HISTORY OF CREDIT LEGAL RELATIONSHIP IN UKRAINE AND ITS REGULATION IN FOREIGN JURISDICTIONS

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Abstract. The article is devoted to the genesis of credit legal relationship as the notion in Civil law as well as historical transformations of its legal regulation at the different stages of Ukraine's development. The analysis deals compliance of Ukrainian laws with international crediting standards. The theoretical and practical recommendations on the improvement of law implementation and legal credit regulation are made. The article argues that the domestic legislation regulates the relations of consumer lending are more perfect in the field of consumer rights protection in comparison with other countries of the post-Soviet area. As for the EU countries, the legal regulation and practical application of the credit institution used by the participants in civilian circulation to meet their economic needs is deprived of those gaps existing in the domestic legal system. In particular, it is a question of the uncertainty in the Ukrainian legislation of issues related to the use of misleading advertising by banks concerning lending conditions, incomplete disclosure of information, difficulties encountered in assessing the borrower's creditworthiness, the status of a credit intermediary, establishing unfair terms of consumer credit agreements, imposing by banks and other institutions of additional and related services, lack of equal requirements to creditors, etc. The authors conclude that the change in the political and economic situation in our country directly influenced the legislator's approach to the legal regulation of credit relations. The transition of social relations to the market economy has led to increased acquisition by the subjects of the civilian turnover of goods and services on credit. However, the current legal credit regulation does not always meet the requirements of

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practice. To date, Ukrainian legislation has legal acts that regulate lending relations, while in the EU countries, credit agreements have been regulated at the level of separate legislative acts since the previous century. Therefore, the foreign practice of the separate credit institution has already deprived of those gaps that Ukrainian legal system still need to fill up. In order to eliminate the problems of legal consumer credit regulation it is necessary to bring the legislation of Ukraine into conformity with the best international practice.

1. Introduction

Economy of the developed countries is characterized by the domination of credit relationships. Embracing the total system of social reproduction, including production, distribution, exchange and consumption, they have penetrated deeply into international economic relations. The proper legal regulation of debt liabilities and the financial and credit system on the whole is a guarantee of the stability of the market economy as well as commodity-money circulation of any developed country in the world. Today there is a rapid development of lending, its volume increase and distribution in society. The said factors require a comprehensive research of the genesis of credit legal relations in Ukraine and the development of scientific recommendations for the improvement of domestic legislation in this area. The development of legal credit regulation in Ukraine is an integral part of the world historical transformation of credit relations; therefore, it is logical to begin studying the issue under discussion with the origin of this legal institution in the world ancient systems.

2. The genesis of credit relations in recent times

A prerequisite for the development of credit relations in their modern legal sense can be considered the origin of borrowing relations (mutuum) in Roman private law. Banks currently engaged in providing financial services did not initially perform such functions. For example, it is known that in ancient Rome there were argentarii, i.e. a union of trading owners who set off mutual debt liabilities between customers and kept records of deposits and cash provided on loan [1, p. 408]. The transformation of banks directly into lending institutions dates back to the Middle Ages, in particular to the opening of the Amsterdam Bank in 1609. Consequently a real and unilateral loan agreement no longer met the purpose of banking service

to administer credit relations. It resulted in development of a complicated bilateral obligation, which involves not only the borrower's obligation to return the loan amount, but also the obligation of the bank to grant a loan. G. Dernburg commented thereupon, "loans are often preceded by contracts for loan transfer – pacta de mutuo dando and pacta de mutuo accipiendo. Both transactions are usually united in the one, but each of them has its own peculiarities. Pactum de mutuo dando – a contract for the transfer of things on loan – is based on the silently acknowledged condition that a borrower must be creditworthy when receiving it. Thus, this condition was provided for by the contractor, who promised to conclude a loan agreement, since the latter intended to grant a money loan, rather than lose it at all" [2, p. 277].

