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Legal Instruments to Support Borrowers (Consumers and Entrepreneurs) in Connection with the COVID-19 Pandemic in Poland, and Vietnam

Abstract: The COVID-19 pandemic restrictions introduced in 2020 in many countries on economic activity and gainful employment have in many cases, reduced the incomes of individual households. As a result, the actual ability to meet credit obligations has declined, particularly for those who have lost their jobs or livelihoods. The COVID-19 pandemic has become a significant challenge for economies, national authorities, and entrepreneurs, including borrowers. This article aims to analyse the legal regulations in Poland, and Vietnam, introducing instruments to support borrowers, consumers, and entrepreneurs, in connection with the COVID-19 pandemic. The authors will present the legal basis for the instruments to support borrowers provided in the studied countries, indicate their legal nature, forms, and conditions of using them. They also compare legal solutions introduced in connection with the pandemic aimed at mitigating its adverse effects on borrowers in Poland, and Vietnam, to indicate whether cultural differences and differences in legal systems, as well as individual approaches to the domestic credit market, affected the choice of legal instruments for supporting borrowers in connection with the COVID-19 pandemic, or not.
Keywords: anti-crisis regulation, COVID-19, consumer credit, credit vacation, lender, trader

Introduction

The declaration of a COVID-19 pandemic in many countries in 2020 and the need to introduce numerous restrictions in the functioning of the economy, the public service sector, as well as in the private sphere, forced many countries and legislators to take appropriate action. Their purpose was to protect and ensure the safety of the, broadly understood, interests of consumers[1] and other entities operating in the market, including entrepreneurs. In addition, the occurrence of the CoVID-19 pandemic and the economic and social constraints caused by it has had a huge impact, not only on the economies of individual countries[2], but also on the financial situations of households and businesses, while affecting household confidence and highlighting the importance of preparing household budgets for an unexpected loss of income.[3] As was shown in an earlier study (2015) by The Pew Charitable Trusts[4], even unexpected but straightforward events cause an impact on the financial economy of households, especially of the most vulnerable, less educated, and less wealthy, let alone in a pandemic.[5] Many households and businesses had difficult and unstable financial situations, lost liquidity, and thus experienced environmental threats to their economic well-being.[6] The airline, automobile, hotel, and restaurant industries suffered the most significant losses[7], and many people experienced reductions in pay, or were made unemployed.[8] Communities all over the world face these problems . Therefore aid solutions were sought, both for businesses and individuals who found

1 A natural person makes a legal transaction with an entrepreneur who is not directly related to his/her business or professional activity. Thus, art. 22 1 of the Act of 23 April 1964 – Civil Code (Journal of Laws 1964, No. 16, item 93, as amended).

2 S.R. Baker, N. Bloom, S. Davis, S.J. Terry, COVID-Induced Economic Uncertainty, National Bureau of Economic Research, 2020, https://www.nber.org/papers/w26983 (10.10.2021).

3 Ł. Kurowski, Household's Overindebtedness during the COVID-19 Crisis: The Role of Debt and Financial Literacy, "Risks" 2021, no. 9(4), 62.

4 Pew Charitable Trust, How do families cope with financial shocks? Pew Charitable Trust Research Brief, https://www.pewtrusts.org/~/media/assets/2015/10/emergency-savings-report-1_artfinal.pdf (13.10.2021).

5 European Consumer Payment Report 2020, https://www.intrum.com/media/10154/intrum-ecpr-2020.pdf (13.10.2021).

6 J. Fox, S. Bartholomae, Household finances, financial planning, and COVID-19, "Financial Planning Review" 2020, no. 3, e1103, https://onlinelibrary.wiley.com/doi/10.1002/cfp2.1103 (10.10.2021).

7 D. Haydon, N. Kumar, Industries most and least impacted by COVID-19 from a probability of default perspective – September 2020 update, New York, S&P Global, https://www.spglobal.com/marketintelligence/en/news-insights/blog/industries-most-and-least-impacted-by-covid19-from-a-probability-of-default-perspective-september-2020-update (13.10.2021).

8 K. Parker, R. Minkin, J. Bennett, Economic fallout from COVID-19 continues to hit lower-income Americans the hardest, Washington DC: Pew Research Centre, 2020, https://www.pewresearch.org/social-trends/2020/09/24/economic-fallout-from-covid-19-continues-to-hit-lower-income-americans-the-hardest/ (13.10.2021).

themselves in difficult financial situations, lost their jobs, lost their source of income, or whose economic conditions deteriorated.[9] Thus, they were forced to seek new sources of financing to cover current operating costs.[10] All over the world, solutions have been, and are being, sought to mitigate sudden economic shocks, maintain the functioning of primary sectors of the economies of individual countries[11] in the face of rising social expectations.[12]

The economic crisis triggered by the COVID-19 virus outbreak also seriously affected the financial sector and the credit market (credit sector). The loss of part of the income caused real concerns about the ability to service the debt, especially in Central and Eastern European countries.[13]. The economic consequences of the COVID-19 pandemic and its impact on the global economy, and consumers' financial situations, have been analysed by commercial research institutes and academic centres around the world: Teresiene[14], van der Wielen and Barrios[15], Baker[16], Kanapickiene[17]. The

9 C.G. Baicu, I.P. Gardan, S.A. Gardan, G. Epuran, The impact of COVID-19 on consumer behavior in retail banking. Evidence from Romania, "Management & Marketing, Challenges for the Knowledge Society" 2020, no. 15, https://sciendo.com/article/10.2478/mmcks-2020–0031 (11.10.2021).

10 Cf. V.V. Acharya, R.F. Engle III, S. Steffen, Why did bank stocks crash during COVID-19?, "National Bureau of Economic Research" 2021, https://www.nber.org/papers/w28559 (13.10.2021); A. Demirgüç-Kunt, A. Pedraza, C. Ruiz-Ortega, Banking sector performance during the COVID-19 crisis, "Journal of Banking & Finance" 2021, https://www.sciencedirect.com/science/article/pii/S0378426621002570#bib0002 (13.10.2021).

11 R. Baldwin, E. Tomiura, Thinking ahead about the trade impact of COVID-19", (in:) R. Baldwin, B. Weder di Mauro (eds.), Economics in the Time of COVID-19, a VoxEU eBook, 2021, https://voxeu.org/system/files/epublication/COVID-19.pdf (13.10.2021).

12 C. Balloch, S. Djankov, J. Gonzalez-Uribe, D. Vayanos, A Restart Procedure to Deal with Covid-19, Special Paper 254, LSE Financial Markets Group Paper Series, May 2020, p. 1, https://www.fmg.ac.uk/sites/default/files/publications/SP254.pdf (13.10.2021).

13 Cf. Ł. Gębski, The Impact of the Crisis Triggered by the COVID-19 Pandemic and the Actions of Regulators on the Consumer Finance Market in Poland and Other European Union Countries, "Risks" 2021, no. 9, 102. https://doi.org/10.3390/risks9060102 (9.10.2021).

14 D. Teresiene, G.Keliuotyte-Staniuleniene, Y. Liao, R. Kolesnik, R. Pu, S. Hu, X.-G. Yue, The Impact of the COVID-19 Pandemic on Consumer and Business Confidence Indicators, "Journal of Risk and Financial Management" 2021, no. 14, 159, https://www.mdpi.com/1911–8074/14/4/159 (9.10.2021).

15 W. van der Wielen, S. Barrios, Economic sentiment during the COVID pandemic: Evidence from search behaviour in the EU, "Journal of Economics and Business" 2021, no. 115, https://doi.org/10.1016/j.jeconbus.2020.105970 (14.10.2021).

16 S.R. Baker, N. Bloom, S. Davis, S.J. Terry, COVID-Induced Economic Uncertainty…, *op.cit.*

17 Cf. Ł. Gębski, The Impact of the Crisis Triggered by the COVID-19 Pandemic and the Actions of Regulators on the Consumer Finance Market in Poland and Other European Union Countries, "Risks" 2021, no. 9, 102, https://doi.org/10.3390/risks9060102; M. Zaleska (ed.), The financial impact of COVID-19. Polish perspective, Warsaw 2021; J. Koleśnik, The Cognition Effect and its Mitigation in the Modern Banking System, "European Research Studies Journal" 2021, no. 24, https://www.ersj.eu/journal/2008 (10.10.2021); R. Kanapickiene, D. Teresiene, D. Budriene,

consumer finance market in all national markets of Eurofinas member states in the region experienced sharp declines in the lending volume, as evidenced by the research.[18] The crisis triggered by Covid-19 was accompanied by rising household indebtedness, which resulted from difficulties in servicing it[19] on an ongoing basis and increased credit risk, due also to the deterioration of the financial situation of companies affected by repeated foreclosures and rising unemployment. In July 2020, the European Commission published a list of best practices[20] for assisting consumers and businesses affected by the pandemic for bank, and non-bank, financial institutions. EU supervisors also monitored the situation in EU member states to ensure market stability. They recommended the introduction, where possible, of moratoria for repayments of consumer and business loans, the creation of national programs to support efficient lending to mitigate the impact of the crisis caused by the pandemic, while keeping the levels of fees and interest rates under control, thus preventing unfair practices in this regard. In crisis (forced) situations, debtors with obligations under credit agreements can only meet their responsibilities in the short term. Therefore, it was necessary to find such solutions that made it possible to temporarily relieve the debtor from the obligation to meet their requirements, or to postpone them.[21]

In many countries, to counteract these negative effects, it was necessary to take regulatory action as a result of a reduction of the debtor's creditworthiness related

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G. Keliuotyte-Staniuleniene, J. Kartasova, The impact of COVID-19 on European financial markets and economic sentiment, "Economy & Business" 2020, no. 14, https://epublications.vu.lt/object/elaba:73275063 (10.10.2021).

