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Regulatory Overreach or Necessary Protection? The Impact of EU Consumer Protection and Digital Markets Laws on E-Banking in FinTech

Introduction[1]

The emergence of financial technology has fundamentally restructured how banking services are conceived, distributed, and experienced across Europe. E-banking, broadly understood as the digital delivery of financial services through online or mobile platforms, has transitioned from a technological convenience into a systemic component of the European Union's financial architecture (Radhakrishnan, Shankar 2024). FinTech, which encompasses artificial intelligence applications, blockchain-based payment systems, mobile banking, and digital lending, represents the technological substrate upon which this transformation rests (Hutukka 2024). Together, these developments have compelled the EU to undertake an ambitious programme of legal reform, producing a layered and at times internally conflicted regulatory landscape.

[1] This article is based on research originally conducted for the author's unpublished Master's thesis, defended in April 2026 at the Faculty of Law and Administration, University of Szczecin, under the supervision of Krystyna Nizioł, PhD, DSc, Associate Professor, University of Szczecin. The analysis and argumentation have been significantly developed and expanded for this publication.

The European Union's regulatory response has been characterised by breadth and ambition. The Payment Services Directive 2 (PSD2), adopted in 2015, introduced open banking obligations and competitive access rights that reshaped market dynamics. The Digital Markets Act (DMA) and Digital Services Act (DSA), both adopted in 2022, seek to govern digital platform behaviour and constrain the dominance of large online intermediaries. The Digital Operational Resilience Act (DORA), also of 2022, mandates systemic cybersecurity and operational continuity standards across the financial sector. These instruments are supplemented by the General Data Protection Regulation (GDPR) and sector-specific consumer protection directives, creating a web of interlocking obligations that financial technology firms must navigate simultaneously.

Yet the very comprehensiveness of this regulatory architecture has given rise to a fundamental normative tension. Innovation in digital finance is by nature iterative, experimental, and cross-border, qualities that sit uneasily within a compliance culture premised on legal certainty, ex-ante obligations, and jurisdictionally fragmented enforcement. Scholars and institutions have raised legitimate concerns that this mismatch produces proportionality deficits, particularly for small and medium-sized FinTech firms (Ozili 2025; ITIF 2022; MIT JRC 2021). At the same time, judicial oversight through the Court of Justice of the European Union (CJEU) has progressively reinforced consumer rights as a constitutional anchor within digital financial governance, as demonstrated in *Kušionová v SMART Capital a.s.* (C-34/13) and *FS and WU v First Bank SA* (C-593/22).

This article undertakes a doctrinal legal analysis of these developments. It proceeds from the premise that understanding the structural features of EU FinTech regulation, comprising its normative rationale, institutional architecture, and interpretive controversies, is a prior condition for any meaningful evaluation of the EU's digital finance strategy. The article does not present empirical findings or policy recommendations. Rather, it analyses the normative tensions embedded in the existing legal framework and offers a coherent interpretation of how those tensions manifest across three distinct regulatory domains.

The article is structured as follows. Section 2 situates e-banking and FinTech within the broader EU regulatory landscape, examining the definitional and conceptual foundations of these phenomena. Section 3 analyses the PSD2 framework and the normative fault lines it generates at the intersection of open banking and data governance, including the unresolved tensions with GDPR. Section 4 turns to the DMA and DSA, examining their architectural logic, gatekeeper designation criteria, and competitive implications for FinTech ecosystems. Section 5 analyses DORA's cybersecurity and resilience obligations, with particular attention to its asymmetric compliance burden. Section 6 examines the CJEU's contribution to FinTech governance through landmark case law. Section 7 synthesises the analysis across all three normative fault lines and draws conclusions about the current state of EU digital finance law.

E-Banking and FinTech in the EU: Definitional and Conceptual Foundations

Any rigorous legal analysis of the regulatory framework governing e-banking in the FinTech sector must begin with definitional clarity, since the legislative texts themselves often deploy overlapping and incompletely harmonised terminology. E-banking refers, in its most foundational sense, to the delivery of financial services, including account management, payments, transfers, and digital lending, through networked electronic systems rather than physical branch infrastructure (Radhakrishnan, Shankar 2024). FinTech, by contrast, is a broader and more dynamic category encompassing the technological innovation that drives and continuously transforms digital finance, including the deployment of artificial intelligence in credit assessment, distributed ledger technologies in payment settlement, and algorithmic tools in portfolio management (Hutukka 2024).

