], Zysk i S-ka, Poznań 2012, p. 7. Thaler’s scholarly perseverance and questioning the *homo oeconomicus* assumption led him to the pinnacle of research excellence, as indicated by the Nobel Committee’s prize citation, despite many renowned academics being skeptical about the behavioral strand of economics.

¹⁵ *Scientific Background on the Sveriges Riksbank Prize in Economic Sciences in Memory of Alfred Nobel 2017 – Richard H. Thaler: Integrating Economics with Psychology*, the Committee for the Prize in Economic Sciences in Memory of Alfred Nobel, the Royal Swedish Academy of Sciences, 9.10.2017, https://www.nobelprize.org/nobel_prizes/economic-sciences/laureates/2017/advanced-economicsciences2017.pdf (30.04.2018).

become famous actors, Gene Hackman and Dustin Hoffman. Prior to their stardom, they were often short of cash. On a certain occasion, when Hackman visited Hoffman in his apartment, Hoffman asked him for a loan. Hackman agreed, but when he went into the kitchen he saw several mason jars full of money lined on the countertop. One of them was labelled “rent”, another one “utilities,” and so on. When Hackman asked why Hoffman should possibly need a loan having so much cash in his jars, Hoffman pointed to an empty jar labeled “food.”¹⁶

Thaler’s theoretical and empirical investigations of social preferences concerned, amongst others, decision-making priorities in the context of fairness and a sense of justice. In his experimental studies, Thaler analyzed attitudes to fairness in different social groups around the world and their effects on market functioning and financial choices. Thaler’s research has shown that people with self-control problems are prone to conflicts between needs and temptations as well as between current utility and long-term plans (e.g., saving or pension plans). Importantly, Thaler proposed how those conflicts could be prevented by means of what he called “nudging.” He also shed some new light on why so many financial (and borrowing) decisions entail disproportionate costs (e.g., high interest rates) and may end up in non-performance, as well as, amongst other things, why it is so hard to keep New Year’s resolutions.

The Nobel Prize was awarded to Thaler at a time of mounting difficulties with implementing desirable socioeconomic objectives due to a flawed “choice architecture” with inappropriate nudges created by the state and other institutions. The phenomena identified and investigated by Thaler (cognitive limitations, bounded rationality, social preferences, and self-control problems) directly correspond to the concerns and motivations of payday borrowing (as well as other types of decisions).

Surveys and statistical data indicate that payday borrowers do not always have sufficient knowledge to understand debt-related risks and that loan decisions are often made without sufficient self-control. Although not all of the aforementioned issues are relevant in the case of every payday loan, at least one of them must be present, providing a foundation for borrowing decisions. And this gives support to Thaler’s concept of libertarian paternalism¹⁷.

Thaler and Sunstein provided the most comprehensive exposition of their views on human economic behaviors in their book *Nudge: Improving Decisions*

¹⁶ R.H. Thaler, C.R. Sunstein, *Impuls [Nudge]....*, op. cit., p. 68.

¹⁷ More on the subject in: E. Mączyńska, *Richard H. Thaler – Nobel z ekonomii – 2017 r. Ekonomia z życia wzięta [Richard H. Thaler – The 2017 winner of Nobel Prize in economics: Real life economics]*, “Ekonomista” 2018, no. 2.

About Health, Wealth, and Happiness. According to Thaler, such improvement opportunities are afforded by what he calls *nudges*, or impulses stimulating people to choose desirable solutions, e.g., in the area of education (including financial education) and health care. In the last chapter of the book, entitled *The Real Third Way*, the authors observe: “In this book we have made two major claims. The first is that seemingly small features of social situations can have massive effects on people’s behavior; nudges are everywhere, even if we do not see them. Choice architecture, both good and bad, is pervasive and unavoidable, and it greatly affects our decisions. The second claim is that libertarian paternalism is not an oxymoron. Choice architects can preserve freedom of choice while also nudging people in directions that will improve their lives.”¹⁸

The question posed by Thaler and Sunstein about making the right choices concerning wealth and happiness is closely related to the issue of rational lending decisions. Given the globally increasing debt burden, which might potentially trigger another crisis, of fundamental importance is the behavior of market actors, including consumers, as well as the role of the state in promoting reasonable behaviors. Thaler and Sunstein hope that their approach may serve as “a viable middle ground in our unnecessarily polarized society”¹⁹. In reference to the extremely complex role of the state in the contemporary economy, they warned that “there is all the difference in the world between senseless opposition to all *government intervention* as such as the sensible claim that when governments intervene, they should usually do so in a way that promotes freedom of choice.”²⁰ Moreover, they emphasized that “no less than those in the private sector, public officials can nudge people in directions that will make their lives go better while also insisting that the ultimate choice is for individuals, not for the state.”²¹ However, Thaler’s concept has been criticized precisely on the grounds that his system of nudges and choice architecture would unfavorably strengthen the status of the institutions implementing that architecture, including the state, to the detriment of the position of individual citizens.²² That possibility certainly cannot be ruled out, which additionally underscores the complexity of the problem.

¹⁸ R.H. Thaler, C.R. Sunstein, *Impuls [Nudge]....*, op. cit. p. 295.

¹⁹ *Ibidem*, pp. 285–286.

²⁰ *Ibidem*, p. 286.

²¹ *Ibidem*, p. 297.

²² A. Ostapiuk, *Ekonomia behawioralna nowym przelomowym narzedziem wladzy i ekonomistow?* [*Behavioral economics is a groundbreaking instrument of power and economics?*], *Forsal.pl*, 31.05.2015, <http://forsal.pl/artykuly/873674,ekonomia-behawioralna-nowym-przelomowym-narzedziem-wladzy-i-ekonomistow.html> (02.06.2018).

Payday loans: The development of “choice architecture”

Payday loans constitute an important and socially useful instrument for addressing those financial problems of the borrowers that can be rationally resolved in the short term. The notion of rationality is of fundamental importance and is understood not only as the ability to repay the loan, but also to use it in accordance with the rules of praxeology, as stipulated, e.g., by the eminent Polish philosopher Tadeusz Kotarbiński.²³ In this case, rationality is expressed via the praxeological alternative in which one should either maximize results at a given level of inputs or minimize the inputs needed to achieve the desired results. Due to the cognitive limitations, bounded rationality, pressure of social preferences (e.g., consumption patterns), and self-control deficiencies, in practice praxeological decisions are frequently given up in favor of other criteria, impulses, or motivations. This also concerns borrowing decisions. Empirical data show that payday loans are often characterized by excessive risk or costs (interest, fees, etc.) that overstrain the borrower’s financial position, potentially harming creditor-debtor relations, or resulting in a default, which may have a disruptive effect on the flow of payments in the economy.

While creditor-debtor relations lie at the intersection of specialized economic and legal knowledge, they concern practically everybody as almost all market actors are both creditors and debtors. This also applies to relations between payday lenders and borrowers.

The creditor expects that his rights will be respected and that repayments will be made as agreed (orally or in writing). The circumstances under which individuals and organizations become creditors or debtors vary greatly as the evolving free-market economy provides an increasing number of opportunities for entering into contracts simultaneously giving rise to credit and debt obligations. Creditor-debtor relations are widespread in everyday situations as most of us incur some liabilities associated with rent, utility bills, loan installments, etc. On the other hand, we act as creditors to banks by entrusting them with our money. As taxpayers, we are in the position of debtors to the state, but we may also be its creditors if we purchase treasury bonds. Many of us are creditors to our employers when we acquire the right to a remuneration as a result of our work. The ubiquity of such relations in everyday life means that disruptions in the flow of credit may pose a threat to the socioeconomic system at large, undermining confidence in the government and eroding social trust. Giv-

²³ T. Kotarbiński, *Traktat o dobrej robocie* [Treatise on good work], Zakład Narodowy im. Ossolińskich, Wrocław 1958.

en the increasing complexity of socioeconomic circumstances, both credit and debt become more and more often the subject of dispute and litigation, generating further debt and claims for the parties involved.

