



**Janina Harasim**

ORCID ID: 0000-0001-5244-2319

Department of Banking  
and Financial Markets  
Faculty of Finance and Insurance  
University of Economics in Katowice,  
Poland  
jharasim@ue.katowice.pl

**Monika Klimontowicz**

ORCID ID: 0000-0001-9215-1938

Department of Banking  
and Financial Markets  
Faculty of Finance and Insurance  
University of Economics in Katowice,  
Poland  
mklimontowicz@ue.katowice.pl

**Regulations as a tool to increase consumer protection  
on the European retail payment market**

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**Abstract**

**Aim/purpose** – The purpose of the paper is to identify the main areas of customers' threats concerning using financial services and the in-depth review of European industry-specific consumer regulations concerning current accounts and payments.

**Design/methodology/approach** – Desk research including in-depth analysis of industry-specific consumer regulations referring to current accounts and payment services having the character of EU directives and regulations, European Commission reports, and documents.

**Findings** – The paper shows that consumers' interests are threatened even when they use basic financial services as current account and combined payment instruments. The analysis based on of desk resources has revealed that the regulations give effect to customer protection only if they strictly correspond to defined areas of threats and particular types of risks.

**Research implications/limitations** – The experience of the recent financial crisis proved that the asymmetry of knowledge and information was one of the crucial reasons disrupting customers' position on financial markets. Research findings will help to identify gaps in regulations and develop the quality of further initiatives aimed on informing customers about the implementation of regulations and improving their financial literacy level.

**Originality/value/contribution** – The payment products are rarely discussed in the literature in the context of consumers' protection and financial regulations. This paper

contributes to the debate by providing an overview of financial consumer protection issues concerning retail payments.

**Keywords:** customer protection, customer risk, financial markets, retail payment market.

**JEL Classification:** D18, G21, G28, O16.

## 1. Introduction

Despite a rising awareness of customers' rights and numerous activities focused on customers' protection, there are many indicators that on financial markets their interests are still threatened (Directorate General for Internal Policies [DGIP], 2014). Astonishingly, it concerns not only complicated financial services but also those basic ones as current account and payment services (Centre for Strategy & Evaluation Services [CSES], 2010; European Commission, 2011b; European Parliament, 2011; London Economics, 2011b). The paper shows that on the retail payment market one of the most efficient forms of consumer protection is a regulatory framework.

The aim of the paper is to identify key areas of consumer interests' threats related to current accounts and payment services and find how they have been (could be) reduced by regulations.

The primary focus of the analysis was on industry-specific consumer regulations referring to current accounts and payment services having the character of EU directives and regulations. Desk research has also based on other European Commission analysis and documents.

Imperfectness of competition, asymmetry of information, the occurrence of transaction costs and inequality of consumer agreements parties (Benston, 2000; Llewellyn, 1999) as well as weaknesses of taking decisions by consumers alone (Hirshleifer, 2008; Oxera, 2013) constitute the theoretical basis of the contemporary consumer policy. Views on the consumers' role in the market economy seem to be split. On the one hand, they are seen as a sovereign whose needs and expectations must be fulfilled by producers and distributors. On the other hand, there are many proves that they are very weak as financial market players and are not able to use their sovereign position to protect their interests and rights. As a result, those interests and rights require regulatory protection.

There are endogenous and exogenous reasons for granting them such protection. Among the first, the most important is the low level of their financial knowledge and capability. There are four areas to assess consumers' financial capability: making ends meet, planning, choosing and managing financial products, financial literacy and self-assessed skills (Lusardi, 2010). The lack of those

capabilities often results from financial illiteracy what is the reason of financial exclusion (Lusardi & Mitchell, 2006; Lusardi & Mitchell, 2011). The exogenous reasons cannot be managed by consumers. They include following kinds of factors: economic (as a complexity of financial product, the limited access to information, the lack of transparency), legal (as abusive clauses, unfair commercial practices, a hermetic legal language), psychological (as misleading advertisements, influencing consumers' subconscious mind, a pressure to purchase) and social (as financial exclusion) (Goodhart, 1998, pp. 7-8; Llewellyn, 1999; Nelson, 1970).

In general, three main ways for consumer protection are listed (Campbell, Jackson, Madrian, & Tufano, 2011; Vickers, 2003):

- business self-regulation and discipline – the voluntary adoption of higher ethical standards and proper behaviour (for example, the code of conduct imposed by the manufacturers and others engaged in supplying and distributing goods and services),
- institutional protection containing governmental agendas (in developed countries) and voluntary organisation of consumers such as NGO's or others organisations aiming to safeguard the interests of consumers,
- government regulations – the state can ensure consumer protection through legislative, executive and judicial actions.

As the level of financial knowledge and capabilities (financial literacy) is the condition for rational use of financial products and services, the financial education is sometimes treated as a kind of consumer protection instrument (Hastings, Madrian, & Skimmyhorn, 2012; Winston, 2003).