Within EU law, the concepts of e-banking and FinTech are not defined as discrete legal categories. Rather, they are captured by functional and activity-based definitions distributed across multiple legislative instruments. PSD2, for instance, defines payment services by reference to their economic function rather than the technology employed, thereby extending its scope to FinTech payment service providers irrespective of their institutional form (Directive (EU)

2015/2366, Article 4). The DMA defines digital gatekeepers by reference to quantitative thresholds and qualitative criteria related to market power and systemic importance, a definitional architecture that may encompass large financial technology platforms providing digital payment services (Regulation (EU) 2022/1925, Article 3). DORA, for its part, applies to a broadly defined category of financial entities, explicitly including payment institutions, electronic money institutions, and crypto-asset service providers (Regulation (EU) 2022/2554, Article 2).

This terminological dispersion reflects the EU legislator's preference for technology-neutral drafting, a technique intended to ensure that legal obligations remain applicable as technological paradigms shift. Ferretti (2022) observes that PSD2's technology-neutral architecture was deliberate: by anchoring obligations to economic functions rather than technical forms, the EU sought to prevent regulatory arbitrage by FinTech firms seeking to evade compliance by characterising their activities as falling outside the scope of banking regulation. However, this approach also generates interpretive uncertainty, particularly at the margins of regulatory scope, where novel business models resist easy categorisation within existing definitional frameworks (Aben, Etti 2022).

The conceptual distinction between e-banking and FinTech is also important at the level of regulatory purpose. E-banking regulation is primarily concerned with ensuring the safe and efficient provision of payment services, protecting consumers from fraud and unfair terms, and maintaining systemic financial stability. FinTech regulation, in its EU form, is additionally concerned with market structure, particularly the prevention of monopolistic concentration by large technology firms and the promotion of competitive entry by smaller, more innovative players. This dual regulatory purpose explains why the EU's digital finance strategy encompasses both microprudential instruments such as PSD2 and DORA, which govern the conduct and resilience of individual firms, and macrostructural instruments such as the DMA and DSA, which govern the competitive architecture of digital markets as a whole (Moloney 2024; Kapsis 2020).

The growth trajectory of European FinTech underscores both the significance and the urgency of achieving the right regulatory balance. ICMA (2023) reports that European FinTechs attracted approximately €4.6 billion in capital investment in the first half of 2023, representing a decline of approximately seventy percent compared to the same period in 2022. While this contraction reflects macroeconomic headwinds, it also raises questions about whether the EU's regulatory burden contributes to investor hesitancy. Notably, early-stage FinTech deals continued to represent a historically high share of total investment at seventy-two percent, suggesting that foundational innovation remains robust even as scaling becomes more challenging. Payments and digital banking, historically the most heavily funded subsector, became the third most funded in 2023, reflecting a diversification of investor interest toward emerging FinTech categories less directly subject to PSD2's compliance obligations (Preziuso, Koefer, Ehrenhard 2023).

The PSD2 Framework: Open Banking, Data Governance, and the GDPR Interface

The Normative Architecture of PSD2

The Payment Services Directive 2, adopted in November 2015 and transposed across EU member states by January 2018, constitutes the primary legal instrument governing electronic payment services within the European Union. Its normative architecture pursues three interconnected goals: fostering competition by mandating access rights for third-party payment service providers (TPPs); enhancing consumer protection through transparency, liability, and dispute resolution obligations; and strengthening cybersecurity through the requirement of strong customer authentication (SCA) (Directive (EU) 2015/2366, recitals 3 to 7).

The open banking framework created by PSD2 is its most structurally significant innovation. By compelling payment account providers, predominantly banks, to share customer account data with authorised TPPs upon customer consent, PSD2 reconfigured the data-based competitive advantage that incumbent banks had

historically enjoyed (Babina, Buchak, Gornall 2022). This structural shift created the legal conditions for the emergence of account information service providers (AISPs) and payment initiation service providers (PISPs), categories of FinTech firm that derive their entire business models from the data-sharing obligations imposed on banks (Ferretti 2022). Polasik et al. (2024) argue that this mandatory data-sharing architecture produced measurable effects on market openness, particularly in jurisdictions such as Poland and the United Kingdom, where implementation was accompanied by regulatory guidance supporting the development of open banking ecosystems.