Despite the ubiquity of debt and related obligations and claims, these categories are often confused or inadequately defined, which increases the risk of misunderstandings. Furthermore, a distinction should be made between claims and receivables. As these categories are commonplace in socioeconomic practice, terminological precision is of the essence.

According to *The Dictionary of the Polish Language*, a claim is “1) the right of the creditor to demand a specific performance from the debtor, 2) the amount of money or object with a value equal to [the value of] that performance”²⁴. In turn, a creditor is defined as “a natural or legal person that has extended a loan to someone.”²⁵ Receivables are understood as “an amount that must be paid to someone.”²⁶ It follows from the above definitions that a claim is a legal concept with receivables being its financial counterpart, and an asset on the balance sheet. According to accounting principles, receivables are a cash category, while claims may have various forms. Thus, receivables constitute a cash equivalent of a claim.

Furthermore, *The Dictionary of the Polish Language* defines debt as “1) an amount of money that someone has borrowed and has to repay, 2) the debtor’s obligation to make a specific performance, 3) a moral obligation towards someone.”²⁷ Accordingly, a debtor is “1) a person or institution that has borrowed money and must repay it, 2) a person that has a moral obligation towards others.”²⁸ This definition is not very precise from an economic or legal point of view, as neither claims nor debts are in reality limited to cash. This is linked to the category of “obligation,” which the dictionary defines as “1) that which one is obliged to do, 2) the legal relation between debtor and creditor.”²⁹

Terminological accuracy may be also difficult to achieve due to the fact that both parties to a transaction are in a sense simultaneously creditors and debtors with respect to one another. Indeed, for a creditor to have a legitimate claim, he must make a performance for the benefit of the debtor, especially as far as reciprocal contracts are concerned.

²⁴ *Wierzytelność [Claim]*, <http://sjp.pwn.pl/sjp/wierzytelnosc;2536255.html> (30.05.2017).

²⁵ *Wierzyciel [Creditor]*, <http://sjp.pwn.pl/sjp/wierzyciel;2536250.html> (20.05.2017).

²⁶ *Należność [Receivables]*, <http://sjp.pwn.pl/sjp/naleznosc;2486402.html> (20.05.2017).

²⁷ *Dług [Debt]*, <http://sjp.pwn.pl/sjp/dlug;2452541.html> (20.05.2017).

²⁸ *Dłużnik [Debtor]*, <http://sjp.pwn.pl/sjp/dluznik;2452614.html> (21.05.2017).

²⁹ *Zobowiązanie [Obligation]*, <http://sjp.pwn.pl/sjp/zobowiazanie;2547092.html> (15.05.2017).

The issues of debt and related obligations are regulated in Article 353 of the Polish Civil Code and in the articles that follow:

Article 353. § 1. An obligation exists where a creditor may demand performance from a debtor and the debtor should make the performance. § 2. Performance may consist of action or refraining from action.

Article 353. Parties entering into a contract may arrange their legal relationship at their discretion so long as the content or purpose of the contract is not contrary to the nature of the relationship, the law or the principles of community life.

The ensuing articles of the Civil Code regulate the relationship between debtor and creditor:

Article 354. § 1. The debtor should perform his obligation in accordance with its substance and in a manner conforming to its social and economic purpose and the principles of community life, and if there is established custom in this respect – also in a manner conforming to this custom. § 2. The creditor should cooperate in the same manner in the performance of the obligation.

Article 355. § 1. The debtor is obliged to use the care commonly required in relations of a given type (due care). § 2. The due care of the debtor in his business activity is construed with reference to the professional nature of this business.

Article 356. § 1. A creditor may demand personal performance by the debtor only if the same follows from the substance of the legal act, the law or the nature of the performance. § 2. If a monetary claim is due and payable, the creditor cannot refuse to accept performance from a third party even if the latter acts without the debtor's knowledge.

Article 357. If, due to an extraordinary change in circumstances, a performance entails excessive difficulties or exposes one of the parties to a serious loss which the parties did not foresee when entering into the contract, the court may, having considered the parties' interests, in accordance with the principles of community life, designate the manner of performing the obligation, the value of the performance, or even decide that the contract be dissolved. When dissolving the contract, the court may, as needed, decide how accounts will be settled between the parties, guided by the principles set forth in the preceding sentence.³⁰

According to these regulations, a claim is treated as a right, while debt as an obligation. Regrettably, statistical analysis, research, reports, and other sources

³⁰ Act of April 23, 1964 on the Civil Code (Journal of Laws 1964, no. 16, item 93, as amended), <http://isap.sejm.gov.pl/DetailsServlet?id=WDU19640160093> (30.05.2017).

indicate that the laws governing creditor-debtor relations are not adequately respected in Poland. Despite gradual improvement, the country is still afflicted by persistent dysfunctions in this area and stands out in terms of the volume and frequency of payment backlogs, which persist also during periods of relative economic prosperity even as companies enjoy stronger financial positions.³¹ Although the non-financial sector in Poland has seen systematic growth of liquid assets, including short-term investments and cash, this has not translated into payment discipline and payment morality to a sufficient degree.³² Widespread failure to timely repay debt spawns a contagion in which late payments or non-payments are transmitted down the credit chain in a domino effect affecting increasing numbers of people and institutions. Indeed, poorly performing or non-performing borrowers put their creditors in a position where the latter cannot meet their own financial obligations, drawing others (including employees) into an insolvency quagmire.³³ Importantly, research shows that in some cases payment backlogs may lead to the bankruptcy of creditors.³⁴

According to the National Bank of Poland (NBP), a payment backlog is “a situation resulting from an accumulation of debt that is passed on to subsequent parties.”³⁵ If this continues, creditors who cannot recover their claims will not be able themselves to pay their suppliers, workers, financial institutions, etc. After a period of time, this may result in an epidemic of overdue debt spreading across the economy, entailing not only of financial, but also social consequences, endangering harmonious development as a result of erosion of trust and anomy (chaos in the system of social values). If failure to pay becomes commonplace, the moral appraisal of such behavior will no longer be clear-cut. Therefore, this phenomenon should be considered in the context of payment morality measured by the volume of overdue debt, although it is worth mentioning that non-payment may result from circumstances beyond the debtor’s control (e.g., force majeure, payment backlog, economic slowdown/crisis, etc.). It is worrying that payment backlogs continue to be quite widespread and per-

³¹ Exact figures quantifying this problem were given in “Biuletyn PTE” 2016, no. 4. Thus, this chapter presents only supplementary data.

³² According to data from the National Bank of Poland, the spare cash accumulated by non-financial companies exceeds PLN 200 billion. Cf. *Raport o stabilności systemu finansowego [Report on the stability of the financial system]*, NBP, Warsaw, June 2017, <http://www.nbp.pl/systemfinansowy/rsf062017.pdf> (10.06.2017).

³³ More on the subject in: *Ochrona praw wierzycieli w Polsce [Protection of debtors’ rights in Poland]*, E. Mączyńska, J. Gołaczyński, eds., PTE, Warsaw 2017.