The regulatory framework is the foundation for a broad and complex consumer protection (Goodhart, 1998). It needs to be implemented because of the weaker position of consumers in economic relations with professional entities. In the financial service industry, the consumer protection framework is evolving along with increasing complexity of products, and a greater number of people using financial services. Most countries have witnessed an unprecedented expansion of the financial services industry in the decade preceding the crisis. Hundreds of millions of people opened bank accounts, started transferring payments electronically and took out consumer loans. In most cases, the development of the retail financial services industry preceded the development of consumer protection law. The recent crisis highlighted shortcomings in the existing consumer protection frameworks in high-income countries and prompted some broad-ranging reforms (DGIP, 2014; Jensen & Legind, 2010; OECD, 2009).

The first section of the paper is literature review. Its result was the foundation for finding the research gap. As the payment products are rarely discussed

in the literature in the context of consumers' protection and financial regulations, the paper contributes to the debate by providing an overview of financial consumer protection issues concerning retail payments.

The next section include analysis of regulations as an instrument of EU consumer policy, and their role in the process of minimising threats to consumer interests in the basic financial services market through regulatory efforts.

The last section concludes the impact of regulation on consumer protection on the European payment market and points out the unsolved problems, and the current and still existing threats.

## **2. Literature review**

The recent financial crisis has arisen the particular interest in financial consumer protection. The belief in the perfectness of competition and market players' potential to self-regulation collapsed when the results of weaknesses of taking decisions by consumers, asymmetry of information, the occurrence of transaction costs and inequality of consumer contracts parties have appeared.

The contemporary academic literature focuses on different aspects of customers' behaviour and position on the financial market.

The first attitude pays attention to the process of making financial decisions and choices. The results of the contemporary research have undermined M. Friedman's (1953) suggestion that consumers learn to behave optimally through trial and error. Some customers' biases and cognitive limitations make their behaviour irrational. As a result, they make avoidable financial mistakes with non-trivial financial consequences (Agarwal, Chomsisengphet, Liu, & Souleles, 2006; Agarwal, Driscoll, Gabaix, & Laibson, 2009; Bar-Gil & Warren, 2008; Benartzi & Thaler, 2002; Bertrand, Mullainathan, & Shafir, 2004; Campbell, 2006). Choosing financial products they quite often take into account their current needs without forecasting the future results of their decisions. Such an internality can lead to a reduction of future welfare (Herrnstein, Loewenstein, Prelec, & Vaughan, 1993; Laibson, 1997; Strotz, 1955).

The second aspect focus on information disclosure and its importance in the process of making financial decisions and for financial safety. Making sensible financial decisions requires considerable information on terms and conditions, not just prices. In many cases, consumers cannot efficiently generate information on their own and use the information delivered by financial services provider what creates an additional rationale for mandates that firms produce and disseminate particular type of information (Campbell et al., 2011). There is no univer-

sally accepted set of disclosure requirements concerning which terms and conditions are to be disclosed and when, how information should be presented. Some research proves that information overload reduces the usefulness of disclosure (Ebers, 2004). Most authors put the attention on the necessity to use plain language of information and avoid complex formulas and calculations (Brix & McKee, 2010; Collins, Morduch, Rutherford, & Ruthven, 2009; Ebers, 2004; Peterson, 2003; Porteous & Helms, 2005; Wilson, Howell, & Sheehan, 2009).

The disclosure of information is worth nothing without the capability to analyse that information. Thus, the next aspect of customer protection discussed in the academic literature is the role of financial literacy. Many authors state that it is one of the most important reasons for making irrational financial decisions and prove that its level is low, especially among low-income consumers, women, elderly, and minorities (Campbell, 2006; Lusardi & Mitchell, 2006; 2007; Lusardi, Mitchell, & Curto, 2010; Lusardi & Tufano, 2009; Miller, Godfrey, Levesque, & Stark, 2009; Wilson et al., 2009). The lack of knowledge may also lead consumers to avoid the use of certain financial products altogether (Christelis, Jappelli, & Padula, 2010; Cole & Shastry, 2009; Guiso, Sapienza, & Zingales, 2008).

The research findings highlight the importance of financial literacy and disclosure requirements in mitigating information asymmetries in the market for financial products and services. The key challenge for the applied research going forward is to identify effective forms for regulations. Most of the authors suggest developing financial market regulations based on behavioural models in which the underlying reasons for certain decisions by the households are investigated, rather than modelling the way in which rational households should make their decisions. Their recommendations focus on different financial products and markets.

As the recent financial crisis started in the mortgage market, many authors have analysed processes mentioned above focusing on mortgages and exploring the research for other credit product (Barr, Mullainathan, & Shafir, 2008; Brix & McKee, 2010; Elliehausen, 2010; Lusardi & Tufano, 2009; Wilson et al., 2009). The next analysed field is an investment process. The payment products are rarely discussed in the literature in the context of consumers' protection and financial regulations.

This paper contributes to the debate by providing an overview of financial consumer protection issues concerning retail payments.

### **3. Research methodology**

The paper adopts realistic approach using qualitative and quantitative dataset. It is theoretical study based on desk research including in-depth analysis of industry-specific consumer regulations referring to current accounts and payment services having the character of EU directives and regulations, European Commission reports, and documents. The research combines both deductive and inductive methods.