As for the promise of loan issuing, it should be noted that this transaction was eventually transformed into a loan agreement. The credit opening (sui generic), in the narrow sense of the word, is a promise to transfer, upon request and at the disposal of the counterparty, the funds specified in the agreement. So, the credit opening should be considered as an agreement on the implementation of a loan in the future, or a grant of loan on the specified terms [1, p. 449].

Over time, in 1922 the Central Committee of the Ukrainian SSR adopted Article 218 stipulating a preliminary loan agreement. The credit reform of 1930-1931 led to introduction of the concept of a credit contract as an independent transaction in the civilian turnover, which differed from the loan agreement. Thus, Article 382 of the Central Committee of the Ukrainian SSR (hereinafter referred to as CC, USSR), 1964 regulated the lending to state organizations, collective farms and other cooperative and public organizations. This activity was carried out in accordance with the approved plans and by issuing purpose term loans by the State Bank of the USSR and other banks of the USSR as provided for by the legislation of the USSR. And in this, mutual lending to organizations in kind or in cash, including the issuance of advances, was allowed only in cases established by the legislation of the USSR. The conditions and procedure for lending by one collective farm of another for providing production assistance were authorized by the Council of Ministers of the Ukrainian SSR.

As we see, not excluding entirely the construction of a loan agreement for regulating credit relations, the legislation of the Soviet period compiled the disposition of Independent legal institutions, Art. 382, CC, USSR, 1964. As for lending to individuals, the relevant relations were regulated by Bank

loans to citizens, Art. 383, CC, USSR, 1964 with a reference provision prescribing that loans granted to citizens are issued by banks of the USSR in compliance with the laws of the Union of Soviet Socialist Republics.

Significant changes in the development of the legal regulation of credit relations was significantly changed due to the adoption of [3] the Fundamentals of Civil legislation of the USSR and the republics [4]. Accordingly, Art. 113 of the Fundamentals stated that under the loan agreement (credit contract), the lender (creditor) transfers possession of money or things determined by generic features (full economic management or operational management) to the borrower (debtor), and the latter undertakes to return the same amount of money or the same number of things of the same kind and the same quality in due time.

In the case of business loan the interest was charged as agreed upon by the parties. In the absence of the agreement, it was determined by the average interest rate of the bank at the location of the creditor. The loan to individuals was interest-free. All of this points to the fact that the terms of loan and credit were used as synonyms in the Soviet period. Over time, however, the independent legal nature of the credit contract and its distinction from the loan agreement has been increasingly supported in scientific legal publications. In particular, there are the following distinctive features of a credit contract: a special entity; the presumption of payment of credit services; the moment of occurrence of the parties' rights and obligations under the contract. Furthermore, a credit contract does not lose its generic relation to a loan agreement that allows of applying the general provisions on the loan agreement to the credit relations. Gradually, the approach was implemented for drafting the relevant chapters of the Civil Code of Ukraine in 2004 [5]. In this regard, it seems logical that Chapter 71 lacks for provisions on financial services.

Also, the Soviet period can be marked by the development of consumer lending [6]. The vast majority of loans were granted directly in kind owing to the instable financial system. The payment by installment for the purchase of housing was a common practice. One of the most common types of consumer lending was the sale and purchase of durable goods under the payment by installment. By contracting, citizens acquired household items, professional devices, agricultural equipment, and houses, cooperative and small enterprises.

Consumer cooperatives played a significant role in satisfying the lending needs of the population. There were two types of credit: small and long-

term ones. Small consumer credit was granted for the purchase of food products and necessities, for a period not exceeding one month and at a rate not exceeding fifty percent of the salary. The responsibility for timely repayment of credit indebtedness was relied on the administration of the enterprise under the relevant agreement with the consumer cooperative. Accordingly, the debt repayment was at the expense of payments deducted from the borrower's wages and transferred to the consumer cooperative. Long-term credit was intended for persons who had shares in consumer cooperatives. At the expense of their funds, individuals satisfied their needs in consumer goods and household goods. Long-term consumer credits were issued by banks as well as by state-owned industrial enterprises. The latter provided a credit in commodity. The credit amount did not exceed one and a half months' earnings and six months of the repayment term [7].