³⁴ Including research conducted as part of the NCN grant described in “Biuletyn PTE” 2015, no. 1; for more publications on the subject see the reference list given at the end of that issue of “Biuletyn PTE.”

³⁵ *Zator płatniczy [Payment backlog]*, NBP, <https://www.nbportal.pl/sloownik/pozycje-sloownika/zator-platniczy> (30.05.2017).

sistent despite favorable market conditions, with aggregated statistics showing only a slight, and highly unsatisfactory, improvement.

The crippling effects of payment backlogs on the economy and social relations are also reflected in alarming media reports. The persistence of late repayments proves that the underlying causes of this phenomenon go far deeper than finance. Indeed, the unfavorable position of creditors amid relatively robust economic growth and low inflation rates points to the systemic nature of the problem, which is attributable, amongst others, to regulatory weaknesses and deficient law enforcement, indicating impaired functioning of the state.³⁶

Contractual breaches jeopardize the smooth flow of business transactions and have destructive effects on the economic and social order. The devastating consequences of breaching agreements were emphasized, amongst others, by the Hungarian economist János Kornai in his paper entitled *Breaking Promises, Hungarian Experience*³⁷. He observed that broken promises result not only in loss of confidence with respect to those individuals or organizations which fail to meet their obligations, but give rise to a vicious circle eroding trust at large. It should be noted that while trust may be lost easily and quickly, sometimes instantaneously, it may take years or decades to regain it. Loss of trust may be likened to an infection – if its causes are not eliminated, it may readily turn into an epidemic, or even pandemic, with negative ramifications for generations to come. In fact, trust may be conceptualized as a *lubricant for business* and for harmonious socioeconomic development. Indeed, trust is the cornerstone of monetary systems using paper fiat money rather than gold-based currencies and the poisoning of this lifeblood of the economy poses a lethal threat, just as in the world of medicine. In this case, mortal danger arises from breaches of contracts and violations of related socioeconomic obligations, which, in extreme cases, may result in corporate or personal bankruptcy. Still, the economic consequences of such breaches are but the tip of an iceberg. Much more harmful are the social costs. According to Kornai, even a single, seemingly minor instance of contract breach may have a ripple effect potentially leading to a wave of insolvencies and a flood destroying interpersonal relations.

³⁶ These issues were described in terms of macroeconomic asymmetries in “Biuletyn PTE” 2016, no. 4. Cf. e.g., E. Mączyńska, *Ochrona praw wierzycieli w kontekście makroekonomicznych asymetrii* [Protecting creditor rights in the context of macroeconomic asymmetries], “Biuletyn PTE” 2016, nr 4, pp. 13–25.

³⁷ J. Kornai, *Breaking promises. A Hungarian experience*, “Corvinus Economics Working Papers” 2016, no. 8, http://unipub.lib.uni-corvinus.hu/1638/7/cewp_201608.pdf (30.03.2017); see also: E. Mączyńska, *Lamane obietnice jako syndrom nieladu instytucjonalnego* [Breaking Promises as a Syndrome of Institutional Disorder], “Finanse, Rynki Finansowe, Ubezpieczenia” 2013, no. 62, pp. 727–742.

Due to the space constraints of this chapter and owing to the very fast pace of change, statistics are largely limited to the general data on debt dynamics presented in section 9.1. The quantitative characteristics of payday loans and other short-term lending instruments are restricted to the latest data from institutions that provide the information infrastructure to the credit sector, including the National Debt Register (NDR), the Economic Information Bureau (BIG), the Credit Information Bureau, business intelligence agencies, and others. The examples given below are primarily of spectacular nature. Although those extreme cases do not offer a comprehensive overview of the studied phenomena, they may constitute a wake-up call showing the implications of unreasonable borrowing decisions. And indeed, irrationality poses a threat to both contractual parties. The debtor may bear the severe (potentially penal) consequences of non-payment, while the creditor is at risk of a deteriorating financial position, crippled solvency, impaired economic performance, and participation in a chain of late payments. While much can be gleaned from aggregated statistics on the growth of debt (see section 9.1), they do not show individual cases of borrowing, many of which bear the symptoms of recklessness.

According to data from the Economic Information Bureau as of the end of 2017, more than 2.5 million borrowers in Poland fell in arrears with their loans or other obligations for an overall amount of PLN 64.49 billion. Within one year the number of debtors increased by almost 193,000 and the overdue amount by PLN 10.8 billion (for comparison – this corresponds to approx. half the annual expenditure on the Family 500 Plus welfare program). This amount consists of missed mortgage and other loan payments to banks and non-bank financial institutions, as well as unpaid bills for telecom services, cable TV, electricity, natural gas, rent, child support, fines, court penalties, and fare evasion (including debt sold to collection agencies). The registry contains data about late payments of at least PLN 200 that have been overdue for more than 60 days (that period was reduced to 30 days on November 13, 2017 by amendment of the Economic Information Bureau law). The increase in non-performing debtors is reflected in the Late Payment Index, which is 79.7 per 1000 adult Polish citizens, up from 73.8 the year before. Thus, statistically speaking, 8 out of 100 adults have financial problems.³⁸

Data from the National Debt Register show that the debt of the Polish population has tripled over the past four years with people aged 36 to 59 owing as much as PLN 28.5 billion. According to the NDR, this surge is attributable to

³⁸ *Ogólnopolski raport o zaległym zadłużeniu InfoDług i niesolidnych dłużnikach* [National report on overdue debt InfoDług and on non-performing debtors], BIG, February 2018.

growing consumption and purchases on credit. Many debtors get trapped in a vicious circle and find it difficult to break out. At the top of the NDR list are a man with PLN 45.3 million in arrears and a woman with PLN 10.1 million in arrears (in their respective gender categories).³⁹ These extreme cases reveal deficiencies of the system of debt monitoring and control as well as regulatory shortcomings. They are worrying especially that according to debt collection agencies people tend to borrow excessively, e.g., to buy the latest consumer electronics (e.g., an iPhone). Indebtedness is obviously fueled by consumerism, the desire for luxury goods, and the tendency to live beyond one's means. However, other people are forced to take out loans to cover their dental bills.⁴⁰ Indeed, in many cases mounting debt arises from adversities, such as a job loss or sudden illness, due to which people find themselves at the brink of financial disaster, not being able to satisfy their basic needs or cover their living expenses.

The NDR cites data from a debt collection agency according to which many 36–49-year-old debtors are in arrears with their mortgage payments, credit card debit, third-party liability insurance, as well as consumer loans (including payday loans) taken out to buy household electronics and appliances, and telephone plans. The loans processed by the debt collection agency included the purchase of a PLN 3500 Chanel bag (PLN 200 monthly installment), a PLN 3600 leather jacket (PLN 100 per month), or paintball paints (PLN 200 per month). These cases may be treated as examples of borrower recklessness. Furthermore, the NDR reported that the rising debt among young people is associated with elevated risk. In 2017 alone that category of debt increased by 62%, with a mean overdue amount exceeding PLN 3500. “The debt of young Poles grows with them. The aggregate debt of 18-year-olds is only PLN 1 million, that of 22-year-olds is PLN 65 million, and that of 25-year-olds exceeds PLN 167 million. As much as 55% of debt in this category is owed by people aged 24–25 years.”⁴¹ The record holder is a 24-year-old woman who owes PLN 625,000. Symptomatic of these problems is the opinion of a debt-trading company quoted by the NDR: “Young people’s awareness of their obligations is so low that they sometimes do not realize who their creditors are. When the negotiators call to tell them they owe money to the bank, they say that it is impossible because they have never been to that bank. When the negotiator tells them

³⁹ *Z torebką na kredyt, czyli Polacy w średnim wieku* [With a credit bag, or middle-aged Poles], 23.04.2018, <https://krd.pl/Centrum-prasowe/Informacje-prasowe/2018/Z-torebka-na-kredyt—czyli-Polacy-w-srednim-wieku> (30.05.2018).

