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Il presente fascicolo raccoglie gli atti del convegno «L'ordinamento finanziario italiano verso il mercato unico dei capitali. Impatti per le imprese, gli intermediari, i mercati, le autorità di vigilanza» tenutosi presso l'Università Ca' Foscari Venezia i giorni 8 e 9 maggio 2025 nell'ambito del PRIN_2020 – "An analysis of the Italian financial legal framework vis-a-vis the Capital Markets Union action plan: the perspective of regulatory fragmentation and sustainability" (bando 2020 prot. 2020smp7a7).

Non sono incluse le seguenti relazioni, in quanto già oggetto di pubblicazione su questa o su altre riviste:

- A. Brozzetti, Unione bancaria e mercato unico dei capitali: qualche riflessione su sinergie e ostacoli anche nella prospettiva della "SIU", in European law and finance review, 2025, I, 90-102.
- G. Desiderio, Il servizio di consulenza in materia di investimenti: prospettive di riforma e criticità nella Retail Investment Union, in questa Rivista, 2025, I, 77-103.
- A. Sacco Ginevri, Appunti su diritto di recesso e maggiorazione del voto, in Riv. soc., 2025, II, 372-382.
- M. Sepe, La declinazione nazionale della Capital Markets Union nella riforma della disciplina dei mercati del TUF, in Riv. trim. dir. econ., 2025, I, 301-321.

SEDE DELLA REDAZIONE

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Assessing Risk Awareness in Financial Investments to Protect Young Investors [*]

SUMMARY: Introduction and European context. – 2. The pivotal role of out-of-court dispute resolution bodies – 3. Transparency 2.0 and the "Retail Investment Strategy": beyond simple product disclosure. – 3.1. Mitigating financial vulnerability: suitability in the digital age. – 4. Toward informed inclusion.

1. *Introduction and European Context*

The path charted by the European Commission with the action plan *"A Capital Markets Union for People and Businesses"*[1] has marked a crucial turning point: financial markets are no longer considered an ecosystem reserved for a few institutional players, but a space that must become accessible, secure, and inclusive for citizens and small savers as well[2] .

The real strategic challenge lies in the ambitious goal of converging individual national markets into a genuine single market.

To achieve this goal, European institutions have focused on resolving a long-standing critical issue: the deep deficit of trust and understanding that keeps retail investors away from capital markets. As highlighted by the working groups of *the High Level Forum*[3], low participation is not due to a lack of capital, but rather to informational and cultural asymmetries that breeds mistrust.

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[*] This article is based on a paper presented at the conference "The Italian Financial System and the Single Capital Market: Impacts on businesses, intermediaries, markets, and supervisory authorities," held in Venice on May 8 and 9, 2025, and is part of the activities related to the PRIN2020 project *"An analysis of the Italian financial legal framework vis-à-vis the Capital Markets Union action plan: the perspective of regulatory fragmentation and sustainability"*.

[1] Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee, and the Committee of the Regions "A Capital Markets Union for People and Businesses: New Action Plan" Brussels, September 24, 2020 (COM (2020)590 final).

[2] D Rossano, Listed SMEs in light of the renewed market context, in Review of European Public Law, I, 2024, (Page numbers missing).

[3] See *A New Vision for Europe's Capital Markets. Final Report of the High Level Forum on the Capital Markets Union*, June 2020.

Today, this scenario is marked by a new sense of urgency: the massive influx of younger generations into the world of investing through digital platforms and *trading* apps. The contractual relationship between young investors and market participants (issuers and intermediaries) requires a paradigm shift. It is no longer merely a matter of fulfilling formal transparency obligations—historically based on the mere, passive receipt of data—but of initiating a process of genuine "guided engagement." Fostering informed financial engagement among young people means equipping them with the critical tools needed to understand risk, transforming vulnerability into solid, sustainable financial skills over time. This massive entry of younger generations into the world of investing through digital platforms requires a paradigm shift. In Italy, a decisive response in this regard came with the Capitali Law[4] , which introduced mandatory financial education in schools as part of civic education, placing specific emphasis on digital money management and informed risk assessment."

This is precisely why the position of those investors who, due to a possible lack of financial literacy, may find themselves in a vulnerable situation resulting from a limited ability to understand the terms of the investment proposal, as well as their own savings capacity, which could affect their awareness of their actual exposure to risk, must be carefully examined. Consequently, in recognizing this condition[5] , there arises a need to ensure that their interests are genuinely upheld in legal relationships, such as the right to regulate contractual relationships in a symmetrical manner, in accordance with the principles that protect the fundamental rights of the individual[6] .

[4] Law No. 21 of March 5, 2024.

[5] In the context of financial products, vulnerable groups include not only young people but also the elderly and individuals with disabilities that do not impair their ability to act. This category also includes former cancer patients, who are currently subject to special protection, including in the banking and financial sectors, thanks to Law No. 193 of December 7, 2023. On this topic, see A. SCOTTI, *"Vulnerable Individuals and Problems of Access to the Banking and Financial Markets*," in *EJPLT*, 1, 2023, 71 ff.; G. BERTI DE MARINIS, *Vulnerability in Regulated Markets*, in P. CORRIAS, E. PIRAS (eds.), *Vulnerable Persons in Common Law and Regulated Markets*, Naples, 2022, 96.

