

THE IMPACT OF THE 2007-2008 CRISIS ON THE EUROPEAN AND ROMANIAN LEGISLATIVE AND INSTITUTIONAL FRAMEWORK IN THE PROTECTION OF CONSUMERS OF FINANCIAL SERVICES

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Abstract

Inadequate consumer protection, especially in the US mortgage market, has not only resulted in considerable consumer harm, but has contributed substantially to the onset of the global financial crisis. In the EU, the miss-selling of financial products has also led to major damages to consumers. Given the potential significant detriment that financial services can cause to individual consumers and to the single market, it has become clear that consumer protection policy needs to be properly regulated in this area. The global trend is to include the responsibilities of information, financial education, consumer protection and transparency among the duties of supervisory and regulatory authorities. In the EU, enhanced consumer protection has resulted in improved transparency of financial products for consumers and better information regarding retail financial transactions. Stricter regulation of the financial products and services market has resulted in better solutions for consumers and an increased efficiency of the retail financial products market. The improved European legislation was gradually transposed into Romanian internal law.

A number of legislative solutions, recommendations and actions to strengthen consumer protection in the area of financial services are put forward in this study with the aim to demonstrate that one of the aftermath of the financial crisis was an irreversible change of paradigm regarding the end users and consumers of financial services reflected in consumer protection legislation.

Keywords: consumer protection, financial services, financial education, digitalisation, European regulation, Romanian Law.

1. Introduction

The global financial crisis has highlighted the need for more effective and efficient measures to protect consumers of financial services in the context where they are facing increasingly sophisticated offers and matching risks. One of the lessons of the 2008 mortgage crisis was that it is essential to protect the rights of the consumer, while admitting that these rights also come with responsibilities on both sides of the financial market.

The field of financial services consumer protection, as we understand it today, is relatively new but is developing rapidly and this will probably be the trend for the following period. In this regard, new approaches to the regulation of business codes of conduct are constantly being developed and implemented, and the major challenge is to implement the best practices and to standardize these approaches, benefiting from the accumulated experiences as well as the results of scientific research on consumer behavior.

The global trend is to include the responsibilities of information, financial education, consumer protection and transparency among the duties of supervisory and regulatory authorities.¹

At present, international policies and regulatory efforts are increasingly taking consumer protection into account, as companies tend to transfer a broad range of

risks associated with the new saving and investment opportunities to customers and households. At the same time we are witnessing a constant increase in the complexity of financial products and the rapid development of the related technical tools. All of these overlap with adverse conditions for consumers, where access to basic financial services and financial literacy are unsatisfactory in many countries around the world.

Basically, technology has developed at a faster pace than consumer education and skills and suppliers are developing their products faster than the market can adapt to them safely.

Rapid evolutions of market conditions, the pace of innovation in the financial field, the emergence of alternative financial services and of poorly regulated or completely unregulated suppliers, generate risk factors for possible market abuses, miss selling of financial products and services, non-transparent and non-compliant activities, financial exclusion for those less digitalised, fraud, money laundering. In particular, lower income or less experienced consumers face additional difficulties in accessing or using financial services and products. There may also be cases where compliant financial products are promoted and sold by authorized agents, at the edge or with the breach of the law, to unsuitable categories of consumers, causing them significant losses due to information and transparency flaws.

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¹ <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52014SC0261&from=en>, page4.

From the perspective of supervisory and regulatory authorities, at a strategic level, the duties regarding consumer protection and education of consumers of financial services imply the allocation of a sufficient level of authority and resources to the specialized personnel as well as the elaboration and implementation of clear working procedures integrated into a coherent legislative framework. The rationale of this strategy is the recognition that only an integrated approach can contribute to the stimulation of healthy consumer behaviors into the retail financial market, allowing long-term financial plans of individuals and helping to financial stability. At the same time, to ensure robust post-crisis recovery, the goal of not burdening the market with too much regulation has been weighed.

In light of these aspects, consumer protection measures for financial services have to be integrated with other inclusion and financial education policies, thus contributing to achieving a strengthened financial stability.

2. Consumer protection

Consumer protection is usually one of the main functions of any market regulatory and supervisory authority. By extrapolating, we could say that almost all the measures taken by the authorities are, in essence, taken with the ultimate purpose of protecting consumers. However, the term consumer protection is consecrated among authorities to describe the direct and domain-specific measures related to: complaints management, ensuring the transparency framework in the activity of suppliers, compensation of the injured, business ethics, supervision and control of abusive clauses and modalities of selling financial products to the retail market, issuing public communications such as alerts or recommendations, analyzing the impact of niche financial products.