⁴⁰ *Polacy zapożyczają się, aby wyleczyć zęby* [Poles borrow money for dental care], 20.07.2017, www.infodent24.pl/bizdentpost/polacy-zapozyczaja-sie-aby-wyleczyc-zyby,107837.html (30.04.2018).

⁴¹ *Z torebką na kredyt* [With a credit bag]..., op. cit.

that they took out the loan to purchase this or that product, they say it is a mistake because they bought their telephone on credit from an electronics store and not from the bank.”⁴² This confusion may be attributable to the low morality and/or low financial knowledge of those people.

An unfavorable image of lax payment discipline also emerges from annual “Poland Payment Surveys” published by the credit insurer Coface. According to data from April 2018 payment delays of more than 3 months were reported by 28% of Polish companies (up from 24% the year before). The mean delay increased by 11 days to 62 days. Research shows that late payments have become the norm, being experienced by 9 out of 10 companies in Poland.⁴³ This obviously generates considerable costs and decreases profitability (Table 9.4).

Table 4. Costs of payment backlogs as a percentage of total business costs, depending on company size in the years 2015–2016

Company size	Costs of payment backlogs (%)
Micro	8.0
Small	5.5
Medium-sized	3.9
Large	3.3

Source: *Zielona księga. Zatory płatnicze* [The Green Paper: Payment Backlogs], Ministry of Entrepreneurship and Technology, Warsaw, April 13 2018, p. 6, https://www.mpit.gov.pl/media/55199/Zielona_Ksiega_zatory_platniczne.pdf (20.04.2018).

Payment delays are also reflected in the increasing personal and corporate bankruptcy rates. The year 2017 saw the highest number of Polish companies defaulting (almost 900) since 2012, mostly due to payment backlogs. Late payments have affected more than 90% of Polish businesses.⁴⁴ Furthermore, in 2017 as many as 5471 individuals filed for personal bankruptcy, which was by 24% more than in 2016.⁴⁵

⁴² Ibidem.

⁴³ M. Włodarczyk, *Badanie płatności w Polsce 2018: opóźnienia płatnicze wzrosły pomimo solidnego wzrostu gospodarczego* [Poland Payment Survey 2018: Payment delays mounting amid robust economic growth], Coface, 8.03.2018, <http://www.coface.pl/Aktualnosci-i-media/Biuro-prasowe/Badanie-platnosci-w-Polsce-2018-Opoznienia-platnicze-wzrosly-pomimo-solidnego-wzrostu-gospodarczego> (20.04.2018).

⁴⁴ *Zielona księga. Zatory płatnicze* [The Green Paper: Payment Backlogs], Ministerstwo Przedsiębiorczości i Technologii, Warsaw, April 13, 2018, https://www.mpit.gov.pl/media/55199/_Ksiega_zatory_platniczne.pdf (20.04.2018).

⁴⁵ *Kobiety częściej decydują się na zaczynanie wszystkiego od nowa* [Females are more likely to start all over again], Raport BIK, BIG Monitor, 19.03.2018, <https://media.bik.pl/informacje-prasowe/386664/kobiety-czesciej-decyduja-sie-na-zaczynanie-wszystkiego-od-nowa> (20.04.2018).

The debt problems afflicting Poland may be traced to behavioral and regulatory/systemic causes. In response to those problems, the country has been gradually adopting new pieces of legislation under the so-called *Creditor Package*. The first one was the Act of April 7, 2017 on amending certain acts to facilitate debt recovery (it came into force on June 1, 2017).⁴⁶ Further regulatory moves (e.g., rules on posting information about non-payments in the National Debt Register) were meant to protect debtors from information manipulation and abuse from creditors, especially in the face of increasing anonymity and widespread market scams.⁴⁷ These issues were discussed by two Nobel Prize winners, George A. Akerlof and Robert J. Shiller in their book under the tell-tale title *Phishing for Phools: The Economics of Manipulation and Deception*, focusing on ethical and moral aspects.⁴⁸ Akerlof and Shiller distance themselves from neoclassical economic theory with its free market dogma, pointing to its inherent dysfunctions and giving numerous vivid examples of commonplace market hoaxes, scams, and manipulations, which the authors collectively call *phishing*. While the digital revolution has provided new fraud opportunities, it also helps to expose, visualize, and publicize manipulations, including financial ones, aiding prevention efforts. This additionally emphasizes the role of legal regulations and their effectiveness.

The main piece of legislation aimed at ameliorating payment backlogs was the Act of March 8, 2013 on payment terms in commercial transactions.⁴⁹ As indicated by the Ministry of Entrepreneurship and Technology, its provisions largely transposed Directive 2011/7/EU of the European Parliament and of the Council of 16 February 2011 on combating late payment in commercial transactions.⁵⁰ Unfortunately, *The European Payment Report 2018*, an annual publication of the research organization Intrum Justitia encompassing data on almost 10,000 companies from 29 European countries, revealed that despite the directive late payments are still widespread. On the other hand, a 2017 study showed that most parties to loan agreements, also in Poland, are not familiar with the directive six years after its adoption.⁵¹

⁴⁶ Act of April 7, 2017 on amending certain acts to facilitate debt recovery (Journal of Laws 2017, item 933).

⁴⁷ Act of April 9, 2010 on sharing of commercial information and commercial data exchange (Journal of Laws 2010, no. 81, item 530; Journal of Laws 2018, items 470, 650, 723, 730, 771).

⁴⁸ G.A. Akerlof, R.J. Shiller, *Złowić frajera, Ekonomia manipulacji i oszustwa* [Phishing for Phools: *The Economics of Manipulation and Deception*], PTE, Warsaw, 2017.

⁴⁹ Act of March 8, 2013 on payment terms in commercial transactions (Journal of Laws 2013, item 403, as amended).

⁵⁰ Directive 2011/7/EU of the European Parliament and of the Council of 16 February 2011 on combating late payment in commercial transactions (OJ L 48, 23.2.2011, p. 1–10, as amended).

⁵¹ *The European Payment Report, 2018*, <https://www.intrum.com/media/2772/epr-2018.pdf> <https://www.intrum.com/globalassets/corporate/publications/epr/epr-2017.pdf> (30.05.2018).

In Poland, legal regulations on payment terms are in the stage of consultations based on the official government document entitled *The Green Paper: Payment Backlogs*,⁵² which presents the characteristics and analyses of regulations aimed at improving payment morality and preventing payment backlogs which have been introduced in other countries.

Summary

Payday loans are a blessing for people who find themselves in a financial emergency, but at the same time they give rise to obligations entailing a risk of late payment or non-payment. Thus, it is necessary to design such a choice architecture that would encourage reasonable decisions and prevent harmful, reckless behavior. According to the principles of behavioral economics, such an architecture may be achieved by combining appropriate legal regulations with the right dose of libertarian paternalism. An important role in this respect is to be played both by the state and institutions providing financial services, including lenders. It is critical to ensure symmetry between the rights and duties of creditors and debtors. While under libertarian paternalism no-one can be prevented from borrowing money, it is nevertheless possible to foster greater financial responsibility. Thus, of fundamental importance is economic education (and the state's inevitable obligation to make it possible) as well as the promotion of symmetrical creditor-debtor relations.