18 EUROFINAS. 2021. Biannual Survey 2020, New Consumer Credits Granted for Personal Consumption and Individual Vehicles, http://www.eurofinas.org/uploads/documents/statistics/Eurofinas%20Biannual%20Survey%202020.pdf (8.10.2021); J. Ophem, COVID-19 and consumer financial vulnerability, "Central European Review of Economics and Management" 2020, no. 4, https://www.ceeol.com/search/article-detail?id=929094 (15.10.2021).

19 V. Bignon, O. Garnier, Mesurer l'impact de la crise Covid-19 L'expérience de la Banque de France, "Revue de l'OFCE" 2020, no. 2, pp. 45–57, https://www.cairn.info/revue-de-l-ofce-2020–2-page-45.htm#s1n3 (13.10.2021).

20 European Central Bank 2020, Decisions taken by the Governing Council of the ECB (in Addition to Decisions Setting Interest Rates), https://www.ecb.europa.eu/press/govcdec/otherdec/2015/html/gc150918.en.html (10.10.2021); European Central Bank 2020, Recommendation of the European Central Bank of 15 December 2020 on Dividend Distributions during the COVID-19 Pandemic and Repealing Recommendation ECB/2020/35 (ECB/2020/62) 2020/C 437/01, https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv%3AOJ.C_.2020.437.01.0001.01.ENG (13.10.2021).

21 B.S. Aji, M. Warka, E. Kongres, Credit Dispute Resolution through Banking Mediation during Covid-19 Pandemic Situation, Budapest International Research and Critics Institute-Journal, p. 1618, https://doi.org/10.33258/birci.v4i2.1823 (14.10.2021); M. Tjoanda, Y. Hetharie, M. V.G. Pariela, R.F. Sopamena, The Outbreak of Covid-19 as an *Overmacht* Claim in Credit Agreements, "Fiat Justisia Jurnal Iimu Hukum" 2021, no. 15(1), p. 85, http://jurnal.fh.unila.ac.id/index.php/fiat (14.10.2021).

to the loss of income, in order toto counteract potential credit risks and disruptions of banking activity and, in turn, the stability of the financial systems of individual countries. Restructuring of credit or financing through, among other things, the reduction of interest rates; extension of the term; reduction of arrears of principal and interest; addition of credit or financial instruments (subsidized loans), deferral of loan repayment, depending on the situation of the debtor adversely affected by COVID-19, became a challenge, and often required the introduction of these instruments through specific (emergency) and temporary acts.

This article presents only a part of those regulatory actions implemented in the credit market to counteract the effects of the pandemic on borrowers, both businesses and consumers. It shows only the regulations that affected borrowers in Poland and Vietnam. However, it is worth noting that they were also introduced in other countries of the world (Indonesia[22], China[23], Brazil[24], Austria[25], Italy[26], Hungary,[27] Germany[28], Belgium, and Spain), which will not be analysed. In this study, the reason for choosing the subject of legal regulations adopted in Poland, and Vietnam, is primarily the long-term and established scientific contacts of one of the authors from Poland with the

22 H. Sytra Disemandi, A. Ismail Shaleh, Banking credit restructuring policy on the impact of COVID-19 spread in Indonesia, "Journal Inovasi Ekonomi" 2020, vol. 05, p. 68, https://ejournal.umm.ac.id/index.php/JIKO/article/view/11790/8316 (13.10.2021); H.S. Disemadi, A.I. Shaleh, Banking credit restructuring policy on the impact of COVID-19 spread in Indonesia, "Journal Inovasi Ekonomi" 2020, no. 5(2), p. 63, Special Issue of Economic Challenges in COVID-19 Outbreak, http://ejournal.umm.ac.id/index.php/jiko (14.10.2021).

23 A. Błaszczyk, Impact of coronavirus on trade policy of the People's Republic of China and the Republic of Poland in Challenges of the modern world, VII, J. Kawa (ed.), Archegraph 2020, s. 18, https://www.archaegraph.pl/lib/l231bv/wyzwania-7-ebook-kfy8iite.pdf#page=16 (13.10.2021).

24 R.M. Goncalves, A.F.A. Alves, T. Almeida, Debtor-financing in judicial recovery and covid-19 pandemia impacts on the Brazilian entrepreneurs, "Revista Juridica" 2021, no. 2(64), pp. 203–234, https://pesquisa.bvsalud.org/global-literature-on-novel-coronavirus-2019-ncov/resource/pt/covidwho-1404238 (14.10.2021).

25 Memorandum on legal solutions adopted in Austria intervening in the relationship of lenders with borrowers in order to protect borrowers, in connection with the COVID-19 pandemic. Analysis of Article 37 § 2 of the COVID-19-Gesetz of 4 April 2020, https://rf.gov.pl/wp-content/uploads/2020/05/Analiza_wakacje_kredytowe_Austria.pdf (5.10.2021).

26 Trieste, 16 April 2020 Italian Report by Francesca Fiorentini, University of Trieste https://rf.gov.pl/wp-content/uploads/2020/05/Italian-Report_Consumer-loans-and-Coronavirus1.pdf (15.10.2021).

27 Payment moratorium in Hungary; Measures to mitigate the impact of a coronavirus pandemic on the national economy https://rf.gov.pl/wp-content/uploads/2020/05/Wakacje_kredytowe_W%C4%99gry_maj2019.pdf (15.10.2021).

28 B. Giessen , Report on the German law on the mitigation of the COVID-19 epidemic in the consumer credit sphere (Gesetz zur Abmilderung der Folgen der Covid-19-Pandemie im Zivil- Insolvenz- und Strafverfahrenrecht vom 27.3.2020.1), prepared for the Financial Ombudsman, https://rf.gov.pl/wp-content/uploads/2020/05/Wakacje_kredytowe_Niemcy_Analiza.pdf (15.10.2021).

National University in Ho Chi Minh City in Vietnam. Besides, it was considered that a comparison of legal solutions introduced in connection with the pandemic aimed at mitigating its negative effects on borrowers in Poland, and Vietnam (one of the first countries where cases of COVID-19 infection were disclosed), may be an interesting procedure due to cultural differences and differences in legal systems; even different economic development, and individual approaches to the domestic credit market.[29] Indirectly, it was also examined whether, or not, these dissimilarities influenced the choice of legal instruments to support borrowers in the wake of the COVID-19 pandemic. The research undertaken in this article was carried out using the formal-dogmatic method and linguistic-logical analysis of the texts of the relevant legal acts aimed at interpreting the legal norms contained therein.

1. Instruments of Support to Borrowers in the Light of Legal Regulations in Poland in Connection with COVID-19 Pandemic

1.1. General Comments

In Poland, on March 14, 2020[30], a state of epidemic emergency was introduced, and on March 20, 2020, an epidemic state was declared. Poland was entering 2020 with dynamic economic growth – according to the Central Statistical Office, GDP growth in 2019 was 4.5%[31]. A decrease in household income greater than 30% could mean the inability to cover necessary expenses without breaching savings or incurring new liabilities. The results of a cyclical international survey conducted by the ING Group[32]showed that in Poland, the impact of the pandemic was, on the one hand, smaller than in other countries, but the economic consequences were still severe.[33]

In response to the unique situation caused by the spread of the SARS-CoV–2 virus, regulations were introduced into the Polish legal system in 2020 that also affected credit relations and the position of borrowers; both consumers and businesses. They were temporary and extraordinary. The first law introducing

29 Cf. Ł. Gębski, The Impact of…, *op. cit.*

30 Regulation of the Minister of Health of 13.03.2020 on the declaration of an epidemic emergency on the territory of the Republic of Poland (Journal of Laws 2020, No. 433, as amended, not in force).

31 Information from the Central Statistical Office on the revised estimate of gross domestic product for 2019, CSO, October 05, 2020, https://stat.gov.pl/obszary-tematyczne/rachunki-narodowe/roczne-rachunki-narodowe/informacja-glownego-urzedu-statystycznego-w-sprawie-skorygowanego-szacunku-produktu-krajowego-brutto-za-2019-rok,9,6.html (05.07.2021).

32 Results of international survey "ING Financial Barometer – August 2020" Impact of Covid-19 on personal finances of Poles and Europeans Results of international survey "ING Financial Barometer, https://www.ing.pl/_fileserver/item/s1m3flr (05.07.2021).

33 Survey commissioned by the BIG InfoMonitor Debtor Register, April 2020.

unique solutions in connection with the COVID-19 outbreak is the Act of 2 March 2020 on unique solutions related to the prevention and counteraction of COVID-19[34]. The Act was repeatedly amended by subsequent acts referred to as the Anti-Crisis Shield:1.0[35], 2.0[36], 3.0[37], 4.0[38]. Shield 1.0 and 4.0 were important in terms of instruments supporting borrowers. Shield 1.0 introduced credit vacations for entrepreneurs[39]and reduced maximum costs of consumer loans.[40] On the other hand, in Shield 4.0 statutory credit vacations for consumers and interest rate subsidies for bank loans granted to entrepreneurs (revolving and non-revolving working capital loans given in PLN) were envisaged. Shield 4.0 was intended to provide support for entrepreneurs who, in times of the COVID-19 pandemic, face difficulties in running their businesses, or their operations are significantly impeded, causing problems in the form of loss of financial liquidity.

1.2. Instruments to Support Consumer Borrowers in the Light of the Anti-Crisis Shield in Poland

The Crisis Shield provided instruments to support consumer borrowers adversely affected by the COVID-19 pandemic, who had previously incurred credit obligations and, as a result of the loss of sources of income, had difficulty repaying them, or who had incurred them during the pandemic. On 31 March 2020, at the initiative of the President of the Office of Competition and Consumer Protection (from now on referred to as the OCCP), the Shield 1.0 was enacted, which introduced a "new" and "temporary" reduced limit on non-interest costs of consumer credit. Its

34 The Act of 2 March 2020 – on special solutions related to preventing, counteracting, and combating COVID-19, other infectious diseases and crisis situations caused by them (Journal of Laws 2020, item 374, as amended), further Act COVID-19.