[6] H.W. MICKLITZ, *The Consumer: Marketized, Fragmented, Constitutionalized*, in *Riv. trim. dir. proc. civ.*, no. 3, 2016, 859 ff.

In this regard, it is important to bear in mind that by protecting and fostering interaction among the parties involved, a more financially inclusive approach—given the naturally lower financial resources of young and/or more vulnerable investors—can be encouraged, thereby promoting their participation in financial markets through greater product knowledge and the implementation of appropriate safeguards[7]
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2. *The pivotal role of out-of-court dispute resolution bodies*

Based on the assumption that modern financial products are so complex that a *retail* or vulnerable investor will never be able to assess their risks on their own, no matter how careful they are, the traditional *"*caveat *emptor"* principle gives way to a rigorous system of conduct rules for intermediaries, designed to ensure that the investment is the result of a truly informed choice consistent with the client's risk profile. In this context of structural imbalance, alternative dispute resolution (ADR) bodies, such as the Banking and Financial Arbitrator (ABF) and the Financial Disputes Arbitrator (ACF), do not operate merely as alternatives to ordinary litigation, but as true drivers of regulatory *compliance* and the evolution of the law[8] . The centrality of ADR mechanisms lie in their ability to offer, at the same time, rapid and cost-effective protection, breaking down barriers to access to justice for small savers who would otherwise forego legal defense due to the costs and duration of a civil trial; specialized, thanks to panels composed of subject matter experts capable of deciphering the complexity of financial products and banking practices; and finally, proactive, in that the

From the perspective of the safeguards put in place to address contractual asymmetries involving vulnerable parties, there is a substantial equivalence between the terms consumer, customer, saver, and investor. See A.M. PANCALLO, *Banking Transparency in the Transition to a Sustainable Market*, Bari, 2022.

[7] This topic is precisely one of the research areas of the PRIN2020 "*An analysis of the Italian financial legal framework vis-à-vis the Capital Markets Union action plan: the perspective of regulatory fragmentation and* sustainability," cit., specifically regarding two specific areas (2 and 3): *best practices* aimed at incentivizing green investments; the relationship between the Italian legislative definitions of "investors" and "investments" and the European proposal to introduce harmonized concepts.

[8] Consob, *Report on the Activities of the Financial Disputes Arbitrator (ACF)*, Rome, (Section dedicated to the evolution of disputes regarding digital and cross-border services), 2025.

decisions of these bodies, while not formally binding, create "living law" and a strong reputational deterrent for intermediaries, guiding best practices in the banking sector.

More specifically, this driving role becomes clear when addressing the impact of "contractual weakness" on the investor's actual awareness, particularly[9] , in cases where complex investments were sold through an off-site advisor to individuals lacking financial literacy[10] , such as young investors[11].

In this case, the intermediary's conduct was censured by focusing on the link between the suitability of the transaction and the profiling deficiency.

The contested transactions, in fact, on the one hand, were deemed unsuitable from a risk perspective, given the excessive concentration of investments relative to the client's total assets and the clear inconsistency with their risk tolerance; on the other hand, it was found that the rules regarding the proper execution of the suitability assessment and the relevance of the profiling process had not been complied with (pursuant to Article 21 of the Consolidated Law on Finance and implementing CONSOB resolutions).

In this regard, profiling cannot be reduced to a mere bureaucratic formality (such as simply ticking boxes on a MiFID questionnaire), but must constitute a diligent process of genuinely understanding the client's characteristics. A key point concerns precisely the value of written disclosure. The EU regulatory framework [12] requires the provision of the

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[9] See ABF, February 8, 2023, No. 6303. In this same vein, see also ACF Decision, April 27, 2020, No. 2501. Indeed, similar considerations were made by the Civil Cassation Court, Section I, August 31, 2020, No. 18153, called upon to decide on a case in which high-risk products—which later proved to be unsuitable—had been offered to the investor without providing adequate information, solely based on the client's prior conduct

[10] P. CORRIAS, E. PIRAS (eds.), *Vulnerable Parties in Common Law and Regulated Markets*, op. cit.

[11] On this case, see S. Viciani, *"Assessing Financial Investment Awareness from the Perspective of Risk for 'Vulnerable' Investors Due to Low Financial Literacy,"* in *Assicurazioni,* 1, 2025, 119 ff.

[12] With CONSOB Resolution No. 22551 of December 21, 2022, published in the Official Gazette No. 303 of December 29, 2023, the supervisory authority amended the rules on information for retail investors effective January, replacing the *Key Investor Information Document* (KIID) with the *Key Information Document* (KID). The KIID had been introduced by Directive 2009/65/EC of the European Parliament

KID (*Key Information Document*), a concise and standardized document designed to facilitate the comparability of products. However, these decisions have established a fundamental principle: a mere reference to the information contained in the KID does not exhaust or satisfy the bank's prior disclosure obligation. In the presence of a structurally vulnerable investor, formal transparency does not equate to substantive understanding.