### **4. Research findings and discussion**

#### **4.1. EU legislation as a tool for customer protection on retail payment market**

##### **4.1.1. Regulations as an instrument of EU consumer policy**

According to the fundamental assumption of neoclassical economic theory, if there is a perfect competition on the market, the external intervention concerning its functioning is unjustified. Following this paradigm, at the beginning of European integration, the need for consumer protection could not be seen. The European economic integration were based on the idea of single market which seeks to guarantee the free movement of goods, capital, services and labour as well as an abolition of national protectionism. The integral European economy without any borders was the crucial idea and purpose. The increased price and quantity competition altogether with the development of cross-border transactions were supposed to improve consumers' economic prosperity (Weatherill, 2013).

The need to protect customers on single European market appeared in the middle of seventies last century. Then, for the first time, it was realised that, especially compared with consolidated producers and distributors, consumers have no knowledge and protection enabling them to face up the market challenges (Council of the European Communities, 1975). However, this issue was raised to the rank of a primary European Union purpose in the Treaty on the European Union in 1992. The range of Community policies was extended with the title XI 'Customer protection' (currently the title XIV) combining article 129a (now article 153). This meant isolating consumer policy aimed at ensuring a uniform minimum level of consumer protection in all Member States. It is the primary tool that the state has to empower consumers as the weakest market participant and to protect their interests, which may be compromised in dealing with professional producers and distributors of goods and services. Consumer

policy of European Community is complementary to actions taken by the Member States in this regard. It can address problems that individuals cannot tackle. It ensures that goods and services are safe and that markets are fair and transparent so that consumers can exercise informed choice and rogue traders are excluded. Consumer policy can equip consumers to make rational decisions and take on the responsibility to promote their interests (Commission of the European Communities, 2007). Its essence boils down to ensuring a high level of protection of their health, safety and economic interests, as well as the promotion of their right to information, education and representation. Consumer policy is also a key to improving the functioning of the single European market and removing obstacles to the cross-border transactions. As retail markets remain predominantly fragmented along national lines opening up cross-border retail markets is the key to unlocking the potential of the single retail market.

The programme of EU action in the field of consumer policy consists, in particular, of the European Consumer Agenda and the Consumer Programme 2014-2020. The strategic vision for EU consumer policy was formulated in the European Consumer Agenda adopted in 2012 by the European Commission. It identifies the key measures needed now to maximise consumer participation and trust in the market. In general, EU aims to empower European consumers through choice, information and awareness of consumer rights and means of redress. It sets out measures to put customers at the heart of all EU policies as instruments to achieve the Europe 2020 goals.

Four key objectives of consumer policy to reach to 2020 are (European Commission, 2012, pp. 7-14):

- improving consumer safety (improving the regulatory framework on product and service safety and enhancing the market surveillance framework and reinforcing safety in the food chain);
- enhancing knowledge of consumer rights (improving information and raising awareness of consumer rights and interests among both consumers and traders and building knowledge and capacity for more effective consumer participation in the market);
- strengthening the enforcement of consumer rules (improving implementation, stepping up enforcement and securing redress) focusing on the key sectors<sup>1</sup>;
- aligning rights and key policies to economic and societal change (adapting consumer law to the digital age and promoting sustainable growth and supporting consumer interests in key sectors).

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<sup>1</sup> These key sectors are: digital, financial services, food, energy, travel and transport and sustainable products. In the financial services sector, the EU aims to increase transparency and access to retail financial services and facilitate switching of bank accounts.

The tools for implementing consumer policy in the EU are the following: legislation creating a legal framework for the protection of consumer interests, building of organisational and institutional infrastructure for consumer protection and information and consumer education aimed at increasing knowledge and raising consumer awareness.

Government intervention and regulation in the area of consumer protection are justified by inherent information asymmetries and power imbalances in markets, with producers or service providers having more information about the product or service than the consumers. A consumer protection framework includes the introduction of higher transparency and awareness of the goods and services, promotion of competition in the marketplace, prevention of fraud, education of customers, and elimination of unfair practices (Ardic, Heimann, & Mylenko, 2011).

Creating a single European consumer law system require two-fold activities. Firstly, harmonised national legislation already regulating individual areas and problems of consumer protection is harmonised. Secondly, the EU authorities create rules and regulations that are then adapted to the legal systems of the EU countries. Such a mechanism of harmonisation combines two tendencies. On the one hand, national governments are left to autonomy in shaping their legislative systems and adapting European Union directives. On the other hand, integration efforts are being undertaken which ultimately lead to increased prosperity for the Eurozone.

The specificity of EU consumer law is the lack of effective solutions directly deriving from the primary law (the Treaties), which implies that the implementation of EU consumer policy is primarily based on secondary law. Within the scope of secondary consumer law, directives, regulations, decisions, recommendations and opinions are essential. Procedures for the preparation, adoption and transmission of directives and regulations for implementation and application by a Member State of the European Union are complicated, but, at the same time, ensure a high degree of realism. Legal acts are consulted with all market players.