35 The Act of 31 March 2020 – on amending the Act on special solutions related to the prevention, counteraction and eradication of COVID-19, other infectious diseases and crisis situations caused by them and some other acts (Journal of Laws 2020, item 568), further Shield 1.0.

36 Act of 14 April 2020 – on specific support instruments in connection with the spread of the SARS-CoV–2 virus (Journal of Laws, item 695 as amended), further Shield 2.0.

37 Act of 14 May 2020 – amending certain laws with respect to protective measures in connection with the spread of the SARS-CoV–2 virus (Journal of Laws 2020, item 875), further Shield 3.0.

38 Act of 19 June 2020 – on interest subsidies for bank loans granted for providing liquidity to entrepreneurs affected by COVID-19 and on simplified proceedings for approval of an arrangement in connection with the occurrence of COVID-19 (Journal of Laws, item 1086), further Shield 4.0.

39 Cf. T. Białek, The most important changes for banks resulting from the Anti-Crisis Shield, LEX/eL; A. Serzysko, Contractual clauses in banking contracts and COVID-19, LEX 2020, eL.

40 Cf. art. 8d, 8ei8fAct COVID-19; T. Czech, New limits on non-interest consumer credit costs due to the coronavirus outbreak, "Banking Law Monitor" 2020, vol. 6, p. 79.

purpose was to protect consumer borrowers who entered into a consumer credit agreement[41]during the COVID-19 outbreak.

They were initially in force for one year after their introduction (until 31 March 2021); however, another amendment to the Act COVID-19[42] extended this deadline to 30 June 2021. The "Temporary" nature of the validity of this particular "new" and reduced limit was argued for by the necessity of rebuilding the Polish economy to the state before the COVID-19 epidemic, which may have a medium-term character. Regarding the notion of 'non-interest credit costs' and limitations on their amount, the Consumer Credit Act, implementing Directive 2008/48[43], contains its solutions, which do not transpose its provisions or other EU regulations[44]. According to Article 5.6a of the CCA, these are all costs (fees[45], including collection fees[46], commissions[47], taxes, margins, and other expenses directly related to the consumer credit agreement) incurred by the consumer, excluding interest. Since they often exceed the amount of the credit obligation (credit or loan)[48], regulations were introduced governing the maximum amount of non-interest credit costs (i.e., the limit of non-interest credit costs) and rules of their calculation in the case of postponement of credit repayment and granting of subsequent credits (Art. 36a – 36c of the CCA).[49]

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41 Consumer credit agreement within the meaning of Article 3 of the Act of 12 May 2011 – on consumer credit (Journal of Laws 2019, item 1083), further CCA.

42 Act of 21 January 2021 – on amending the Act on special solutions related to the prevention, counteraction and combating of COVID-19, other infectious diseases, and crisis situations caused by them, and some other acts (Journal of Laws 2021, item 159), further Act of 21 January 2021.

43 Directive 2008/48EC of the European Parliament and of the Council of 23 April 2008 on credit agreements for consumers and repealing Council Directive 87/102/EEC (O.J. L 133/66, 22.05.2008, p.1).

44 v. T. Czech, Article 5 Definitions, (in:) Consumer credit. Comment, 2017, LEX, eL.

45 The CCA does not provide a definition of the term "fees" and does not distinguish the fees that may be charged by lenders. The lack of uniform naming these fees results in lenders using different names and charging different fees in practice. v. E. Rutkowska-Tomaszewska, Creditor's remuneration related to the crediting process and legal regulation of the reduction of the total cost of consumer credit in cases of its early repayment as a manifestation of the protection of consumer's economic interests, (in:) E. Rutkowska-Tomaszewska (ed.) Customer protection on the financial services market in the light of current problems and legal regulations, Warsaw 2017, pp. 285–324.

46 T. Czech, Limit on non-interest costs of consumer credit, "Banking Law Monitor" 2016, vol. 2.

47 v. E. Rutkowska-Tomaszewska, Creditor's remuneration related…, *op. cit.*

48 Explanatory Memorandum to the Government Bill amending the Act on supervision over the financial market, the Banking Law Act, and certain other acts, http://www.sejm.gov.pl/sejm7.nsf/druk.xsp?nr=3460, p. 19 (14.07.2021).

49 Due to the limited scope of this paper, they will not be discussed here. More extensively on their topic: T. Czech, Limit…, *op.cit*.

However, due to the prevailing epidemic condition, as well as the economic situation of the country and consumers, the legislature[50] found the existing limits on non-interest credit costs too high, and introduced reduced ones. The new limits are governed by Article 8d of COVID-19, and have different values depending on the loan repayment period. For loans granted from March 8, 2020, to March 8, 2021 (extended to June 30, 2021), there are two maximum non-interest credit cost limits: a separate higher limit for loans with a repayment period of more than 30 days and a relatively lower limit for loans with a repayment period of less than 30 days, which applies, in particular, to loans offered by lending institutions. Thus, loans with a repayment period of fewer than 30 days cannot be higher than 5% of the total loan amount. However, for consumer loans with a repayment period of more than 30 days, the non-interest credit costs amount to a maximum of 15% of the total credit amount and 6% for each year of the loan agreement, not more than 21% for a loan granted for one year. Regardless of the length of the credit agreement, non-interest charges may not exceed 45% of the total credit amount (Article 8d of the Act COVID-19).[51]

The term of the new limits (365 days) shall not be counted from the effective date of Shield 1.0 (Amendment Act, March 31, 2020), but from March 8, 2020 (the effective date of COVID-19). Initially, it was applicable till March 8, 2021. However, the Act of 21 January 2021 was extended till June 30, 2021. The Draft[52]even proposed to extend them to December 31, 2021, which was justified by the need to protect consumers from being taken advantage of by lending institutions because of their weaker position.

According to Section 31zc(1) of Act COVID-19, where a credit or loan agreement is entered into during the period in which the new limits apply but for a period exceeding 365 days calculated from March 8, 2020, the lender is required to use both the new and existing limits on non-interest credit costs. It must make separate calculations of these limits for both periods for the same loan or credit agreement. The new limitations on non-interest credit costs, as with the limits outlined in Article 36a of the COVID Act, do not apply to credit in a consumer's savings and checking account maintained by the creditor, and to a credit card agreement if the creditor is also the issuer of the credit card (Articles 8d and 8e of the COVID Act-19).

50 Justification to the draft law on amending the Law on Special Solutions for Preventing, Counteracting and Combating COVID-19, Other Infectious Diseases and Crisis Situations Caused by Them and Some Other Laws, Parliament Print No. 299,https://www.sejm.gov.pl/sejm9.nsf/PrzebiegProc.xsp?nr=299 (14.07.2021), further Explanatory Memorandum to the Act of March 31, 2020.

51 T. Czech, Limit…, *op.cit.*, p. 86.

52 Government bill on amending the Act on special solutions related to preventing, counteracting, and combating COVID-19, other infectious diseases and crisis situations caused by them and some other acts – the essence of preserving the reduced limits, http://www.sejm.gov.pl/sejm9.nsf/agent.xsp?symbol=RPL&Id=RM-10–106-20 (29.07.2021).

Special rules have been introduced regarding granting a credit card by the creditor or an entity affiliated with the creditor[53]. If the creditor, or an affiliate of the creditor, consents to subsequent loans to the consumer within 120 days of the disbursement of the first loan, and the consumer has not repaid the loan in full, the total amount of the loan, for the purpose of determining the maximum non-interest credit costs, is the amount of the first loan. In that case, the non-interest credit costs include the sum of the non-interest costs of all loans granted during that period (Article 8e of COVID-19).

The Act COVID-19 did not separately (specifically) address issues related to lenders' violations of the new limits on non-interest credit costs established by the time indicated. In particular, no new sanction to free credit was introduced. In this situation, there should be no doubt that the sanction for violation of the established "ordinary" and fixed limits of Article 45 of CCA[54] also applies in the case of non-compliance with the "new" "temporary". Shield 1.0 constituted an amendment to the solutions adopted in this respect in the Consumer Credit Act.

While in principle, the solutions adopted by the legislator concerning the lowering of non-interest credit limits, as it is a manifestation of consumer protection against over-indebtedness directly caused by the COVID-19 epidemic, have been assessed very positively by representatives of the loan industry.[55]

Another instrument to support consumer borrowers connected with the COVID-19 pandemic was the introduction of so-called statutory credit vacations. It is worth mentioning that the institution of so-called credit vacations[56] is not itself only created and used in connection with the pandemic. However, it became popular at that time. Financial institutions, especially banks, took measures to help consumers repay their loans (as part of an offer to take advantage of so-called "contractual credit vacations"). Despite considerable media coverage[57], they did not meet the real

53 Related entity within the meaning of Commission Regulation (EC) No 1126/2008 of 3 November 2008, adopting certain international accounting standards in accordance with Regulation (EC) No 1606/2002 of the European Parliament and of the Council (O.J. L 320/1, 29.11.2008, p.1).

54 v. E. Rutkowska-Tomaszewska, Consumer banking, (in:) W. Góralczyk (ed.), Problems of modern banking. Legal issues, Wolters Kluwer, Warsaw 2014, pp. 189–190.

55 They argued that failure to profit from the non-interest costs of consumer credit would result in losses and the withdrawal of many lending institutions from the market.

56 It is an entitlement (contractual or statutory) of the borrower allowing the possibility of deferring (suspending) the payment of capital and interest installments. Initially, it was subject to the lender's will (bank) under the so-called contractual (commercial) credit vacations. The suspension could cover: the whole installment, capital installment, or interest installment, and the suspension period could be up to 6 months, depending on the regulations adopted by the bank.

