

DOI: <https://doi.org/10.34069/AI/2022.53.05.30>

How to Cite:

Lepekh, S. (2022). Consumers of financial services: features of the legal status in the conditions of financial inclusion. *Amazonia Investiga*, 11(53), 308-319. <https://doi.org/10.34069/AI/2022.53.05.30>

## Consumers of financial services: features of the legal status in the conditions of financial inclusion

### Споживачі фінансових послуг: особливості правового статусу в умовах фінансової інклюзії

Received: May 2, 2022

Accepted: June 10, 2022

Written by:

**Svitlana Lepekh**<sup>128</sup><https://orcid.org/0000-0002-2111-1100>

#### Abstract

The urgency of the study is due to the reform of the national legislation in the context of institutional transformation of the financial services market. The purpose of the study is to develop a scientific basis for legislative changes aimed at optimizing the legal status of individuals as consumers of financial services. The methodological basis of the study consists of general scientific and special legal methods, in particular, dialectical, statistical, comparative law, formal law, methods of sociological research, analysis and synthesis. The general principles of realization of such strategic direction of development of the market of financial services as financial inclusion and its influence on formation of legal requirements to the person of the consumer of such service are investigated in the article. The particular interest are scientific positions, legislative novelties on the definition of the scope of persons who have the status of consumers of financial services. The peculiarities of the acquisition of such status by minors and young persons, as well as the second spouse or a third party in the obligation are clarified. On the basis of the conducted research the corresponding conclusions are formulated.

**Key words:** consumer, financial service, banking service, financial inclusion, bank, consumer information.

#### Introduction

The renewal of the civil legislation is taking place during the institutional transformation of

#### Анотація

Актуальність дослідження обумовлена реформуванням національного законодавства в умовах інституційної трансформації ринку фінансових послуг. Метою дослідження є розробка наукового підґрунтя законодавчих змін, спрямованих на оптимізацію правового статусу фізичної особи як споживача фінансових послуг. Методологічну основу дослідження складають загальнонаукові та спеціально-юридичні методи, зокрема, діалектичний, статистичний, порівняльно-правовий, формально-юридичний, методи соціологічного дослідження, аналізу та синтезу. В статті досліджено загальні засади реалізації такого стратегічного напрямку розвитку ринку фінансових послуг як фінансова інклюзія і його вплив на формування законодавчих вимог до особи споживача такої послуги. Особливий інтерес становлять наукові позиції, законодавчі новели щодо окреслення кола осіб, які мають статус споживачів фінансових послуг. З'ясовано особливості набуття такого статусу малолітніми та неповнолітніми особами, а також другим із подружжя або третьою особою в зобов'язанні. На підставі проведеного дослідження сформульовані відповідні висновки.

**Ключові слова:** споживач, фінансова послуга, банківська послуга, фінансова інклюзія, банк, інформування споживача.

financial services market, legislative changes aimed at eliminating gaps and shortcomings in

<sup>128</sup> Candidate of Law, Associate Professor, Associate Professor of the Theory of Law and Human Rights Department, Ukrainian Catholic University, Lviv, Ukraine.



regulating contractual relations in this area, optimizing the legal status of individuals as consumers of financial services. The Strategy for the Development of the Financial Sector of Ukraine until 2025, presented by the National Bank of Ukraine, by the Ministry of Finance of Ukraine and by the Individual Deposit Guarantee Fund, highlights financial inclusion, which aims to 1) increase the availability and use of financial services; 2) strengthening the protection of the rights of consumers of financial services; 3) increasing the level of financial literacy of the population (National Bank of Ukraine, 2021). Exact this direction of the Strategy is aimed at improving the mechanisms of participation of individuals in contractual obligations for the provision of consumer financial services.

It is proposed to consider financial inclusion as a set of means and methods aimed at achieving a high level of use of financial services and financial products among the population (Marushchak & Latkovskiy, 2020).

In terms of consumer financial services in Europe, Denmark and Finland have achieved 100% financial inclusion, which means that all members of the population are fully integrated into the financial system. Along with Sweden, the Netherlands and Germany, financial inclusion is being achieved, while Romania, Bulgaria, Slovakia, Hungary and Poland have high levels of financial exclusion (Ozili, 2021a). Financial inclusion in the United States is greatly improved and contributes to poverty eradication and prosperity. Public-private partnerships are needed to achieve full affordability for low-income Americans (Ozili, 2021b).

The level of effectiveness of the implementation of such a strategic direction in Ukraine as financial inclusion is evidenced by statistics on violations of the rights of individuals as consumers of financial services market and their protection. In the third quarter of 2021, the National Bank of Ukraine received and processed almost 29,000 applications from consumers of financial services. Where, 11,344 were written appeals and 17,462 were calls to the contact center. Debt settlement and unethical behavior of collectors and credit institutions is the most common topic of both written appeals (47% of the total) and calls to the contact center (19%). Among the problematic issues in the work of non-bank financial institutions - the accrual of interest over the term of the loan, fraud using lost consumer documents, problematic issues with insurance companies, strict methods of collecting bad debts. Among the identified

problematic issues in the work of banks - cases of fraud with customer accounts, the imposition of additional services, tough actions to recover bad debts (National Bank of Ukraine, 2021).

According to the analytical review of the state of civil proceedings by the Civil Court of Cassation in the first half of 2021, among the considered cassation appeals by category of civil cases, the majority are still lawsuits, including disputes arising from contracts (4.1 thousand cases, or 35.1% of the number of lawsuits), where 1.8 thousand - cases arising from loan, credit, bank deposit agreements (44.7% of all reviewed disputes arising from contracts). A significant percentage of revoked court decisions is observed in cases arising from loan, credit, bank deposit agreements (375 court decisions out of 912 reviewed, or 41.1%) (Supreme Court, 2021).