The cash credit was not common in the socialist period. In fact, the funds were granted for the construction and major repairs of individual dwellings, houses, cottages and improvement of individual holdings, for the purchase of livestock, etc. Banks lent at the expense of their available credit resources. It is important that the size of credits was approved in the annual long-term lending plans by the Council of Ministers of the USSR. However, the main resource of bank consumer lending was the return of previously granted credits. Accordingly, the Council plans provided for the terms and amounts of credit repayments.

As we noted, the classic contractual loan scheme was used for the legal registration of consumer loan in Soviet times. Banks, mutual funds and pawn shops act as the lender in this agreement. For example, if a citizen want to buy a certain product on the basis of a sale contract, he was entitled to pay part of his value by cash, and the rest of the debt could be converted into a loan obligation. Thus, the sale agreement changed to the loan agreement. This transformation arose as a result of the absence of the design of a loan agreement in the text of the Civil Code of the Ukrainian SSR in 1922. Individuals had the opportunity to conclude a preliminary loan agreement, the terms of such contract were considered legal keeping the written form, regardless the amount of money. At the same time, the lender had the right to request the cancellation of the prelimiary contract, if the property situation of the counterparty will significantly deteriorate in the future, in particular, if become insolvent, or will stop paying. In the latter case it was assumed that the creditor is entitled to charge interest on interest (so-called compound interest).

In the sixties of the XX century, with the adoption of the Decree of the Council of Ministers of the USSR "On the sale of durable goods to employees and servants on credit", consumer credit relations became more poular. It was given the opportunity to define a special list of goods for sale on credit, that, in turn, could be changed or supplemented by other durable goods available in sufficient assortment. When a product was selling on credit, at least twenty percent of the purchase price was paid by the buyer by cash, the rest, as a rule, was repaid from six to twelve months. At the same time the loan charge (amounting to one – two percent of the retail value of the goods) was paid by buyers in favor of trading companies. In order to simplify settlements, repayment of the granted loan was carried out by means of retention of funds from the salary of the employee or servant at the place of their main work and its corresponding inclusion in accounts of trade organizations.

In addition to the sale of durable goods for loans in the Soviet period, there were other forms of consumer lending. For example, loans to citizens were provided for participation in housing and building cooperatives (Decree of the Council of Ministers of the Ukrainian SSR "On housing construction and cottage construction cooperatives", "On housing construction cooperation", the Decree of the Central Committee of the Communist Party of Ukraine and the Council of Ministers of the Ukrainian SSR "On Individual and cooperative housing construction"), for purchasing the livestock, the development of a household in the case of a resettlement in the less populated regions of the country (Ordinance of the Presidium of the Verhovna Rada of the USSR "On the Measures to Strengthen the State Aid to Families with a Child «), for purchasing, repairing and reconstruction of houses that are empty, for the development of self-employment, for the construction of individual houses and so on.

It should be noted that consumer lending by banks was of a slightly different nature, since they rarely independently issued loans to citizens. There were always three parties where intermediaries were trade organizations, collective farms, state agricultural enterprises, and others. Savings banks were authorized to issue credits to citizens at the expense of available deposits. Nevertheless, under their agreements, the borrower did not obtain the funds in cash, but in the check of standard sample, that entitled the consumer to buy goods allowed for sale on credit within the credit limits.

3. Legal regulation of credit relations in modern Ukraine

As a result of independence of Ukraine and its transition to the market economy along with reforming of the banking system legal regulation of lending relations have undergone radical changes. At present, Ukraine has a developed banking system, including the National Bank of Ukraine; other banks (residents and non-residents, registered in accordance with the law of Ukraine); non-bank financial institutions exclusively authorized to accept deposits, make loans or keep customer accounts; Deposit Guarantee Fund; banking infrastructure, as well as relationships and agreements between them. It was the law of the USSR on banks and banking, 1991 that launched legislative support for the functioning of the Ukrainian banking system, although commercial banking institutions at the territory of Ukraine had operated even before that.