However, PSD2's open banking model has also generated tensions that its drafters did not fully anticipate. Sadowski (2021) identifies fragmented national implementation as a persistent problem, noting that member states adopted divergent approaches to SCA technical standards, API functionality requirements, and supervisory enforcement, producing a patchwork of compliance conditions across the EU single market. The European Commission's own study on the application and impact of PSD2 (FISMA/2021/OP/0002) acknowledged that, while the directive delivered tangible competition benefits, it fell short of creating genuinely harmonised conditions, particularly regarding the accessibility and reliability of bank APIs.

The PSD2 and GDPR Interface: Normative Friction and Data Consent Conflicts

The most acute normative fault line within the EU's open banking framework arises at the intersection of PSD2 and the General Data Protection Regulation (GDPR). Both instruments claim jurisdiction over the processing of payment account data, but they operate according to different and not always compatible legal architectures. GDPR establishes consent as one of six legal bases for data processing, requiring that consent be freely given, specific, informed, and unambiguous (Regulation (EU) 2016/679, Article 7). PSD2, by contrast, conditions data access on customer consent but does not define consent in the same technically demanding terms as GDPR, nor does it fully align its consent mechanism with GDPR's requirements regarding the granularity, withdrawability, and documentation of consent.

This divergence creates genuine compliance difficulties for FinTech firms seeking to operate simultaneously under both regimes. As Gounari et al. (2024) observes, a TPP relying on PSD2's open banking access right must ensure that its data processing activities are also legally grounded under GDPR, yet the grounds available, including consent, legitimate interests, or performance of a contract, each generate their own normative complications in the specific context of payment data sharing. The interaction between PSD2's explicit consent requirement and GDPR's prohibition on bundled consent has, in practice, produced uncertainty regarding whether a single consent mechanism can simultaneously satisfy both instruments' requirements.

The European Banking Authority's 2022 Report on the Implementation of PSD2 identified this interface as one of the unresolved structural weaknesses of the current framework, noting that inconsistent interpretations by national data protection authorities and payment supervisors have created legal fragmentation that disadvantages FinTech firms seeking cross-border scale. The proposed Regulation on a Framework for Financial Data Access (FIDA), tabled by the European Commission in COM(2023) 360 final (European Commission 2023b), represents an attempt to address some of these tensions by creating a more structured and harmonised legal framework for financial data sharing beyond the scope of PSD2. Whether FIDA succeeds in resolving the PSD2 and GDPR interface tensions, or whether it generates new normative complexities, remains to be seen.

The Transition to PSD3: Continuities and Structural Reforms

The European Commission's 2023 proposal for a revised Payment Services Directive (PSD3) and an accompanying Payment Services Regulation (PSR) signals the EU legislator's acknowledgment that PSD2's harmonisation goals were only partially achieved. The PSD3 and PSR package proposes, among other things, to convert the core open banking obligations from a directive requiring national transposition into a regulation directly applicable across member states, thereby eliminating one of the primary sources of legal fragmentation identified by commentators (European Commission 2023c).

The package also introduces enhanced API standardisation requirements and an explicit duty on banks to ensure that their APIs provide FinTech firms with a functionality equivalent to that available through the bank's own customer interface.

From a doctrinal perspective, the shift from directive to regulation represents a significant constitutional choice about the appropriate relationship between EU-level harmonisation and national regulatory discretion. While direct applicability ensures uniform compliance conditions across member states, it also reduces the capacity of national regulators to adapt obligations to local market structures and supervisory traditions. Aben and Etti (2022) observe that this tension between uniformity and flexibility is a recurrent feature of EU financial regulation and that the PSD3 and PSR package does not fully resolve it. The regulation's delegated act mechanisms, which grant the Commission significant rule-making authority over technical standards, may replicate the fragmentation problem at the level of delegated legislation rather than eliminating it.

The Digital Markets Act and the Digital Services Act: Gatekeeper Logic and FinTech Competition

The DMA's Architectural Logic

The Digital Markets Act, which entered into force in November 2022 and began full application in May 2023, represents the EU's most far-reaching structural intervention in digital market competition (Regulation (EU) 2022/1925). Its architectural logic is premised on the identification of gatekeepers, meaning large digital platforms that serve as critical intermediaries between business users and end users, and the imposition of ex-ante behavioural obligations intended to prevent gatekeepers from leveraging their systemic market position to foreclose competition, exploit business users, or restrict consumer choice.

