INTRODUCTION

The role of the financial sector in the economy has become over the times an unquestionable factor. Both the lending and the fundraising activity of the credit institutions plays an important role in the economy. The roles of the regulation and thereby the legislator and the implementation bodies are a very important factor, because they have to try to find the golden principle of the balance, which contributes to the economic growth, but in the meantime it protects the consumers too. The role of the financial consumer protection became especially important because of the financial crisis of 2008. The reasons of the financial crisis were subjects of numerous researches. According to these researches such reasons were the mispricing of risks associated with the lending activity, the inadequate regulation of the banking system and the lack of transparency of its operation. The inadequate regulation of the financial consumer protection was also mentioned between the potential reasons, but it is very important to add to the facts, that only this factor could not lead to systemic collapse.[1] After the determination of the reasons of the global financial crisis significant legislative process have begun throughout the world. The aim of my thesis is to highlight the changes in the regulation on the financial consumer protection in the Unites States of America (USA). According to this I will demonstrate through analysis of some financial consumer protection cases how the provisions of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act), enacted in 2010, contribute to consumer protection in practice and to the fulfillment of the principle of transparency, how it takes steps to reduce the information asymmetry between the consumers and financial institutions.

SOME WORDS ABOUT THE CONSUMER PROTECTION IN THE USA

Consumer protection has an important role in the USA. Already in the 19th century there were some rules dealing with consumer protection, but the first regulation on this field was adopted on the time of the New Deal program. In 1914 the organisation for consumer affairs was set up at federal level: the so called United States Federal Trade Commission (FTC).[2]

It has two main goals:
- first of all to protect consumers by preventing fraud, deception, and unfair business practice in the marketplace
- and secondly to maintain competition by preventing anticompetitive business practices. [3]

The FTC has seven divisions and until 2010 the Division of Financial Practices dealt with financial consumer protection. Because of the reasons, aforementioned in the introduction, there were some significant changes on this field. The Dodd-Frank Act was adopted in 2010. According to the scientific literature this act is also called since then as the most comprehensive reformpackage on the field of the financial regulation. The main aim of the Act is: „To promote the financial stability of the United States by improving accountability and transparency in the financial system, to end "too big to fail", to protect the American taxpayer by ending bailouts, to protect consumers from abusive financial services practices, and for other purposes.” [4] The Act established a new, independent entity, which is responsible for the financial consumer protection: the Consumer Financial Protection Bureau (Bureau). The financial consumer protection functions of the FTC were carried over to the Bureau. The Act defines the tasks of the Bureau, which are conducting financial education programs, researching, monitoring and publishing information relevant to the functioning of markets for consumer financial products, identifying risks for consumers. The Bureau has enforcement authority to pursue action against entities, who violated the federal consumer financial protection law. The Bureau has a variety mechanisms for enforcing the law. It can investigate, hold hearings, hold power over witnesses and documents in connection with cases. The hearing serves as a trial, because its main aim to determine whether the covered person is guilty or not. The Bureau’s decision is appealable. [5] The Bureau’s main enforcement power is to bring civil lawsuit against the entities, who violated the law. The provisions of the Dodd-Frank Act connection with the Bureau covers the rules on its jurisdiction and defines the fundamental definitions, such as the definition of consumer, financial product, financial institution. Activites in connection with financial products and violation of financial consumer rights are regulated in other acts, like in the Fair Debt Collection Practices Act, Home Mortgage Disclosure Act, the Credit Cardholders Bill of Rights.

TRANSPARENCY AND INFORMATION ASYMMETRY

The global financial crisis has pointed out the importance of the financial consumer protection. The consumer are not well-informed about the financial products, do not recognise the risk in connection with these products, their nature and the operation of the financial institutions. After the financial crisis the sign of distrust was felt in the marketplace. The consumer lost trust in banks. But this distrust affected and affects the operation of the financial market. The principle of transparency is very important in this field. Giving effect to this principle it is achievable to reduce the information asymmetry between the parties.[6] One of the main aim of the Bureau is to reduce this asymmetry in order to do so the Bureau participates in the implementation of the financial culture, it holds different educations for specific age categories, supplies information on the financial products (e.g. credit,
mortgage, credit card), supplies complaint handling mechanisms for the consumers, where the consumers can make a formal complaint or they can share their stories with the others. In order to implement the principle of transparency the Bureau publishes informations about unreliable financial institutions. In case of violation of the law it discloses to the public the warning letters, publishes press releases, gives press conferences about the actual happenings. It publishes also the documents in connection with trials and court’s rulings. According a report published in Januar of 2017 the debt collection is a $13.7 billion industry and this problem affects more than 70 million consumers, they were not able to repay their debts under the conditions laid down in contracts. The Bureau handles more complaints debt collection than about any other financial product or service. There are serious problems in connection with debt collection, because there are complaints about harassing phone calls, calling at all hours of the day or night, threats of arrest or criminal prosecution, threats of physical harm to consumers. [7] In the following part of my thesis I will present through debt collection and consumer protection cases how the financial institutions violated consumers’ rights and the measures taken by the Bureau in connection with the cases.