The retail financial services market, where the weakness of the consumer as a party to the transaction is particularly evident (mainly due to the lack of transparency of products and the market), is increasingly regulated in the form of directives (less frequently regulations). The regulations can be divided into prudential and non-prudential ones. Prudential regulation is a fundamental consumer protection mechanism, which operates as a preventative measure to promote sustainable financial institutions that can deliver on their financial promises. The framework for non-prudential regulation of financial services consists of two tiers:

- generic consumer regulation contained in directives protecting consumer rights, which covers all products and services, including financial,

- industry-specific consumer regulation, which includes directives relating to particular kinds of financial services (Table 1).

**Table 1.** Consumer protection framework concerning financial services in EU

Generic consumer regulation	Industry-specific consumer regulation	
	Subject	Regulations
Council Directive 93/13/EEC on unfair terms in consumer contracts	Accounts	Directive 2014/92/EU on the comparability of fees related to payment accounts, payment account switching and access to payment accounts with basic features (PAD)
Directive 2000/31/EC on certain legal aspects of information society services, in particular, electronic commerce, in the Internal Market (Directive on electronic commerce)	Payment services Cross-border payments E-money Interchange fee	Directive 2007/64/EC on payment services in the internal market (PSD) Directive 2015/2366/EU on payment services in the internal market (PSD II) Regulation (EC) No 924/2009 on cross-border payments Directive 2009/110/EC on the taking up, pursuit and prudential supervision of the business of electronic money institutions (EMD II) Regulation (EU) 2015/751 of the European Parliament and of the Council of 29 April 2015 on interchange fees for card-based payment transactions (MIF Reg.)
Directive 2002/65/EC concerning the distance marketing of consumer financial services	Loan services	Directive 2008/48/EC on credit agreements for consumers (Consumer Credit Directive) Directive 2014/17/EU on credit agreements for consumers relating to residential immovable property
Directive 2005/29/EC concerning unfair business-to-consumer commercial practices in the internal market	Saving services	Directive 2014/49/EU on deposit guarantee schemes
Directive 2006/114/EC concerning misleading and comparative advertising	Investment services	Directive 2004/39/EC on markets in financial instruments (MiFID I) Directive 2014/65/EU on markets in financial instrument (MiFID II) Regulation (EU) 2014/600 on markets in financial instruments (MiFID) Directive 2009/65/EC on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS)
Directive 2011/83/EC on Consumer Rights		
Regulation (EU) 2016/679 on the protection of natural persons with regard to the processing of personal data and the free movement of such data, and repealing Directive 95/46/EC (GDPR)		

In the paper, we will analyse the impact of the second group of regulations containing directives and regulations referring to essential retail financial services such as current account and payment services.

#### 4.1.2. Minimising threats to consumer interests in the basic financial services market through regulatory efforts

Despite the fact that the current account with related payment services is one of the simplest retail financial services, consumers may be exposed to numerous threats that make it difficult or even impossible to access and reaping the benefits of using it. On the basis of analysis conducted for several years in the European Union, five areas of these threats can be identified (European Commission, 2006, 2007, 2009, 2015, pp. 19-21). They include access to the account, using the account, consumer mobility, cybersecurity and data protection, insufficient market competition.

Table 2 presents the most significant European regulations concerning current accounts and payment services that are of particular importance for developing customer interest protection in this area and their relation to the fields of consumer interest threats mentioned above.

**Table 2.** Consumer interest threats on basic financial services market and regulations referring to them

The field	The basic consumer interest threats	The most important regulations
Access to the account	<ul style="list-style-type: none"> <li>– a refusal to open the account because of a low level of incomes, residence,</li> <li>– difficulties in comparing offers and prices concerning accounts and related payment services of different banks and other financial institutions,</li> <li>– a low level of financial knowledge and capabilities,</li> <li>– the lack of consumer awareness and distrust of banks and other financial institutions</li> </ul>	Payment Account Directive (PAD)
Using the account	<ul style="list-style-type: none"> <li>– a refusal to open the account because of a low level of incomes, residence,</li> <li>– difficulties in comparing offers and prices concerning accounts and related payment services of different banks and other financial institutions,</li> <li>– a low level of financial knowledge and capabilities,</li> <li>– the lack of consumer awareness and distrust of banks and other financial institutions</li> </ul>	Payment Account Directive (PAD) Payment Services Directives (PSD and PSD II) MIF Regulation
Consumer mobility	<ul style="list-style-type: none"> <li>– account switching (a change of service provider),</li> <li>– cross-border opening an account with or without physical presence of a customer,</li> <li>– using cross-border payment services</li> </ul>	Payment Account Directive (PAD)
Cyber security and data protection	<ul style="list-style-type: none"> <li>– improper consumer identification mechanisms,</li> <li>– frauds and possible payment related abuses and incidents,</li> <li>– a ‘leak’ of personal data, using them for purposes other than payment</li> </ul>	PSD II GDPR regulation
Insufficient market competition	<ul style="list-style-type: none"> <li>– a high level of banking market concentration,</li> <li>– limitations concerning managing accounts and related payment services by non-bank entities</li> </ul>	Electronic Money Directives (EMD and EMD II) PSD and PSD II

The analysis of the contents of Table 2 leads to the conclusion that many of the basic payment service regulations refer to more than one area of consumer interest threats, which reflects their complex nature. PAD, PSD and PSD2 directives can be considered as key regulations for the direct protection of consumers' interests.