The gatekeeper designation criteria are quantitative and qualitative. Quantitatively, a provider must have annual EEA turnover or market capitalisation above specified thresholds, must operate a core platform service used by at least 45 million monthly active end users

in the EU, and must have been active in the digital sector for at least three of the past five financial years (Regulation (EU) 2022/1925, Article 3(2)). Qualitatively, the Commission may designate a provider as a gatekeeper where it holds an entrenched and durable position by virtue of its market share, scale, data advantages, vertical integration, or network effects (Article 3(6)). Ozili (2025) notes that these criteria, while defensible as proxies for systemic market power, are not self-executing: their application to the financial technology sector requires difficult judgments about the extent to which digital payment services constitute a core platform service within the DMA's taxonomy.

For FinTech, the most significant aspect of the DMA is not its application to FinTech firms themselves, most of which are far too small to meet gatekeeper thresholds, but rather its implications for the large technology companies that have entered the financial services space. Companies such as Apple, Google, Amazon, and Meta operate digital payment services at a scale that brings them within the DMA's potential scope. The DMA's prohibition on self-preferencing (Article 6(5)) and its data interoperability obligations (Article 6(7)) have direct implications for the competitive dynamics of digital payment markets, where platform operators may use their control over operating systems or app distribution channels to favour their own payment applications over competing FinTech solutions (Citterio, King, Locatelli 2024).

The DSA's Complementary Architecture and Consumer Protection Obligations

The Digital Services Act, which entered into force in November 2022 and became fully applicable to all in-scope providers in February 2024, complements the DMA by addressing the responsibilities of digital intermediaries in respect of user safety, transparency, and accountability (Regulation (EU) 2022/2065). While the DMA is concerned primarily with market structure and competition, the DSA focuses on the governance of digital content and services, establishing a risk-based compliance framework under which providers of online platforms and search engines must assess, mitigate, and report on systemic risks arising from their services.

For e-banking and FinTech, the DSA's relevance is primarily indirect. FinTech platforms that facilitate financial services through

digital marketplaces or facilitate peer-to-peer transactions may, depending on their functional architecture, fall within the DSA's definition of an online platform or, in larger cases, a very large online platform (VLOP). The obligations applicable to VLOPs are substantially more demanding than those applicable to smaller providers, including mandatory systemic risk assessments, independent audits, and enhanced transparency obligations toward users and authorities (Regulation (EU) 2022/2065, Articles 33 to 43). Aben and Etti (2022) observe that the DSA's layered compliance structure, which differentiates obligations by provider size and risk profile, represents a genuine attempt to apply proportionality, though the practical boundary between platform categories remains contested.

The 'Regulation over Innovation' Critique and Its Normative Limits

The DMA has attracted significant critical attention from technology policy scholars and industry commentators. The Information Technology and Innovation Foundation (ITIF 2022) characterised the DMA as a triumph of regulation over innovation, arguing that its ex-ante prohibition architecture sacrifices the consumer welfare benefits of platform integration in favour of a structural competition model that prioritises contestability over efficiency. The MIT Joint Research Centre's expert panel (MIT JRC 2021) similarly raised concerns about the DMA's definitional breadth, arguing that its gatekeeper designation criteria could capture innovative platform models that do not, in fact, exercise the kind of entrenched market power that the regulation is designed to address.

These critiques raise legitimate proportionality concerns that deserve serious engagement. However, they must be situated within a broader normative context. The DMA was adopted in response to a sustained European Commission investigation of digital market dynamics, conducted over multiple years and drawing on extensive evidence of the competitive distortions produced by platform dominance in sectors including digital payments (CERRE 2020). The regulation's architectural choices, including ex-ante obligations, structural access rights, and administrative enforcement by the Commission, reflect a deliberate legislative preference for structural remedies over case-by-case antitrust enforcement, which the

Commission had determined to be inadequate in addressing the pace and scale of digital market concentration. As Craig and de Búrca (2022) observe, the proportionality of EU legislation is assessed by reference to the regulatory objectives pursued, and the legislative record of the DMA demonstrates a considered, if contested, balance between those objectives and the means chosen to achieve them.

DORA and the Cybersecurity Architecture of EU Digital Finance

The Normative Rationale and Scope of DORA

The Digital Operational Resilience Act (DORA), which applies from January 2025, introduces a comprehensive and harmonised framework for the management of information and communication technology (ICT) risk across the EU financial sector (Regulation (EU) 2022/2554). Its normative rationale is grounded in the systemic risk logic of financial regulation: digital disruptions, whether arising from cyberattacks, software failures, or operational dependencies on third-party ICT service providers, can, if they affect systemically important financial institutions or critical payment infrastructure, propagate rapidly across interconnected financial markets and cause macroprudential harm (Busch 2023).