The complaints analysis and the conclusions drawn from their settlement are the main factors generating regulation and control actions in the field of consumer protection. In this context, at European level, there is a tendency to harmonize policies and regulations in the field as well as measures to collect and analyze data on petitions.

Currently, consumers are at a disadvantage in the financial market equation, the balance being inclined in favor of the suppliers. The latter have better access to information, resources and skills to measure. Financial innovation is most often used to differentiate competition providers by competitive advantage, sometimes disregarding the limited degree of consumer understanding, or the potential harms that may arise from the misuse of financial instruments and services. Thus, the prospect of increasing profits can even lead

to systemic risks, without strict regulation and supervision of the activity or without implementing clear and transparent ethical rules at the suppliers' level.

In order to understand the present role of consumer protection in ensuring financial stability, we must first analyze the moments in the recent history of the financial mechanism in which the protection measures were either non-existent or improperly applied.

In the context of a relaxed supervisory and regulatory framework in mature markets, this imbalance has led to the rapid spread of the high-risk (subprime) mortgage crisis in the US, which has since expanded to the level of the global financial mechanism and then to the entire economic system, culminating in the state debt crisis. According to the trigger mechanism of the crisis², banks have relaxed the security requirements when granting loans, customers without sufficient incomes or guarantees thus being able to qualify for a mortgage loan. With the new money thus thrown into the real estate market, buying pressure was created and the price of real estate increased artificially. The more expensive houses required higher loans, over time. When the price started to fall, the loan installments became too high compared to the daily value of the purchased properties. Clients stopped paying their mortgages and banks were left with properties that could not cover their debts. Initially, banks secured insurance coverage against the risk of non-payment through complex financial products. But the risk does not simply disappear from the system, it being taken over by other financial entities (usually speculators) and sometimes sold indirectly even to those who were insured in the first place, lured by the attractive yields offered and ignoring the risk for the second time. Thus, everything started from the chase after profit, from underestimation and ignorance from both buyers and sellers, who often failed to fully understand the mechanism of the financial products they were selling to ordinary customers. In this context, where the suppliers carry, perhaps, most of the blame, we cannot ignore the failure of the supervision, control and prevention policies implemented by the authorities, but also of the lack of understanding of the risks by consumers.

Nowadays, financial products and instruments are becoming more and more complex, especially in markets with a high degree of competitiveness. High competition, usually a factor for the benefit of consumers, generator of reasonable prices and high quality services, works to their detriment. Studies conducted on both mature systems and developing markets highlight that complex products have higher hidden costs and lower performance for ordinary consumers³, especially when these tools are promoted to inappropriate groups of customers.⁴

² <https://ei.com/economists-ink/special-issue-november-2008/financial-crisis-what-went-wrong-by-jonathan-a-neuberger/>

³ https://www.esma.europa.eu/sites/default/files/library/esma50-165-422_trv_-_vulnerabilities_-_investor_protection_corrected.pdf.

⁴ <https://www.thepriceofbadadvice.eu/static-map/>.

The information available to the public in the financial field has evolved not only in complexity but also in quantity and the pace of change, regarding the launch of new services and products, as well as the pace of adaptation of financial services to new technologies, has increased dramatically.

From the considerations set out above, consumer protection has become a term usually associated with the regulatory and supervisory authorities, the only ones able to ensure the impartiality of the regulations and the actions taken to improve the financial mechanism.

For instance, into the Report From The European Commission To The European Parliament And Council on the operation of the European Supervisory Authorities (ESAs) and the European System of Financial Supervision (ESFS) COM(2014) 509 final, it is provided: „(ESAs) have been assigned regulatory, supervisory, financial stability and consumer protection roles.” At part v. **Consumer protection**, is stated: *Consumer and investor protection is one of the statutory tasks assigned to the ESAs, which so-far is perceived as not being given sufficient priority in the work of the authorities.*⁵

3. Financial education

Some authorities regard financial education as part of the broader field of consumer protection, on the preventive side, others treat it separately and complementarily.

It is certain that the recent economic crisis has highlighted the need for adequate information, education and tools to make the right financial decisions in an increasingly complex financial system. The financial difficulties of consumers and of their families can affect the development of communities and of the market as a whole. The crisis has shown that the financial well-being of individuals is fundamental to the financial stability at national level and that the lack of financial education is one of the reasons that can lead to a decrease in the standard of living.