57 Communication from the ZBP on banks' relief efforts in the wake of the COVID-19 coronavirus pandemic, Warsaw, 16.03.2020, https://zbp.pl/Aktualnosci/Wydarzenia/Komunikat-ZBP-nr-2-ws-dzialan-pomocowych (22.07.2021).

needs and did not fulfil their intended purpose.[58]. They were not only a partial and insufficient solution, but also raised concerns of the President of the OCCP. For this reason, a statutory regulation became necessary, the purpose of which was to relieve those consumers who were directly affected by the consequences of the pandemic in the form of loss of work or their main source of income. In addition, the aim was to ensure that the use of the statutory credit vacations would not imply an increase in the burden of credit service for consumers affected by the consequences of the epidemic after the suspension of the credit agreement had ended[59]. The provisions regulating the so-called statutory credit holidays for consumers were introduced by Article 77 point 57 of the so-called Shield 4.0, which amended the COVID Act -19 and came into force on 24 June 2020. It is worth noting that the institution of statutory credit vacations was introduced in Poland and other European countries; Austria, Italy, Hungary, Germany, and others.

The essence of statutory credit vacations (suspension of contract performance) was to suspend the obligation to make loan repayments to which the borrower is contractually obligated, and thereby avoid an increase in the burden of servicing the loan. It applies to the suspension of both principal and interest instalment payments. During this time, the lender may not charge any other fees, except for cash benefits resulting from the borrower's insurance policies linked to the loan agreement due to insurance coverage continuity[60]. This right was granted to the borrower by law – with ex lege effect from the moment the lender received the application for suspension of the agreement.

Under Section 31 of the Act COVID – 19, the statutory credit vacations[61] apply to the following credit agreements with consumers[62]:

1) consumer credit agreements[63] within the meaning of CCA, or

58 Justification to the draft law on subsidies to interest rates on bank loans granted to ensure financial liquidity of entrepreneurs affected by COVID-19 and on amendments to some other laws. http://isap.sejm.gov.pl/isap.nsf/download.xsp/WDU20200001086/T/D20201086L.pdf (22.07.2021).

59 Credit vacations and anti-transfer provisions in Shield 4.0, release dated 08/06/2020 https://www.uokik.gov.pl/aktualnosci.php?news_id=16465; The crisis shield – credit vacations and protection against hostile takeovers, https://www.uokik.gov.pl/aktualnosci.php?news_id=16423 (22.07.2021).

60 Explanatory Memorandum to the draft law on subsidies to interest rates on bank loans granted for providing liquidity to entrepreneurs affected by COVID-19 and on amending some other laws, p. 73, further Explanatory Memorandum COVID-19.

61 v. M. Urban-Theocharakis, Credit Vacation, LEX 2020, eL.; Ł. Wilkowicz, Shield 4.0: Lose your job or source of income? You'll be able to suspend your loan payments, https://serwisy.gazetaprawna.pl/finanse-osobiste/artykuly/1479492,zawieszenie-splaty-kredytu-tarcza-4–0.html (30.07.2021).

62 A natural person makes a legal transaction with an entrepreneur (in this case, a creditor) that is not directly connected with their business or professional activity.

63 According to the legal definition (Article 3.1 CCA, consumer credit is a credit in the economic sense, regardless of its legal form, granted by a creditor to a consumer in an amount not exceeding

2) mortgage credit agreements[64], including those indexed to a foreign currency, within the meaning of the Act of 23 March 2017 on mortgage credit and supervision of mortgage credit intermediaries and agents[65], or
3) a credit agreement[66] within the meaning of Article 69 of the Act of 29 August 1997. – Banking Law, if the borrower is a consumer within the meaning of Article 22[1] of the Civil Code.

The suspension of credit agreements was addressed to consumers who entered into a deal before 13 March 2020. The end of the credit period was to fall after six months from that date (credit agreements with long repayment periods).

Where a borrower had several loans of the same type (e.g., two consumer loans) with a given lender, the possibility to exercise power to suspend the contract only concerned one of them, at the borrower's choice (Article 31fa(3) of Act COVID-19). This restriction did not apply when credit agreements of a given type were concluded with different creditors.

Entitlement to benefit from the "statutory credit vacations (Section 31fa(2) of the Act COVID-19) was available to a borrower who lost their job or another main source of income after 13 March 2020. A borrower applying for a statutory credit vacation is required, among other things, to make a declaration to that effect[67] (this did not only apply to persons employed under a contract of employment), under pain of criminal liability.[68]

The period of suspension of contract performance under the "statutory credit vacations" (up to a maximum of 3 months) is not considered a credit period. It is, and all deadlines stipulated in the credit agreement are, extended by the period for which the execution of the agreement has been suspended, contrary to the rules of commercial credit vacations offered by banks.

The triggering of a "statutory credit vacation" occurs upon the borrower's request in a durable medium (e.g., in writing, by email, or through electronic banking, if

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PLN 255,550 (or its equivalent in a currency other than the Polish currency), which the creditor grants or promises to grant to the consumer within the scope of its business activity. In particular, a consumer credit agreement is: a loan agreement, a credit agreement within the meaning of Article 69 of the Polish Banking Act, a revolving credit agreement, or a contract that was deferring the payment date to the consumer.

64 Article 3 of Act of 23 March 2017 – on mortgage credit and supervision of mortgage brokers and agents (Journal of Laws 2017, item 819).

65 *Ibidem*.

66 Article 69 of Act of 29 August 1997 – Banking Act (Journal of Laws 1997, No. 140, item 939, as amended, further Banking Act.

67 Banking Act.

68 When more than one borrower is a party to the agreement, loss of employment or another primary source of income by one of them is sufficient to meet the condition.

it has such functionality), and the request binds the lender.[69] This was intended to reduce the possibility of consumers being hindered from taking advantage of them by lenders imposing procedural restrictions or imposing onerous requirements that are difficult for consumers to meet. Within 14 days following the application being delivered to it, the creditor must provide the borrower with an acknowledgment of receipt, also in a durable medium, and inform the borrower of the charges under the insurance contracts.

Statutory credit vacations are also available to a borrower to whom the bank has deferred on a commercial basis. According to Section 31fc(1) of Act COVID-19, at the time the application for statutory credit vacations is served on the lender, the term of the "commercial credit vacations" previously granted by the lender is shortened by operation of law. In such a situation, the consequence of requesting of a statutory credit vacation is that the term of the "commercial credit vacation" is shortened, and the lender automatically switches to a statutory suspension of performance.

The regulations governing statutory credit vacations for consumers related to COVID pandemic 19 took effect on June 24, 2020. As early as August, the OCC, and the Financial Ombudsman[70]received signals indicating irregularities related to their proper application by creditors that necessitated appropriate action.[71]

1.3. Instruments to Support Borrowers of Entrepreneurs in Connection with the COVID-19 Pandemic in the Light of Legal Regulations in Poland

On March 18, 2020, the government presented a project called the Economic and Social Crisis Shield for the Security of Businesses and Workers in Connection with the SARS Virus Pandemic – Cov – 2 (from now on Crisis Shield[72], which includes the protection of five pillars, including, among others, issues related to corporate financing. The total amount of support granted is PLN 212 billion (over 9% of GDP). The project assumptions indicate instruments of support given to entrepreneurs, in the scope of, among other things, credit guarantees, financing of leasing for transport companies, and micro-loans.[73]

69 Explanatory Memorandum COVID-19, p.74.

70 Credit vacations – summary of issues and activities undertaken by the Financial Ombudsman, https://rf.gov.pl/wakacje-kredytowe-podsumowanie-problematyki-i-dzialan-podjetych-przez-rzecznika-finansowego/ (20.07.2021).

71 Proceedings under reference number DAR-2.401.2.2020 STATUTORY CREDIT VACATION – OCCUPIED BANKS, https://www.uokik.gov.pl/aktualnosci.php?news_id=16667 (15.07.2021).

72 This is a package of legal acts that aims to support Polish entrepreneurs struggling with the effects and consequences of the COVID-19 epidemic, as well as to protect the state and its citizens from the crisis caused by the COVID-19 epidemic.

73 Prime Minister: PLN 212 billion for the government's aid package for entrepreneurs and the economy, https://www.gov.pl/web/premier/premier-212-mld-zl-na-rzadowy-pakiet-pomocowy-dla-przedsiebiorcow-i-gospodarki (12.07.2021).

This part of the study will discuss the essential tools that were offered to entrepreneurs as part of financial assistance in raising funds in connection with combating the harmful effects of the pandemic. The legislative solutions provided two directions of action. On the one hand, the aim was to assist in obtaining preferential loans, which were supposed to improve the financial situation of companies. In this respect, solutions concerning guarantees issued by Bank Gospodarstwa Krajowego (further BGK), loan holidays, and subsidies to interest on loans were introduced. On the other hand, financial assistance was to be granted with regard to the repayment of the credits taken earlier. Here, entrepreneurs had an opportunity to obtain funds within the framework of non-returnable loans and subsidies of the State Development Fund. Each of these solutions is analysed later in this study.

Entrepreneurs expected a quick response from the state concerning this challenging situation they were forced to face. In this regard, in the initial legislative phase, government work proceeded very quickly.

In the first phase, the Act COVID-19 was enacted. Pursuant to its Article 15zzzd, the legislator provided for granting sureties and guarantees of repayment of credits or other liabilities to entrepreneurs (excluding micro and small entrepreneurs) by BGK under the provision of public aid in connection with the effects of COVID – 19. In Article 70 of the Shield 1.0, it is indicated that a Liquidity Guarantee Fund (hereinafter FGP) will be established at BGK, and the funds will be raised from, inter alia, commission fees for financial guarantees and sureties from FGP funds, proceeds from recoveries paid by BGK in performance of the guarantee or surety agreement, as well as from interest, donations and bequests, and funds from the state budget. The funds from the FGP will be used to cover costs and expenses related to the issuance of sureties and guarantees of repayment of loans and other liabilities. In addition, the amount of surety or guarantee covers up to 80% of the amount of the credit or other liability, and in special cases (due to important economic or social interests) up to 90%. This solution is designed for medium and large enterprises to secure the repayment of credit that is granted by the crediting bank in order to ensure the financial liquidity of the company. The maximum guarantee amount is PLN 200 mln.