The intermediary remains bound by the obligation to translate the complexity of the KID into accessible language tailored to the counterparty's actual cognitive abilities, conducting a critical assessment prior to the conclusion of the contract (under penalty of nullity or liability for damages as in cases of failure to indicate the right of withdrawal pursuant to Article 30, paragraphs 6 and 7 of the TUF for off-premises offers)[13].

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and of the Council of July 13, 2009, on the coordination of laws, regulations, and administrative provisions relating to certain undertakings for collective investment in transferable securities (UCITS) at eur-lex.europa.eu.

[13] This obligation is generally provided for by law: Article 21 of Legislative Decree No. 58 of February 24, 1998, requires *that "financial instruments be offered or recommended only when this is in the client's best* interest"; To achieve this, the provision requires that, prior to the investment, the entity proposing it *"must obtain the necessary information from clients and act in such a way that they are always adequately informed*."

In accordance with the provisions of Article 36 of the CONSOB Regulation containing implementing rules for Legislative Decree No. 58 of February 24, 1998, concerning intermediaries (adopted by CONSOB by Resolution No. 20307 of February 15, 2018, and subsequently amended by Resolution No. 21466 of July 29, 2020, Resolution No. 21755 of March 10, 2021, and Resolution No. 22430 of July 28, 2022): *"1. All information, including advertising and promotional communications, addressed by intermediaries to clients or potential clients must be accurate, clear, and not misleading. Advertising and promotional communications must be clearly identifiable as such; 2. Intermediaries shall provide clients or potential clients, in a timely manner and in an understandable form, with appropriate information so that they can reasonably understand the nature of the investment service and the specific type of financial instruments being offered to them, as well as the risks associated with them, and, consequently, make informed investment decisions*".

Among the aforementioned investment information, pursuant to paragraph 6 of Article 30 of the TUF, the intermediary is also required to provide information regarding the right of withdrawal applicable to off-premises transactions, with the consequence set forth in the subsequent paragraph 7, whereby *"failure to indicate the right of withdrawal in the forms and documents renders the entire contract null and void, a consequence that can be invoked only by the client*." See also BANCA

These decisions demonstrate how ADR bodies serve as the vanguard in protecting vulnerable parties in financial markets, shifting the focus from the abstract formal equality of contracting parties to the concrete vulnerability of investors, and requiring intermediaries to exercise a level of social diligence that goes beyond the literal wording of the law. Thus, the future of investor protection inevitably depends on consolidating these positions capable of addressing asymmetries and ensuring that digitalization and financial complexity do not become tools for exclusion or the surreptitious exploitation of citizens' low financial literacy.

However, the advent of digital platforms and the massive influx of young investors pose new cross-border and technological challenges. The first critical issue concerns territorial jurisdiction and supervision.

Many of the trading apps used by the younger generations operate in Italy under the freedom to provide services, having their registered offices in other EU member states (often Cyprus, Germany, or the Netherlands), as a result, when a dispute arises regarding losses resulting from non-transparent order execution or a technical platform outage (as has historically occurred in well-known cases of market hyper-volatility), the investor faces a dilemma: whether to file a claim with the dispute resolution body in the platform's country of origin or to pursue the national ACF route. Furthermore, in these cases, it is no longer merely a matter of assessing whether the intermediary provided the required information, but of analyzing the digital architecture of the interface (so-called *"choice architecture"*).

If a platform induces errors or excessive trading through aggressive push notifications, the out-of-court body must be able to sanction this conduct as a violation of the duties of diligence, fairness, and transparency required by law.

3. *Transparency 2.0 and "Retail Investment Strategy": Beyond Simple Product Disclosure*

Reflecting on the considerations outlined so far, it is clear that traditional rules on product disclosure reveal their limitations in the face of the complexity of modern markets.

D'ITALIA, *Provisions on Banking and Financial Transactions and Services. Fairness in Relations between Intermediaries and Clients*, Section II, Paragraph 3.

The turning point at the EU level is represented by the recent European Retail Investment Strategy (RIS)[14]: this regulatory reform aims to dismantle information asymmetries[15], seeking to make the world of investing for ordinary citizens less opaque, more affordable, and significantly safer.

First, by amending MiFID II, in order to require that those offering advice act in the best interest of the client, assessing product suitability more rigorously; second, by introducing strict oversight of online marketing campaigns, involving the promotion of investments by financial influencers on social media (*finfluencing),* in order to seek to ensure that the digitization of financial services becomes an opportunity for inclusion and not a trap for younger investors and, more generally, for the most vulnerable[16] .

The traditional model of transparency, based on the assumption that *"more information equals greater protection"* has revealed all its structural limitations when it comes to young investors.