Financial education has become a complementary element to the policies of prudential regulation and supervision of business conduct in the financial field. In many countries of the world, it is considered a long-term priority policy aimed at improving individual financial behavior.

Thus, at the epilogue of the financial crisis, financial education has begun to be recognized as one of the major individual skills in most economies of the world. As in the case of the consumer protection field, the basic reasons for the increasing importance of this field include the tendency to transfer an increasing range of (financial) risks to the population, the tendency

to increase the complexity of financial services, the pace of evolution of financial markets, the increasing number of active consumer-investors as well as the recognition of the limits of the regulatory instrument as the only consumer protection tool. The definition of *financial education* developed by the OECD in 2005 and endorsed by G20 leaders in 2012 is used in a majority of countries to refer to: *“the process by which financial consumers/investors improve their understanding of financial products, concepts and risks and, through information, instruction and/or objective advice, develop the skills and confidence to become more aware of financial risks and opportunities, to make informed choices, to know where to go for help, and to take other effective actions to improve their financial well-being.”* (OECD, 2005a). In addition, OECD states: *“financial education is a process that covers and takes into account the varying needs of individuals in different socio-economic contexts. Financial literacy that is the outcome of this process is defined as a combination of financial awareness, knowledge, skills, attitude and behaviours necessary to make sound financial decisions and ultimately achieve financial well-being (OECD/INFE, 2012).”*⁶

Another point of view regarding the goals of the financial education is emphasized into the Communication from the Commission COM (2007) 808 final on Financial Education, from 18.12.2007. As a recognition of the economic and social benefits of providing financial education is mentioned that *“financial education should be seen as a complement to adequate consumer protection and to the responsible behaviour of financial services providers. It can in no way be seen as the only solution to remedy information asymmetries between consumers and providers.”*⁷

While financial institutions are obviously familiar with the contractual terms and conditions of their own financial products, they may be non-transparent or difficult to decipher by the clients to whom they are addressed. Thus, financial education must aim at rebalancing information symmetry, on both sides of the balance, so that consumers can ultimately make informed decisions. To do this, in most cases, suppliers must be required by law to provide product information in a wording accessible to their customers.

Currently, it is recommended to implement programs only after the clear identification of the needs of the population, of the target groups and of the most efficient ways of transmitting the messages, following surveys and analyzes that can last, according to the World Bank estimates, up to 3 years⁸. In the meantime, pilot programs can be organized which can then be refined and calibrated on a large scale, following a clear plan, preferably set according to a national strategy in the field. The evaluation stage is deemed to be absolutely necessary, allowing policies and programs

⁵ <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52014SC0261&from=en>.

⁶ https://www.oecd.org/finance/financial-education/G20_OECD_NSFinEd_Summary.pdf, page 11.

⁷ file:///D:/My%20Documents/APC/CKS%202021/COM_2007_0808_FIN_EN_TXT.pdf, page 4.

⁸ <http://documents1.worldbank.org/curated/en/638011468766181874/pdf/296720PAPER0100steps.pdf> page 40, page 57.

to be calibrated and adjusted in accordance with the field reality.

4. International context

The change of paradigm started in 2010, at G20 summit in Seoul, where participants called for stronger protection of consumer interests in financial markets. As a result, under the 2010 Dodd-Frank Act, the United States established the Federal Deposit Insurance Corporation, FDIC. After three years, in the United Kingdom was created a separate independent supervisory body to protect the interests of consumers of financial services - Financial Conduct Authority, FCA.

In EU, consumer protection and information also fall within the framework of Community legislation in the field of financial services. The Articles 114 and 169 of the Treaty on the Functioning of the European Union⁹ are the legal basis for the protection of consumers in European Union, including consumers of financial services, from which is derive the Community's commitment to promoting consumers' right to information, education and to organise themselves in order to safeguard their interests.

The Cannes Summit, held in 2011 seeking measures to counteract the negative effects of the financial crisis has addressed, among others, the need for better regulation of the protection of consumers of financial services, central bank governors in the G20 states and finance ministers and have appealed to the OECD and the Financial Stability Board (FSB) together with any other relevant international organizations to develop a set of common principles of consumer protection in the field of financial services¹⁰. An international working group was established, focused on the effective implementation of the three priority objectives set out in the Action Plan, regarding transparency and provision of information for consumers, responsible behavior and business ethics for financial service providers and authorized intermediaries and procedures to manage and settle complaints.