The essential point is that the Ukrainian legislation, in comparison with other post-Soviet countries, is characterized by regulation and development of the relations at issue. In particular, credit relations are regulated by the provisions of the Civil Code of Ukraine [5] and the Laws of Ukraine "On Banks and Banking", "On Credit Unions", "On Financial Services and State Regulation of Financial Services Markets" [8], and "On Protection of Consumer Rights" [9], by the resolutions of the National Bank of Ukraine "On Approval of the Rules of Providing by Banks of Ukraine Information to the Consumer on the Conditions of Credit and Total Credit Value", to name a few. A special achievement of domestic legislation is the Law of Ukraine on Consumer Lending, November 15, 2016 [10] aimed at establishing a mechanism of protecting the rights and legitimate interests of the participants in the relevant relations, creating proper competitive environment at the financial market, increasing the level of public confidence in it, and providing favorable conditions for the development of Ukrainian economy. This means that Ukraine is attempting to bring national legislation on consumer lending in line with the provisions of European law and consolidate the effective mechanism of protecting the rights of the borrower as the weaker party in these contractual relations.

4. Legal regulation of credit relations in foreign countries

The formation and development of legal science in Ukraine is integral and essential part of the world experience in the establishment of the rule of law. Today, there is an objective tendency for international cooperation to

intensify and deepen in economic, political, cultural and other spheres. This necessitates mutual study of the experience of legal credit relations regulation taking into account the peculiarities of social development in certain states. In this regard, it is considered necessary to analyze the procedure of consumer credit regulation in the legislation and law practice of foreign jurisdictions.

First of all, it should be emphasized that at the current stage of the legislation development the world leading states have already regulated the lending relations by separate normative legal acts on credit for several decades. So, the Council of Europe adopted the resolution on Preliminary program of the European Economic Community for a consumer protection and information policy in 1975. This document inaugurates the priority of economic consumer interests on the principles of their protection against unfair contract terms and losses arising as a result of improper services. The resolution also stipulates that presentation of goods and services, including financial ones, and methods of their selling should not mislead, directly or indirectly, the persons to whom they are offered.

In 1987, the special EU directive on consumer credit came into force, which sets requirements for the content of the credit agreement. So, in order to protect the rights of participants in these relationships, the contract must contain conditions for the actual amount of interest per annum, the conditions for their change, the terms of the amount, the number and frequency of payments, other costs that may be incurred in connection with the conclusion and performance of the contract, the information on the total amount of all specified payments, the terms of the elements of expenditure not taken into account when calculating the actual annual percentage, but subject to compensation by the consumer in the event of certain circumstances, and a list of such circumstances. Annex 1 of the Directive details the standard terms of various credit contracts as recommended for application in the national legislation of the EU Member States. For example, the indispensible terms of a credit contract concluded for acquiring goods and services are: the description of the goods and services being the subject matter, the price, the amount of the first payment, the total cost of the credit, number, frequency and amount of subsequent payments, indications that entitle the consumer to discharge the obligations before the date of expiry and therefore, obtain a proportional reduction in the cost of the credit, the name of the person who posses the goods, on the conditions and the term when

the consumer becomes the owner of the goods, the detailed methods of securing the credit obligation, the time limits for the consumer's withdrawal of the contract, etc. The overdraft credit agreements must also specify the maximum amount of the credit or the procedure for its determining, the conditions for its using and repayment, the time limits for the agreement withdrawal, etc. The Directive focuses on credit agreements aimed at purchasing goods, works and services by consumers. The detail regulation is provided for the case when the consumer obtains a credit under a pre-existing agreement between the creditor and the seller (supplier) of the goods (services) that prescribes granting credits to the consumers of the specified seller (supplier) in order to acquire the goods (services) of the latter. If the contractual goods (services) are not supplied to the consumer or their quantity or quality is not in compliance the contract terms, the consumer is entitled to apply to the creditor for redress (Article 11 of the Directive) [11].

Subsequently, many EU member states have implemented the Directive in national legislation by adopting special laws or amendments to the current regulations. Nevertheless, it should be noted that to date, the consumer lending market in most European states has some pronounced domestic peculiarities owing to the national lending culture.