DEBT COLLECTION CASES, CONSUMER PROTECTION CASE

According to the §1031 a) of the Dodd-Frank Act the Bureau has general power in case to prevent a covered person or service provider from committing an unfair, deceptive, or abusive act or practice in connection with any transaction with a consumer for a consumer financial product or service, or the offering of a consumer financial product or service. The FTC adopted the Fair Debt Collection Practices Act (FDCPA) [8], which defines how the debt collector can violate the law and the consumer rights. In the following case the Bureau took action against two individuals, who operate a network of companies, deal with debt collection, that harass, threaten millions of costumers. They set up 60 debt collection firms, and purchased large debt portfolios. The Bureau alleges that the defendants violated both the provisions of the FDCPA and the Dodd-Frank Act. They practiced unfair and deceptive practice, because they charged $200 the consumers without no contractual or legal background. The firms falsely threatened with legal action, but they have no intention of taking one. In some cases they falsely accused consumers of committing crimes, lied to them, claiming that they would be arrested in case if they do not pay. In one other case they instructed a woman, that she not even got time to get a lawyer because she would be arrested the next day. They faked calls and e-mails to make it appear that these calls, e-mail were coming from government or court officials. They called the consumers’ relatives claiming that he/she is a government official who could arrest the consumer for non-payment of the debt. The firms have profited tens of millions of dollars annually and these profits have been funneled back to the defendants’ relatives through payment to various sham companies. The Bureau requested the court to impose penalties and to pay compensation to the consumers who have been harmed. [9] The Bureau alleges that the defendants violated both the provisions of the FDCPA and the Dodd-Frank Act. They practiced unfair, deceptive practice. According to the provisions of the
FDCPA they were not allowed to communicate with other persons than the consumer[10], they may not harass the consumer in connection with collection of the debt, they may not use any misleading representation, that the nonpayment of the debt will result imprisonment, they may not threat to take any action that cannot legally be taken, they may not represent themself as they were affiliated with the State.[11] It is clear that the defendants violated the provosions of the law, but in this time there is no substantive court decision yet. [12]

In other debt collection case the Bureau took action against two firm for misrepresenting attorney involvement to collect medical debts. They falsely represented that letters and calls were coming from lawyer [13] and to do so they violated the § 807 (3) of the FDCPA. In this case the Bureau had authority to take action against the two firms and ordered to pay $ 577.135 to harmed consumers and $ 78.800 civil money penalty. [14]

From the two aforementioned cases it is clear that how important the legal regulation on this field, and the role of the Bureau, who has authority to take action against such serious violation of the law.

An other big problem on this field are the unfair contract terms, they also emerge from the information asymmetry. Even if the financial institutions give detailed information concerning the contracts, it is not sure that the consumers will understand them. In many cases they lightly accept the terms and recognise the risks of the financial products only after the contracting. The financial institutions have a high level of financial knowledge, but this can not be said about the consumers. The aim of the Dodd-Frank Act is to ensure and promote fair market practice between the parties. The following case illustrates how can the fair market practice be violated, the unfair contract terms and how the institutions take advantage of the consumers’ weaker positions. In this case the Bureau took actions and filed lawsuit against a firm, who scammed 9/11 heroes out of money by lying about the terms of the deal. The company targeted such fund awardees, who were the first responder of the World Trade Center attack and many of them suffered very serious injuries. They were awarded money from a fund, established by the Congress. The company contacted them after they were awarded but before they received the money and by lying about the terms of the contracts it lured the consumers into costly payouts. It lied about speeding up the payment process. It used unlawfully high interest rates on the settlements. In case of a consumer, who was awarded $65,000, the company advanced her $18,000, and after six months, when she got her award from the fund, she had to repay $35,000 to the company. The Bureau alleges that the defendants violated the prohibition on deceptive and abusive act and practices, and alleges that the transactions are not valid and enforceable because they violated the state interest rate cap.[15]
CONCLUSIONS

Mayor changes have been occured in the regulation of the financial consumer protection in the USA. The activity and the operation of the Bureau is outstanding both at federal and international level. It explains the risk of the financial products in such way, which is easily understandable by the consumers. It provides formal interfaces to the consumers to be able to submit a complain or just tell their stories. It carries out important researches in order to survey the problems of the consumers. It put emphasis on the financial education, provides free brochures to the consumers. But it is clear from the aforementioned cases that the Bureau has to face with serious problems. The indebtedness of households is risky, could affect the liquidity of the financial institutions. One instrument against this indebtedness is and could be the improvement of the financial education. With this approach the Bureau and the State could achieve, that the consumers will take more informed decisions. But the question is, how the State could change on the approach of the consumers to finance, namely on the fact that the majority of the citizens financed and finance their whole life from loans. This was and is so before and after the financial crisis. The amount of debt collection is huge, and the question arises from that: Is that not too risky? Could this factor lead to an other financial crisis? Answering these questions takes time. It is important to examine the other side too: the side of the financial institutions. The regulation on their operation was also tighten up. But there are several violation on the consumers’ rights trough unfair contractual terms, unlawfully high interest rates, unfair and deceptive practices. There are exhaustive lists on each financial products, which describe how the financial institutions can violate the costumers’ rights. But with this kind of regulation there is a danger that the institutions will find legal vacuum.

BIBLIOGRAPHY


[5] Dodd-Frank Act 4173 Title X Subtitle § 1035 (a-c)


[7] We’re working to improve fairness and transparency in the debt collection market for you


[10] FDCPA 805. § (b) Communication with third parties


[12] Northern Resolution Group, LLC, Douglas MacKinnon, Mark Gray, Enhanced Acquisitions, LLC, and Delray Capital, LLC,


https://www.consumerfinance.gov/policy-compliance/enforcement/actions/works-lentz-inc/

[15] RD Legal Funding, LLC, RD Legal Finance, LLC, and RD Legal Funding Partners, LP, and Roni Dersovitz