Directive 2014/92/EU of 23 July 2014 on the comparability of fees related to payment accounts, payment account switching and access to payment accounts with basic features (PAD), refers to three areas of consumer interest risks listed in Table 2:

- The access to the account – the consumer, must be able to open a basic payment account in any Member State. Using such an account, any EU citizen, regardless of his financial situation, will be able to make basic operations, such as receiving a salary, pension or social benefit or paying utilities' bills. Such a solution will reduce the risks associated with refusing to set up an account for people with low or irregular income and those who live, work or study outside their country of origin.
- Payment account switching – the establishment of a simple and fast procedure for consumers wishing to change the entity that manages the payment account. Directive regulations reduce the threat concerning consumer mobility and, concurrently, encourage market competition.
- The comparability of payment fees, which is aimed at facilitating consumers' comparison of European banks and nonbanks' charges. The obligations imposed on the Member States in this area increase consumer access to information and enhance the transparency of payment service prices.

Access to a basic payment account should not be dependent on the purchase of other additional products and should be free of charge or subject to low charges (even if the holder does not comply with the terms of the contract). The amount of charges to the consumer should be calculated according to the: national income levels and consumer prices, average charges associated with payment accounts in the member state concerned, total costs relating to the provision of the basic payment account (European Commission, 2011a). To mitigate the risk of poor access to information about the conditions of managing payment accounts, the PAD obliged the Member States to set up at least one comparison website (meeting agreed quality criteria) at a national level, which enables to compare various financial institutions' offers. The comparison engine should provide and analyse information about the range of services offered with the account and all charges (European Commission, 2015, pp. 19-21). By increasing the transparency and comparability of fees and simplifying the account switching procedure, consumers can expect better proposals and lower costs. At the

same time, payment service providers and the whole financial services industry will benefit from increased customer mobility and lower entry barriers to both domestic and foreign markets.

Directives that most comprehensively relate to payment services treated as basic services combined with the current account are the PSD and PSD II. The implementation of the PSD Directive was a breakthrough in the protection of consumer interests in this market segment. Until its publication, the providing payment services in the European Union was mainly based on national legislation. The variety of these regulations, payment infrastructure and individual payment instruments schemes functioning in the EU Member States has hindered not only the use of cross-border services, but also has led to very different standards for the execution of similar payment orders. The payment execution time was not determined, the consumers had inadequate access to information on payment processing rules, and they had no impact on their costs, which in the case of cross-border transactions were very high.

The regulations included in the PSD Directive primarily minimise the risks associated with the use of the current account and the related payment services. It adopts the concept of moving away from the regulation of individual payment instruments to systematising all payment services provided and unifying the requirements for the execution of payment transactions using all payment instruments.<sup>2</sup> It is worth pointing out that the protection of consumer interests is also supported by the principles developed by the Single Euro Payments Area (SEPA), which standardises basic payment instruments<sup>3</sup> and automates the cross-border payments processing to increase its efficiency and reduce costs to the level of the domestic payments.<sup>4</sup> Among others, the PSD created the SEPA legal framework and unified the rules for providing payment services.

From the consumer perspective, the rules for transferring the full payment amount, the maximum transaction time and the irrevocability of payment orders are of the fundamental importance.

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<sup>2</sup> The Directive only provides a relaxation of the requirements for micropayment instruments meaning payment transaction that do not exceed 30 EUR or that either have a spending limit of 150 EUR or store funds that do not exceed 150 EUR at any time.

<sup>3</sup> SEPA has primarily developed standards for basic traditional payment instruments, such as SEPA Credit Transfer, SEPA Direct Debit and SEPA Card Framework, although online (e-SEPA) and mobile (SEPA Mobile) payments were also later included in this concept (E-SEPA) and mobile (SEPA Mobile) (Harasim, 2013).

<sup>4</sup> The SEPA is a kind of self-regulation, but it was introduced as a reaction to the adoption of Regulation (EC) No 2560/2001 of the European Parliament and the Council of 19 December 2001 on cross-border payments in euro to harmonise comparable national and cross-border payments.

In accordance with the principle of transferring the total amount of payment, fees charged for the payment execution cannot be charged to the total amount of payment, unless the parties agree otherwise. In this case, the fees may be charged, but they must be presented separately. The PSD directive also defined the maximum transaction execution time. Until January 1, 2012, the payee's account must have been credited with a payment transaction no later than three business days after receiving the payment order from the payer's payment service provider (D+3). Since then the execution time for payment is the next business day (D+1). The primary purpose of setting maximum settlement dates is to avoid holding funds by payment services providers longer than necessary. The Directive also assumes that, as a rule, the execution of a payment transaction cannot be revoked since the account of payment services provider has been debited, unless agreed between the payment service user and his payment service provider.