A pan-European feature of the consumer credit regulation is that special legal acts embrace contractual obligations under mortgage credits. Moreover, it is common practice to formulate so-called general conditions of the contract, which become the key instrument for regulating the consumer services supplied by both financial institutions and non-financial organizations. The EU Directive and national laws set forth the requirements for the "general conditions".

The theory of general credit conditions dominates mostly in Germany, where the relevant law (Allgemeine Geschäftsbedingungen der Banken) was adopted in 1974. The law contributed to generalizing the established court practice of resolving credit-related disputes as well as established the standard wording of void contract terms. It is the Federal Union of German Banks, a non-profit organization uniting various credit institutions that develops general conditions of credit agreements in Germany. Most German banks apply the general conditions as their own local legal acts.

Consumer loan relations in Germany are regulated by the Law "On General Terms and Conditions of Credit Agreements", by the Civil Code, the Law "On Consumer Lending," as well as by the Special Law "On the

reneging on a deal "in front of the Entrance Door". Let consider these legal acts in more detail.

The Law "On Consumer Lending" was adopted in Germany in 1990 and contains rules on bank lending, on contracts with a clause on payment installments, on contracts aimed at financing production, sales of goods, provision of services, employment contracts. Paragraph 3 of the specified normative act carries out a special distinction – establishhes the types of credit or intermediary agreements (concluded during consumer lending), and the cases when its provisions apply. At the same time, it is noted that the provisions of the Law "On Consumer Lending" have priority over other legal acts regulating the mentioned relations. The Law defines an agreement on consumer lending as an agreement under which a business entity (the creditor) provides or undertakes to provide a consumer (a borrower) with a payable credit in the form of a loan, it include an arrangement for the installments of the payment or other financial assistance. At the same time, the law establishes a minimum amount of consumer lending. So, if a loan is provided for less than € 200, it is not considered as consumer loan. Also, contractual relationship between worker and employer couldn't be considered as consumer credit relations, if the interest rate for such loan is less than adopted in the market turnover. The contract concluded within the framework of housing construction, carried out on the basis of public-law decisions on the allocation or on the basis of a budget subsidy also couldn't be considered as consumer loan relations, if the contract is concluded directly between the consumer and a public entity allocating construction costs with an interest rate less than adopted in the market turnover. The law regulates in detail the issues related to the execution of an application for a loan, the liability of the borrower for late payment, the order of execution and the order of debt repayment, the procedure for termination of the loan agreement, etc. Also German law establish the concept of an agreement on credit intermediation, whereby a special person – a credit intermediary (for a fee) takes appropriate actions from mediation in the interests of the consumer or is looking for the possibility of concluding a loan agreement.

Sufficiently useful for the regulation of Ukrainian property turnover are the rules established in German legislation on "interrelated transactions". In accordance with paragraph 9 of the German Law "On Consumer Lending", if goods (works, services) are acquired at the expense of credit funds, the relevant contract (sale contract, etc.) together with the loan agreement form

the interrelated transaction, therefore, such transactions should be considered as a whole, in their economic unity. The expression of the consumer's willingness aimed at concluding such an interrelated transaction that becomes effective only if the consumer does not declare the refusal from it, in accordance with the established procedure. If, at the time of the consumer's refusal, the amount of the loan has already been transferred to the seller (the performer of works and services), in the relations with the consumer (in terms of the legal consequences of such refusal), the creditor enters into the rights and obligations of the seller (executor) under the relevant agreement.

Exploring the concept of interrelated transactions in German law, we should pay attention to the provisions of the Law "Reneging on a Deal" on 1986, that regulate issues relating to the protection of consumers' interests against a possible kind of damage arising in the so-called "direct trade". These are cases where the client is not well-informed about the quality and other characteristics of the goods or services offered to him. In this connection, the consumer may not always correctly decide on the appropriateness of acquiring the corresponding goods (works, services), to establish correctly whether they meet his real requirements or not. For example, in the case of purchasing a product in the catalog, the consumer often has no opportunity to compare its quality and price with the similar characteristics of other goods of this type or doesn't aware the risks associated with the purchase of such goods. Thus, the consumer has the right to refuse to repay the loan (transferred to the seller in order to pay for the purchased goods) in the presence of circumstances that give him the right to refuse the fulfillment of the obligation arising from the sale contract.