The above statistics on the prevalence of violations of the rights of individuals as participants in the financial services market indicate the relevance of research on the legal status of consumers of financial services as a basis for improving relevant legislation to restore consumer confidence in banks and non-bank financial institutions.

### Literature review

Issues of general legal status of an individual as a consumer have been studied by such scholars as I.I. Banasevych, G.A. Osetynska, O.Y. Cherniak, G.B. Yanovytska, and features of the legal status of the consumer of services in some aspects are covered in the works of I.M. Stankova, V.Y. Gorblianskyi, N.B. Patsuriia, V.P. Yanishena.

G.A. Osetynska (2006), having analyzed the peculiarities of the legal status of the consumer in general, she came to the conclusion that it is necessary to improve the definition of consumer, which, in her opinion, should be considered a natural person who buys, orders, uses or intends to purchase or order goods (works, services), but also when it is done to meet family, household, cultural, financial and other personal needs. It is proposed to understand the legal status of the consumer as a system of norms, which provides a comprehensive legal institution that combines legally established and guaranteed by the state rights and responsibilities of individuals, regardless of citizenship, age and gender, to implement relationships in the field of consumption (Yanovytska, 2018). There are also proposals in the scientific literature on the feasibility of expanding the content of the

category of “consumer of financial services” and include in such consumers of micro and small businesses (Rudenko, Plotnikova, & Schwager, 2021).

According to I.M. Stankova (2021), “consumer right” should be considered as a specific subjective right of the consumer or a set of such rights as, for example, the consumer’s right to safety of goods (services); the consumer right to information about the manufacturer (performer / seller) and about goods (services). Peculiarities of consumer rights realization under service agreements were studied by V.Y. Gorblianskyi (2019), who considers it appropriate to classify them as follows: 1) consumer rights arising during the exercise of the right to receive the service (the right to necessary, accessible, reliable and timely information about the service and its performer, the right on fair terms of the contract, the right to proper quality of service, the right to security of service); 2) rights arising in connection with the violation of consumer rights to receive services, the right to protection by the state, the right to go to court and other authorized state bodies to protect violated rights, the right to compensation for property and moral damage caused by lack of service the right to unite in public organizations (associations).

Given the general characteristics of the legal status of consumers, it is appropriate to highlight the specifics of participation of individuals in contractual obligations to provide financial services and to implement the principles of financial inclusion to propose mechanisms to improve legal regulation of consumer contractual relations in financial services.

### Methodology

The methodological basis of the study are general scientific and special legal methods. The dialectical method accompanied the whole research process and allowed us to consider the trends in the formation of legal requirements for the consumer as a participant in civil relations. Methods of analysis and synthesis, as well as the logical-semantic method were used in connection with the formulation of the definition of the consumer of financial services. The comparative law method was used in the analysis of consumer legislation of Ukraine and foreign countries (Germany, France, Italy, the Czech Republic).

The statistical method of research revealed the most problematic aspects of the implementation and protection of the rights of consumers of financial services. The method of sociological

research was used to characterize ways to ensure proper protection of consumer rights, the establishment of legislative guarantees of such protection. In the process of preparing the study, the formal-legal method was used (for the analysis of legal regulations governing consumer participation in contractual obligations for financial services), and thus to formulate basic theoretical provisions and conclusions on issues of legal status of consumers in the financial services market.

### Results and discussion

Pursuant to Art. 1 of the Law of Ukraine “On Protection Consumer Rights” (Law No. 1023-XII, 1991) a consumer is a person who intends to order, orders, or uses purchased goods, products, or services primarily for personal, social, family, household and similar needs, not directly related to entrepreneurial or business activities. Such a definition cannot be considered successful, as it does not reflect all areas of civil circulation with the participation of the consumer, although it is of general importance. Similar approaches to the essence of the legal status of these participants in civil relations are supported by O.Y. Cherniak (2011), who suggests that a consumer is a person who, in order to meet personal needs not directly related to business activities or performance of duties of an employee, purchases, orders, uses products (goods, works, services). However, the author does not include consumers who only intend to enter into a consumer contract.

In the practice of legislation of different countries there is no unified approach to determining the place of consumer law in the legal system. Thus, there are examples of the inclusion of provisions on the general characteristics of the legal status of consumers and the legal regulation of consumer obligations in individual codified acts, for example, the Consumer Code of France (Legifrance, 1993), which contains in addition to characteristics of the general legal status of consumers, and certain instructions for the provision of financial, including banking, services. The Consumer Code of France was amended by Decree No. 2021-1247 of September 29, 2021 to introduce the introductory part and these provisions will apply to contracts concluded on or after January 01, 2022 (Article 21). According to these changes «consommateur : toute personne physique qui agit à des fins qui n'entrent pas dans le cadre de son activité commerciale, industrielle, artisanale, libérale ou agricole» (Consumer is the natural person who acts for personal and non-professional purposes, unrelated to entrepreneurial, commercial, craft or

professional activity carried out). Article 3 of the Italian Consumer Code of 2005 (as amended on July 16, 2020 No. 76) for the purposes of this Code, unless otherwise specified, defines «consumatore o utente: la persona fisica che agisce per scopi estranei all'attività imprenditoriale, commerciale, artigianale o professionale eventualmente svolta» (consumer or user: the natural person acting for purposes unrelated to carried out business, commercial, craft or professional activity) (Altalex, 2005).