At the time of drafting the strategy, the international working group involved in monitoring the implementation of the objectives was in the process of drafting effective methods and guidelines in this regard, meant to stimulate the implementation at national level. The approaches take into account the best practices identified so far in different states and the circumstances of each financial sector and the materials developed include experiences identified in many parts of the world following consultations with stakeholders: national regulatory and supervisory authorities, employers' associations, the academic environment, and consumer associations. Considering the high level of the works elaborated in this context, we can say with

certainty that they represent the current concerns and the global trends in the matter of consumer protection. At the same time, taking into account the secondary intention of elaborating these principles, namely their implementation in a form as uniform and comparable as possible by the states, it is advisable to integrate them in any strategic document in the field, respecting the specificity of the local systems and markets.

Important to mention is the joint statement of the G20 leaders, at the Cannes summit, which shows the level of involvement and importance of this aspect, at international level: "We agree that integration of financial consumer protection policies into regulatory and supervisory frameworks contributes to strengthening financial stability, endorse the FSB report on consumer finance protection and the high level principles on financial consumer protection prepared by the OECD together with the FSB. We will pursue the full application of these principles in our jurisdictions and ask the FSB and OECD along with other relevant bodies, to report on progress on their implementation to the upcoming Summits and develop further guidelines if appropriate."

The need to standardize the practices in this field, in the context of globalization, has led to the correlation between the materials elaborated by the OECD and the existing or planned regulations at EU level, in the field of financial services.

The World Bank has also played a pivotal role in the field of consumer protection and financial education, dealing with these areas in an inter-dependent manner. The institution has issued numerous studies and researches in the field as well as specific recommendations applicable both at international level and in particular, to the states under review. For example, the World Bank has prepared the document Good Practices for Consumer Protection and Financial Literacy in Europe and Central Asia: A Diagnostic Tool. The paper reviewed the good practices and made necessary annotations, being elaborated in order to stimulate the debates in the field. The recommendations contained in this analysis are valuable in the light of the fact that they were not limited to incorporating the principles and recommendations contained in EU directives and European Commission recommendations, but went further with the comparative analysis of good practices used worldwide.

5. European post crisis context of consumer protection

The first aspects of increasing EU consumer confidence and strengthening their position were addressed in the Green Paper on Retail Financial

⁹ <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:12012E/TXT>.

¹⁰ <https://www.oecd.org/daf/fin/financial-markets/48892010.pdf>.

*Services in the single market*¹¹, which overlaps with the onset of the 2008 global financial crisis.

The necessity of better regulation of financial market, including the adequate supervision of the retail financial services market for consumers have been reflected in the new Community institutions created in 2011, the European Supervisory Authorities (ESAs) system, which consist of the European Systemic Risk Board (ESRB), the European Banking Authority (EBA), the European Insurance and Occupational Pensions Authority (EIOPA) and the European Securities and Markets Authority, (ESMA). The European financial supervisory authorities, EBA, EIOPA and ESMA carry out activities in the field of financial education and each of them has in their operating regulations similar provisions regarding consumer protection and financial education. "EIOPA has a key role in promoting consistent supervisory practices on consumer protection issues, working together with national competent authorities on the tools they can use and measures they can take to identify, assess and solve consumer protection problems".¹²

„The role and tasks of the EBA related to consumer protection and financial activities include: collecting, analysing and reporting on consumer trends in the EU; reviewing and coordinating financial literacy and education initiatives; developing training standards for the industry; contributing to the development of common disclosure rules; monitoring existing and new financial activities; issuing warnings if a financial activity poses a serious threat to the EBA's objectives as set out in the its funding Regulation; and temporarily prohibiting or restraining certain financial activities, provided certain conditions are met.”¹³

ESMA's activity in the field of consumer protection is not limited to legislative improvements. According to article 9 of the ESMA Regulation no. 1095/2010, in Chapter II Article 8, Tasks and powers of the Authority, is provided "(i) develop common methodologies for assessing the effect of product characteristics and distribution processes on the financial position of financial market participants and on consumer protection".

Also, Article 9, Tasks related to consumer protection and financial activities is stated:

1. The Authority shall take a leading role in promoting transparency, simplicity and fairness in the market for consumer financial products or services across the internal market, including by:

(a) collecting, analysing and reporting on consumer trends;

(b) reviewing and coordinating financial literacy and education initiatives by the competent authorities.