DORA's scope is broad and deliberately so. It applies to credit institutions, payment institutions, electronic money institutions, investment firms, insurance companies, crypto-asset service providers, and critically, their third-party ICT service providers including cloud service providers offering services to the financial sector (Regulation (EU) 2022/2554, Article 2). This last category is of particular significance for FinTech firms, most of which rely heavily on cloud infrastructure and third-party software platforms for their core operational systems. DORA requires financial entities to perform thorough due diligence on their ICT third-party dependencies, to include contractual provisions ensuring auditability and resilience in their ICT service agreements, and to maintain digital operational resilience testing programmes commensurate with their risk profile (Articles 24 to 27).

Proportionality and the Asymmetric Compliance Burden

The most significant doctrinal issue raised by DORA in the FinTech context is proportionality, specifically whether the regulation's compliance requirements are calibrated appropriately to the risk profile and resource capacity of smaller market participants. DORA does include a proportionality principle (Article 4), which requires that financial entities apply its requirements in a manner proportionate to their size, overall risk profile, and the nature, scale, and complexity of their services, activities and operations. However, the practical content of this proportionality qualification is heavily mediated by implementing technical standards developed by the European Supervisory Authorities, which may not always translate the proportionality principle into sufficiently differentiated requirements.

The contractual and audit requirements imposed by DORA on ICT third-party service providers create compliance costs that are likely to be disproportionately borne by smaller FinTech firms, whose leverage *vis-à-vis* large cloud service providers is limited. A small FinTech firm negotiating a service agreement with a major cloud infrastructure provider has limited capacity to impose the contractual terms required by DORA's Article 30, including audit access rights and information-sharing obligations, without incurring significant cost or accepting less favourable commercial terms. This asymmetric compliance burden may, paradoxically, strengthen the competitive position of large incumbent financial institutions, which already have established relationships and negotiating leverage with ICT providers, at the expense of the FinTech entrants that EU innovation policy seeks to promote.

Moloney (2024) argues that this proportionality deficit is not unique to DORA but reflects a systemic feature of EU financial regulation, which has historically developed compliance frameworks calibrated to large, complex financial institutions and then sought to apply them, with modifications, to smaller and more agile actors. The European Banking Authority's Report on the Implementation of PSD2 (European Banking Authority 2022) identified an analogous problem in the SCA context, where the technical complexity of strong authentication requirements created disproportionate burdens for smaller payment service providers relative to established

banks. Whether DORA's proportionality qualification is sufficiently robust to address these concerns in practice remains to be determined through enforcement experience.

CJEU Jurisprudence and the Judicial Architecture of EU FinTech Governance

Kušionová v SMART Capital a.s. (C-34/13): Consumer Rights as Constitutional Principle

The Court of Justice of the European Union's judgment in *Kušionová v SMART Capital a.s.* (Case C-34/13, judgment of 10 September 2014) provides a foundational reference point for understanding how the Court interprets the relationship between EU consumer protection law and the enforcement of financial contracts in the digital age. The case concerned a Slovak consumer who had granted a secured loan over her family home to a financial services provider, with the loan agreement containing a term permitting the creditor to realise the security through extrajudicial sale without judicial review. The CJEU held that a national procedural mechanism permitting extrajudicial enforcement without adequate judicial oversight was incompatible with the Unfair Contract Terms Directive (93/13/EEC) and the fundamental right to an effective remedy enshrined in Article 47 of the Charter of Fundamental Rights.

For present purposes, the significance of *Kušionová v SMART Capital a.s.* lies not in its specific factual matrix but in the constitutional methodology the Court deployed. By grounding its analysis in the right to an effective remedy and interpreting consumer protection directives in light of fundamental rights, the Court signalled that consumer protection in the financial context cannot be treated as a merely technical regulatory objective susceptible to derogation on grounds of contractual freedom or market efficiency. This constitutional dimension of EU consumer protection law has direct implications for FinTech regulation: it suggests that legislative or regulatory choices that expose consumers of digital financial services to unfair terms, inadequate redress mechanisms, or opaque decision-making processes are liable to be assessed not only against proportionality but against fundamental rights standards (Craig, de Búrca 2022).