An emphasis on rational financial choices, including those concerning payday loans, is crucial to the functioning of the economy and harmonious social relations, as those two domains may be severely impaired by the adverse consequences of late repayment. In addition to financial losses, of equal (or perhaps greater) importance is the erosion of trust resulting from dysfunctional borrowing and failure to honor obligations, which in turn breeds anomy, or a chaos in the system of values. While the results of these negative phenomena cannot be quantified, they do exert a subliminal destructive force. Therefore, in preventing financial dysfunctions, of significance are not only legal regulations, but also the effectiveness-promoting efforts of businesses and institutions responsible for protecting the quality of law and harmonious social relations. Joint efforts may improve the security of creditors' rights and mitigate the erosion of trust, which comes with a hefty social price, unfavorably increasing transaction costs. This is all the more important as Poland has the dubious honor of being amongst countries with the lowest social trust. The crucial role of trust can be

⁵² *Zielona księga [The Green Paper]...*, op. cit.

beautifully illustrated with a quotation from Michał Rusinek's book entitled *Nothing usual: On Wisława Szymborska* in which he mentions the Polish Nobel Prize winner's lectures at Italian universities. "The following day the organizer comes to pay WS's fee with a Bianco di Sicilia check. She suggests that WS should cash it in Sicily. I ask whether I could do that for her to spare her the trip to the bank. Sure thing. Off we go. I don't have any document to prove I am Wisława Szymborska's secretary. I don't have WS's passport, either, because I don't want to bother her before departure. No problem. We come up to the counter and the organizer says: 'Sono Siciliana. And this is the secretary of the person to whom the check was made out. Would you please hand him the money.' I do not even have to show my ID card. I only write my signature. The phrase 'sono Siciliana' is like a word of honor, more important than any credential, document, or stamp. A Sicilian lady's word of honor."⁵³

This quotation conveys the potential of trust, which is being eroded and squandered, leading to both adverse social consequences and sizeable financial losses. Improvement in the area of payday loan functioning is a major factor that may boost trust between parties as well as confidence in institutions and the state. This also points to the importance of high quality legal regulations of the financial sector and their enforcement.

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On democracy and social exclusion

In 1996, John Kenneth Galbraith published a book titled *The Good Society. The Human Agenda*. Its rendition into Polish appeared for the first time in 1999 under the title *Godne społeczeństwo. Program troski o ludzkość*.¹ Elżbieta Mączyńska² wrote in the introduction that there are few books concerning economics that not only do not lose their relevance with time, but to the contrary, only gain more of it – and she was right. John Kenneth Galbraith is an outstanding modern economist. He represents a broad perspective on economic, social and political powers in his search for an answer to the question how to counteract systemic flaws in the way the economy and society function, how to combine the striving for economic power with the concern for the citizens' social needs. The author endeavours to develop the theoretical framework of a socio-economic regime which could be described as truly good, as one that guarantees freedom, prosperity, absence of racial and ethnic discrimination and the opportunity to find self-fulfilment. For that purpose, he analyses the fundamental problems of the modern world.³

As the author himself declares, the book is about a good society that is simultaneously a possible society. We reconcile ourselves to the thought that some obstacles are immovable and impossible to overcome, and therefore have to be accepted. Yet there are also some goals that we must not give up on. In a good society, all the citizens need to enjoy personal freedom, basic living conditions, equality regardless of race and nationality, and opportunities to lead a satisfying life.⁴ As Galbraith argues, while some forming powers that are sometimes deeply rooted in human nature need to be accepted, there are also certain restrictions which a good society cannot and must not accept. Changes that are desired for social reasons generally encounter opposition based on well-known egoistical interests. The chief example involves those who live in riches but

¹ J. K. Galbraith, *Godne społeczeństwo. Program troski o ludzkość*, Polskie Towarzystwo Ekonomiczne, Warszawa 2012.

² E. Mączyńska, "Od wydawcy", op. cit.

³ Z. Sadowski, "Słowo wstępne do I wydania polskiego", op. cit.

⁴ Z. Sadowski op. cit., p. 17

oppose public actions for the benefit of the poor, because it harms their interests, e.g. in the form of increased taxes. That, according to Galbraith, must not be accepted. When someone says that certain action might be good, but at the same time politically impractical, we should know that what comes to the fore here is the common need to protect socially disadvantageous interests.

In a good society, social success cannot be limited by factors that can be remedied – everyone has to have economic opportunities. That is why young people need to get prepared for life and be taken care of and provided with education that should allow them to use this opportunity. No one can be denied it on account of the random circumstances in which they were born or the economic conditions. The role of the economy in a good society is of fundamental relevance, because economic determinism is an unrestrainable force. The economic system in a good society has to work efficiently and for the sake of all.⁵ As long as everyone has equal opportunities, social peace is preserved. Economic stagnation and privation have extensive unfavourable social consequences. When people have no jobs, experience financial deprivation and plunge into hopelessness, the best method is escapism, for instance in drugs and aggression. Aggression against other people or against the state. This regularity pertains to both local and world scene. The poor peoples of Africa, Asia or South America murder each other; economically stable and wealthy countries enjoy peace. According to Galbraith, it was the desperate economic situation in the 1920s and 1930s that contributed to the **development of fascism in Italy and Germany**, eventually leading to a catastrophe. In less remote past, following the fall of Communism, economic difficulties and insecurity caused political conflicts and social unrest in the former Soviet republics.⁶ A good society is a social foundation that guarantees peace. That is why neither the political system nor the economy must allow any social groups to be **pushed onto the margins of society** and deprived of income. The first solution is a **support scheme for the poor**, because the fight against inequality begins with better opportunities for people from the lowest social strata. Secondly, Galbraith demands that the dominant tendencies of the financial world are dealt with, that measures to ensure elementary honesty are put in place, etc.

He does not call for good society to endeavour equal income, which he deems socially undesirable. He calls for realising the principle of equality of opportunity, including **equality of treatment**, and for ensuring a minimum living standard that guarantees dignity.

⁵ Z. Sadowski op. cit., p. 30.

⁶ Z. Sadowski op. cit., p. 31.

In 2013, Thomas Piketty published the book *Capital in the Twenty-First Century*, which was released in Poland in 2015 under the title *Kapitał w XXI wieku*. The book immediately became a best-seller; some regard the date of its release as the beginning of the end of ‘pure’ economic liberalism. Since its release, the common impression in societies that the distribution of wealth had become extremely unjust has become the subject of public and economic debate. Piketty with his team collected data from 50 countries for several years and calculated the income from capital and the income from work. He advanced and proved the thesis that social inequality grows systematically and that it constitutes an intrinsic feature of the current system. Piketty’s calculations demonstrate that return on capital grows faster than wages. That causes growing inequality, and the gap is deepening exponentially. The problem is not inequality itself, but the excess capital in the hands of few. The discussions focus on the poorest, yet the chief threat is the erosion of the middle class and the situation of young people who have no opportunity to join the middle class, because the growing inequality ‘cuts out’ the middle. Only two poles remain: the enormously rich and the relatively poor, who will admittedly ever more rarely suffer hunger, but cannot count on much more, either. Meanwhile, it is the middle class who ensures the stability and cohesion of the model of democratic states.⁷ According to Elżbieta Mączyńska,⁸ the problem is underestimated in Poland. The European Commission published its appraisal of Poland in February 2015. Poland was heavily criticised for ignoring social issues and for junk job contracts, which were described as causing a “record-breaking labour market segmentation”, since they constituted 30% of job contracts at the time. In addition, the Commission criticised Poland for the growing number of the so called working poor, that is people who, even though they have a job, earn so little that they are unable to make ends meet.