Therefore, according to article 9 of the ESMA Regulation no. 1095/2010, consumer protection and financial activity related tasks are delegated to the European Authority.

In coordination with the European Securities and Markets Authority (ESMA) and in specific and well-defined circumstances, supervisory authorities may prohibit certain products, services or practices in the case of threats to investor protection, financial stability or proper functioning of markets ESMA Regulation no. 1095/2010 (12)¹⁴.

In this respect, at 27th March 2018, ESMA, along with National Competent Authorities (NCAs), concluded that there exists a significant investor protection concern in relation to CFDs and binary options offered to retail investors and prohibited the marketing, distribution or sale of binary options to retail investors. Also, imposed a restriction on the marketing, distribution or sale of CFDs to retail investors.¹⁵

Another European Authority, EIOPA, more recently, pursuant to Article 18(2) of the PRIIPs Regulation, EIOPA announced that partially supports a planned prohibition of some unit-linked life insurance products by the Polish Financial Supervision Authority and calls for coordinated action across Europe, for identified risks for policyholders buying unit-linked insurance products in Poland.¹⁶

One more example: making use of its active role in consumer protection, the European Banking Authority (EBA) issued a statement in relation to consumer and payment issues in the context of the COVID-19 pandemic, which acknowledges the need to adopt appropriate measures to protect consumers and the orderly functioning of payment services across the EU.¹⁷

With regard to the European policy in the field of financial education, in May 2012, the European Commission adopted a new European Consumer Agenda¹⁸ to boost confidence and development by placing consumers at the center of the single market concerns. Built around four main objectives, the European Consumer Agenda aimed to increase consumer confidence by increasing security, improving their knowledge, intensifying law enforcement and ensuring the possibility of obtaining compensation as

¹¹ europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+TA+P6-TA-2008-0261+0+DOC+XML+V0//EN.

¹² https://www.eiopa.europa.eu/browse/consumer-protection_en.

¹³ <https://www.eba.europa.eu/regulation-and-policy/consumer-protection-and-financial-innovation>.

¹⁴ <https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2010:331:0084:0119:EN:PDF>.

¹⁵ <https://www.esma.europa.eu/press-news/esma-news/esma-agrees-prohibit-binary-options-and-restrict-cfd-protect-retail-investors>.

¹⁶ https://www.eiopa.europa.eu/content/eiopa-partially-supports-planned-prohibition-of-some-unit-linked-life-insurance-products_en.

¹⁷ https://www.eba.europa.eu/sites/default/documents/files/document_library/News%20and%20Press/Press%20Room/Press%20Releases/2020/EBA%20provides%20clarity%20to%20banks%20and%20consumers%20on%20the%20application%20of%20the%20prudential%20framework%20in%20light%20of%20COVID-19%20measures/Statement%20on%20consumer%20protection%20and%20payments%20in%20the%20COVID19%20crisis.pdf.

¹⁸ https://ec.europa.eu/commission/presscorner/detail/en/IP_12_491.

well as adapting consumers' rights and policies in the field to changes which have occurred in society and the economy.

Consumer expenses, which amounted at the level of 2011 to approx. 56% of the EU's GDP¹⁹, reflects the huge power of consumers (about 500 million consumers at European level) to drive the European economy. And consumers need to enjoy their rights and be confident in order to fully exploit the potential of the single market and stimulate innovation and growth. The agenda replaces the EU Consumer Policy Strategy 2007-2013. According to the Agenda, the Commission aims, among other things, to recognize the importance of the role of national consumer organizations and to support them through capacity building and assistance in the field. European institutions recognize the transformation of the financial crisis into a crisis of consumer confidence.

Nowadays, financial literacy is becoming increasingly vital for individuals, and it should be considered, in the context of the European Pillar of Social Rights, Principle 20 on the right to access to essential services: „Access to essential services: "Everyone has the right to access essential services of good quality, including water, sanitation, energy, transport, **financial services** and digital communications. Support for access to such services shall be available for those in need."²⁰

Due to the lack of transparency, the low level of information on risks and the inappropriate treatment of conflicts of interest, consumers across the EU have repeatedly been sold investment and insurance products that were not suited to their needs. Consumer confidence in the financial sector has been shaken here and there. In addition, the existing legislation has not developed fast enough to reflect the increasing complexity of financial services.