Consumer pursuant to Sec 419 (2012) of the Czech Civil Code means any individual who, outside his/her trade, business or profession, enters into a contract or otherwise deals with an entrepreneur (Justice.cz, 2012). Among other general provisions on obligations arising from consumer contracts

Among other general provisions on obligations arising from consumer contracts, section 1796 of the Czech Civil Code “Usurious interest”, according to which “*A contract shall be deemed invalid if, in its conclusion, somebody takes advantage of distress, inexperience, intellectual weakness, agitation or recklessness of the other party and extracts a promise to provide performance to himself or somebody else the value of which is in stark contrast to the mutual performance*”. However, section 1797 provides that an entrepreneur who has entered into a contract in the course of his business may not invoke its invalidity under section 1796. This ground of invalidity of the consumer contract is especially relevant in the field of financial services, where consumers due to low financial literacy, ignorance, the need for financial services often due to financial difficulties agree to extremely unfavorable conditions, significant disparities in rights and obligations under contracts for the provision of financial services. Also, in general, it is advisable to adopt a foreign legislative approach to distinguish among the provisions of the Civil Code of Ukraine provisions on consumer legal status, consumer obligations and on the basis of such general rules to define the specifics of their functioning in certain areas by special legislation.

Directive 2011/83 / EC of October 25, 2011 on the consumer rights, amending Council Directive 93/13 / EEC and Directive 1999/44 / EC of the European Parliament and of the Council and repealing Council Directive 85/577 / EEC and Directive 97/7 / EC of the European Parliament and of the Council, “consumer” means any natural person who, in contracts covered by this Directive, is acting for purposes which are

outside his trade, business, craft or profession (European Union, 2011).

The legislative approach to limiting the number of consumers to individuals has provoked discussions in the scientific literature. I.I. Banasevych (2018) suggests that the consumer is understood not only as a natural person, but also as a natural person - an entrepreneur who acquires (otherwise acquires ownership or use) or orders goods (works, services) or intends to purchase (otherwise acquire ownership) or use) or order goods (works, services) for personal or other needs not related to business activities. N.B. Patsuriia (2014a) substantiates the need to extend the legislation on consumer protection to business entities, in particular, in insurance, as well as together with V.V. Reznikova (2020b) proposes to consider such participants as a natural person, a natural person - an entrepreneur, a legal entity as a consumer of financial services. At the same time, according to G.O. Ilchenko (2016), the consumer of insurance services is always an individual, because the insured - a legal entity cannot be recognized as a consumer in the civil law sense of the term. However, it is predominant in science to support the legislative approach to limiting the range of consumers, including in the field of financial services, only to individuals.

Regarding the legal status of consumers of the researched services, the attention of scientists is focused on the analysis of already outlined by the legislator features of the implementation of consumer rights of certain types of financial services (Yanishen, 2017). At the same time, sometimes attempts to single out certain specifics of the legal status of the consumer of certain types of financial services are not entirely correct. For example, V.I. Kondratiuk (2021) among the characteristics of the consumer of banking services calls its consumer nature.

The requirements for participation as a consumer counterparty is a professional participant in a certain market of goods, works or services, as well as the purpose of participation in these relations of the consumer are generally accepted for consumer contracts. Regarding the characteristics of the needs for which an individual receives, orders or intends to order a financial service, the consumer effect is achieved by using the benefits received by the customer to meet his personal needs of final consumption, not related to entrepreneurial or independent professional activities. As a result, the specifics of the needs of individuals in the field of financial services does not allow the full application of

guarantees provided by the Law of Ukraine “On Consumer Protection”, because only some of its provisions can be used to eliminate contractual imbalances, hedge against financial and economic risks crises, etc.

In accordance with Art. 1 of the Law of Ukraine “On Financial Services and Financial Companies” (Law No. 1953-IX, 2021). A consumer of financial services is a natural person who applies for financial services to a financial service provider and / or intermediary or uses the services of a financial service provider and / or intermediary to meet personal needs not related to entrepreneurial or independent professional activity. The proposed definition is slightly different from the above general concept of consumer. It seems that the definition of the sphere of personal needs, for the satisfaction of which an individual enters into consumer contracts, should be agreed in general and special regulations. In this case, any person who receives or intends to receive a financial service, including a consumer of financial services, is called a client.

The Grand Chamber of the Supreme Court in the decision of 03.07.2019 (Resolution No. 342/180/17-c, 2019) uses the concept of “average consumer of banking services”, which, given the usual level of education and legal awareness, does not can effectively exercise its rights to be informed about the terms of lending under a specific loan agreement, which is concluded in the context of the case in the form of a loan application and the Terms and Conditions of banking services. Thus, for the characterization of all consumers of banking services there are at least such requirements as the usual level of education / it is not specified whether it is only a full school education or another level / and a certain level of legal awareness.

The Constitutional Court of Ukraine in the case of the constitutional appeal of a citizen on the official interpretation of the second sentence of the preamble to the Law of Ukraine of November 22, 1996 No. 543/96-B “On liability for late performance of monetary obligations” of July 11, 2013 noted that in view of the provisions of the fourth part of Article 42 of the Constitution of Ukraine participation in the consumer contract as a weaker party subject to special legal protection in relevant legal relations, narrows the principle of equality of civil law and freedom of contract, in particular in consumer credit agreements (Decision No. v007p710-13, 2013).

Emphasis is placed on the general features of the legal status of the parties to consumer contracts in DCFR I.-1:105: “Consumer” and “entrepreneur”. The term “consumer” means an individual acting primarily for a purpose which is not relevant to his trade, business or profession. The term “entrepreneur” means a natural or legal person, irrespective of the form of ownership of the latter (public or private), acting for a purpose relating to non-employment commercial, industrial or professional activities, even if the person does not intend to do so, make a profit.

Legislation in the field of financial services has borrowed much of the European experience, in particular embodied in the EU Directives, and consumers mean individuals who receive financial services for the purpose outlined above. It should be noted that currently the special legal status of an individual as a consumer is outlined in the field of consumer lending, taking into account international experience, including the principles of Directive 2008/48/EC of the European Parliament and of the Council of 23.04.2008 on credit agreements with consumers. Directive 87/102 / EEC. Thus, according to section 9 of part 1 of Article 1 of the Law of Ukraine of 15.11.2016 “On consumer lending” a consumer is a *natural person* who has entered into or intends to enter into a consumer loan agreement, which in accordance with section 11 of part 1 of this article (borrower) to purchase goods (works, services) to meet needs not related to entrepreneurial, independent professional activity or performance of duties of an employee.