Another financial support tool for entrepreneurs is the introduced facilitation in obtaining credits for technological innovations under the Act of 30 May 2008, on some forms of support for innovative activity. According to article 2 sec. 1 item 6 a specialized credit is a credit granted to an entrepreneur by a crediting bank to realize a technological investment. The idea behind this tool is a partial repayment of the credit in the form of a technology bonus (subsidy of up to 75% of the investment). Within the anti-crisis shield, the possibility of extending the deadline for application and signing a credit agreement was prepared, and most importantly, the requirement to produce completely new or significantly improved products or services was waived, and the only condition for receiving financial support is the implementation of innovative technology by the entrepreneur.[74]

Another form of assistance provided for entrepreneurs was the postponement and modification of credit agreements of entrepreneurs. Under Article 31f (1) of the Act Covid – 19, banks, in connection with the state of the epidemic, have the right to make changes to specific contractual terms and repayment dates of loans granted to entrepreneurs under the Banking Law. The legislator provided in Article 31f point 1 of Act Covid – 19 that the indicated solutions will be applicable in a situation where the loan was granted before 8 March 2020 and the change is justified by the current financial and economic situation of the borrower (in relation to the circumstances on 30 September 2019). In addition, pursuant to Article 31f(2) of the Act Covid – 19, amendments to the loan agreement shall be made in consultation between the bank and the borrower and shall not lead to deterioration of the borrower's financial and economic situation.

It is worth mentioning that the implemented solution provides only a possibility and not an obligation for banks to change contractual terms and conditions or repayment dates of loans or credits to entrepreneurs. In line with the recommendation of the Polish Bank Association, banks have taken the initiative in favour of entrepreneurs by offering two options. Entrepreneurs could, upon request, take advantage of an additional grace period (up to 3 months) concerning repayment of principal instalments or loan holidays (up to 3 months) concerning the principal or capital-interest instalments.[75]It should also be emphasized that during the second lockdown in Poland, banks offered non-statutory credit holidays to entrepreneurs, allowing them to maintain the liquidity and continuity of their operations. Conditions provided for entrepreneurs were determined individually by each institution. Entrepreneurs were offered e.g., an extension of the crediting period, limit reduction, reduced amounts of instalments, or suspension of credit repayments, usually for up to 3 months (although there are examples of postponement of instalments for 12 months).[76]

To sum up, solutions introduced into the Polish legal system largely left the freedom of actions taken, in the scope of forms of support for entrepreneurs in a difficult financial and economic situation concerning the occurrence of COVID – 19 pandemic, to the banks. The proposed legal solutions indicate vagueness of

74 Key changes to the technology innovation loan, https://www.funduszeeuropejskie.gov.pl/strony/o-funduszach/fe-koronawirus/ruszyl-nabor-wnioskow-o-premie-technologiczna-na-nowych-zasadach/ (20.07.2021).

75 Communication from the ZBP concerning bank support measures in connection with the COVID 19 coronavirus pandemic, https://www.zbp.pl/Aktualnosci/Wydarzenia/Komunikat-ZBP-w-sprawie-dzialan-pomocowych-podejmowanych-przez-banki (22.07.2021).

76 Companies can suspend loan installments during lockdown, https://pieniadze.rp.pl/firma/27315-firmy-moga-zawieszac-raty-kredytow-podczas-lockdownu (21.07.2021).

regulations, which left too much decision-making leeway for banking institutions. For these reasons, the conditions offered by banks to amend the content of credit agreements were each time determined individually, and the conditions provided for entrepreneurs were not the same for everyone.

In the face of the third wave of the pandemic, restrictions in the operation of specific industries, and the end of the credit vacation period, entrepreneurs found themselves in a difficult financial situation. Despite numerous solutions proposed by the government, business owners also tried to raise funds on their own to run their businesses. Nevertheless, data from the National Information Bureau (from now on BIK) indicate that banks were less willing to grant loans to entrepreneurs during the second wave of the pandemic. For example, comparing February 2021 to February 2020, banks gave 26.9% fewer working capital loans, 3.3% fewer overdrafts, and 17% fewer investment loans to microentrepreneurs by number. In terms of value, the value of overdrafts decreased by 10.2%, working capital loans by 22.3%, and investment loans by 10.7%.[77] It is worth mentioning that entrepreneurs first indicated problems with obtaining funds for running business activities, which was mainly caused by unfavourable legal regulations and the monetary policy pursued by the state, and thus difficulties in obtaining loans.[78]

Another form of financial assistance provided for entrepreneurs was the granting a non-refundable one-time loan from the funds of the Labour Fund to cover the current costs of conducting business activities according to Article 15zzd Act Covid – 19. Eligible to benefit from this form of financial assistance were micro-entrepreneurs who, by Article 7 of the Act of 6 March 2018 Entrepreneurs Law[79], employed in the last two years on average less than 10 employees and achieved an annual net turnover from sales of goods, products and services and financial operations up to EUR 2 million. The entrepreneur was obliged to apply to the Poviat Employment Office appropriate to the registered office for a loan, the value of which was PLN 5,000.00. Its interest rate was fixed at 0.05% of the rediscount rate on bills of exchange accepted by the National Bank of Poland. The loan was forgiven with interest if the entrepreneur conducted a business activity for three months after the granting of the loan. If the requirement to conduct business activity was not fulfilled, the loan was subject to repayment with interest within twelve months. It is worth emphasizing that in accordance with Article 15 Zzd item 10, loan cancellation did not constitute tax revenue for the entrepreneur. This action of the legislator should be assessed

77 Ending credit payment holidays and 3rd wave of Covid-19 plunge micro-businesses, BIK data for February, https://alebank.pl/konczace-sie-wakacje-kredytowe-i-iii-fala-covid-pograzaja-mikrofirmy-pokazuja-dane-bik-za-luty/?id=364769&catid=22872 (31.07.2021).

78 Access to commercial finance for SMEs with the support of public institutions, https://alebank.pl/dostep-mmsp-do-finansowania-komercyjnego-ze-wsparciem-instytucji-publicznych/?id=376412&catid=22872&cat2id=25928 (29.07.2021).

79 The Act of 6 March 2018 – Business Law (Journal of Laws 2018, No. 646), further Business Law.

positively. It is worth emphasizing that by Article 15zzd Act COVID – 19, the funds received had to be used to cover current costs of business activity. Thus, spending them was solely up to the entrepreneur, as no legal definition of current costs was introduced. The legislator only made a list of sample costs in the instructions to the loan application, indicating that the costs were to be spent on, e.g., payment of taxes, contributions, or costs of renting the premises.[80]It should be remembered that the above list is for reference only and is not exhaustive. Therefore, the amounts received could be used, among other things, to repay earlier loan liabilities incurred in the course of business.

At the end of March 2020, the Shield 1.0 on amending the Act on the system of development institutions, was passed, according to which, by Article 1.9. the Council of Ministers in connection with the prevailing state of the epidemic, is authorized to delegate tasks related to the anti-crisis shield project to the Polish Development Fund (hereinafter PFR). The solutions of financial assistance for entrepreneurs are called the PFR 1.0 and PFR 2.0 financial shield for micro, small and medium-sized enterprises. This is a type of financial support in the form of subsidies paid by banks in order to improve the financial liquidity of companies, compensate for losses incurred during the epidemic, protect jobs, and support the sectors most affected by the effects of COVID – 19. The application procedure was fully electronic, and the entrepreneur was obliged to provide basic information about the business activity conducted and the results of the pandemic (issues of demonstrating the losses incurred). According to the data supplied by PFR, over 347 thousand business entities benefited from the solutions of shield 1.0. More than PLN 60.5 billion has been paid out.[81] As of June 2021, PLN 42–45 million has been written off from the funds of Shield 1.0.[82] In the Shield 1.0 program, subsidies granted were subject to full or partial write-offs, depending on whether the entrepreneur was conducting business activity for another 12 months from the date of receiving the subsidy and depending on the maintenance of employment.[83] It should be mentioned that according to point 3.2 of the Regulations of applying for participation in the governmental program "TarczaFinansowaPolskiegoFunduszuRozwojudlamałychiśrednichprzedsiębiorstw" (Financial Shield of the Polish Development Fund for Small and Medium-Sized

80 Instructions for submitting an application for a loan to cover the current costs of micro-entrepreneur's business activity by persons who are not logged in, https://www.gov.pl/attachment/17f8b89b-91e6–4a04–8dd1-f2fb872e4cd0 (31.07.2021).

81 PFR Financial Shield for Companies and Employees, https://pfrsa.pl/tarcza-finansowa-pfr.html (20.07.2021).

82 PFR 1.0 shield – over PLN 42 billion of redeemed subsidies, https://ksiegowosc.infor.pl/wiadomosci/5280610,Tarcza-PFR-10-ponad-42-mld-zl-umorzonych-subwencji.html (20.07.2021).

83 PFR Financial Shield 1.0. Accounting for and cancelling subsidies, https://pfrsa.pl/dam/jcr:b0aee6fa-f81b-4c21-ab09–564e84d366f3/TF-1–0-prezentacja-MIKRO (20.07.2021).

Enterprises)[84], the funds received could be used for covering the costs of current economic activity, including the possibility of repayment of loans taken earlier, up to a maximum of 25% of the financial subsidy received. Additionally, in January 2021, due to the next wave of the COVID – 19 outbreak, the PFR launched a second program, Financial Shield 2.0, aimed at entrepreneurs in industries particularly affected by the pandemic situation who were required to suspend or limit their activities. For this purpose, funds in the amount of PLN 13 billion were allocated for micro, small and medium enterprises, while in the case of large economic entities, the budget amounted to PLN 25 billion, and the method of granting subsidies was the same as in the case of Financial Shield 1.0. In the end, almost PLN 7 billion of support was paid out to nearly 50 thousand entrepreneurs.[85]The maximum subsidy that micro-enterprises could receive was PLN 324 thousand, while the total amount of financial assistance from shield 1.0 and 2.0 could not exceed PLN 144 thousand per one employee.[86]The entities that received the subsidy are obliged to account for it 12 months after receiving it. In the absence of prerequisites for cancelling 100% of the received amount, the value to be repaid is spread into 24 equal instalments. As far as the manner of spending the funds received under the financial subsidy from the financial shield 2.0 is concerned, they should have been earmarked for covering current costs of conducting business activity, under § 8 of the Regulations of applying for participation in the governmental program "Financial shield 2.0 of the Polish Development Fund for micro, small and medium enterprises".[87] Included in these categories are, but are not limited to, employee compensation expense, purchase of goods and materials, third-party services expense, and ongoing borrowing costs. Prepaid loans, leases, and other similar instruments were excluded.