Furthermore, Mączyńska cites the work of a German economist who believes that we are witnessing a transformation of the traditional ‘tax state’ model into a ‘debt state’.⁹ In his opinion, both individuals and institutions, such as schools or hospitals, are prone to take out loans if they experience a considerable lack of funds. The citizens begin to do the state’s job for it with the banks’ money. The more the state neglects public services, the more people go to banks to maintain the current living standard. The economists call this phenomenon ‘private keynesianism’. The transformation of the ‘tax state’ model into a ‘debt

⁷ E. Mączyńska, “Równiej”, interview in *Magazyn Świąteczny*, a weekly supplement to *Gazeta Wyborcza* daily, 6–7th June 2015

⁸ E. Mączyńska op. cit.

⁹ E. Mączyńska op. cit.

state' has the result that both citizens and governments, regardless of the political option, heavily depend on the financial sector. Politicians take all decisions with the following question at the back of their heads: "how will the markets react?". The democratic question – "how will the citizens react" – has lost its top priority.

British economist Guy Standing published a book titled *The Precariat. The New Dangerous Class* in 2011, and in 2014 – *A Precariat Charter: From Denizens to Citizens*. Thus he introduced the concept of the precariat, which has been present in academic and social discourse ever since. Similarly as Piketty, Standing emphasises the unparalleled growth of social inequality: the major part of the surplus based on the economic growth is raked in by the 'magical' 1% of the wealthiest capital holders. The remaining 99% take out loans to make up for the shortfall of funds necessary to support themselves.

Standing distinguishes between several layers of members of the precariat – people in whose life uncertainty has become the fundamental category. It can be uncertainty of employment, uncertainty of residence, uncertainty of obtaining a medical service or a social benefit, uncertainty of finding a good job despite having completed higher education, uncertainty whether one will manage to support oneself or pay back one's debts. Thus the precariat consists of employees who lost their decently paid jobs and had to take up junk jobs in the services sector, young graduates without a chance to find permanent employment, and immigrants. According to him, the precariat are people who lack seven forms of labour security, which social democrats, labour parties and trade unions demanded for the working class or the industrial proletariat in the wake of World War II, regarding them as the programme for the 'citizenship of the industrial era'. Those forms of security are: 1/ labour market security – adequate employment opportunities, on the microlevel ensured through state-guaranteed "full employment"; 2/ employment security – protection against arbitrary dismissal, regulations on hiring and firing; 3/ job security – ability and opportunity to maintain a niche designated as an occupation, plus barriers to skill dilution, as well as promotion prospects in terms of status and income; 4/ work security – protection against accidents and illness at work through e.g. safety and health regulations, limits on working time, unsociable hours, night work for women, as well as compensation for accidents; 5/ skill reproduction security – opportunities to gain skills through apprenticeships, employment training etc., plus opportunity to use those skills; 6/ income security – protection of adequate stable income through e.g. minimum wage machinery, wage indexation, comprehensive social security, progressive taxation aimed to reduce inequality and supplement low income; 7/ representation security – protection of

the collective voice in the labour market through e.g. independent trade unions with the right to strike.¹⁰ Standing demonstrates that precarisation causes a *de facto* erosion of civil rights, while economic uncertainty translates into uncertainty in other areas of life.

According to Standing, the global precariat, which consists of many millions of people worldwide deprived of a stable job, is becoming a new, dangerous class, **prone to follow extremists** and to use its electoral rights and money to provide those extremists with an increasingly relevant political platform.¹¹

In the preface to the Polish edition of his book,¹² Standing writes that millions of people are in that situation in Poland, just as everywhere else. The problem concerns predominantly **young and educated people, many of whom cannot find a job. Almost one third work under fixed-term contracts or so called junk contracts. Another common phenomenon is the working poor. Moreover, the number of the jobless who receive an unemployment benefit is very low.** Since the 2007–2008 financial crash, activities which may be referred to as the ‘era of belt-tightening’ rapidly increased the number of those forced into precariat in Poland. Similarly, the governments in all European countries focused on reducing public budget deficits, i.a. by denationalising social services and disposing of former obligations with regard to public sector employees. Standing argues that we must develop today a new Precariat Charter, a programme of transformation, a set of political demands that will drive forward the matter of the Great Trinity of Freedom, Equality and Fraternity. For the Poles, it means there is no going back to the limitations, futility and enslavement of the 1980s. Yet it is also about abandoning the grim labourism proposed in the course of the last few decades by the old social democrats, and certainly about not resurrecting the vulgar, primitive, Darwinian ethos of the neoliberals who used to shape the globalisation process.¹³ Standing criticises labourism, which he defines as acceptance for the model of a long-term, stable employment in one job, involving numerous rights, securities and guarantees, the privileges of hired workers, and the ‘Darwinian’ neoliberal economic ethos. He argues that in the 1970s, a group of ideologically inspired economists managed to gain the attention and respect of politicians. The main premise of their ‘neoliberal’ model was based on the claim that growth and development are contingent on market competitiveness, that all activities should aim to maximise com-

¹⁰ G. Standing, *Prekariat. Nowa niebezpieczna klasa*, PWN, Warszawa 2014, p. 49

¹¹ G. Standing, *op. cit.*, p. 33

¹² G. Standing, *op. cit.*, p. 21

¹³ G. Standing, *op. cit.*, p. 27

petition and competitiveness, and that the market principles should permeate all other dimensions of life.¹⁴

Neoliberal economy has been criticised by many for at least ten years now. More arguments are voiced besides those quoted above offered by Piketty and Standing. Jerzy Wilkin¹⁵ advances an interesting thesis that the enslavement of the individual can be cause not only by the lack of a free market, but also by a free market governed by the **principles of neoliberal economy**. Economists like to speak about the free market, much less about the free man. One of the crucial sins of economy is, in Wilkin's view, ignoring and underestimating the relations of power in economy. Economists deal with the conditions in which businesses, including great corporations, operate with much greater care than with the conditions in which the consumer, the employee or the state function. They silently assume that "what is good for business is good for the economy, society and state, which of course resembles the famous saying that what's good for General Motors is good for America".¹⁶ Milton Friedman's classic thesis emphasises that the free market and free economy are the best support for and guarantee of democracy and political freedom. This approach underlines the negative notion of liberty, 'liberty from'¹⁷ the oppression of the state, limitations of individual freedoms, enslavement etc. The legitimacy of this thesis is unquestionable; its rightness has been verified by historical experience. Yet Wilkin cites also the thesis advanced by Amartya Sen, who has introduced into the context of economic relations the concept of positive liberty, 'liberty to' enjoy various rights and opportunities that restrict the area of non-freedom: development can be also treated, and I strive to prove that, as a process of expanding actual freedom enjoyed by humans. Focusing on human freedom contrasts with a narrower approach to development equated with the growth of the gross national product or the growth of personal income, industrialisation, technical advancement or social modernisation. Development requires removing the chief sources of non-freedom: poverty, tyranny, scarce economic opportunities, systematic social deprivation, neglected public services as well as intolerance or undue expansion of the repressive state.¹⁸

¹⁴ G Standing, op. cit., p. 33

¹⁵ Quoted after: J. Wilkin, "Ekonomia wolności i ekonomia zniewolenia. Kiedy ekonomia sprzyja poszerzaniu Ludzkiej wolności, a kiedy ją ogranicza?" in: *Modele ustroju społeczno-gospodarczego. Kontrowersje i dylematy*, edited by E. Mączyńska, Polskie Towarzystwo Ekonomiczne, Warszawa 2015

¹⁶ J. Wilkin, op. cit., p. 25

¹⁷ The concepts of negative liberty and positive liberty were introduced into scholarly theory by Isaiah Berlin in his essay "Two Concepts of Liberty".