Part 4 of Article 13 of the Law of Ukraine of 04.02.2021 “On Financial Leasing” provides that for the conclusion of the contract with lessee – a natural person, who is married, the lessor must obtain from such a person the written consent of his spouse.

An agreement concluded by one of the spouses in the interests of the family entails obligations for the other of spouses if the property received under such an agreement is used for the benefit of the family (part 4 of article 65, Code No. 2947-III), and in case of failure of the lessee to fulfill its obligations under the contract of recovery may be imposed on property that is the joint property of the spouses (part 2 of Article 73 of the FC of Ukraine), such spouses will be jointly and severally liable. In this case, the consumer of financial services should be considered not only the lessee, but also the second spouse. A similar

rule should be applied to some other consumer financial services, primarily credit.

According to O. Yegorycheva (2012), based on the analysis of the legislative definition of the consumer, given in the Law of Ukraine “On Consumer Protection”, it can be concluded that the consumer may also be a citizen who did not directly purchase goods or order work (service), but uses them. Consumers sometimes include not only an individual as a party to a consumer contract, but also third parties in whose favor such a contract is concluded. Thus, in accordance with section 47 of part 1 of Article 1 of the Law of Ukraine of 18.11.2021 “On Insurance” – A consumer is a natural person who has applied for or receives insurance services to meet personal needs not related to entrepreneurial or independent professional activity, as well as other persons defined by the insurance contract as insured persons and / or beneficiaries who are natural persons, or other individuals who are entitled to receive insurance benefits. At the same time, the issue of distinguishing features in their legal statuses as consumers is unresolved in the legislation, in addition to the well-known differences in the rights of both parties and third parties.

A natural person may acquire the legal status of a consumer of financial services before reaching the age of majority in terms of concluding consumer contracts within the scope of his civil capacity. With regard to the receipt of certain consumer financial services, such a possibility is provided by law when a child reaches 14 years of age. The scientific literature examines the possibility of using certain banking services before reaching this age. Also, N.O. Tyschuk (2021) proposes in part 1 of Article 31 of the Civil Code of Ukraine to provide for the right of natural persons under 14 years of age (minors) from six to ten years to enter into transactions using a personal bank card under parental control. Indeed, some banks in Ukraine allow the issuance of children’s bank cards, however, a separate account in the name of the child is not opened, the card is issued as an additional and the child is limited to a limited amount from his account, which issued the main card and additional – children’s card. However, the payment of the child with the help of such a card for purchased goods, services or works does not go beyond its legal capacity, because it must relate to small household transactions. Although such a card is issued in the child’s name, it does not provide for a minor to enter into a bank account agreement on their own.

With regard to natural persons aged from fourteen up to eighteen year (minors), in accordance with Part 1 of Art. 32 of the Civil Code of Ukraine a minor has the right to independently enter into a bank deposit agreement (account) and dispose of the deposit made by it in his own name (cash on the account), and Part 3 of the same article of the Civil Code of Ukraine provides the right of the minor to dispose of the money deposited fully or partially by other persons in financial institution on his name with the consent of guardianship and custody body and parents (adoptive parents) or the custodian. Therefore, a minor may acquire the rights of a depositor in the case of concluding a bank deposit agreement directly by him or in his favor by another person. In addition to concluding a bank deposit agreement in writing, to confirm this fact and deposit money into the deposit account, the bank issues a savings book or other document to the natural person, which replaces it and is issued in accordance with the internal regulations of the bank. It should be noted that the mechanism of committing this transaction by a minor defined by law is quite clear. It is also logical to give such a person the authority to dispose of the contribution made in his own name. However, if the terms of the contract provide for the right to replenish the deposit and further funds were paid not only by the depositor but also by other persons in accordance with Art. 1062 of the Civil Code of Ukraine, the question arises as to the need to apply Part 3 of Art. 32 of the Civil Code of Ukraine in the context of their disposal, because this rule contains a general rule for all funds deposited in the name of a minor, regardless of whether an account is opened in the name of the child or funds are deposited in an account already opened. Requiring the consent of not only parents (adoptive parents, guardians), but also the guardianship authority significantly complicates the procedure of early termination of this agreement as a whole and in part, as well as closing the account in case of expiration. The mechanism of acquisition of the depositor’s rights by a minor in case of concluding a bank deposit agreement in his favor is unregulated. In accordance with Part 1 of Art. 1063 of the Civil Code of Ukraine, a third party shall acquire the rights of a depositor since the moment of the first claim producing resulted from the depositor’s rights or otherwise expressing its intention to exercise such rights. If the method of expressing the intention to acquire the rights of the depositor is at the same time an act of disposition of the deposit, then to perform such an action a minor requires the consent of parents (adoptive parents,

guardians) and the body of guardianship and custody.