The consequences of taking too many risks can be devastating for consumers, since investments are often the essential element of their life-long savings. In the context where the EU retail investment market stands at 10,000 billion euros, buying wrong or inadequate products can quickly become a major problem.

There are three types of financial abuse at European level: (1) the poor performance generated by the incompetence of the providers or the poor quality of the services; (2) misinformation or overselling, i.e. the sale of inadequate financial products in the context of a low financial literacy of consumers, misinformation or abusive sales practices; (3) fraudulent trading, that is, abuse and direct fraud performed by financial service providers. The consequences of taking too many risks

can be devastating for consumers, since investments are often the essential element of their life-long savings. In the context where the EU retail investment market stands at 10,000 billion euros, buying wrong or inadequate products can quickly become a major problem.

In order to strengthen consumer confidence and economic growth in the medium and long term, solid, well regulated retail markets that are focused on consumer interests are needed. As part of its reporting activity in 2012, the Commission assessed the need to strengthen current rules on combating unfair practices in the financial services sector and to optimize their application, including for vulnerable consumers.

Thus, in the last decade, the European Commission has focused its attention on taking concrete legislative measures to address deficiencies in consumer protection, while helping to restore the level of trust. That is why, in 2012, the Commission presented a legislative package that tried to raise the standards in the field and eliminate legislative gaps. More specifically, the package was made up of three legislative proposals: a proposal for a regulation on key information documents for packaged retail investment products (PRIIPS), a revision of the Insurance Mediation Directive (IMD), and a proposal to increase protection for those who buy investment funds.

With the aims of strengthening the consumer protection and empowering the consumers of financial services, EU Member States have transposed EU directives regarding to the protection of consumers of financial services to their national law, namely, the Markets for Financial Instruments Directive (MIFID), the Consumer Credit Directive, and the Payments Directive. Regarding the protection of investors at European level, the most important ones to mention is the revised Markets in Financial Instruments Directive (MiFID), proposed in October 2011: a revised directive - MiFID II and a new regulation – MiFIR (the Markets in Financial Instruments Regulation).

The new rules contained in MiFID II offer increased protection to consumer which act as investors by imposing requirements for financial institutions and strengthening the rules of professional conduct.

Over the past decades, household debt in Europe increased tremendously: between 1997 and 2017, it increased from 39.3% to 50% of nominal GDP.²¹ Main components were mortgage credit and consumer credit. In 2017, the outstanding amount of consumer credit in EU28 was around EUR 1,800 billion, according to EBA Consumer Trends Report 2018/2019.

¹⁹ <https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:52012DC0225&from=EN>.

²⁰ https://ec.europa.eu/info/strategy/priorities-2019-2024/economyworks-people/jobs-growth-and-investment/european-pillar-social-rights/european-pillar-social-rights20-principles_en.

²¹ <https://www.ceicdata.com/en/indicator/european-union/household-debt--of-nominal-gdp>.

Figure 4: Consumer credit, 2013-2017 (billion EUR, outstanding amounts)



Source: ECB.

Note: 28 EU MSs.

Regarding consumer credit, the same report found that “the main issues arise from the cost of short-term credit, the misuse of consumer credit, poor creditworthiness assessment and insufficient contractual and precontractual information.”¹²²

A Commission study²³ estimated that, in 2016, the total financial damage for EU consumers in the market for loans, credit and credit cards was EUR 12.84 billion.

Study on measuring consumer detriment in the European Union

Table 82: Monetisation of time loss and sum of total financial detriment and monetised time loss, EU28

Market	Total time loss (in millions of hours)		Total monetised time loss (in millions of Euro)		Total post-redress financial detriment (in millions of Euro)		Sum of post-redress financial detriment and monetised time loss (in millions of Euro)	
	FTF	Online	FTF	Online	FTF	Online	FTF	Online
Mobile telephone services	244.30	631.05	3,274.41	8,458.07	1,980.53	6,821.83	3,254.94	15,279.90
Clothing, footwear and bags	101.74	286.38	1,363.64	3,838.39	741.74	2,208.09	2,105.38	6,046.48
Train services	42.17	126.73	565.25	1,698.56	811.29	1,895.59	1,376.54	3,594.15
Large household appliances	116.44	272.16	1,560.59	3,647.73	2,822.38	7,162.85	4,382.97	10,810.58
Electricity services	161.84	254.61	2,169.13	3,412.53	1,927.91	6,368.00	4,097.03	9,780.52
Loans, credit and credit cards	131.90	300.22	1,767.83	4,023.84	1,288.81	8,819.29	3,056.64	12,843.13

Source: Face-to-face and online consumer survey, Eurostat (data series demo_pjan, prc_ppp_ind and earn_ses_hourly), and European Commission Market Monitoring Survey 2015.