In German law enforcement practice there is a problem of competition between the norms of the Law "On Consumer Loans" and the Law "Reneging on a Deal". In short, it is decided by such a rule: if in a specific situation the provisions of the Law "On Consumer Credit" should be applied, then in accordance with part 2 of paragraph 5 of the Law "On waiving of transactions" the provisions of the latter shouldn't be applied.

Having significant features of legal credit agreements regulation English law differs from respective legal acts in other jurisdictions. The law of 1974 thoroughly and sufficiently regulates every detail of a credit transaction. To take an illustration, it stipulates the title of the document, the print size, the degree of contrast between the print and the paper on which a contract is printed. In accordance with English law, a credit agreement must

contain the conditions of the total credit amount, annual interest rate, credit repayment schedule, etc. Moreover, the specified items cannot be "mixed" with others, but should be located next to the document field intended for its signature by the debtor. In certain cases violations by the creditor of the legal requirements for the form and content of the contract entails the inability to enforce the credit agreement.

In English law, the rights and obligations of the parties to the loan agreement are regulated in detail. An essential condition is the obligation of the creditor to provide the borrower with information related to obtaining a loan and the fulfillment of the terms of this transaction. The law states that the creditor must inform the borrower within seven days from the moment of his claim about the credit agencies he has addressed in order to obtain information about the borrower. In this case, the borrower also has the right to obtain a copy of the file with information that has been transferred to its future lender from the relevant reference credit agency. Due to the fact that the borrower has the right to return the received loan ahead of schedule, the creditor has the obligation to provide information on the amount of loan debt within twelve days. In case of delay by the debtor of repayment of a credit obligation, the creditor should request a payment of the debt to the borrower, and the latter has the right to fulfill its obligation within seven days.

It is worth paying attention to the provisions of English law that prohibit the inclusion in the text of the loan agreement the deliberately bonded (for the debtor) conditions. For example, in accordance with the 1974 Act, a loan agreement may be declared void as imposing a person in an extremely disadvantageous position if it is proved that the loan payment, established by the contract, is too large or if the loan agreement contains other conditions that contradict the notion of "honest trade".

The essential thing about the law of United States of America (hereinafter referred to as USA) is that it has its own peculiar features of the legal credit regulation. The US banking regulation has a special sub-sector, Consumer Protection law, including four primary laws: the Uniform Consumer Credit Code (UCCC), The Truth in Lending Act (TILA), the Fair Credit Reporting Act (FCRA), and the Law on Equal Credit Opportunities (Equal Credit Opportunity Act (ECOA) [12; 13; 14]. The laws establish "fair" rules for granting a credit and the maximum amount of credit payments as well as the sale of goods rules of installment and deferred payment, and special

contract clauses, etc. A particular focus is on the methods of judicial protection of the creditor, and the cases where the court is empowered to discharge foreclosure and distress. The laws also secure the consumer rights of the advanced credit repayment without any extra charges or penalties; whereas, if all contractual charges have already been paid, they are subject to corresponding reduction. The US laws guarantee the right of the consumer to receive complete and accurate information on the credit terms. Specifically, the text of the contract must be clear and unambiguous.

Thus, the creditor is obliged to inform the consumer about the annual interest rate, the total amount of payments on the loan, the amount of taxes and other mandatory payments that should be paid in connection with the loan, to disclose to the consumer the terms of the insurance contract, that is entered in order to ensure fulfillment of the credit obligation, as well as to indicate the amount of any other additional costs and penalties related to the conclusion of a consumer lending agreement.