Thus, in a significant number of cases, the exercise of the depositor's rights by a minor is complicated by control not only by the parents (adoptive parents, guardians), but also by the guardianship authority and guardian. Given the various factors in the functioning of such a mechanism (for example, the lack of a clear list of cases where the guardianship authority may refuse to give consent, uncertainty of requirements, and sometimes delays in considering this issue), control of property management of a child who is not deprived of parental care and is not an orphan, it should be recognized that it is necessary to conceptually partially change the legal regulation of deposit relations with the participation of a minor depositor. For example, the German Civil Code (BGB) (Federal Ministry of Justice, n/d) contains different approaches to the disposal of a minor's contribution depending on whether the child is cared for by a parent or guardian (if the child is deprived of parental care or is an orphan). Thus, according to section 1666, if the child's physical, mental or spiritual health or property is exposed to a risk of improper parental care, neglect of the child, the conduct of a third party or the fact that the parents are not to blame cope with their responsibilities, the family court must take the necessary measures to eliminate this risk, as parents are unwilling or unable to eliminate it. According to section 1667, the family court may decide that the child's money must be invested in a certain way and his permission is required to withdraw it from the accounts. Therefore, such measures are taken by the court only in case of threat to the goods (in particular, property) of the child. Section 1809 is also provided, that the guardian should invest money held in trust for a ward under section 1807 (1) no. 5 only subject to the provision that the approval of the supervisory guardian or of the family court is required for the collection of the money. Such restrictions do not apply in the case of exemption from guardianship provided for in section 1852. It seems appropriate to borrow foreign experience and, given the peculiarities of the contractual regulation of deposit relations, to optimize the conditions of participation of minors. In particular, Part 3 of Art. 32 of the Civil Code of Ukraine to read as follows: "3. A minor may dispose of cash means deposited by other persons to the financial institution to his/her favor by the consent of parents (adoptive parents) or guardians. The guardianship authority may decide that the child's permission is required to withdraw money from the child's accounts."

Also Art. 1063 of the Civil Code of Ukraine should be supplemented by part 3 of the following content: "A minor in whose favor the bank deposit agreement is concluded has the right to acquire the rights of the depositor independently. The contract may stipulate that the withdrawal of money from the account in full or in part before the expiration of the contract by such a minor requires the permission of a guardianship and trusteeship body." Credit services are also of interest to minors as consumers. In the Law of Ukraine of 15.11.2016 "On consumer lending" the consumer is understood as an individual who has entered into or intends to enter into a consumer credit agreement. As the special legislation does not contain additional requirements for such a natural person, the general provisions on the scope of legal capacity of a minor apply. This is confirmed by litigation practice. Thus, the mother of a minor applied to the "Consumer Center" LLC with a claim to invalidate the loan agreement (Case No. 161/7810/19, 2019). She substantiated her claims by the fact that on January 10, 2019, a loan agreement No.10.01.2019-100005143 in the amount of UAH 3,000 was concluded between her daughter and Consumer Center LLC with a maturity date to January 23, 2019, including the payment of interest on the loan in the amount of UAH 840, which is 28% for 14 days of the loan. She considers that this agreement is invalid on the grounds that at the time of concluding the agreement her daughter was a minor and lived with her, was dependent on her. She also stated that she did not approve her daughter committing the transaction. The court decided to satisfy the claim, arguing that the commission of other minors, not provided for in Articles 31, 32 of the Civil Code of Ukraine, requires the consent of parents or guardians. At the same time, the mother did not give her consent to the conclusion of the loan agreement dated January 10, 2019. At the same time, the case file does not contain any evidence that she would have given such consent or subsequent approval of the transaction.

At the same time, the reference of the Consumer Center LLC to the fact that the conclusion between the parties to the disputed loan agreement does not go beyond a small household transaction was critically assessed by the court. According to the case file and the defendant points out, the minor received a loan in the amount of UAH 3,000. Also, taking into account the interest rate for the use of credit funds, as well as the complexity of the content of credit relations, including the consequences of default or improper performance by the borrower of its

obligations under the contract, the loan agreement in any case cannot be attributed to small household transaction. The above circumstances of this case as one of a number of similar ones suggest that consumer credit agreements, as a rule, go beyond small household transactions. Taking into account the specifics of such agreements, it seems appropriate to establish the right of an individual to enter into a consumer loan agreement only with the acquisition of full civil capacity.

In education, young people need to gain knowledge about individual financial behavior - the pension system, the financial banking system and taxes (Kocwin J., 2021). Financial awareness and prudence are not only to have a broad knowledge of financial matters, plan your budget and rationally manage your money and other assets, but also to know your rights and responsibilities (USAID, 2020).

According to the USAID "Financial Sector Transformation Project" for September 2021, "Financial Literacy, Financial Inclusion and Financial Welfare in Ukraine in 2021", it is noted that the awareness of financial institutions of their responsibility for unfair behavior towards consumers of financial services, in particular, in terms of disclosure of financial services, will be a solid basis for increasing confidence in financial institutions (USAID, 2021). The importance of informing customers about the advantages and disadvantages of consumer financial services in order to assess potential risks has become obvious to their providers as a result of the financial and economic crisis. According to Part 3 of Article 12 of the Law of Ukraine of 12.07.2001 "On Financial Services and State Regulation of Financial Services Markets", the information provided to the client must provide a correct understanding of the essence of financial services without imposing its acquisition.

A positive step is the detail of the legal regulation of the scope and procedure of information. Thus, the procedure for posting information on the websites of non-banking financial institutions, as well as in places of providing services to customers is regulated by the Regulation on non-banking financial institutions, approved by the Resolution of the Board of the National Bank of Ukraine dated 05.11.2021 No. 114. Such information in accordance with paragraph 4 of part 1 of Article 24 of the Law of Ukraine of 03.07.1996 "On Advertising" is not considered advertising. Peculiarities of disclosure of information about certain financial services are

regulated by certain legislative acts that specify such information. For instance, according to the Regulation on information provision of consumer financial institutions for consumer lending services, approved by Resolution of the Board of the National Bank of Ukraine dated 05.10.2021 No.100, consumer information is the provision (disclosure) of information by financial institutions to consumers in accordance with Ukrainian legislation on consumer services credit, providing a minimum amount of information about the conditions and essential characteristics of this service, defined by this Regulation, by placing such information on the financial institution's own website, in advertising, providing information when using the consumer credit service, and providing other information provided by internal documents of the financial institution. Thus, the consumer exercises the right to information at the stages of concluding and executing the contract, as well as after its termination. It is the responsibility of the intermediary and the financial service provider to disclose such information.