Among the major drivers of irresponsible lending that may cause consumer detriment are inappropriate product design, misaligned sales incentives, even conflict of interest on credit or financial advice, unsolicited credit offers, risks related to online distribution of credit, inadequate creditworthiness assessment by creditors, product cross-selling, financial products bundle, lack of a harmonised EU personal bankruptcy scheme and lack of effective

supervision and enforcement by competent authorities.²⁴

In the context of the existence of a high degree of indebtedness of the European population even after a decade of the previous recession, the European Commission considers amending the Consumer Credit Directive 2008/48.

²² [https://www.eba.europa.eu/sites/default/documents/files/documents/10180/2551996/75e73a19-d313-44c9-8430-fc6eca025e8b/Consumer %20Trends%20Report%202018-19.pdf](https://www.eba.europa.eu/sites/default/documents/files/documents/10180/2551996/75e73a19-d313-44c9-8430-fc6eca025e8b/Consumer%20Trends%20Report%202018-19.pdf).

²³ <https://op.europa.eu/en/publication-detail/-/publication/b0f83749-61f8-11e7-9dbe-01aa75ed71a1/language-en>.

²⁴ <https://www.thepriceofbadadvice.eu/static-map/>

6. Romanian post crisis development of consumer protection

The economic crisis has led consumers to look more closely at credit agreements and to become more aware of their rights, thus discovering the benefits of the existence of EU legislation and the regulation of retail financial services. Many of them discovered not only that they were misled by the banks, by incorrect practices and terms, even from the pre-contractual stages. Credit institutions hide some fees or commissions or by splitting the real percentage of the loan interest so they can advertise offers with a very low interest, while in contracts was provided clauses which introduced the duty for the consumer to pay a certain percentage sum of money to the ballance as a commission under different terms (credit management fee or risk commission). The legal battle started and thousands of them referred their credit contracts to the National Consumer Protection Authority establishing a dark history of the relationship between consumer and banks and creating a litigation culture²⁵. The examination in Romanian courts of the applicable legislation of consumer protection though rised issues related to the transposition in national law and interpretation of the directives on consumer protection, which in several cases was asked to the European Court of Justice²⁶. In Romania, the major obstacle to the development of an adequate legal framework for protection of consumer of financial services was generated by the great inertia of the authorities regarding the adoption of modern instruments of safeguarding and prevention in the financial field. The Consumer Credit Directive (CCD) was agreed by the Council and Parliament and published in the Official Journal in May 2008. The CCD was designed to harmonise the regulation of consumer credit across Europe and to increase consumer protection. Member States were asked to transpose the Directive into national law before 12 June 2010. In 2010, the EU Directive 2008/48/EC on credit agreements for consumers was transposed in Romania by Government Emergency Ordinance no. 50/2010 on credit agreements for consumers after months of debates, fortunately with an application to a wider array of contracts - including mortgage credit, which has been shown to be a source of relief for the debtors affected by the recession beginning to be felt in Europe. This ordinance is the main regulation on consumer credit protection and implemented EU requirements on the obligations of creditors. Even this Directive was aimed at unsecured lending such as credit for the purchase of consumer goods or leasing contracts, the Romanian Parliament adopted the law with a higher level of protection than in the Directive, providing stronger information obligations, a prohibition post-contractual changes and extended them to mortgage loans. Government Emergency Ordinance no 50/2010 was

amended by Law no. 288/2010, published in the Official Gazette of Romania no. 888 of 30.12.2010.

The provisions of Directive 2014/17/EU on credit agreements for consumers relating to residential immovable property were implemented into national law through Government Emergency Ordinance no. 52/2016 on credit agreements offered to consumers for immovable property and for amending and supplementing the Government Emergency Ordinance no. 50/2010 on credit agreements for consumers („GEO 52/2016”) and it was after passed the transposition term of 21 March 2016 established by the Directive. The new legislation entered into force on 30 September 2016.

In Romania, Regulation No. 32/2006 regarding financial investment services transposed MiFID I Directive, Directive implementing Market abuse Directive, Distance marketing of consumer financial services Directive. Regulation No. 15/2004 regarding the authorisation and functioning of investment management firms, collective investment undertaking and depositories, as amended and supplemented, transposed UCITS Directive.