FS and WU v First Bank SA (C-593/22): Transparency, Fairness, and Digital Financial Contracts

The more recent CJEU judgment in *FS and WU v First Bank SA* (Case C-593/22, judgment of 6 July 2023) addresses the application of the Unfair Contract Terms Directive to digital banking contracts in the contemporary FinTech environment. The case, originating from Romania, involved a challenge to variable interest rate clauses in consumer credit agreements. The Court's ruling reinforced the requirement that financial institutions ensure that the essential terms of digital financial contracts, including pricing mechanisms, interest rate variation procedures, and early repayment conditions, are drafted in plain and intelligible language that allows the average consumer to assess the economic consequences of contractual terms before entering into an agreement.

This transparency obligation, while applicable to traditional banking contracts, acquires heightened significance in the FinTech context. Digital financial products, including algorithmic credit scoring systems, dynamic pricing models, and automated investment advice platforms, present challenges of transparency that go beyond the drafting of contractual terms in accessible language. Where pricing or eligibility decisions are generated by algorithmic systems operating on large datasets, the transparency requirement demands not merely that the contractual terms be intelligible but that the consumer be able to understand the basis on which those terms were generated. It may be argued that the existing EU consumer protection framework, particularly the Consumer Rights Directive (2011/83/EU) and the Unfair Commercial Practices Directive (2005/29/EC), does not yet fully address this algorithmic transparency dimension, and that legislative updating is necessary to ensure that consumer protection standards are adequate for the FinTech era.

The CJEU's jurisprudence in both *Kušionová v SMART Capital a.s.* and *FS and WU v First Bank SA* thus performs two complementary functions in the governance of EU digital finance. First, it provides interpretive guidance on the application of existing consumer protection instruments to new factual contexts generated by digital financial innovation. Second, it signals to the EU legislator

and to national regulators that the consumer protection baseline established by EU law is constitutionally anchored and cannot be attenuated by the competitive pressures of digital financial markets. This judicial posture aligns with and reinforces the structural consumer protection goals of the legislative instruments analysed above.

Synthesis: Three Normative Fault Lines and the Path Toward Proportionate Digital Finance Governance

The foregoing analysis identifies three normative fault lines that cut across the EU's digital finance regulatory landscape and that, taken together, define the structural challenge facing European FinTech governance at the current juncture.

The first fault line concerns the PSD2 and GDPR interface and the tensions it generates at the intersection of open banking mandates and data protection obligations. The coexistence of two technically incompatible consent regimes, one grounded in the payment services logic of PSD2 and the other in the fundamental rights logic of GDPR, creates compliance complexity that falls disproportionately on smaller FinTech entrants who lack the legal and technical infrastructure of established financial institutions. The proposed FIDA regulation signals legislative awareness of this problem but does not yet offer a fully coherent solution.

The second fault line concerns the gatekeeping architecture of the DMA and its implications for the competitive position of FinTech firms within digital payment ecosystems dominated by large technology platforms. The DMA's structural intervention logic, compelling interoperability, prohibiting self-preferencing, and mandating data access, creates structural opportunities for FinTech firms to compete on merit rather than on access to platform infrastructure. However, the DMA's definitional frameworks and enforcement architecture require further calibration to ensure that its benefits accrue to FinTech innovators rather than being captured by incumbent financial institutions with the resource capacity to exploit the new compliance landscape (Citterio, King, Locatelli 2024).

The third fault line concerns DORA's cybersecurity and resilience obligations and the asymmetric compliance burden they generate for smaller FinTech firms. While DORA's systemic risk rationale is unimpeachable, its proportionality architecture is, on doctrinal examination, insufficiently differentiated to adequately protect smaller market participants from compliance burdens that outstrip their risk contribution. The practical effectiveness of DORA's Article 4 proportionality qualification will depend critically on the content of the implementing technical standards and on supervisory practice.

Across all three fault lines, the CJEU's jurisprudential contribution functions as a constitutional backstop: it ensures that whatever regulatory architecture the EU legislator constructs, it must respect the fundamental rights of digital financial consumers and provide effective judicial protection against unfair practices. This constitutional dimension does not resolve the normative tensions identified above, but it ensures that they are resolved within a framework that prioritises consumer protection as a foundational value rather than a tradeable regulatory objective.