The implementation of important principles of financial inclusion in practice is possible only if the legislative mechanisms for informing potential customers about the choice of financial services among those offered by banks and non-bank financial institutions are improved. Law of Ukraine of 14.12.2021 "On Financial Services and Financial Companies" Articles 6 and 7 provide for the right of the consumer to receive necessary, complete, accessible and reliable information about the financial and / or intermediary service and its provider sufficient for acceptance a conscious decision to receive such a service or to refuse to receive it. Acquaintance with such information should create conditions for the consumer to assess their own ability to fulfill obligations and responsibly choose a financial service. According to a USAID survey in 2018, only 2.4% of consumers received written information about a loan that complies with the law (USAID, 2018). In 2021, during 76% of visits, information on important issues provided orally by the consultant differed from information in the consumer loan passport or contract (in 2019, 66% of visits provided oral information different from the passport and / or contract) (USAID, 2021).

The information provided to the potential consumer is divided into two groups: 1) on the provider and the intermediary; 2) on consumer financial service. The above-mentioned draft law proposes to specify which types of up-to-date and reliable information about the provider or

intermediary should be posted by them at the place of customer service and / or on their own website, including its mobile version, and in mobile applications (if available). An intermediary discloses such information about the provider and about itself (additionally specifying the list of services it may provide as an intermediary) in similar ways as the provider or by posting a hyperlink on its own website to redirect (link) to the financial service provider's website.

The second group includes information on consumer financial services disclosed by the provider, intermediary, in particular: 1) a list of services and products, the procedure and conditions for their provision; 2) cost, price / tariffs, amount of payment (interest, remuneration) for products depending on the type of financial service; 4) mechanisms for consumer protection. Financial service providers and intermediaries shall ensure the availability of information posted on their own websites (web pages) for at least the last three years. Article 8 of the same law prohibits the dissemination of misleading information on financial and / or related services in the financial services market. Such information includes, but is not limited to, incomplete or inaccurate information about financial or related services, features of such services, costs and discounts, and / or material terms of the contract for those services, incomplete or inaccurate information about financial performance of activities of the provider of financial and / or related services and / or its financial condition, inaccurate data on the activities of the provider of financial and / or related services, falsely reflect the scope and content of powers and rights of financial and / or related services providers relationships in which they are not. However, this article does not contain civil consequences of such actions. As you can see, the legislator is trying to maximize the amount of information available to potential customers, however, there are issues that are not taken into account, for example, potential financial risks of the consumer in case of exchange rate fluctuations, in case of replacement of the party in the obligation, establishment of a moratorium, etc.

Upon termination of the financial service agreement, including due to the expiration or performance of such agreement, the client has the right to receive written request from the financial service provider regarding the parties' performance of their contractual obligations. In fact, sending such information to the consumer should be an imperative of the financial service

provider, because sometimes the client does not make such a request, because he does not know about this possibility or believes that he has fulfilled the obligation in full, but finds out about the debt only as of expiration of a certain time.

## Conclusions

The statistics provided by the National Bank of Ukraine on the prevalence of violations of the rights of natural persons as participants in the financial services market and obstacles to the implementation of financial inclusion strategy in our country as opposed to positive foreign experience indicate the relevance of research on the legal status of in order to restore consumer confidence in banks and non-bank financial institutions, to provide favorable conditions for them to exercise their rights.

Legislation regulations to determine the legal requirements for the categories of persons who may acquire the status of a consumer of financial services, the procedure for informing such consumers about the legal and economic nature of financial services still need to be discussed and further refined. Thus, attention is paid to the peculiarities of the acquisition of such status by minors, whose interest is primarily credit, deposit services. It is proposed to improve the mechanism of realization of the depositor's rights by a minor in whose favor the bank deposit agreement has been concluded, in particular, to limit the need to obtain a permit from the guardianship authority to dispose of the deposit amount. Taking into account the specifics of such agreements, it seems appropriate to establish the right of the natural person to enter into a consumer loan agreement only with the acquisition of full civil capacity. The issue of concluding agreements on the provision of consumer financial services by one of the spouses in the interests of the family is considered and emphasis is placed on the need to obtain the written consent of the other of them.

The article analyzes the legal norms and scientific positions on the characteristics of the legal status of consumers in general and in the field of financial services. It is proposed to consider a consumer of financial services as the natural person who personally or through a representative applies for financial services to a financial service provider and / or intermediary and / or in favor of his or another person receives the services of a financial service provider and / or intermediary to meet personal, family needs not related to entrepreneurial or independent professional activity.