The proliferation of KIIDs, KIDs, and mile-long prospectuses has led to the paradoxical effect of *"blanket consent*": investors accept the terms with a single click without understanding the true nature of the risk. The goal is no longer to overload the client with data, but to ensure that the information is "digital-by-design"— that is, natively designed

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[14] European Commission, *Proposal for a Directive of the European Parliament and of the Council amending Directives 2014/65/EU, (EU) 2016/97, 2009/138/EC, 2009/65/EC, and 2011/61/EU as regards Union rules on retail investor protection (Retail Investment Strategy)*, COM(2023) 279 final, Brussels, May 24, 2023. The strategy was officially presented by the European Commission on May 24, 2023, as part of the broader Capital Markets Union (CMU) action plan. From a technical-legal perspective, the RIS is not a single law, but a "package" consisting of two main acts that cascade-amend various existing directives and regulations: the "Omnibus" Directive and the PRIIPs Regulation.

[15] M. PELLEGRINI, The Conduct of Business Rules for Financial Intermediaries in the Provision of Investment Services, in F. CAPRIGLIONE (ed.), Handbook of Banking and Financial Law, Milan, 2019, 578 ff.; M. RABITTI, Financial Products Between Rules of Conduct and Organization. The Limits of MiFID II, in Riv. dir. banc., IV, 2020, 145 ff.

[16] The Retail Investment Strategy addresses finfluencing with a principle of strict and joint liability: if a financial intermediary pays a finfluencer for marketing, the intermediary becomes liable for the finfluencer's conduct; the bank must ensure that the finfluencer's communications comply with the same duties of appropriateness, balance, and transparency imposed by the relevant regulations.

for smartphone screens, with intuitive graphics, clear performance scenarios, and immediate visibility of costs, all focused on *"value for money"*[17].

From this perspective, RIS introduces a revolutionary principle: intermediaries cannot simply offer an "appropriate" product but must demonstrate that the item offers real value relative to its price. This serves to dismantle the practice of placing financial products burdened by hidden management fees or inducements that erode the capital of small savers.

In this context, the RIS marks the definitive transition to Transparency 2.0: disclosure regarding the provision of the financial product[18] and, more generally, the investor's understanding of the nature and — what is of particular interest to us — the risks of the specific transaction or financial service, constitutes an essential element in enabling informed choices[19].

Therefore, in situations of contractual vulnerability, where there is a concrete and objective imbalance between the contracting parties regarding their ability to "access"[20] information.

This obligation serves as a counterbalance to the clear superiority of the stronger party in terms of knowledge of the contractual terms [21]. For

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[17] European Parliament and Council of the EU, *Interinstitutional Political Agreement on the "Retail Investment Strategy" (RIS) reform package*, December 2025. On this point, R. LO CONTE, Value for money in POG processes: application profiles and future prospects, in Riv. dir. banc., 2023, 239 ff.

[18] Article 1, paragraph 1, letter u) of the TUF defines "financial products" as financial instruments and any other form of investment of a financial nature; bank or postal deposits not represented by financial instruments do not constitute financial products.

[19] F. Sartori, *Transparency and Behavior in Financial Markets: Beyond the Disclosure Model*, Padua, Cedam, 2022 (to be verified)*;* F. Annunziata, "Retail Investment Strategy: How to Boost Retail Investors' Participation in Financial Markets," in www.dirittobancario.it, 30–31

[20] The quotation marks are intended to convey a broad notion of the concept of access that also encompasses the relative and effective understanding of the information itself. On this point, we recommend reading the general report on *Disclosure duties in insurance* (edited by P. SHARON) presented at the AIDA Rio 2018 World Congress Review, available at aidainsurance.org.

[21] According to V. ROPPO, *"On Financial Market Contracts*," in *Riv. dir. priv*., 2008, 485, and ID., *The Contract of the 2000s*, Turin, 2011, 10, we are dealing with regulations that are entirely market driven.

this reason, the primary duty of intermediaries in the field of financial investments, guided by the protection of the public interest related to the collection of savings, must consist of properly fulfilling their mandate, while complying with stringent duties[22], which give rise to specific obligations.

In this context, information must serve to precisely identify what the bank requires of the client, so that the latter can make informed choices regardless of their level of experience and, even less so, their relative risk tolerance[23], without which the intermediary is precluded from proceeding with the execution of such contracts.

In fact, in accordance with the principle of solidarity among private individuals, including in the contractual sphere, good faith[24] would become a binding requirement, according to authoritative doctrine[25] , for the implementation of the constitutional principle of economic and social solidarity.

In this sense, good faith/fairness is regarded as a source of contract supplementation capable of both filling any gaps in the prepared regulations and setting limits on private autonomy to bind the parties to compliance with regulatory requirements, through the imposition of

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[22] The MiFID I Directive, or Markets in Financial Instruments Directive (2004/39/EC, available at eur-lex.europa.eu), governed the financial markets of the European Union from January 31, 2007, to January 2, 2018. On January 3, 2018, the new MiFID II Directive (2014/65/EU, available at eur-lex.europa.eu) entered into force throughout the Union; together with MiFIR (Markets in Financial Instruments Regulation, EU Regulation No. 600/2014, available at eur-lex.europa.eu), it replaced the previous European regulations.