The EU is, in the terms of its own institutional self-description, at a critical juncture in digital finance governance. The regulatory instruments it has adopted represent one of the most comprehensive and ambitious FinTech governance frameworks in the world. Whether those instruments achieve their stated goals of combining consumer protection, financial stability, and digital innovation without generating disproportionate compliance burdens will depend on the quality of implementing technical standards, the coherence of supervisory enforcement across member states, and the willingness of the EU legislator to engage in continuous, evidence-based regulatory adaptation as the digital financial landscape evolves.

Conclusion

This article has undertaken a doctrinal legal analysis of the EU's regulatory framework governing e-banking in the FinTech sector, focusing on PSD2, the DMA, the DSA, and DORA as the primary legislative instruments, and on the CJEU's jurisprudence as the

constitutional foundation of EU digital finance governance. The analysis has identified three structural fault lines, namely the PSD2 and GDPR interface, the DMA's gatekeeper architecture, and DORA's asymmetric compliance burden, that define the central challenges facing EU FinTech regulation in the current period.

The article's central argument is that these fault lines are not incidental imperfections in an otherwise coherent regulatory system but rather symptomatic of a deeper normative tension between the EU's commitment to comprehensive, rights-based consumer protection and its equally genuine commitment to fostering a competitive, innovative digital single market. Resolving this tension requires not merely technical amendments to individual legislative instruments but a more systematic commitment to proportionality, regulatory coherence, and cross-instrument harmonisation.

The proposed PSD3 and PSR package, the FIDA regulation, and the ongoing implementation of DORA's technical standards all present opportunities to address the normative deficits identified in this analysis. Whether those opportunities are seized will determine whether the EU's digital finance governance framework becomes a model for other jurisdictions or a cautionary example of regulatory overreach producing outcomes inconsistent with its own declared objectives. This question is of fundamental importance not only for the competitive position of European FinTech in global digital markets, but for the millions of European consumers whose financial lives are increasingly conducted through the digital platforms that this framework seeks to govern.

Bibliography

Primary Legislation

Directive 2005/29/EC of the European Parliament and of the Council of 11 May 2005 concerning unfair business-to-consumer commercial practices in the internal market (OJ L 149, 11.06.2005).

Directive 2011/83/EU of the European Parliament and of the Council of 25 October 2011 on consumer rights (OJ L 304, 22.11.2011).

Directive (EU) 2015/2366 of the European Parliament and of the Council of 25 November 2015 on payment services in the internal market (PSD2) (OJ L 337, 23.12.2015).

Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data (GDPR) (OJ L 119, 4.05.2016).
Regulation (EU) 2022/1925 of the European Parliament and of the Council of 14 September 2022 on contestable and fair markets in the digital sector (Digital Markets Act) (OJ L 265, 12.10.2022).
Regulation (EU) 2022/2065 of the European Parliament and of the Council of 19 October 2022 on a Single Market for Digital Services (Digital Services Act) (OJ L 277, 27.10.2022).
Regulation (EU) 2022/2554 of the European Parliament and of the Council of 14 December 2022 on digital operational resilience for the financial sector (DORA) (OJ L 333, 27.12.2022).

EU Institutional Documents and Proposals

European Banking Authority (2022). *Report on the Implementation of PSD2*, https://fintech.gov.pl/component/content/article/the-european-banking-authority-publishes-an-opinion-and-report-on-the-review-of-the-psd2?catid=19&Itemid=101
European Commission (2021). A Study on the Application and Impact of Directive (EU) 2015/2366 (PSD2) (FISMA/2021/OP/0002), https://www.ecri.eu/sites/default/files/a-study-on-the-application-and-impact-of-directive-ev0423061enn.pdf [accessed: 13 October 2025].
European Commission (2023a). Proposal for a Directive on payment services in the internal market (PSD3). COM(2023) 341 final.
European Commission (2023b). Proposal for a Regulation on a Framework for Financial Data Access (FIDA). COM(2023) 360 final.
European Commission (2023c). Proposal for a Regulation on Payment Services (PSR). COM(2023) 367 final.
European Court of Auditors (2023). Digital Regulation and Enforcement Readiness Report.
European Parliamentary Research Service (2019). Fintech (financial technology) and the European Union. EPRS_BRI(2019)635513, https://www.europarl.europa.eu/thinktank/en/document/EPRS_BRI(2019)635513.

