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**LINKED CREDIT AGREEMENTS WITH A PARTICIPATION
OF CONSUMERS IN GERMAN, FRENCH AND EUROPEAN
UNION LAW**

The Article covers the problems of effect of mixed consumer agreements. Agreements of purchase and sale, concluded together with crediting agreements, are examples of mixed agreements with the participation of consumers. The consumer, acting as a party of a mixed agreement, must not continue to remain tied by crediting agreement clauses in case of cancellation of a purchase and sale agreement, for example, in case of return of goods by the consumer. Such rule is fixed by the new EU Directive on consumer crediting, and also by civil legislation of some European states.

Key words: purchase and sale agreements, crediting contract, mixed contract, consumer crediting.

In temporary legal order, not only professional but also consumer, there is a universal phenomenon to enter linked contract. A subject of contract like that is simultaneously several different performances. Such legal acts are recognized as a specific feature of modern civil legal turn [1, p. 234]. There are linked agreements, but agreements like that are often also called as groups of contracts or teams of contracts [2, p. 35; 3 p. 8]. Linked agreements are still giving birth of many practical problems [4, p. 1034]. Those problems are results of the situation, in which the consumer, that is a part of contracts like that, is simultaneously linked by several contracts, although he is doing only one legal act.

An example of linked agreements, that are often covenanted by consumers are sales agreement and credit agreement. A credit, that is a subject of credit agreement, is used to pay for goods or services, that are a subject of sales agreement.

The protection of consumers rights, that is a legal basis in the legal order of European Union and in legal orders of its member states, requires that consumer should not be linked by credit agreement when a sales agreement stopped being in force, for example when one part of that contract made use of the right of withdrawal. By that reason, linked contracts should be treated as one contract, not as two or more separate contracts.

A new directive on consumer credit — directive 2008/48/EC of the European Parliament and of the Council of 23 April 2008 on credit agreements for

consumers and repealing Council directive 87/102/EEC presents that when the consumer has exercised a right of withdrawal concerning a contract for the acquisition of goods or services, he shall no longer be bound by a linked credit agreement. Besides, where the goods or services covered by a linked credit agreement are not supplied, or are supplied only in part, or are not in conformity with the contract for the supply thereof, the consumer shall have the right to pursue remedies against the creditor, if only the consumer has pursued his remedies against the supplier, but has failed to obtain the satisfaction to which he is entitled according to the law or according to the contract for the acquisition of goods or services [5, article 15]. A result like that has changed in connection with the regulation of previous directive on consumer credit [6, article 11]. The old directive required that the grantor of the credit and the supplier of goods or services must have a pre-existing agreement, according to which credit is made available exclusively by that grantor of credit to customers of that supplier for the acquisition of goods or services from that supplier. The situation of the consumer as a part of linked agreement has therefore changed for better in new credit directive. The new directive must be implemented in all member states of the European Union. However, legal orders of some member states include regulations that are consistent with the EU new regulation on the linked agreements including credit agreement.

Namely in German law functioning a legal definition of linked agreements in German Civil Code (called BGB). According to BGB, in the situation when consumer credit serves for financing, totally or partially, some other agreement and both agreements create some economic unity, the agreement of supplying goods or granting other service is linked to the agreement of consumer credit. Thus, the decay of one agreement of the linked agreements, for example caused by using the consumers right of withdrawal, causes always the decay of the second [7, p. 975].

In French law however, the issue of not only economic, but also legal connection between credit agreement and the agreement for the acquisition of goods or services is regulated in French consumer code. In case of not giving a credit for the consumer or in case of using the right of withdrawal from the credit agreement, the agreement for the acquisition of goods or services is solved. The consumer does not have to pay off a credit before issuing the thing (the object of the agreement) by the vendor [7, p. 976].

To summarize, both European Union and German and French regulations indicates that the agreement of the acquisition for goods or services, especially the agreement of sale, and the credit agreement, thanks to which consumer is able to pay the price, are connected — there are linked agreements and there could not be treated separately. In case of solving one of them the another should be treated as not bounding, not existing. The consumer, as the weaker part of the agreement, could not be bound by the credit agreement in case of the agreement of sale or the agreement of favoring services stop being in force.

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СМЕШАННЫЕ ПОТРЕБИТЕЛЬСКИЕ ДОГОВОРЫ В НЕМЕЦКОМ И ФРАНЦУЗСКОМ ПРАВЕ, А ТАКЖЕ В ПРАВЕ ЕВРОПЕЙСКОГО СОЮЗА

Резюме

Статья посвящается вопросам действия смешанных потребительских договоров. Договоры купли-продажи, заключаемые вместе с договорами кредитования, являются примерами смешанных договоров с участием потребителей. Потребитель, выступая стороной смешанного договора, не должен продолжать оставаться связанным условиями договора кредитования в случае прекращения действия договора купли-продажи, например, в случае возврата товара потребителем. Именно такое правило закрепляет новая директива ЕС о потребительском кредитовании, а также положения гражданского законодательства ряда европейских государств.

Ключевые слова: договор купли-продажи, договор кредитования, смешанный договор, потребительское кредитование.

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**ЗМІШАНІ СПОЖИВЧІ ДОГОВОРИ В НІМЕЦЬКОМУ
І ФРАНЦУЗЬКОМУ ПРАВІ, А ТАКОЖ В ПРАВІ ЄВРОПЕЙСЬКОГО
СОЮЗУ**

Резюме

Стаття присвячена питанням дії змішаних споживчих договорів. Договори купівлі-продажу, що укладаються разом з договорами кредитування, є прикладами змішаних договорів за участю споживачів. Споживач, виступаючи стороною змішаного договору, не повинен продовжувати залишатись зв'язаним умовами договору кредитування у разі припинення дії договору купівлі-продажу, наприклад, у разі повернення товару споживачем. Саме таке правило закріплює нова директива ЄС про споживче кредитування, а також положення цивільного законодавства ряду європейських держав.

Ключові слова: договір купівлі-продажу, договір кредитування, змішаний договір, споживче кредитування.