[23] Consequently, *"the obligation of disclosure and transparency incumbent upon the financial intermediary does not cease to apply even if the transaction is appropriate to the investor's risk profile and level of knowledge of the financial market";* see Civil Cassation, Section I, April 4, 2018, No. 8333.

[24] The so-called "evolutionary" interpretation of the objective concept of good faith and fairness is based on the general principle of social solidarity set forth in Article 2 of the Constitution. Supreme Court, March 9, 1991, No. 2503, in *Foro Italiano,* 1991, I, 2077. The concept of good faith as an obligation of solidarity is found in E. BETTI, *Teoria generale dell'obbligazione*, I, Milan, 1953. On the duties of solidarity enshrined in Art. 2 of the Constitution, see S. RODOTÀ, *Le fonti di integrazione del contratto*, Milan, 2004.

[25] P. PERLINGIERI, *"Information and the Contract*," in ID., *The Law of Contracts Between Individuals and the Market*, op. cit., 375.

supplementary obligations with respect to the primary obligation of performance[26].

Consistent with this, primary national legislation explicitly sets as the objective of operators' transparent, fair, and diligent conduct, and as the guiding principle of their behavior, the satisfaction, to the best of their ability, of their clients' interests (Art. 21 TUF)[27], as also called for by EU regulations, which specifically require intermediaries to act *"honestly, fairly, and professionally to best serve the interests of their* clients"[28] .

It is therefore clear that the omission of such information cannot fail to influence customers' decision-making and their assessment of the investment's risk level, resulting—in the event of financial losses arising from uninformed investments—in an unquestionable obligation on the part of the intermediaries to provide compensation.

[26] S. RODOTÀ, *Sources of Contractual Integration*, op. cit., 3 ff. For a detailed study of good faith and contractual integration, see G. ALPA, *"The Completeness of the Contract: The Role of Good Faith and Equity*," in *Vita notarile*, 2002, no. 2, 64 ff.; ID., *Notes on Integrative Good Faith from a Historical and International Trade Perspective*, in *I Contratti*, 2001, issue 7, II, 723.

[27] Financial market law has found its governing framework in the Consolidated Law on Financial Intermediation (TUF), approved by Legislative Decree No. 58/1998, as amended (most recently by Law No. 28 of March 11, 2025, which amended the so-called Capital Law No. 21/2024).

[28] See Article 24(1) of MiFID II; in this regard, all the provisions contained in MiFID II must be considered, as the directive aims to enhance investor protection through a more transparent and efficient approach on the part of intermediaries and financial firms. In addition, financial advisors and intermediaries are required to incorporate sustainability preferences, in addition to financial ones, expressed by clients during the suitability assessment, while also emphasizing the role of financial education in raising savers' awareness of issues related to sustainable investing. The European Commission, *Proposal for a Directive of the European Parliament and of the Council amending Directives 2009/65/EC, 2009/138/EC, 2011/61/EU, 2014/65/EU, and (EU) 2016/97 as regards Union rules on retail investor protection*, Brussels, May 24, 2023 COM(2023) 279 final, 1., has reached an agreement on the regulatory package on retail investments (*Retail Investment Package*, RIP), aimed at *"ensuring that the legal framework for retail investments sufficiently empowers consumers, encourages better and fairer market outcomes, and ultimately creates the conditions necessary to increase retail investors"* participation in capital markets. The European Commission's proposed *Retail Investment Package* is part of the *Retail Investment Strategy* (RIS).

This results in a position for the investor/saver that is broadly protected, thereby encouraging savers to seek legal redress for the losses they have suffered. In fact, the burden of proof regarding compliance with the duty to inform rests with the intermediary, and does not merely require the absence of negligence, but must be demonstrated through positive evidence of due diligence, while the investor is required to specifically allege the information *gap* and provide proof of financial loss resulting from the investment or investments made.

Finally, upon finding a breach of the obligations to provide accurate information, there is a presumptive finding of a causal link between said breach and the damage suffered by the investor; a presumption that the intermediary must rebut by proving that they have properly fulfilled their obligations[29] .

Ultimately, a client-investor who, due to a series of conditions, is not qualified to carry out financial transactions independently must place trust in a professional who can enable them to access market resources; trust that, from a legal standpoint, is fostered by strengthening protections.

The transparency of regulations and contractual relationships that affect vulnerable positions[30] can certainly be said to be effective in our system[31] and can be interpreted not only in terms of ensuring

[29] Supreme Court, Order No. 4727 of February 28, 2018, and Supreme Court, Civil Section I, Judgment No. 15708 of June 11, 2019.

[30] P. CORRIAS, E. PIRAS (eds.), *Vulnerable Persons in Common Regulations and Regulated Markets*, op. cit.