The Law "On Provision of True Information at the Time of Loans Providing" regulates in detail the guarantees of consumer's rights in the course of lending. The most important of these is the obligation of the creditor to provide in writing the information about the "the true coast of credit"), that is determined by the contract, expressed in percentages per annum. The consumer should be informed how such interest has been calculated. Thus, before the bank gives the consumer a so-called credit line, he is obliged to provide the latter with the following information: the full name of the creditor; the amount financed; the financed fee; the annual percentage rates, except the cases when the loan amount does not exceed seventy five dollars and the payment for the loan is no more than five dollars or the amount of the loan exceeds seventy five dollars and the fee for its delivery is no more than seven and a half dollars; total of payment; the amount and period of payments; in case of sale of real estate – total sale price; detailed explanation of all the above conditions of the contract; an indication that the stipulated payment for a pledge (guarantee, suretyship) will be charged in the event of the provision of the said methods of provision; the amount of fines, penalties that may be imposed on the debtor in the event of late payment; the condition whether the consumer has the right to reduce the amount of the loan fee in case of his early repayment or not.

The practice of applying the provisions of the Law "On Providing Reliable Information in Providing Loans" in the American legal system allows

to identify the most typical violations committed by banks in the field of consumer lending, that, in turn, can be taken into account in order to prevent their occurrence in domestic law enforcement practice. For example, there are frequent cases when in the text of the loan agreement the mandatory for the consumer information is posted in such a way that it is difficult for a professionally unprepared person to separate it from general information; missing the indication of the amount of the provided loan; it is difficult to understand specific terminology; the indication of the amount of the loan is not distinguished from other information that is subject to mandatory notification; there are no indications of the amount of the loan fee and the real interest rate (or it is indicated in the form of annual interest); does not specify a schedule for making payments for repayment of a loan obligation.

It should also be noted that one of the peculiarities of American legislation governing consumer credit relations is the detailed regulation of so-called "consumer credit reports". This special agencies providing creditors certain information about the creditworthiness of the consumer, his personality, reputation, life style, his possibility to non-return the loan and other information collected and used for making decisions about capacity of consumer to meet the demands made within the concluded loan (and, together with it, the insurance) obligation. In addition, US Law "On reliable credit reports" ban discrimination in every sphere of lending activities including advertising, filing and consideration of loan applications, assessment of creditworthiness, accounting and repayment of the loan. The law also prohibits discrimination based on sex, marital status, age, race, color, religion, national origin, or state aid. Some provisions of this law are quite interesting, for example, creditors are not entitled to demand information about the spouse of consumer except when the latter resides in the municipal building and the other spouse is responsible for the debt or the consumer relies on the income of the other spouse during the repayment. Under the provisions of US law, creditors can not require from the consumer the information about his marital status, ability and attitude to having children, shall not to be interested in information about the source of income of the consumer, if the income is formed by support payments or similar sources of financial assistance. An exception are the cases when the creditor properly clarifies to the consumer that he is not obliged to report such data, if he does not want the creditor to take into account such information during the establishment of creditworthiness.

The US Law "On Equal Lending Opportunities" sets requirements that also should be observed during implementing consumer lending. It is allowed to use the system of selective provision of a loan, if it is statistically substantiated, does not contradict the legislative requirements and does not allow discrimination on the grounds of age, marital status, sex of the applicant; during assessing the creditworthiness a creditor may not take into account the information contained in telephone directories; if a person submits an application for the provision of an unsecured loan and for confirmation of his creditworthiness indicates that he has certain property, the creditor is entitled to demand the signature of the spouse of the applicant or other person on a document certifying the possession of such property in case of non-repayment of the loan; creditors are obliged to inform consumers about their decision to grant a loan within thirty days; the message is allowed verbally, however, at the request of the applicant, must be made in writing and so on.