**Bibliographic references**

- Altalex (2005) Italian Consumer Code of 2005. <https://www.altalex.com/documents/codice-i-altalex/2014/03/19/codice-del-consumo>
- Banasevych, I.I. (2018) The concept of “consumer” in civil law: doctrinal approaches. Current issues of improving the current legislation of Ukraine, 48, 170-178. [http://nbuv.gov.ua/UJRN/apvchzu\\_2018\\_48\\_19](http://nbuv.gov.ua/UJRN/apvchzu_2018_48_19). P. 176.
- Case No. 161/7810/19. Decision No. 85651878, 11/13/2019, Lutsk City and District Court of Volyn Region <https://reyestr.court.gov.ua/Review/85651878>
- Cherniak, O. Y. (2011) Civil status of the consumer in the context of adaptation of the legislation of Ukraine to the legislation of the European Union: author’s thesis. (Ph.D. in Law). Research Institute of Private Law and Entrepreneurship named after F. G. Burchak. Kyiv, 8, [http://irbis-nbuv.gov.ua/cgi-bin/irbis\\_nbuv/cgiirbis\\_64.CNR=20](http://irbis-nbuv.gov.ua/cgi-bin/irbis_nbuv/cgiirbis_64.CNR=20)
- Code No. 2947-III. Family Code of Ukraine, Verkhovna Rada of Ukraine, 2002. <https://zakon.rada.gov.ua/laws/show/2947-14#Text>
- Decision No. v007p710-13. Of the Constitutional Court of Ukraine of July 11, 2013 in case No. 1-12/2013. <https://zakon.rada.gov.ua/laws/show/v007p710-13#Text>
- Decree No. 2021-1247. Consumer Code of September 29, 2021 [https://www.legifrance.gouv.fr/codes/section\\_lc/LEGITEXT000006069565/LEGISCTA000032220895/#LEGISCTA000032227360](https://www.legifrance.gouv.fr/codes/section_lc/LEGITEXT000006069565/LEGISCTA000032220895/#LEGISCTA000032227360)
- European Union (2008) Directive 2008/48/EC of the European Parliament and of the Council of 23 April 2008 on credit agreements for consumers and repealing Council Directive 87/102/EEC <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32008L0048>
- European Union (2011) Directive 2011/83/EU of the European Parliament and of the Council of 25 October 2011 on consumer rights, amending Council Directive 93/13/EEC and Directive 1999/44/EC of the European Parliament and of the Council and repealing Council Directive 85/577/EEC and Directive 97/7/EC of the European Parliament and of the Council Text with EEA relevance OJ L 304, 22.11.2011, 64 - 88. <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32011L0083>
- Federal Ministry of Justice (n/d) German Civil Code (BGB) Recovered from <https://www.gesetze-im-internet.de/bgb/>
- Gorblianskyi, V.Y. (2019) Costumer rights protection under a service contract. (uthor’s thesis ...Ph.D in Law). Prykarpattia National University named after Vasyl Stefanyk. Ivano-Frankivsk, 14-15. [https://svr.pnu.edu.ua/wp-content/uploads/sites/5/2019/06/dis\\_Horblianskyi.pdf](https://svr.pnu.edu.ua/wp-content/uploads/sites/5/2019/06/dis_Horblianskyi.pdf)
- Ilchenko, G. O. (2016) Civil-legal protection of consumer rights of insurance services. (thesis. ...Ph.D in Law). Research Institute of Private Law and Entrepreneurship named after F. G. Burchak. Kyiv, 201. [http://irbis-nbuv.gov.ua/cgi-bin/irbis\\_nbuv/cgiirbis\\_64.CNR=20](http://irbis-nbuv.gov.ua/cgi-bin/irbis_nbuv/cgiirbis_64.CNR=20)
- Justice.cz (2012) Civil Code of the Czech Republic of 2012. Recovered from [www.justice.cz](http://www.justice.cz)
- Koćwin, J. (2021) Ethics in the financial services market. Consumer knowledge, education and morality [Etyka na rynku usług finansowych. Wiedza, edukacja i moralność konsumenta]. Wrocław-Lviv Law Journal, 12, 37-52. <https://wuw.pl/wlzp/article/view/13702>
- Kondratiuk, V. (2021) Legal status of subjects of consumer banking relations. Entrepreneurship, Economy and law, 4, 37-42. <http://www.pg-journal.kiev.ua/archive/2021/4/7.pdf>
- Law No. 1023-XII. On Consumer Rights Protection. Ukraine, May 12, 1991. Recovered from <https://zakon.rada.gov.ua/laws/show/1023-12#Text>
- Law No. 1201-IX. On Financial Leasing. Ukraine, February 4, 2021. Recovered from <https://zakon.rada.gov.ua/laws/show/1201-20#Text>
- Law No. 1734-VIII. On consumer lending, Ukraine, November 15, 2016. Recovered from <https://zakon.rada.gov.ua/laws/show/1734-19#Text>
- Law No. 1909-IX. On Insurance. Ukraine, November 18, 2021. Recovered from <https://zakon.rada.gov.ua/laws/show/1909-20#Text>
- Law No. 1953-IX. On Financial Services and Financial Companies. Ukraine, December 14, 2021. Recovered from