Minimising the risks of the consumer interest is also supported by clarifying the responsibilities of payment service providers (e.g., providing users the permanent access to the payment instrument, the possibility of reporting loss or mislaid, comprehensive information obligations<sup>5</sup>) and payments users (e.g., using a payment instrument due to its purpose, immediate reporting its loss) as well as their responsibilities connected with payment transactions. Payment service providers are entirely responsible for in case of failure to provide or improper execution of a payment transaction. The users remain responsible for unauthorised use of the payment instrument up to EUR 150.

The further development of customer trust to use electronic payments, especially remote ones (e-commerce and m-commerce) is to be the result of the PSD II. The novelty of the PSD II was necessary because of rapid technological development in the field of e-payments and m-payments and a rise of payment innovations. Despite managing the account and related payment services, the PSD II reflects mainly the threat concerning of cyber-attacks and personal data protection. In this field, the directive implements the obligation for providers to require strong authentication, especially for increasing the level of remote transactions safety and supporting the development of innovative payment instruments. The implementation of strong authentication requirement is challenging

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<sup>5</sup> Among them, the most important are: informing the consumer about fundamental conditions of providing payments orders including the scope of data forwarded by payer, the maximum time of executing the transaction, all fees, the exchange rate that is to be used for a particular transaction (in the case of cross-border transactions). Payment service providers are obliged to share such information for free, on paper or another durable medium. Information must be easy to understand, in clear and readable form, in the Member State language where the payment service is offered or in any other language agreed by the parties.

because it requires balancing two competing interests: securing the high safety of remote payments and supporting the development of payment innovations. They will be mainly provided by a new type of payment service providers called Third Party Providers (TPPs).

The Directive also includes regulations aiming to secure better consumer (payer) protection in case of frauds, malpractices and other problems connected with payments (e.g., immediate refund of the unauthorised transaction or the limitation of his responsibility for losses resulting from unauthorised transactions from 150 to 50 EUR). Additionally, consumers will be granted more rights in the case of payments and money remittances for payment receivers outside the Europe (so-called ‘one leg principle’) or denominated in non-euro currencies.

The PSD and the PSD II as well as previous the EMD and the EMD II, also reflect the consumer threat resulting from an insufficient level of the competition in retail payment market. The directives broaden the catalogue of payment service providers. The EMD directives added electronic money institutions to the catalogue while the PSD enabled payment institutions to provide such a services. Furthermore, the PSD II directive allowed entering the payment market by Third Party Providers. For all of them, the requirements concerning the scope of their activity and capital requirements, that must be fulfilled to get the license, were defined. Once it is obtained, they can operate throughout the whole European Union. It is worth noting that thanks to the changes introduced by the PSD II directive, in particular, the decoupling payments for a bank account, it will be possible to create a new competitive payment model. The TPPs will be able to make payments using the banks’ infrastructure and information that banks will be obliged to make available to them.

The rest of regulations presented in Table 2 do not have complex character and reflect particular fields and threats on consumer interest. For example, the MIF Reg. (altogether with the PSD II) influences the transparency of payment services’ prices. They harmonise the level of interchange fees<sup>6</sup> and are intended to prevent the use of unfair practices as collecting surcharge from consumers using debit and credit cards. In the case of cards that are not subject to these restrictions (mainly business cards and cards issued by three-party schemes as American Express or Diners), retailers will be able to charge additional fees (as surcharge) or refuse to accept those payments. In this way, the costs associated with these cards can be transferred directly to the people who use them instead of to all consumers.

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<sup>6</sup> The maximum interchange fee for a single payment transaction was set at 0.2% of transaction value for debit cards and 0.3% for credit cards. Member States may accept other rates but not higher than those indicated in the Regulation.

The regulation that indirectly protects the interests of the consumer using the current account and payment services is the GDPR. It complements the customer data protection obligations imposed on financial institutions in so-called ‘subjective’ directives (e.g., concerning credit institutions) or ‘objective’ directives (such as the PSD and the EMD). The Regulation raises the level of protection of consumer rights by strengthening existing and creating entirely new powers granted to the parties whose data are collected and processed. Among them are:

- transparency – the obligation to provide consumers information required so far as administrator identity, processing objectives, anticipated recipients, access to data, correcting them, and the new information including the legal basis for processing, the period of data storage, the use of data for automated decision-making processes relevant to the consumer, the right to request removal or restriction of data processing and transfer;
- the right to be forgotten, that means a deletion of data when data are no longer necessary for the purposes for which they were processed or have been unlawfully processed;
- the right to limit processing (e.g., when the consumer questions their correctness or when the administrator no longer needs personal data, but they are needed by the consumer for redress);
- the right to move data processed automatically<sup>7</sup>;
- the right to object and not to be subject to automatic decisions (the consumer will have the right not to be subject to a decision which is based solely on automated processing, including profiling, e.g., automatic credit decisions or the conclusion of an insurance contract).

Described regulation will cause that institutions providing accounts and payment services altogether with entities offering any purchases (especially remote ones) will not be able to gather and process Big Data<sup>8</sup> and use the scoring or personalise offers as freely as so far.