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5. Conclusions

Thus, we can conclude that the legislation of Ukraine in the field of providing banking services to the population lags behind the leading countries of the world for several decades. It is quite clear that the desire of domestic legislators to bring legal regulation of the studied relations closer to the European level, especially today, when the implementation of the national

strategy of European integration takes place. It is absolutely necessary to take measures to ensure the rights of consumers in the use of consumer lending, the formation of mechanisms for the protection of these rights in case of violation. At the legislative level, it is necessary to consolidate the creditor's duty to provide the consumer with complete information, as well as to determine the liability of creditors for providing incorrect or incomplete information on lending. It's important to regulate the provision of a wide range of banking services in the field of retail consumer lending and mortgages; to ensure the protection of the rights of citizens during using such loans; to simplify procedures for foreclosure by lending institutions; to expand the list of means of securing an obligation; unify the procedures for satisfying collateral-secured claims of creditors, including the cases not related to the liquidation and bankruptcy of the debtor.

The analysis above proves that the legislation of Ukraine regulating bank services is decades behind the leading countries of the world. All of this explains an appropriate desire of domestic legislators to bring legal regulation of the relations at issue in line with the European standards that is essential for implementing the national EU-integration policy.

On the basis of the foregoing, it should be noted that in the pre-revolutionary period of rule-making for the regulation of relations that arose in connection with the time-limit, paid transfer of money or things determined by the generic features to the ownership used traditional, known from the time of Roman private law, civil-law construction of the contract loans. The first mention of the credit transaction in the scientific legal literature is related to the provision of a sign of consensus to the real loan relationship. It was assumed that individuals could agree on a promise to provide a loan qualifying as a preliminary loan agreement. In connection with the further development of the banking system, this promise was transformed into a loan agreement that eventually turned into an independent civil law institute. So, in Soviet times, already in the process of financial reform of 1930-1931 years the credit was introduced in the civilian turnover as an independent type of contract. Further development of this legal institute established in Art. 382 of the Civil Code of the Ukrainian SSR in 1964, that established lending to state organizations, collective farms and other cooperative and non-governmental organizations in accordance with approved plans by issuing targeted fixed-term loans. With the adoption of the Fundamentals of Civil Legislation of the USSR and the republics the

loan was granted the status of an independent civil-law agreement (Article 114), which, having acquired a consensus character, did not lose its clan belonging to the loan agreement. This led to the possibility to regulate such relationships by applying general provisions on a loan agreement to them. Subsequently, such an approach was used by the legislator in preparing the relevant sections of the Civil Code of Ukraine in 2004, that explains the absence in the contents of the said legal act of separate provisions dealing with relations of, for example, consumer lending. As for the latter, it should be noted that they have become widespread in the society during the Soviet period, however, at that time, consumer lending was mostly identified with a commercial loan (relations that arose in connection with the provision of an advance, prepayment, deferral or installment payment) It is worth pointing out that, in general, during the period of socialism, credit relations were used in the sphere of "planned" economies and served as a way of distributing public credit resources not only to legal entities, but also to citizens.

Currently, the domestic legislation regulates the relations of consumer lending are more perfect in the field of consumer rights protection in comparison with other countries of the post-Soviet area. As for the EU countries, the legal regulation and practical application of the credit institution used by the participants in civilian circulation to meet their economic needs is deprived of those gaps existing in the domestic legal system. In particular, it is a question of the uncertainty in the Ukrainian legislation of issues related to the use of misleading advertising by banks concerning lending conditions, incomplete disclosure of information, difficulties encountered in assessing the borrower's creditworthiness, the status of a credit intermediary, establishing unfair terms of consumer credit agreements, imposing by banks and other institutions of additional and related services, lack of equal requirements to creditors, etc.

All things considered are evident that the change in the political and economic situation in our country directly influenced the legislator's approach to the legal regulation of credit relations. The transition of social relations to the market economy has led to increased acquisition by the subjects of the civilian turnover of goods and services on credit. However, the current legal credit regulation does not always meet the requirements of practice. To date, Ukrainian legislation has legal acts that regulate lending relations, while in the EU countries, credit agreements have been regulated at the level of separate legislative acts since the previous century. Therefore, the

foreign practice of the separate credit institution has already deprived of those gaps that Ukrainian legal system still need to fill up. In order to eliminate the problems of legal consumer credit regulation it is necessary to bring the legislation of Ukraine into conformity with the best international practice.

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