



# VULNERABLE VS NOT- VULNERABLE PAYMENT SERVICE CONSUMER

Gabriella Gimigliano, PhD,  
[gabriella.gimigliano@unisi.it](mailto:gabriella.gimigliano@unisi.it)

# Main Concepts



Payment Service

The diagram consists of three horizontal bars stacked vertically. Each bar is composed of a colored segment on the left and a white segment on the right, all enclosed within a thin border of the same color as the segment. The top bar has a blue segment, the middle bar has a purple segment, and the bottom bar has a red segment. The text labels are placed within the colored segments.

Consumer

Vulnerable Consumer

# Vulnerability and the 2015 Payment Services Directive (PSD2)

Unfair Commercial Practices Directive (UCPD)

2014 Payment Account Directive (PAD)

# Vulnerable Consumers in the UCPD

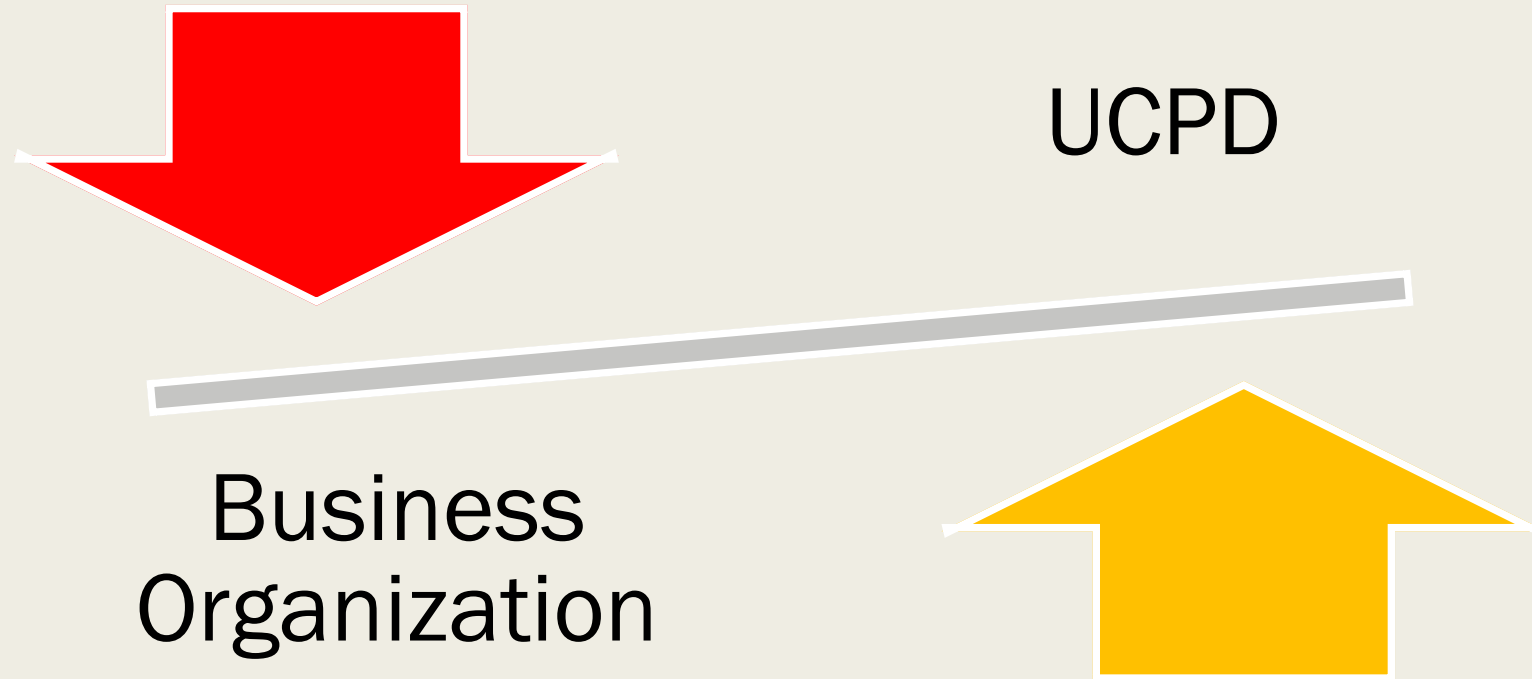
## Unfair commercial Practices

- *Materially distort the economic behaviour*
- *Contrary to professional diligence*

# Vulnerable Consumers in the UCPD (Recitals 18 and 19)

- «This Directive takes as a benchmark the average consumer, who is reasonably well informed and reasonably observant and circumspect, taking into account social, cultural and linguistic factors, (...), interpreted by the Court of Justice, but also contains provisions aimed at preventing the exploitation of consumers whose characteristics make them particularly vulnerable to unfair commercial practices».
- «Where certain characteristics such as age, physical or mental infirmity or credulity **make consumers particularly susceptible to a commercial practice or to the underlying product and the economic behaviour only of such consumers is likely to be distorted by the practice in a way that the trader can reasonably foresee**, it is appropriate to ensure that they are adequately protected by assessing the practice from the perspective of the average member of that group».