The next beneficial for consumer change results from a new personal data protection paradigm. The so far burdensome bureaucratic obligation to report personal data set will be replaced by the default data protection concept of two mechanisms aimed to increase consumer privacy protection:

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<sup>7</sup> The purpose of the regulation is to limit the so called lock-in effect. Users who use certain services over the time may be less likely to use competing services – even if they consider them better – due to the difficulty of transferring information gathered while using their existing service.

<sup>8</sup> The potential of Big Data analysis (so-called exploratory analyses that allow to understand consumer purchase behaviour and forecast their further decision including to another goods or services supplier) has been used for several years by Internet companies (e-commerce) and by financial and telecommunications sector companies.

- *privacy by design*, assuming that from the very beginning tools and services should be designed to take into account the need to protect citizens' privacy;
- *privacy by default*, which primarily refers to services and applications targeted at consumers; this mechanism indicates that the basic settings should protect the user's privacy and give him the freedom to decide in this regard.

Developing practical aspects of privacy in the design phase is to evaluate the risks and effects of the project's impact on privacy (privacy impact assessment). The data administrator or processor is obliged to do such an analysis when the processing operations pose a particular risk to the rights and freedoms because of the data subjects concerning their nature, scope or purpose.

## 4.2. Discussion

The recent financial crisis has shown that ensuring an adequate level of consumer interests protection in the financial market is not possible without the guarantee provided by the regulations. This problem applies in particular to the retail financial services sector where consumers are exposed to some risks, including access to and use of basic financial services such as current account and payment services. The consumer protection law that existed till the outbreak of the crisis included mainly general consumer regulation contained in directives protecting consumer rights, which covers all products and services, including financial. Some regulations relating to the protection of consumer rights were also included in the so-called subjective directives being a part of prudential regulation on financial institutions' governance (e.g., credit institutions or investment firms). However, these regulations proved insufficient to eliminate or even limit consumer risks on the retail payment market, including access to basic financial services. The recent crisis highlighted shortcomings in the existing consumer protection frameworks in high-income countries and prompted some broad-ranging reforms.

In the European Union, it was reflected in the radical reform of financial supervisory system as well as in emerging many new industry-specific consumer regulations, which includes directives relating to particular kinds of financial services. Undoubtedly, from the perspective of managing existing consumer interest threats concerning current account and payment services, the most important are: PAD, PSD and PSD II. They relate to most of the identified fields of threats and aim to protect economic (financial) interests of the consumer. Despite that, analysed regulations guarantee consumers the right to information, withdrawal from the transaction, control the content of consumer contracts and

the right to represent its interests and to enforce rights<sup>9</sup> through judicial or extra-judicial proceedings (as alternative dispute resolution – ADR).

The information obligations posed on financial institutions are included in all analysed directives and regulations. They precise the way, form, time, physical feature and scope of information. According to the PSD directive consumer must receive detailed information concerning payment transaction as the conditions, subject, level of cost, and others. Following the PAD, payment service providers, despite costs, must prepare a kind of lexicon informing consumers how particular terms and services are defined.

The provisions in this category (usually the core legal principles that are mandatory) regulate many issues which disclosure is obligatory for financial institutions. It is worth emphasising that the information obligations refers not only to the contracting but also to the pre-contractual phase and the conclusion of the contract. They are designed to provide a high standard of transparency enabling consumers to be aware and rational in the process of choosing a financial offer and making the right choice. The provisions of the consumer directives also give them the right to withdraw from the transaction. This provides a large-scale cancellation scheme designed for protecting customers from establishing a definite legal relationship too fast. These types of records mainly cover distance contracts and payment services such as credit cards. This safeguard is motivated by the conviction that the consumer as a less well-informed side of the transaction should have additional time to think and evaluate the situation.

Some directives implement a fragmented control of the content of the contract. It is undertaken by introducing requirements concerning the form of legal transaction (e.g., the requirement of bank account agreement written form) and actions to eliminate abusive clauses from consumer contracts. This protective instrument works primarily in areas where the partner's market power leads to an asymmetric pattern of the contract (entitlement and risk), which even a well-informed and prudent consumer cannot oppose. A consumer using basic financial services also has the right to represent his interests and to exercise his rights either through judicial or alternative processes. This law occurs both in the PAD directive and the PSD directives.

Concurrently, it must be stressed that directives change following financial markets' changes. Such an attitude results in a tendency to total termination or consolidation of directives. The example for the first activity is a replacement of the first EMD directive on electronic money (2000/46/EC) by the EMD II

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<sup>9</sup> There are five internationally accepted rights recognised also by EU: the right to protection of health and safety, the right to protection of financial interests, the right to protection of legal interests, the right to representation and participation and the right to information and education.

(2009/110/EC). The example for consolidation is the updating of payment directives. The previous directives (2002/65/EC, 2009/110/EC, 2013/36/EC) were consolidated into the PSD II (2014/65/UE). It is also worth emphasising that in cases of long-standing violation of the fair competition rules that endanger the economic interests of the consumer (but also other market players), the EU authorities use more radical forms of legal acts, such as regulations. One example of such intervention in the payment services market is the MIF Reg. (2015/751) which unifies and lowers the interchange fee, which for many years has not been reached using other methods.