[31] P. RESCIGNO, *"Banking Transparency and General Contract Law in Banking and Finance*," in *Banca borsa tit. credito,* 1990, 297 ff.; G. ALPA, *"Transparency in the Banking, Financial, and Insurance Sectors*,*"* in *Giur. It*., 1992, 411 ff.; A.A. DOLMETTA, *Toward Balance and Transparency in Banking Transactions: Critical Notes on Law No. 154/1992,* in *Banca borsa tit. cred.,* 1992, I, 381 ff.; A. NIGRO, *The Law on the Transparency of Banking and Financial Transactions and Services: Introductory Notes*, in *Dir. banc. fin*., 1992, 422 ff.; G. DE NOVA, *Transparency and Connotation*, in *Riv. trim. dir. proc. civ*., 1994; E. MINERVINI, *"Transparency and Balance of Contractual Terms in the Consolidated Banking Act*," in Civil *Law Review*, 2001, 660 ff. and 935 ff.; E. CAPOBIANCO, *"Bank Contracts: Transparency and Balance in Customer Relations*," in Banking *Law*, 2002, I, 207 ff.; E. CAPOBIANCO - F. LONGOBUCCO, *The New Regulations on the Transparency of Banking and Financial Transactions and Services*, in *Contr. Impr.*, 2011, 1142 ff.; M. CARATELLI, *Transparency Between Banks and Customers. Information Needs and Public*

comprehension of clarity and fairness but also in terms of understanding the information regarding the various contractual conditions, among which, with respect to financial products, the purchase and sale prices as well as the roles of the client and the intermediary are of particular importance.

Furthermore, in accordance with the principle of proportionality, the regulations are structured in different ways depending on the needs of various customer segments and the characteristics of the services.

The great flexibility in applying this rule[32] , combined with its central role within sector-specific regulations, has made it possible to strengthen protections for the less-informed party[33] and to achieve this goal, it is also necessary to take due account of behavioral errors on the part of intermediaries who, if properly trained, could avoid certain errors in judgment.

3.1 *Mitigating Financial Vulnerability: Adequacy*

Having dispelled the doubt that there is an actual correlation between receiving information and acting with full knowledge of the facts, what is evident is that the resulting breach of the obligations to formulate the clauses proposed to the client—whether an investor or a saver—in a clear and comprehensible manner gives rise to a series of issues regarding the sanctions and remedies to be applied[34], especially when, for example, the clauses in question refer to the essential elements of the contractual relationship and their variations.

Intervention, Milan, 2006; F. CAPRIGLIONE, *From Transparency to* "Best Execution*": The Difficult Path Toward the Right Price*, in *Contr. Imp*., 2009, 475 ff.; E. MINERVINI, *Banking Transparency*, in *Contratti*, 2011, 977; S. PAGLIANTINI, *Contractual Transparency*, in *Enc dir*., Annali, Milan, 2011, 1306; E. QUADRI, *Transparency in Banking Services and Consumer Protection*, in *Nuova giur. comm*., 2011, II, 90 ff.; D. MAFFEIS, *Law and Practice of the Financial Market*, Turin, 2016.

[32] F. DI GIOVANNI, *The Transparency Rule in Consumer Contracts*, Turin, 1998, p. 3.

[33] A.A. DOLMETTA, *Transparency of Banking Products: Rules*, Bologna, 2013, 214–215.

[34] A. MUSIO, *"The Breach of Disclosure Obligations*: *Between Rules of Validity and Rules of Fairness*," in www.comparazionedirittocivile.it and D. IMBRUGLIA, *"The Rule of Adequacy and the Contract,"* in *Quaderni di "studi senesi*,*"* Milan, 2017.

Indeed, the fact that the contract belongs to a specific type of agreement — which may impact the product's complexity — will highlight the need to communicate its specific aspects to the other party, especially in the light of regarding the professional capacity and specific expertise of the contracting parties in the subject matter of the contract.

As we have seen, the flexibility in applying the transparency criterion[35] has made it possible to derive from it a general duty to inform[36], from which it follows that failure to comply with disclosure obligations can certainly be regarded as a violation of the rules of fairness toward both the weaker contracting party and, more generally, toward fair competition within the banking and financial market itself.

However, for an inexperienced investor to achieve a reliable level of risk awareness regarding the financial transaction, transparency alone is not sufficient; information on the suitability of the investment (suitability)[37] is required, thereby ensuring a comprehensive protection system aimed at translating the client's interests into responsible financial choices. More specifically, the financial intermediary has a non-waivable obligation to adequately inform its client, providing information *tailored* to the specific case[38] .

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[35] Given that this "rule" constitutes one of the central aspects of sector-specific regulations, the question arises as to whether it functions as a principle, an autonomous legal institution, or even a general clause. On this point, see F. DI GIOVANNI, *The Rule of Transparency in Consumer Contracts*, op. cit.

[36] One example concerns financial intermediation, which would be itself sufficient to establish, between the intermediaries themselves and those to whom the financial services are directed, a "contact" that serves to establish positive duties of good faith and fairness in the transmission of information. In the doctrine, see A.A. DOLMETTA, *Transparency of Banking Products. Rules*, op. cit., 214–215. In case law, Civil Cassation, Joint Divisions, December 19, 2007, No. 26724. See also on this point www.bancaditalia.it.