MiFID II has been transposed into Romanian legislation by Law No. 126/2018 on markets of financial instruments, and by several regulations issued by the FSA and the NBR.

Romania was one of just a few European countries without a personal bankruptcy regulation in place. Law no. 151/2015 on insolvency of natural persons was adopted by the Romanian Parliament in June 2015 after numberless postponement entered into force on 1 January 2018. After the 2008 financial crisis, the stable core of the consumer protection sector in Romania is represented by solid regulations mainly due to transposition of the EU directives into internal legislation. Several central government institutions with continuity in the field, together with some NGOs that have proven a sustained and consistent activity in the field of financial services carried out programs and actions of financial education and popularization of consumer rights. As regards financial education, in the first stages the initiatives came mostly from the civil society and private sector, but sometimes their actions were with a strong commercial character, promoting credit cards or investment plans, for instance. Among the public institutions the programs developed by the National Bank of Romania and the financial supervisory authorities of the non-banking sectors stood out. Especially with regard to public information, efforts towards the transparency of financial institutions and dully informing consumers have often been regarded as a burden or a mere obligation to align with European standards without fully understanding the usefulness of these measures for society in the long term. Thus, the divergent views of the leaders of financial institutions and national competent authorities

²⁵ <https://www.digi24.ro/stiri/economie/capcanele-creditor-bancare-eliminarea-clauzelor-abuzive-destul-de-greu-de-pus-in-practica-124366>.

²⁶ https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2261915.

on the usefulness of financial information, retail market data or regarding competition and sanctions for the breach of legislation on consumer protection has often created lack of trust on behalf of consumers and users of financial services.

7. Conclusions

The financial crisis of 2007 began with a failure to protect consumers of financial services, especially those with mortgage debts. A growing number of member states, like Austria, Belgium, Czech Republic, France, Hungary, Ireland, Lithuania, the Netherlands, Portugal, Romania, Spain and Slovakia have already developed national strategies in order to clarify the roles, competences, mode and level of involvement of each player, in order to identify and prioritize the needs of different social groups and in order to rationalize the available resources. Despite of measures taken both locally and at the highest international level, since 2007 there has been limited progress in most Member States in Europe in ensuring a sufficient level of financial capacity and education and an adequate response to the problem of financial illiteracy in Europe that prevents people from understanding basic financial services and products and making informed and knowledgeable decisions. This somewhat limited progress and effect of the programs so far in the field is widely accepted at international level and officially recognized by the Report of the Directorate-General for Internal Market and Services of the European Commission of March 2011, Review of the Initiatives of the European Commission in the Area of Financial Education. Numerous international surveys have demonstrated consumers' generally low level of understanding of financial matters and of basic economics and shows that even under conditions of full disclosure, many consumers of financial services are unable to make adequate and reasonable decisions. Therefore, these explains somewhat the limited progress and effectivity

of the financial education programs so far in this field. Among the first conclusions of the 2007-2008 crisis, the European Commission said²⁷ that economic and financial education should be complementary to legal and regulatory measures aimed at providing consumers with relevant information and adequate protection.

Another conclusion of the previous recession is that a well-functioning consumer credit market is beneficial to households, not just producers and sellers of goods and services, and stimulates economic growth. But if credit is misused and the debt burden becomes unbearable, it harms not only debtors but also creditors, endangering economic stability. Consumer confidence in a well-functioning financial market creates the premise of financial stability and is a trigger for continuous development and improvement of the efficiency and innovation characteristics for the entire financial system.

Without supervising and effectively enforcing regulations, consumer protection of financial services risks being superfluous. It is essential to ensure that national and EU public authorities in the field are well equipped with clear competences, the ability to monitor, investigate and sanction in order to effectively supervise the business behavior of financial service providers and tackle consumer protection issues.

Consumer protection is generally considered to be a regulatory response to a market failure. (Eisner, Allen, Worsham & Ringquist, 2006). In the context of the new Covid-19 crisis the review of EU consumer protection legislative framework and the transposition into the respective national member states law may address early a foreseeable financial failure of the European households by providing alleviating measures to repair or restructure the economic situation of the concerned persons, and allow them to return to a financially sustainable or socially acceptable situation. Therefore, regulators need to timely understand the consumer perspective in order to establish effective regulation and supervision regimes.

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²⁷ <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:52007DC0808>.