- <https://zakon.rada.gov.ua/laws/show/1953-20#Text>
- Law No. 2664-III. On Financial Services and State Regulation of Financial Services Markets. Ukraine, July 12, 2001. Recovered from <https://zakon.rada.gov.ua/laws/show/2664-14#Text>
- Law No. 270/96 On Advertising. Ukraine, July 3, 1996. Recovered from <https://zakon.rada.gov.ua/laws/show/270/96-вп#Text>
- Legifrance (1993) Consumer Code of France of 1993. <https://bit.ly/3PkiqIH>
- Marushchak, A.V., & Latkovskiy, P.P. (2020) Financial inclusion as a direction of development of the financial sector of Ukraine. Collection of scientific papers ΛΟΓΟΣ Band 2, 90. <https://ojs.ukrlogos.in.ua/index.php/logos/article/view/681>
- National Bank of Ukraine (2021) Report on the work with appeals of consumers of financial services for the third quarter of 2021. <https://bank.gov.ua/ua/news/all/zvit-pro-robotu-zi-zvernenniyami-spojivachiv-finansovih-poslug-za-iii-kvartal-2021-roku>
- National Bank of Ukraine (March, 2021) Strategy of the development of Financial Sector of Ukraine till 2025. <https://bank.gov.ua/ua/news/all/strategiya-rozvitku-finansovogo-sektoru-ukrayini-do-2025-roku-7686>
- Osetynska, G.A. (2006) Civil-legal protection of consumer rights under the legislation of Ukraine. (author's thesis ...Ph.D. in Law). Taras Shevchenko Kyiv National University. Kyiv, 6. <http://www.disslib.org/tsyvilno-pravovyi-zakhyst-prav-spozhyvachiv-za-zakonodavstvom-ukrayiny.html>
- Ozili, P.K. (2021a) Financial inclusion in Europe: what we know. Expert White Paper Series, 1 (PDF) Financial inclusion in Europe: What We Know (researchgate.net)
- Ozili, P.K. (2021b) Financial inclusion in the United States: What We Know. Expert White Paper Series, 1. (PDF) Financial inclusion in the United States: What We Know (researchgate.net)
- Patsuriia, N. (2014a) Economic and legal discourse on the issue of determining the consumer of insurance services. Theory and Practice of Intellectual Property, 4, 61-71. [http://nbuv.gov.ua/UJRN/Tpiv\\_2014\\_4\\_9](http://nbuv.gov.ua/UJRN/Tpiv_2014_4_9)
- Patsuriia, N., & Rieznikova, V. (2020b) Justification of the need to change the legal paradigm of protection of consumer rights of financial services. Law of Ukraine, 5, 235-257. [https://pravoua.com.ua/ua/store/pravoukr/pravo\\_2020\\_5/pravo\\_2020\\_5\\_s15/](https://pravoua.com.ua/ua/store/pravoukr/pravo_2020_5/pravo_2020_5_s15/)
- Resolution No. 342/180/17-c of the Grand Chamber of the Supreme Court of 03.07.2019 (proceedings No. 14-131cc19). <https://zakononline.com.ua/court-decisions/show/82998244>
- Resolution of the Board of the National Bank of Ukraine No. 100. Regulation on non-banking financial institutions. Ukraine, October, 5, 2021. Recovered from <https://zakon.rada.gov.ua/laws/show/v0100500-21#Text>
- Resolution of the Board of the National Bank of Ukraine No. 114. Regulation on information provision of consumer financial institutions for consumer lending services. November 5, 2021. Recovered from <https://zakon.rada.gov.ua/laws/show/v0114500-21#Text>
- Rudenko, L.D., Plotnikova, M.V., & Shvager, O. A. (2021) Consumers of financial services: conceptual principles of definition in the context of modernization of economic legislation of Ukraine. Legal support of market relations in the conditions of civil society: collection of scientific works: collection of scientific works. Edition 4. K.: Research Institute of Private Law and Entrepreneurship named after Academician F. Burchak of the National Academy of Legal Sciences of Ukraine, 161-162 <https://hozpravoreposit.kyiv.ua/bitstream/handle/765432198.pdf?sequence=1&isAllowed=y>
- Stankova, I.M. (2021) Civil law regulation of consumer protection in the field of services (author's thesis. ...Ph.D. in Law). Odesa Law Academy National University, Odessa, 15. <http://dspace.onua.edu.ua/handle/11300/14596>
- Supreme Court (2021) Analytical review state of implementation civil proceedings in the first half of 2021. [https://supreme.court.gov.ua/userfiles/media/new\\_folder\\_for\\_uploads/supreme/Analit\\_oglyad\\_civ\\_sudi\\_1pivr2021.pdf](https://supreme.court.gov.ua/userfiles/media/new_folder_for_uploads/supreme/Analit_oglyad_civ_sudi_1pivr2021.pdf)
- Tyshchuk, N.O. (2021) Minors committing transactions on the Internet (thesis. ...Ph.D. in Law). Odesa Law Academy



- National University. Odessa, 188. <http://dspace.onua.edu.ua/handle/11300/14999?show=full>
- USAID (2018) Consumer lending: we build bridges between law and practice. Project of USAID «Transformation of Financial Sector», 2018. 20. [http://www.fst-ua.info/wp-content/uploads/2019/02/Mystery-Shopping-Survey\\_2nd\\_wave\\_May2018.pdf](http://www.fst-ua.info/wp-content/uploads/2019/02/Mystery-Shopping-Survey_2nd_wave_May2018.pdf)
- USAID (2020) Consumers of financial services, their rights and protection: project of USAID «Transformation of Financial Sector», August 2020. 2 p. [http://www.fst-ua.info/wp-content/uploads/2020/01/consumer\\_protection\\_brochure\\_aug2020.pdf](http://www.fst-ua.info/wp-content/uploads/2020/01/consumer_protection_brochure_aug2020.pdf)
- USAID (2021) Consumer lending by banks: high rates, low compliance with the law / Report on the results of the study of the market of consumer banking lending (fourth wave). Project of USAID «Transformation of Financial Sector», September 2021. 27. <http://www.fst-ua.info/wp-content/uploads/2021/10/Ukr-Banks-Mystery-Shopping-Report-Oct-2021.pdf>
- USAID (2021) Financial literacy, financial inclusion and financial well-being in Ukraine in 2021 / Report on the results of the study of the project of USAID «Transformation of Financial Sector», September 2021. 80 p. [https://bank.gov.ua/admin\\_uploads/article/Research\\_Financial\\_Literacy\\_Inclusion\\_Welfare\\_2021.pdf?v=4](https://bank.gov.ua/admin_uploads/article/Research_Financial_Literacy_Inclusion_Welfare_2021.pdf?v=4)
- Yanishen, V.P. (2017) Features of realization of the rights of consumers under the contract on performance of works (provision of services). Theory and Practice of Legal Science, 2(12). 2. [http://nbuv.gov.ua/UJRN/tipp\\_2017\\_2\\_5](http://nbuv.gov.ua/UJRN/tipp_2017_2_5)
- Yanovytska, G.B. (2018) Civil remedies for consumer rights in Ukraine: monography. Lviv: Publisher «Rastr-7», 113. <http://catalog.lounb.org.ua/bib/412330>
- Yegorycheva, O. (2012) Consumer as a participant in consumer relations under the laws of Ukraine. Judicial Ukraine, 7, 47-52. [http://nbuv.gov.ua/UJRN/urykr\\_2012\\_7\\_11](http://nbuv.gov.ua/UJRN/urykr_2012_7_11)