[37] According to Art. 25, para. 2, MiFID II, the firm is required to collect the following information from the client in advance to assess the suitability of the financial instrument/investment service: knowledge and experience in investment matters; financial situation, including the ability to bear losses; investment objectives, including risk tolerance.

[38] S. DE POLIS, The EU Retail Investment Strategy - Legal Aspects of the Insurance Market. Keynote Address at the Conference - La Sapienza University, February 22, 2024, in www.ivass.it, 6-7, notes that *"the Commission's proposal clarifies and strengthens the requirements that distributors must comply with when*

While vulnerability was once associated with old age or low levels of education, we are now witnessing the emergence of digital and cognitive vulnerability. Young investors possess a very high level of technological literacy but very low financial literacy, combined with specific behavioral *biases*. Modern trading platforms use gamification techniques (mechanics typical of video games: badges, leaderboards, rewarding sounds upon purchase, eye-catching graphics).

This model is not neutral because it reduces the perception of risk, transforming financial investment into a playful gamble; it fuels overconfidence (excessive trust in one's own abilities) and the illusion of control, and, finally, exploits the FOMO (*Fear of Missing Out*) effect, pushing young people to buy volatile assets (such as cryptocurrencies or stock options) simply because they are "viral" on social media channels[39].

The MiFID profiling questionnaire (suitability and appropriateness) is now administered online in a self-service format, and young investors often alter their answers in order to gain access to complex instruments (such as derivatives or CFDs), sometimes guided by tutorials on unregulated online social media created by finfluencers[40].

In this context, the suitability test in the digital age cannot remain a static checklist. To mitigate the vulnerability of young people,

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assessing the suitability or appropriateness of a product for the retail investor". In case law (Civil Cassation, Section I, February 16, 2018, No. 3914), the principle applies that this obligation applies to all types of investments and is manifested in the commitment to provide specific and "tailored" information with respect to the specific case.

[39] ESMA, *Statement on MiFID II investor protection considerations in relation to the rise of retail trading and gamification features*, Paris, doc. ESMA35-43-3463; in legal scholarship, R. H. Thaler, C. R. Sunstein, *Nudge. The Gentle Nudge: The New Updated Edition*, Milan, Feltrinelli, 2022. C. FAILLA, *Gamification, Dark Patterns, and Crypto-Assets. Prospects for Adapting the Regulation of Unfair Commercial Practices,* in Civil and Commercial Law Observatory, 1, January 2024.

[40] Consob, *Report on the Investment Choices of Italian Households: Financial Literacy and the Digital Approach*, Rome, 2025; in the literature, A. CANEPA, *Social Media and Fin-Influencers as New Sources of Digital Vulnerability in Investment Decision-Making,* in Proceedings of the Conference "Financial Supervision After Two Crises. What are the prospects?", held on June 17 and 18, 2022, on the island of Capri and organized by the University of Naples "Parthenope", in https://air.unimi.it/retrieve/89afe6cd-c967-4192-9b23-48e5eac1122d/2022_01_RTDE_Allegra-Canepa%20social%20media.pdf", 2022.

supervisory authorities (ESMA, Consob) are pushing for dynamic profiling[41]. Platforms should monitor actual user behavior: if an investor profiled as "conservative" suddenly carries out numerous daily trades on highly volatile securities, the platform's algorithm must intervene by blocking trading or imposing a *cooling-off period* (a pause for reflection), thereby restoring the protective function of the suitability principle.

All of this can be achieved through a series of requirements, of which customer profiling is already a central element; however, this target can be strengthened through the effective implementation of such activities, which can only be achieved through a thorough analysis and understanding by the customer — via the intermediary — of the mechanisms underlying financial transactions, coupled with continuous updates. In this context, the suitability rule operates on two fronts: the information provided to the client by the intermediary and the financial transaction carried out (the "*know your merchandising"* rule)[42] . In particular, within the framework of the financial transaction assessment procedure[43], the suitability of processes—highlighting the close link between these processes and the guidelines proposed for the *"know your customer* rule"— is considered central to client protection, encompassing both the requirement for the intermediary to obtain information to classify the investor and the subsequent need to verify the investor's suitability and risk tolerance to enable the intermediary (including from an ethical standpoint) to determine whether a given transaction is appropriate or not.

In this regard, the provision stipulates that, when providing an investment service (other than advisory or portfolio management), to assess the suitability of the service or product in question, the firm is required to ask its client to provide information regarding their experience and knowledge, based on their professional background or educational qualifications, within the relevant financial sector.

[41] ARK, *Public Statement: Mystery shopping exercise on marketing communications and disclosure of costs and charges under MiFID II*, Paris, 2024.

[42] On this point, please refer to S. VICIANI, *"The Role of Information in Financial Advisory Services: Regarding the Casaforte Security*," on *giustiziacivile.com*, updated November 20, 2019.

[43] Art. 40 of CONSOB Regulation 20307/2018.