The issue that raised many interpretational doubts for over a year concerned recognizing the amounts of subsidies redeemed as taxable income. At the end, which should be evaluated positively, taxation of the value of the written-off subsidies was abandoned, and tax collection on this account was discontinued. As a result,

84 Regulations to apply for participation in the governmental program "Financial shield Polish development fund for small and medium-sized enterprises, https://pfrsa.pl/dam/jcr:96b68d11-f9f8–4850-a813-edd4bf7d241a/regulamin_programu_tarcza_finansowa_pfr_dla_mmsp.pdf (31.07.2021).

85 PFR Financial Shield 2.0., https://pfrsa.pl/tarcza-finansowa-pfr/tarcza-finansowa-pfr-20.html#mmsp (22.07.2021).

86 A. Świstak, A. Dahms, Financial Shield 2.0, (in:) M. Militz, Support provided to entrepreneurs in connection with the COVID-19 pandemic. Clearing and control, Wolters Kluwer Polska, 2020, eL.

87 Regulations of applying for participation in the governmental program "Financial shield 2.0 Polish Development Fund For micro, small and medium companies", https://pfrsa.pl/dam/serwis-korporacyjny-pfr/documents/tarcza-finansowa-pfr-20/Regulamin-programu-tarcza-finansowa-pfr-20.pdf (25.07.2021).

entrepreneurs gained new means of financing their activities, which will undoubtedly allow them to at least partially mitigate the harmful effects of the COVID epidemic.[88]

The last of the forms of financial assistance for entrepreneurs was the possibility to obtain subsidies for interest on loans introduced under the Anti-Crisis Shield (4.0). Under Article 4 of the Shield 4.0 on subsidies to interest on bank loans granted to entrepreneurs affected by COVID-19 and on simplified proceedings for approval of an arrangement in connection with the occurrence of COVID-19, an entrepreneur who was not in a difficult financial and economic situation as at 31 December 2019, is in business, has not taken out another loan under this Act, and has lost liquidity (which is to be understood as the ability to repay maturing obligations when due) or is at risk of losing liquidity due to the adverse effects of the epidemic may apply for a loan with a subsidy. The provisions of the Shield 4.0 in Article 8 indicate that the subsidy in the form of a part of the interest due to the bank for the SME sector is two percentage points, while for other entities, it is 1 percentage point. The subsidy will be paid at the entrepreneur's request and will depend on the entrepreneur's financial and economic situation. The introduced solution was aimed at granting financial aid to entrepreneurs who experienced difficulties in maintaining financial liquidity due to a pandemic situation.[89] Interestingly, it was not the lack of funds for business operations itself that caused most problems among entrepreneurs, but the way of interpreting regulations indicating the possibility to receive subsidies. Most problems and doubts were caused by unclear and imprecise rules of counting the number of people employed in a given company because with financial tools other than PFR, the status of an entrepreneur had to be determined by the provisions of the Act Entrepreneurs' Law, while in order to receive subsidies under PFR, the status of an entrepreneur had to be determined in accordance with the Commission Regulation (EU) of 17 June 2014, recognizing certain types of aid as compatible with the internal market in application of Article 107 and 108 of the Treaty No. 651/2014[90]. The consequence of these changes was the erroneous qualification of some companies as SMEs, which met the definition of a large enterprise under CR 651/2014. The most doubtful is the fact of different positions of the PFR itself in the field of inquiries addressed by entrepreneurs because the regulations initially gave the definition of SMEs resulting from the provisions of the Entrepreneurs' Law, then this point was corrected, and the provisions of the EU regulation were cited. However, at the same time, in the questions and answers provided by PFR and the very definitions referred

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88 Cancelled subsidies from the Financial Shield without tax, https://ksiegowosc.infor.pl/wiadomosci/5293492,Umorzone-subwencje-z-Tarczy-Finansowej-bez-podatku.html (18.07.2021).

89 A. Serzysko, Loan subsidies in the Anti-Crisis Shield 4.0, LEX2020, eL.

90 Commission Regulation (EU) No 651/2014 od 17 June 2014 declaring certain categories of aid compatible with the internal market in application of Articles 107 and 108 of the Treaty (O.J. L 187, 17.06.2014), further CR 651/2014.

to by the Fund, guidelines from the provisions of the Entrepreneurs' Law were still left. Notably, such changes in the qualification of a given entity as a micro or small entrepreneur, or erroneous interpretations by the entrepreneur themselves, resulted in an error in the submitted declarations and, therefore, no possibility of receiving any assistance, or even worse, an obligation to return it immediately. As it follows from the regulations governing the granting of PFR aid, any financial consequences of changes resulting from improper action by PFR are borne by the entrepreneur.[91]

2. Borrower Support Instruments in the Light of Regulations in Vietnam in Relation to the COVID-19 Pandemic

The first Coronavirus infected case in Vietnam was reported on 23 January 2020, right after the Tet Holiday.[92] Since then, the Vietnamese government carried out comprehensive policies to contain Coronavirus and reduce its impacts very early before the Prime Minister officially declared the Coronavirus epidemic on 1 February2020 as a threshold to trigger subsequent urgent measures.[93]

The Coronavirus landscape in Vietnam shows that enterprise and household income have suffered harshly and requires governmental responses to avoid economic collapse. The government has maintained direct support policies to targeted enterprises and individuals by taxation policies and monetary assistance.[94]

Besides, the government has induced many supporting programmes carried out by the private sector, including credit support policy targeted at loan borrowers. At the very early stage of the pandemic in March 2020, it was reported that the coronavirus outbreak affected about VND 926,000 billion of debts, accounting for about 14.27% of total debts in twenty-three banks.[95] Banks launched preferential programmes to lower the interest rates and restructure loans for their customers at their own incentives.[96]

91 SME status and the PFR Financial Shield, https://codozasady.pl/p/status-msp-a-tarcza-finansowa-pfr (20.07.2021).

92 T. Le, Covid-19 Control in Vietnam, "Nature Immunology" 2021, no. 22, https://doi.org/10.1038/s41590–021-00882–9 (29.07.2021).

93 Decision No. 173/QĐ-Ttg dated 01 February 2020 of the Prime Minister on Declaration of Covid-19 Epidemic; Decision No. 447/QĐ-Ttg dated 01 April 01, 2020, of the Prime Minister on Declaration of Covid-19 Epidemic.

94 Cf. Resolution No. 116/2020/QH14 dated 19 June 2020 of National Assembly on Reduction in Corporate Income Tax Payable In 2020 by Enterprises, Cooperatives, Public Service Providers and Other Organizations; cf. Decision No. 15/2020/QD-TTg dated 24 April 2020 of the Prime Minister on Implementation of Policies on Assistance for People Affected by Covid-19 Pandemic.

95 K. Loan, Banks Cut Interest Rates to Support Businesses amidst COVID-19 Outbreak, "Online Newspaper of the Government of the Socialist Republic of Viet Nam" 11 March 2020, http://news.chinhphu.vn/Home/Banks-cut-interest-rates-to-support-businesses-amidst-COVID19-outbreak/20203/39131.vgp (29.07.2021).

96 *Ibidem*.

On 13 March 2020, the State Bank of Vietnam ("SBV") issued Circular No. 01/2020/TT-NHNN dated 13 March 2020 on providing for credit institutions, foreign bank branches to restructure loan terms, exempt and lower interests and charges, and retain debt categories to assist customers who were affected by the coronavirus epidemic ("Circular No. 01/2020/TT-NHNN"). The given circular is amended by Circular No. 03/2021/TT-NHNN dated 02 April 2021 ("Circular No. 03/2021/TT-NHNN"). The credit supporting programme setting up in the given circulars does not distinguish between corporate, household, or individual borrowers.

Restructuring loan terms and cutting interest rates is within the credit institutions' autonomy. However, through the circulars mentioned above, the SBV demonstrates a solid determination to command all credit institutions to quickly implement the given credit support policy and request the chairman of the board and the chief executive officer to be accountable to the Governor for implementation's outcomes.[97] Any credit institution's units, managers, and employees shall also be accountable for any delay or annoyance caused to customers subject to the assistance programme.[98] On the other hand, the SBV grants incentives to credit institutions whose primary business is to generate revenue from loan interests. Keeping the status quo of loans is expected to prevent loans from being categorized as "bad" loans that require credit institutions to set aside funds for loan loss provision.

Loan categories and entitlement to freezing loan categories are discussed first to evaluate the lender's incentives and loan eligibility for the credit support scheme.

2.1. Freezing Loan Categorises

Categorising loans and saving funds for loan loss provision are tools to counter-weigh the credit institute's autonomy to restructure and reschedule loans and cutting interest rates. Loans are basically organised into five categories.[99] Loans in Category 3, 4 and 5 are classified as bad debts, ranging from loan not recoverable at the due date due to declining credit worthiness, to loan potentially irrecoverable and lost.[100]Loans subject to restructuring, extension or cutting interest rate could be placed in "bad debt" categories. As a result, ratios to set aside funds for loan loss provisions for each loan is provided as follows:[101]

97 Directive No. 02/CT-NHNN dated 31 March 2020 of the SBV on Urgent Measure of Banking Industry for Contribution to Covid-19 Control Effort and Alleviation of Difficulties Caused by Covid-19 Section IV.3.