¹⁸ A. Sen quoted after: J. Wilkin op. cit., p. 26

The idea to introduce into the language of economy the concept of positive liberty is in my opinion extremely interesting and promising from the theoretical point of view. The precariat described by Standing, similarly to other groups subject to social exclusion, is undoubtedly deprived of this positive liberty to profit from the benefits of the economic growth on the macro-level. Those groups usually blame the state as an institution for such circumstances, which is undeniably one of the reasons of the antielitism that is spreading in various countries. The elites are blamed by many for the unequal access to economic goods and lack of prospects of economic and social advancement. Antielitism prepares the ground for populism. The term ‘populism’ is used commonly and in numerous contexts. A possibly complete elaboration on the subject was proposed by Jan-Werner Müller in his recent book *What Is Populism?*.¹⁹ In his opinion, the criticism of elites is a necessary albeit insufficient condition to deem someone a populist. Apart from being against elites, populists are always against pluralism. They maintain that they alone represent the people, they claim the moral right to represent it, they state: ‘we are the people’. Therefore, thirdly, populism is always a form of politics of identity. Perceiving populism as politics of identity and antipluralism explains its being a threat to democracy. For democracy requires pluralism and acknowledgement that we have to find honest principles of co-existence as citizens who are free and equal, but also necessarily different. Populists justify their conduct with the claim that they are the sole representatives of the people. I would add two more criteria that are often typical for populists to Müller’s concept: proposing simple and quick solutions to all problems and presenting politics as a simple confrontation of the good and the evil.²⁰ According to all theoreticians, populism is extremely dysfunctional to democracy. The question is, does antielitism have to lead to populism? No empirical studies devoted to that problem have been carried out, but we can assume that with great probability that is the case. Antielitism itself is sufficiently dangerous, anyway, and can have tragic consequences; let us only think back to the time of the Khmer Rouge.

The subject matter of our study was the Polish market of loan companies. We tried to describe its structure and legal situation as well as the changes in that regard. An exceptionally vital aspect of our analyses was the attempt to characterise the clients of loan institutions. The studies demonstrate unambiguously that the clients of loan institutions in Poland are people whom Guy Stand-

¹⁹ J. W. Müller *Co to jest populizm*, Wydawnictwo Krytyki Politycznej, Warszawa 2017

²⁰ E. Nalewajko “Populizm w demokracji” in: *Populizm a demokracja*, edited by R. Markowski, ISP PAN, Warszawa 2004

ing describes as the precariat: those excluded from the banking financial market, who have no creditworthiness predominantly for two reasons. The first one is their very low income, and the second is the fact that they usually have no permanent employment and work under so called junk contracts, which do not meet the banks' formal criteria. Exclusion from the banking system means that such people cannot take out comparatively cheaper loans. Thus, the underprivileged are doomed to become even more underprivileged when they are forced to obtain funds to satisfy usually the most basic needs. We can speak of a twofold exclusion. Following Standing's ideas, it can be expected that a group of unsatisfied people exists and probably keeps growing in Poland; people who blame the state of affairs on the state as an institution. This group is potentially antidemocratic for the reasons listed above.

Two extremely vital issues appear in reference to the above considerations.

The fundamental matter: in public debate, but also frequently in academic debate, the term 'liberalism' appears in numerous theoretical contexts, yet those who use it seldom make the effort (often on purpose, having their political interest in mind) to specify what area of liberalism they are talking about. At the same time, the term has many meanings that refer to various notions. When discussing the difficulty in defining liberalism, Jerzy Szacki²¹ writes: "Only those authors who propose their own arbitrary project of liberalism and disregard how it relates to all the remaining ones can have complete certainty as to the meaning of the term."²² Szacki carries out a meticulous and in-depth analysis of the notions related to the term 'liberalism' and concludes: "If a liberal social philosophy does exist, then it is a philosophy that speaks the language of the individual's rights. The individual may be perceived in various ways, more or less atomistically, yet it always comes down to that individual and the rights he or she is entitled to sort of naturally, which means that they do not hinge upon the local social conventions and provisions of positive law. This is the Archimedean point of liberalism; it is the starting point of the philosophy that liberalism has always been looking for".²³ "It appears from the etymology of the words 'liberal' and 'liberalism' that it is about free people, and not about wheels in some Great Machinery or cells of such or other 'social organism' that could have its own purposes and needs which do not coincide with the purposes and needs of individuals, and even could contradict them".²⁴ Moreover, the primary and sole explanation of what 'liberalism' means is the statement that

²¹ J. Szacki, *Liberalizm po komunizmie*, Społeczny Instytut Wydawniczy ZNAK, Warszawa 1994

²² J. Szacki, op. cit., p. 23

²³ J. Szacki, op. cit., p. 40

²⁴ J. Szacki, op. cit., p. 39

every person can make use of their liberty to the extent in which it can be reconciled with the liberty and rights of other people. An attempt to answer the question in how far the principles of neoliberal economy exhaust the substantial notion of liberalism in the meaning discussed above requires a separate essay and exceeds the scope of the present paper. However, it is definitely worth the effort. After all, the exercise of rights and freedoms of individuals entails not only the category of negative liberty from the state and its constraints, but also the category of positive liberty to have the opportunity to exercise one's rights. The freedom of subjects in the economic sphere by no means has to involve other rights and freedoms of individuals. Then perhaps the principles of neoliberal economy can be described as a contradiction of the notion of liberalism understood as the exercise of the rights and freedoms of individuals in areas of life other than economic freedom?

The second matter: the conceptual chaos related to the careless use of the term 'liberalism' is dangerous and can have tragic consequences. Apart from the notion of liberal or neoliberal economic principles (economic liberalism), there are also the concepts of cultural liberalism and political liberalism. According to the shortest definition, cultural liberalism is tolerance for and consent to numerous cultural models functioning in one space; the rules of such functioning are determined by principles developed in the course of creating the social contract, with respect for the rights and freedoms of all entities.²⁵ The principles of political liberalism have been precisely and clearly developed in both theory and practice. Two groups of requirements have to be met for a state to be deemed a modern liberal democracy: first, democratic procedures, second, observance of the liberal axiology, that is the law of human rights which exists in the system of international law as well as in that of national law. The notion of modern liberal democracy was created as a response to the principle of the majority's tyranny, which was deemed the foundation of democracy until World War II and which led to the well known consequences in fascist Germany and elsewhere. Observing democratic procedures alone does not protect the individual from the tyranny of the majority; in liberal democracies, the power of the majority is restricted by the rights and freedoms of the individual.

Thus we are dealing with at least three meanings of the term 'liberalism'. As I have written above, in public debate, the term is used without defining its precise meaning. A serious danger exists that loud criticism of economic liberalism (even if justified from the perspective of liberal philosophy) will be understood by the recipients as criticism of the entire liberal idea, including the

²⁵ M. Walzer, *O tolerancji*, PIW, Warszawa 1999

political one. An ever-greater danger arises (as it sometimes happens) when the criticism of economic liberalism will be used by politicians to criticise the concept of political liberalism. The promises of the authoritarian state, a 'good father', to satisfy the expectations of social security benefits may be very tempting to numerous social groups. That is why it is in the interest of each modern liberal democracy to ensure that groups who are underprivileged and excluded from the economic market can live in dignity, to create conditions which will enable them to exercise their positive liberty to profit from all their rights, including economic ones.