To underscore the importance of this aspect, ESMA (*European Securities and Markets Authority*) has also specified over time[44] that intermediary financial intermediaries should clearly explain that it is their responsibility to assess the suitability and appropriateness of the financial transaction, so that clients also understand why they are asked to provide certain information and the importance of such information being up-to-date, accurate, and complete[45].

From this perspective, if the investor's or saver's position is to be framed in terms of an obligation to provide the type of information described above, the only limitation on the collection and processing of such data lies in the possibility that authorized entities may legitimately rely on the information provided by the users themselves, unless they are aware, or in a position to be aware, that such information is manifestly outdated, inaccurate, or incomplete. In any case, no clause (or similar statement) aimed at limiting or excluding the intermediary's liability with respect to its own assessment is permissible[46] .

4. *Toward Informed Inclusion*

Thus, the contractual interaction of financially vulnerable investors regarding the assessment of their awareness of the suitability of the investment, from a risk perspective, is strongly influenced by the knowledge gap and the imbalance in the parties' ability to acquire information.

This appears to conflict with the principles of fairness, parity, and equality that guarantee equal opportunity for contracting parties to pursue their interests; these are represented, on the one hand, by the need for *retail* investors to be afforded enhanced protection when they

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[44] See ESMA Document 35-43-1163, November 6, 2018, *Guidelines on certain aspects of MiFID II suitability requirements*, at www.esma.europa.eu; and ESMA 35-43-349 of October 3, 2019, *Questions and Answers on MiFID II and MiFIR investor protection and intermediaries topics*, at www.esma.europa.eu. More recently, *ESMA35-43-3172_Guidelines_on_certain_aspects_of_the_MiFID_II_suitability_requirements*, at www.esma.europa.eu.

[45] See Art. 55, para. 3, EU Reg. No. 565/2017.

[46] M. MAGGIOLO, *Investment Services and Activities. Providers and Provision*, in *Tratt. Cicu-Messineo*, Milan, 2012, 389.

find themselves in a position of contractual imbalance and, on the other hand, by the more efficient functioning of the market itself[47] .

In fact, a market is defined as efficient with respect to a specific level of information if the price of every *asset* (i.e., financial product) traded therein is an undistorted estimate of the asset's real value[48] .

No less important is the objective that *the European Accessibility Act*—that is, the EU directive for people with disabilities (those with physical, mental, intellectual, or sensory impairments, or age-related impairments), published under the title "on the accessibility requirements for products and services"[49] —aims to achieve in its introductory provisions, where it seeks to make the European market accessible, *"by eliminating and preventing barriers to the free movement of certain accessible products and services resulting from the heterogeneity of accessibility requirements across Member States. This would increase the availability of accessible products and services in the internal market and improve the accessibility of relevant information*." This objective could be applied to the inclusion of young people not by prohibiting access to apps, but by requiring platforms to use the same technology (AI, algorithms, interfaces) not to maximize the number of transactions, but to provide personalized financial education and real-time investor protection.

What is certain is that the countless relationships that can arise between individuals and the very relativity of the concept of vulnerability do not allow us to isolate common or general rules regarding the relevance of information, and the informational factor itself behaves differently in distinct cases.

Assuming a uniform meaning for the concept of information, in fact, certainly does not help in identifying the numerous problems that have arisen in this area; thus, to attempt a solution, we must engage in a reflection that focuses not on a general view of the issue, but on a

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[47] Indeed, one cannot help but agree with those who believe that *"a better-informed market is a more efficient* market"; see A. GENTILI, *Contractual Information and Trading Rules*, op. cit., 556.

[48] See the complete definition in *Dizionario di Economia e Finanza*, Treccani, 2012, www.treccani.it.

[49] Directive (EU) 2019/882 of the European Parliament and of the Council of 17 April 2019 on the accessibility requirements for products and services, available at eur-lex.europa.eu.

process of “disaggregation” (based on belonging to a specific sector), which passes through the framework of individual legal institutions[50] .

Finally, for the purposes of this analysis, we believe it is worth noting a study[51] , which focuses primarily on consumers and examines initiatives within EU member states aimed at providing an understanding of how consumer education is implemented within the EU framework, while assessing its importance in today’s constantly evolving market. In this context, we also sought to explore the various consumer education frameworks used globally to meet consumers’ educational needs (formal, lifelong, and targeted education) and address the importance of using consumer education to develop the skills of vulnerable consumers.

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[50] On this point, see D. MESSINETTI, *Circulation of Personal Data and Mechanisms for Regulating Individual Powers*, in *Riv. critica dir. priv*., 1998, 339 ff.; ID., *Returning to Parmenides? It is rather advisable to start again from* the “Institutiones,” *ibid*., 2000, 395 ff.; ID., *Toward an Ecology of Modernity: The Fate of Legal Concepts. R. Nicolò’s Openness to Complex Situations*, *ibid*., 2010, 25 ff.

[51] *Study of Consumer Education Initiatives in the EU* – Final Report, January 26, 2024, available at commission.europa.eu.