# Vulnerable Consumers in the UCPD:



# 2014 Payment Account Directive (PAD)

Right to hold a payment account

No discrimination

Only credit institutions

# 2014 Payment Account Directive (PAD): vulnerability

- Credit institutions should refuse to open or should terminate a contract for a payment account with basic features only in specific circumstances, such as non-compliance with the **legislation on money laundering and terrorist financing or on the prevention and investigation of crimes**. Even in those cases, a refusal can only be justified where the consumer does not comply with that legislation and not because the procedure to check compliance with the legislation is too burdensome or costly (**recital 47 PAD**).
- Member States may, in full respect of the fundamental freedoms guaranteed by the Treaties, require consumers who wish to open a payment account with basic features in their territory to **show a genuine interest in doing so** (**Article 16(2) PAD**).



# Vulnerable Payment Services Consumer: UCPD vs PAD

The EU policymakers are familiar with the concept of vulnerability in general and as for the provision of payment services

UCPD and PAD: duty of business organization but in different context

No mention of vulnerability in the PSDs is a clear-cut policy-making choice

# Should we reverse this change on the way ahead the PSD3?

(Mary Mellor, 2019): money as a social institution.

*Money cannot be seen as a passive technical instrument of the market. It is an active institution in human societies that is socially and historically constructed. Far from being limited to a market function, money establishes comparative values in a range of circumstances – social, political and economic.*

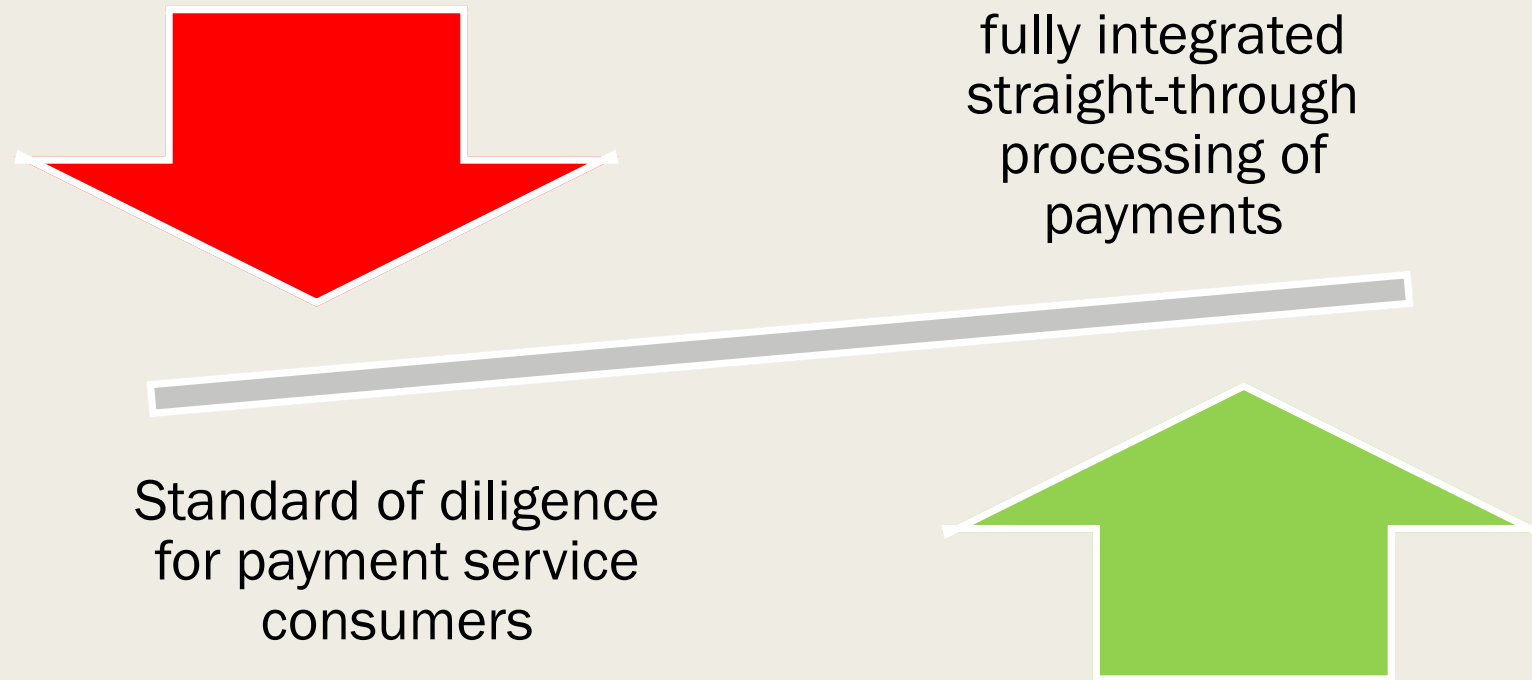
(Christine Desan, 2017) argues:

*what is the substantive value captured by a dollar, one that convinces people with different needs and means to understand it as a common measure?*

# Should we reverse this change on the way ahead the PSD3?

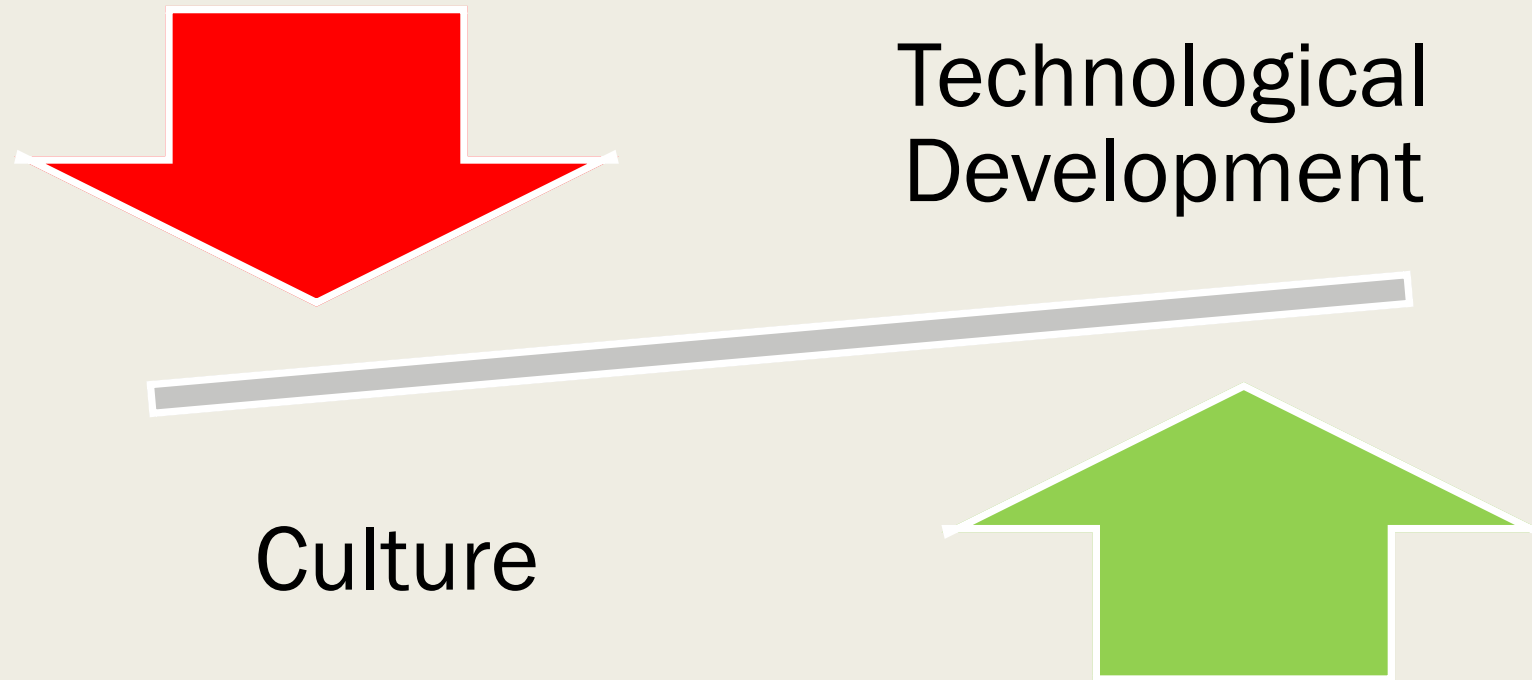
- *the concept of ‘monetary policy’ is not limited to its operational implementation, which, under the first indent of Article 127(2) TFEU, is one of the basic tasks of the ESCB, but also entails a regulatory dimension intended to guarantee the status of the euro as the single currency (Cases C-422/19 and C-423/19, ECJ 26th January 2021)*
- *Nor, moreover, is it necessary for the use of the euro as the single currency and, more specifically, for the preservation of the effectiveness as legal tender of cash denominated in euro that the EU legislature lay down exhaustively and uniformly the exceptions to that fundamental obligation, provided that every debtor is guaranteed to have the possibility, as a general rule, of discharging a payment obligation in cash.*

# A workable plan



# A workable plan: regulatory obligations

- business organization



# A workable plan

## ■ (recital 48 PAD)

*Clear and comprehensible information on the **right to open and use a payment account with basic features** should be provided by Member States and credit institutions to consumers. Member States should ensure that communication measures are well-targeted and, in particular, that they reach out to unbanked, vulnerable and mobile consumers. **Credit institutions should actively make available to consumers accessible information and adequate assistance** about the specific features of the payment account with basic features on offer, their associated fees and their conditions of use, and also the steps consumers should take to exercise their right to open a payment account with basic features*