98 *Ibidem*.

99 Cf. Circular No. 02/2013/TT-NHNN dated 21 January 2013 of the SBV on Providing on Classification of Assets, Levels and Method of Setting Up of Risk Provisions, and Use of Provisions Against Credit Risks in the Banking Activity of Credit Institutions, Foreign Banks' Branches Article 10.

100 *Ibidem,* Article 3.8.

101 *Ibidem,* Article 12.2.

– Category 1: 0%
– Category 2: 5%
– Category 3: 20%
– Category 4: 50%
– Category 5: 100%

To ensure the credit support policy's implementation, the SBV allows credit institutions to retain loan categories at the time nearest to 23 January 2020 for any loan under reconstruction for payment terms, or eligible to interest rate cutting subject to the credit support programmes, if loans are concluded before the above-mentioned date.[102] It was the date when the first coronavirus infection case was reported in Vietnam. For loans granted after that date and before 10 June 2020, when the prime minister announced a "new normal" in Vietnam and enabled businesses with highly intensive contact to reopen,[103] freezing loan categories is tighter. Accordingly, it is allowed to freeze existing loan categories with regard to loans in Category 1, loans arising not later than 17 May 2021, the effective date of Circular No. 03/2021/TT-NHNN, or loans subject to interest rate cutting in this period.[104] It is noticeable that the SBV has targeted loans eligible to credit support policies that arise before the above-stated "new normal" started. The provision reflects an optimistic view about the economy's recovery after nearly six months of putting in strict policies to contain coronavirus, despite an outbreak in Da Nang, a big city in Central Vietnam, which occurred about a month later and lasted for about forty days.[105]

2.2. Restructuring Loan Terms

Credit institutions can accept restructuring or rescheduling the payment term when a customer cannot duly pay the loan or interest as agreed. Still, there is sufficient ground to assess that the customer can pay the loan and interest under

102 Circular No. 01/2020/TT-NHNN dated March 13, 2020 of the Governor of SBV providing instructions for credit institutions and foreign branch banks (FBB) on debt rescheduling, exemption or reduction of interest and fees, retention of debt category to assist borrowers affected by Covid-19 pandemic Article 6.1 (amended by Circular No. 03/2021/TT-NHNN).

103 'Bản Tin Dịch COVID-19 Ngày 10/6/2020: Việt Nam an ToànĐểPhátTriểnBềnVữngTrongTình HìnhMới' (*General Department of Preventive Medicine*, 10 June 2020) <https://vncdc.gov.vn/ban-tin-dich-covid-19-ngay-1062020-viet-nam-an-toan-de-phat-trien-ben-vung-trong-tinh-hinh-moi-nd15780.html> (28.07.2021).

104 Circular No. 01/2020/TT-NHNN Article 6.2 (amended by Circular 03/2021/TT-NHNN).

105 Cf. 'QuyềnBộTrưởngBộ Y Tế: BệnhNhân ở ĐàNẵngĐượcKhẳngĐịnhDươngTínhVới SARS-COV–2' (*SucKhoe& Doi Song*, 25 July 2020) <https://suckhoedoisong.vn/quyen-bo-truong-bo-y-te-benh-nhan-o-da-nang-duoc-khang-dinh-duong-tinh-voi-sars-cov-2-n177597.html> accessed 28 July 2021; 'CậpNhậtTìnhHình Covid-19 TạiĐàNẵngNgày 5–9' (*Da Nang Online*, 5 September 2020), https://baodanang.vn/infographics/202009/cap-nhat-tinh-hinh-covid-19-tai-da-nang-ngay-5–9-3703001 (31.07.2021).

a restructured or rescheduled term.[106] Loans are restructured when the period for paying the loan and interest in part or in full, whether or not the number of periods is changed, is extended, but the loan term remains unchanged. Loans are scheduled when a loan term is extended.[107] For the purpose of the current research, the term "loan restructuring" mentioned covers both loan restructuring and rescheduling.[108]

Loans, including finance leases, eligible for the credit support scheme must satisfy several requirements. From the lender's perspectives, loan restructuring eligible to freezing loan categories and loan loss provision as previously discussed, must possess eight elements. For the first three requirements, the SBV provides standards to leave discretion for credit institutes to evaluate the customer's creditworthiness, and the capacity to discharge debt under the restructuring scheme. The other subsequent five requirements are strict and specific rules.

First, there is a deficiency in the customer's creditworthiness. Credit institutions must evaluate whether a customer cannot pay the loan and interest in full and on time as agreed, due to the impact of the coronavirus pandemic. In other words, loan restructuring should correspond to the customer's declining creditworthiness.[109]

Second, it is required to perform the payment obligation duly under the restructuring scheme at the credit institution's assessment. Also, a customer must apply for a restructured loan due to financial difficulties.[110]

Thirdly, the term for loan restructuring, including loan rescheduling, shall be determined corresponding to the impact of the coronavirus pandemic on the borrower and not exceed twelve months from the date of restructuring.[111]

Fourthly, the loan must have been granted before 10 June 2020,[112] the date marking the "new normal" in the country. It can be assumed that the situation after the given date is considered as returning to normality at least as expected and witnessed at the effective date of Circular 03/2021/TT-NHNN, 17 May 2021. In other words, any financial deficiency resulting in a customer's capacity to pay a loan cannot blame the impact of coronavirus pandemic despite the economy heavily relying on international trade and the prospect of controlling coronavirus being unclear. In fact, a few cases of community transmission were reported and the gradually increasing, but small, number of cases reported at the outset were quarantined right away. Thus, before 17 May 2021, Vietnam did not endure any prolonged period of social distancing and businesses closing as in early months of 2020.

106 Circular No. 02/2013/TT-NHNN Article 3.7.

107 Circular No. 39/2016/TT-NHNN dated on 30 December 2016 of the SBV Prescribing Lending Transactions of Credit Institutions and/or Foreign Bank Branches With Customers Article 2.10.

108 Circular No. 01/2020/TT-NHNN Article 4 (amended by Circular No. 03/2021/TT-NHNN).

109 *Ibidem,* Article 4.4 (amended by Circular 03/2021/TT-NHNN).

110 *Ibidem,* Article 4.5 (amended by Circular 03/2021/TT-NHNN).

111 *Ibidem,* Article 4.7 (amended by Circular 03/2021/TT-NHNN).

112 *Ibidem,* Article 4.1 (amended by Circular 03/2021/TT-NHNN).

Fifthly, it is the due date to repay the debts and interest. The principal loan and/or interest must be overdue from 23 January 2020, the date marking the first infected case reported, to 31 December 2021.[113]

Sixthly, it is a requirement to fall in one of three situations as follows for restructuring the outstanding debts:

– The outstanding debt is not due or up to ten days overdue;
– The loan is incurred before 23 January 2020, and the outstanding debt becomes overdue from 23 January 2020 to 29 March 2020;
– The loan is incurred from 23 January 2020, and the outstanding debt becomes overdue before 17 May 2020.[114]

When the fifth and sixth requirements are read together, it could be inferred from the above regulations that the SBV made an effort to strike a balance between the policy to support borrowers vulnerable to the coronavirus impact and the risk management concerning bad credits. Loose conditions to be eligible for the credit support programme may account for insufficient funds being set aside for loan loss provisions. Therefore, it primarily targeted Category 1 loans not yet due, or overdue for up to ten days. However, it is no more than an assumption because the SBV did not expressly stipulate Category 1 loans. It is raised a question whether a restructured loan can fall within the scope of application if it meets the requirement of not being due, or overdue less than ten days.

Bad loans are eligible for the scheme if they are due in the most severe period of social distancing; that is to say, from the date of the first case reported to the date starting the social distancing policy,[115] 29 March 2020, for any loan incurred before the former date, or before the effective date of Circular 03/2021/TT-NHNN, 17 May 2021, for any loan incurred after the date of the first case reported. Bad loans restructured that do not comply with the conditions cannot remain in the existing loan category, and the credit institution must make loan loss provisions for these loans, respectively.

Seventhly, loans must not violate rules or regulations of law.[116]

Eighthly, loan restructuring shall be carried out up to 31 December 2021.[117]

In brief, the SVB imposes both rules and standards to evaluate the performance of credit institutes in carrying out the credit support policy to assist borrowers. On the

113 *Ibidem,* Article 4.2 (amended by Circular 03/2021/TT-NHNN).
114 *Ibidem,*Article 4.3 (amended by Circular 03/2021/TT-NHNN).
115 Under Directive No. 15/CT-TTg dated 27 March 2020 of the Prime Minister On Climax Stage of Covid-19 Control Effort, the Prime Minister guides the local goverments to implement the social distancing policy starting at 0.00 28 March 2020.
116 Circular No. 01/2020/TT-NHNN Article 4.6 (amended by Circular 03/2021/TT-NHNN).
117 *Ibidem,* Article 4.8 (amended by Circular 03/2021/TT-NHNN).

other hand, implementing broad credit supporting programmes may expose credit institutes to the risk of bad debts. Specific rules can help to avoid the probability of evading from the general rule of loan loss provisions. The standards emphasize the credit institution's discretion to evaluate on a case-to-case basis.