Since the period of being in force most of the legislative issues discussed in this article has been very short, and some of them are only going to bring the effect in the near future, it is still too early to assess how far they have contributed to increasing the level of consumer protection in the use of basic financial services. However, the ongoing changes open the perspectives for future in-depth research on the regulations impact on minimising threats on retail financial services market in European Union and the increase of consumer protection level.

The research conducted so far since 2010 has proved that, according to the consumers, markets constituting banking services cluster characterise the lowest market effectiveness among all assessed markets.<sup>10</sup> In 2015 this cluster was rated the least by criteria such as comparability, trust, expectations, and overall detriment suffered in relation to such services. Slightly better consumers have evaluated it regarding choice, resolution of complaints and ease of switching the provider. Relatively best assessment regarded problem resolution and the possibility of changing the provider (GfK, & European Commission, 2016). As the evaluation has been improved since the first survey, it can be assumed that some influence on this has had legal implications. However, such an assumption must be confirmed by further research.

Also noteworthy are the results of research on the scale of cross-border financial services. For example, despite the fact that in 2015 13.6 million EU citizens lived outside their home country in April 2016, the proportion of consumers

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<sup>10</sup> The survey that has the broadest thematic coverage and repetitive nature (being conducted from 2010 to 2013 annually) is The Consumer Market Monitoring Survey. The survey tracks the effectiveness of consumer markets on the basis of key indicators such as: comparability, trust, expectations, choice, overall detriment, complaints and switching. The survey covers 42 consumer markets in 28 EU Member States as well as in Norway and Iceland. Among these markets are 4 markets for retail financial services: loans, credit and credit cards, bank accounts, mortgages, investment products, private pensions and securities, together forming a so-called Cluster of Banking Services. In addition to monitoring consumer markets, other consumer studies on various segments of the European market, such as Flash Eurobarometer and Special Eurobarometer, are also conducted.

who had a current account in another Member State did not exceed 3%<sup>11</sup>, and this percentage has not changed since 2011. Moreover, in the five years preceding the survey, as many as 71% of the respondents did not change the provider of any of their financial products (TNS & European Commission, 2016, pp. 7-8, 12-13).

Consumers who would be interested in purchasing services in another Member State do not have enough confidence and fear potentially excessive fees, incomprehensible terms and conditions (especially when they are in a foreign language), type and nature of products offered in a foreign country, procedures of rights enforcement by way of compensation (European Commission, 2017, pp. 1-15).

Numerous barriers to using cross-border financial services were also identified in Green Paper on Retail Financial Services issued by European Commission in 2015. For example, despite legal possibilities, consumers who apply to open or access bank accounts are in most cases denied and are not eligible to receive services unless they are in the provider's country. Access restrictions are also applied by internet providers. These practices make it impossible for consumers to apply for the products they choose (European Commission, 2015, pp. 19-21).

Thus, the implementation of legal regulations does not mean that current threats will disappear immediately. Observing the practices and behaviours of financial institutions, including payment service providers (who may also come from outside of the financial sector), provides many examples of the use of gaps in regulation, attempts to circumvent unfavourable law records or an interpretation of regulations, in particular their obligations to the consumer, in a manner consistent with the law but violating the interests of the consumer which is the weakest part of the transaction (for example, recognising the Internet as a mean of communication available for all consumers). The changes in this field require informing consumers about the implementation of regulations and how to use their rights. To make that happen, government agencies and consumer organisations must support intensive educational activities and other forms of institutional support.

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<sup>11</sup> The highest proportion of current account holders in another Member State than their country of origin is in Luxembourg (13%), Hungary (8%) and Belgium, Ireland and Great Britain (7% each), while the smallest in Greece (0%). France and Sweden (1% each) (TNS, & European Commission, 2016).

## 5. Conclusions

The analysis carried out in the article has shown that it is possible to minimise the barriers of using retail financial services regarding access to and use of the current account and payment services through regulatory efforts. However, this requires identification of areas where consumer interests are at risk, the nature of these threats, and the creation of law addressing particular risks.

Based on analysis carried out in the European Union, five areas of threats related to this product have been identified in the article. These include: barriers to opening a current account, risks related to its use (e.g., insufficient access to information and their lack of transparency, unfair commercial practices), the limitation of consumer mobility (difficulty in switching provider or using cross-border services), the insufficient level of cybersecurity and personal data protection and, finally, insufficient competition on the market, narrowing down the range of potential service providers, and as a consequence limiting consumer choice.

The paper has shown that, especially in recent years, a number of legal regulations that aim to remove existing threats or at least limit their scope have emerged while increasing competition in the retail financial services market. Particularly important are the PAD directive on access to an account and PSD directives referring to payment services. They have the most complex character and regulate many issues as the access to the current account, switching the supplier, access to account information and their comparability, introducing single payment schemes in all EU countries, clearly defining their rights, obligations and their responsibilities, while increasing the level of security of electronic payments.

Despite numerous initiatives many consumers' threats remind unsolved. They mostly result from the financial education level. Changes in this field will require not only delivering knowledge but implementing programmes aimed to change consumer habits by learning in practice.

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