And so, in the context of our considerations, is the sector of loan companies functional or dysfunctional for society? The critics of this sector's existence focus on the high costs of the services it provides. If we assume that perspective, the criticism is undeniably justified. Then again, it cannot be ignored that loan companies constitute the only available source of financial security to people excluded from the banking sector of financial services when they find themselves in a critical situation. As has been proven by our and other research, people who borrow money from loan companies typically use those funds to satisfy their basic needs: cover current expenses, buy medications etc. Those in true need will always have to borrow money; the delegalisation of loan companies would mean that such services would go underground and be excluded from legal regulation. From that point of view, the existence of loan companies is functional. Nevertheless, there is no denying that the most functional solution from the perspective of the democratic state would be to introduce a mechanism that does not exclude entire social groups from the banking sector. The implementation of the principles of neoliberal economy, which often fails to take into account the rights of individuals, which excludes entire groups from the fundamental areas of social life, is extremely dysfunctional for modern liberal democracies. Persons with a high level of anxiety, without a sense of security, including economic security, will always run away from freedom and seek shelter in an authoritarian or even totalitarian state. In his famous work entitled *Escape from Freedom*,²⁶ where he analyses the reasons for the support of fascism in German society of the 1930s, Erich Fromm writes: "We were bound to admit that millions of people in Germany renounced freedom with the same enthusiasm with which their fathers had fought for it; that instead of desiring freedom, they sought escape from it; that millions of others treated it with indifference and believed that freedom deserves neither fighting nor dying for. Moreover, we understood that a crisis of democracy is not an exclusively Ital-

²⁶ E. Fromm *Ucieczka od wolności*, Czytelnik, Warszawa 1997

ian or German problem, but something faced by every modern state. And it does not matter what symbols are employed by the enemies of human freedom: freedom can be equally endangered when it is attacked in the name of antifascism as when it is attacked directly by fascism itself. This truth was expressed so convincingly by John Dewey that I will quote his words: ‘A real threat to our democracy is not the existence of totalitarian states, but the factors present in our personal attitudes and our own institutions, which in other countries paved the way for the victory of externally imposed power, discipline, unity and dependence on the Leader. That is why the field of battle is located here, as well – within our very selves and within our institutions’²⁷. Perhaps it is worthwhile to remember Erich Fromm’s words?

²⁷ E. Fromm, *op. cit.*, p. 23

About the authors

Prof. dr hab. Iwona Jakubowska-Branicka is a sociologist with interest in the theory of contemporary democracy, human rights, psychology of politics and political propaganda. She is the author of *Czy jesteśmy inni? Czyli w poszukiwaniu absolutnego autorytetu; O dogmatycznych narracjach. Studium nienawiści*; and *Hate narratives. Language as a tool of intolerance*. She works at the Institute of Applied Social Sciences at the University of Warsaw, in the Chair of the History of Ideas and Cultural Anthropology.

Dr Aleksandra Herman is an adjunct professor at the Institute of Applied Social Sciences at the University of Warsaw, in the Chair of Sociology and Anthropology of Law and Custom. She is a cultural anthropologist with a strong background in local community-based field work. Her research interests include cultural diversity in local communities, the anthropology of the body and bodily practices, and recently also selected aspects of economics as applicable to culture and society. Throughout her academic career, she has been a strong proponent of women's studies and the feminist perspective in research.

Dr hab. Adriana Mica is an adjunct professor and the head of the Actions and Consequences Research Laboratory at the Institute of Social Prevention and Resocialisation at the University of Warsaw. Her central research interests include: unintended consequences; failure; diffusion of innovation and ignorance.

Prof. dr hab. Elżbieta Mączyńska is a professor of economic sciences, associated with the Warsaw School of Economics. She is the president of the Polish Economic Society and a member of: the Scientific Council of the Institute of Economic Sciences of the Polish Academy of Sciences, the "Poland 2000 Plus" Committee Presidium, the Economic Sciences Committee of the Polish Academy of Sciences, the National Development Council. She is a creator of models of predicting bankruptcy. She specializes in economics, including eco-

conomic analysis, finance and enterprise valuation, economic systems and strategy of socio-economic development. She is the author (or co-author) of about 300 publications on these subjects.

Dr hab. Jolanta Arcimowicz is a sociologist and an adjunct professor in the Chair of Sociology and Anthropology of Law and Custom at the Institute of Applied Social Sciences at the University of Warsaw and a member of the Polish Sociological Association. Her research focuses on sociology of law, power, politics, and theory of democracy. She is the author of the monograph *Rzecznik Praw Obywatelskich. Aktor sceny publicznej* and has published in the Polish Sociological Review, *Societas/Communitas*, *Służba Cywilna* and other journals.

Maria Bernat is a legal advisor and member of the Warsaw Bar Association. She is currently pursuing a doctorate in the Chair of Sociology and Anthropology of Law and Custom at the Institute of Applied Social Sciences at the University of Warsaw. Her research focus is on the sociology of law and ethics of legal practice.

Filip Cyuńczyk is currently pursuing a doctorate at the Faculty of Law and Administration at the University of Warsaw. He is a researcher affiliated with the Centre for Legal Education and Social Theory at the University of Wrocław and a visiting lecturer at the Riga Graduate School of Law.

Maciej Frąszczak has a degree in finance and accounting from the Warsaw School of Economics. He is currently pursuing a doctorate at the Collegium of Business Administration at the Warsaw School of Economics. His research interests include financial analysis, business internationalization, as well as business and property valuation.

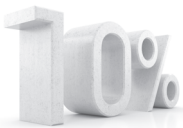
Paulina Spalek has degrees in finance and accounting from the Warsaw School of Economics and the University of Warsaw. She was a winner of a scholarship to attend the Johannes Gutenberg University Mainz. She is currently pursuing a doctorate at the Collegium of World Economy at the Warsaw School of Economics. Her academic interests include international competitiveness, industrial policy, financial analysis, as well as business valuation.



The book offers a comprehensive analytical review of the operating model of loan companies on the Polish financial market. It is published as a component of the research project “Why paraformality works. The diffusion of short term loans in Poland” financed by the National Science Centre of Poland (decision number DEC-2013/11/B/HS6/01506). The project was carried out at the Institute of Applied Social Science, University of Warsaw, and headed by prof. dr hab. Iwona Jakubowska-Branicka. The timing of the project coincided with a crucial period for loan companies in Poland. During the four years in which the project took place, the section of socio-economic reality that was the focus of our attention underwent a major transformation. When we were planning and launching the project, the legal regulations applicable to the loan companies were scant. By the time the project came to an end, the regulatory framework had been significantly expanded, mainly on the initiative of the very entities subject to these regulations.

The project was interdisciplinary, taking place at the meeting point of sociology, law and economics. Thus, we begin the book by offering an attempt at theoretical classification of the newly emerging legal and social phenomena. We then move on to a legal analysis of the changes in the regulatory framework; a review of the loan company market structure (and the changes thereof); a discussion of the media image of loan companies; and finally, a research report on the qualitative and quantitative studies we conducted, including a portrait of the clients of loan companies against a broader social background. The two closing chapters offer a discussion of “quick loans” in the context of behavioural economics and the regulatory role of the state, and contemplate the threats to contemporary democracy arising out of the sense of social exclusion. I hope that we were successful in our attempt to identify, analyse, and describe the changes, and that we managed to give an insightful account of the legal and operational aspects of the loan company market in Poland. I also hope that reading this book proves both interesting and inspiring.

Iwona Jakubowska-Branicka



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