2.3. Exempting and Lowering Interest Rates

Credit institutions can cut interest rates by exempting or reducing interests and charges complying with their internal regulations on outstanding debts. Under the credit supporting programme, the requisites are:

– Loans incurred before 10 June 2020;
– The obligation to pay principal debts and/or interests is due in the period from 23 January 2020 to 31 December 2021;
– The borrower cannot pay the loan and interest in full and in the agreed time due to the impact of the coronavirus pandemic;
– Interest rate cutting is executed before 31 December 2021.[118]

Compared to loan restructuring, conditions for cutting interest rates under the credit supporting programme are not relatively tight. The wording again does not mention whether or not eligible loans are allowed to already being restructured. The period in which the overdue debt arises for the purpose of interest rate cutting lasts for almost two years, enabling bad debts to benefit from the allowances. However, if the loan incurred after 23 January 2020 is subject to the second time of interest cutting rate, the loan cannot remain in the existing loan category.[119]Indeed, many commercial banks in Vietnam have announced an interest rate cutting programme in response to the SBV policies. Vietcombank, one of the biggest commercial banks in Vietnam, reduces the rate of 1% per year for corporate customers in industries heavily affected by the pandemic, individual customers borrowing loans for business, and 0.5% for individual customers borrowing loans for household purposes. This programme accounts for 1,800 billion VND, equivalent to around 78 million USD.[120]

Figures collected show that abundant borrowers got access to the credit supporting policy initiated by the SBV and implemented broadly by credit institutions from March to November 2020, according to the IMF report.[121] 272,183 borrowers

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118 *Ibidem,*Article 5 (amended by Circular 03/2021/TT-NHNN).
119 *Ibidem* Article 6.2.c (amended by Circular 03/2021/TT-NHNN).
120 A. Minh, Vietcombank Giảm Lãi Suất Hỗ Trợ Khách Hàng Bị Ảnh Hưởng Bởi Dịch COVID-19 (16 July 2021), http://baochinhphu.vn/Doanh-nghiep/Vietcombank-giam-lai-suat-ho-tro-khach-hang-bi-anh-huong-boi-dich-COVID19/438491.vgp (28.07.2021).
121 International Monetary Fund, „IMF Country Report: Vietnam" 2021, vol. 21/42, pp. 49–50, https://www.imf.org/-/media/Files/Publications/CR/2021/English/1VNMEA2021001.ashx (20.07.2021), cf. National Economics University and Japan International Cooperation Agency v. 3,35

accounting for 342 trillion VND of outstanding loans (making up 3.9 per cent of total system outstanding loans) are entitled to loan restructuring and rescheduling. 552,425 borrowers accounting for 931 trillion VND of outstanding loans (making up 10.8 per cent of the banking system outstanding loans) are entitled to interest rate cutting. Banking transaction fees are also reduced to a small amount of 1 trillion VND. Data for the period after November 2021 has not been recorded and declared yet.

The implication of the policy is targeting borrowers in manufacturing, trading, and exporting industries who are heavily affected by the coronavirus outbreak. Tourism is also damaged and not recovered, but this industry is not frequently dependent on bank credits for operation. The real estate business is seemingly not eligible for the credit support programme due to difficulties in proving financial deficiency arising from the coronavirus impact. Therefore, even though the ratio of outstanding debts subject to loan restructuring and interest rate cutting is not very large, it reflects the landscape of the Vietnamese economy to some extent.

However, the situation has changed drastically since community transmission was reported in early June 2021 in Ho Chi Minh City. At the time of preparing the manuscript, the number of infected cases recorded is more than 137.000, and new cases every day are about 6000.[122] The acceleration of transmission is expected since the latest outbreak in Da Nang recorded only more than 300 cases. As a result, the impact of the new wave outbreak is supposed to be highly severe. It is predicted that manufacturing, trading industries and exportation are the most vulnerable areas. Loans for household purposes, including house mortgages, certainly expose the incapability to pay overdue debts due to wage and working hour cutting and even termination of full-time jobs.

The SBV is likely to update the policy in response to the changing situation. The deadline of 31 December 2021 for loan restructuring and interest rate cutting should be extended. The period in which outstanding debts are eligible to loan restructuring and rescheduling should be extended beyond 17 May 2021, because Vietnam is no longer in normality. The SBV should clarify whether the second time loan restructuring and scheduling could benefit from the credit support scheme.

Conclusion

The occurrence of the COVID-19 pandemic is undoubtedly a phenomenon negatively affecting the economy as well as the financial standing of borrowers, both consumers, and businesses. The opportunities offered to entrepreneurs in Poland were extensive and, to a large extent, were expected to mitigate the negative financial effects

122 Trang Tin Về Dịch Bệnh Viêm Đường Hô Hấp Cấp Covid-19, https://ncov.moh.gov.vn (30.07.2021).

of the abovementioned areas of the economy. Nevertheless, from the perspective of businesses affected by the consequences of the epidemic, it can be demonstrated that the aid received regarding the losses incurred was small. The closure of particular industries (e.g., hotels and restaurants) for several months and the formulation of quite strict requirements for the granting of individual aid measures led, in many cases, to a lack of opportunity to take advantage of the aid offered. Despite huge outlays from the state budget, financial aid did not reach all those entrepreneurs affected by the consequences of the pandemic. In addition, as confirmed by the COVID-19 Barometer study, conducted by the European Leasing Fund, from the point of view of current trends, entrepreneurs expect an improvement in the situation in industries affected by the pandemic over the next six months.[123]Initially, the "credit holidays" for entrepreneurs were based on bilateral, autonomous arrangements of the parties; however, with respect to consumers meeting the indicated conditions, the so-called statutory credit holidays were introduced. Although the idea behind the introduction of such regulations was probably to help indebted citizens, they were not well thought out and met with justified criticism from the lending community.

On the other hand, as far as forms of support for consumer borrowers are concerned, which were introduced as part of the so-called "anti-crisis package" as one of the responses to the COVID-19 outbreak in Poland, one should point to the reduction of the limit of non-interest credit costs and statutory credit holidays. They were a response to the risk of a significant reduction of consumers' current income and the possibility of falling into a "debt spiral".

Vietnam contained the coronavirus outbreak early on in 2020 using comprehensive social and economic policies. The given guidelines, including credit supporting programmes implemented by credit institutions, probably resulted in the success that could be proved by slightly increased GDP mentioned elsewhere in the current essay. The SBV plays a crucial role in the credit supporting policy in terms of using economic incentives and administrative order to induce credit institutions to implement the loan restructuring and reduced interest rates programme widely. Both consumer and business borrowers are beneficiaries under the programme. As a side effect, avoiding the "bad debts" group can facilitate credit institutions to the extent that they can use funds in the ordinary course of business rather than making it for loan loss provisions. Although the programme has some achievements in the short term; it is expected to have additional policies and legal instruments to support borrowers in the long term, when the impacts of coronavirus are seemingly severe and long-lasting in Vietnam.

123 COVID-19 Barometer: positive trend continues, one in three companies expect their industry to improve in the next 6 months, https://alebank.pl/barometr-covid-19-trwa-pozytywny-trend-co-trzecia-firma-spodziewa-sie-poprawy-w-swojej-branzy-w-ciagu-najblizszych-6-miesiecy/?id=377732&catid=22872&cat2id=25926 (27.07.2021).

Comparing the instruments of support of borrowers introduced in Poland, and Vietnam, in connection with their difficult financial situation caused by the COVID-19 pandemic, it is worth noting that in both countries, there were different legal bases for their introduction, their catalogue, and scope of entities and conditions (prerequisites) for their application. A common feature of the introduced support instruments was the temporary character of their validity and the period in which the incurred credit liabilities were covered by the support mechanisms. In Poland, this was done by acts of a statutory rank of a specific and temporary character which provided for support instruments different for consumer borrowers (statutory credit holidays, temporarily reduced limit of non-interest costs of consumer credit for credits contracted during the pandemic in the indicated period), and different for business borrowers (assistance in obtaining preferential credits in the form of guarantees issued by Bank Gospodarstwa Krajowego, credit holidays and subsidies to credit interest rates, the possibility of obtaining funds within non-returnable loans and grants from the State Development Fund). This was dictated by the existence of well-established pro-consumer regulations in the legal system, and the introduced anti-covid regulations modified the existing legal solutions protecting consumer borrowers. In Vietnam, on the other hand, borrower support instruments were introduced as part of the government's aid policy – credit support policy by Bank Ce already meant by law the Central Bank of Vietnam – State Bank of Vietnam (SBV), which acts as the primary regulator of the financial market and exercises supervision over banks, using circulars. Besides, the instruments were not differentiated according to whether the borrower is a consumer or an entrepreneur. The banks, within their autonomy, launched support instruments, which consisted in lowering (or waiving) interest rates and restructuring loans for their customers, based on a circular of the State Bank of Vietnam, which allowed them to do so and set conditions, which in Poland was a statutory and automatic requirement for consumers, once they met them. At the same time, the SVB, under its authority, created incentives for banks to activate support facilities to prevent them from qualifying as "bad" loans, which in turn required setting aside funds for loan loss reserves.

Measures undertaken by the legislator, the purpose of which was to provide temporary and interim support to borrowers facing financial difficulties in settling their credit obligations under loans taken before the outbreak of the pandemic, deserve, in principle, a positive assessment. Regardless of the legal evaluation of the quality of some solutions concerning the statutory regulation of credit holidays (which admittedly raise doubts)[124], not only in practice but also in doctrine, they

124 v. Letter of 25 June 2020 Polish Bank Association Selected interpretative comments on the so-called statutory credit vacations, https://sip.lex.pl/orzeczenia-i-pisma-urzedowe/pisma-urzedowe/wybrane-uwagi-interpretacyjne-w-zakresie-tzw-ustawowych-185098167 (access 25.07.2021).

were necessary. Another issue is whether the conditions for using the introduced instruments of support for borrowers were a real help in this situation and whether borrowers actually used them. Another issue is whether the assistance was properly provided and whether there were no irregularities in this respect that constituted a violation of their interests. Hence, in this area, the necessity of ensuring adequate ongoing supervision of market practices of lenders so that the problematic, often forced, and independent position of the borrower regarding the pandemic was not exploited by a professional. Besides, an important issue was to ensure the enforcement of the introduced instruments with specific legal regulations of borrower support.

Above all, in the face of the next wave of the COVID – 19 epidemic, it may be necessary to extend the deadlines of temporary support instruments to borrowers and revise them, taking into account experience and irregularities. This will be quite a challenge for the legislature, which should consider the borrower's interest so that the support has an actual dimension and is not delayed.

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