Case Law

FS and WU v First Bank SA (Case C-593/22), Judgment of the Court (Eighth Chamber) of 6 July 2023, ECLI:EU:C:2023:555.
Kušionová v SMART Capital a.s. (Case C-34/13), Judgment of the Court (Third Chamber), of 10 September 2014, ECLI:EU:C:2014:2189.

Secondary Literature

Aben J., Etti P. (2022). Fintech regulation in the European Union: trends and blurred lines. *Revista CIDOB d'Afers Internacionals*, 131, 95–113, https://doi.org/10.24241/rcai.2022.131.2.95/en.

Babina T., Buchak G., Gornall W. (2022). *Customer Data Access and Fintech Entry: Early Evidence from Open Banking*. [Unpublished working paper]. FDIC, https://www.fdic.gov/analysis/cfr/bank-research-conference/annual-21st/papers/gornall-paper.pdf [accessed: 13 October 2025].

Bolawa O. (2026). *The Impact of EU Consumer Protection and Digital Markets Laws On E-Banking in Fintech*. [Unpublished Master's thesis]. University of Szczecin.

Busch D. (2023). *European Banking and Financial Law 2023*. Oxford University Press.

CERRE (2020). *Digital Markets Act: Making Economic Regulation of Platforms Fit for the Digital Age*. Centre on Regulation in Europe, https://cerre.eu/wp-content/uploads/2020/11/CERRE_DMA_Making-economic-regulation-of-platforms-fit-for-the-digital-age_Full-report_December2020.pdf [accessed: 13 October 2025].

Citterio A., King T., Locatelli R. (2024). Is Digital Transformation Profitable for Banks? Evidence from Europe. *Finance Research Letters*, 70, 106269, https://doi.org/10.1016/j.frl.2024.106269.

Citterio A., Marques B.P., Tanda A. (2025). The Early Days of Neobanks in Europe: Identification, Performance, and Riskiness. *The Journal of Financial Services Research, 68*, 153–199, https://doi.org/10.1007/s10693-024-00433-x.

Craig P., de Búrca G. (2022). *EU Law: Text, Cases, and Materials* (7th ed.). Oxford University Press.

Dário Moura Vicente et al. (eds.) (2023). *Fintech Regulation and the Licensing Principle*. European Banking Institute, https://ebi-europa.eu/wp-content/uploads/2023/02/eBook-22Fintech-Regulation-Licensing-Principle-2-2023.pdf [accessed: 13 October 2025].

Ferretti F. (2022). Data-Access Frameworks and Payment Services: The Normative Role of PSD2 in the EU Digital Strategy. *European Journal of Legal Studies*, https://ejls.eui.eu/wp-content/uploads/sites/32/2022/08/08.-EJLS-141-Ferretti.pdf [accessed: 13 October 2025].

Gounari M., Stergiopoulos G., Pipyros K., Gritzalis D. (2024). Harmonizing open banking in the European Union: an analysis of PSD2 compliance and interrelation with cybersecurity frameworks and standards. *International Cybersecurity Law Review*, *5*, 79–120, https://doi.org/10.1365/s43439-023-00108-8.

Hutukka P. (2024). Fintech law in the European Union, the United States and China: Regulation of financial technology in comparative context. *Maastricht Journal of European and Comparative Law*, *31*(5), 559–594, https://doi.org/10.1177/1023263X241298416.

ICMA (2023). *FinTech Regulatory Roadmap,* https://www.icmagroup.org/assets/FinTech-regulatory-roadmap-250423.pdf [accessed: 13 October 2025].

ITIF (2022). *The Digital Markets Act: A Triumph of Regulation Over Innovation?*, https://www2.itif.org/2022-digital-markets-act.pdf [accessed: 13 October 2025].

Kapsis I. (2020). A Truly Future-Oriented Legal Framework for FinTech in the EU. *European Business Law Review*, *31*(3), 475–514.

Kokkinis A., Miglionico A. (2021). *Banking Law: Private Transactions and Regulatory Frameworks*. Routledge.

MIT JRC (2021). *The EU Digital Markets Act: A Report from a Panel of Experts*. MIT Joint Research Centre, https://ide.mit.edu/wp-content/uploads/2021/02/jrc122910_external_study_report_-_the_eu_digital_markets_act.pdf [accessed: 13 October 2025].

Moloney N. (2024). *The Regulation of Financial Markets in the EU: Challenges for FinTech*. Cambridge University Press.

Nourallah M., Öhman P., Hamati S. (2024). Financial Technology and Financial Capability: Study of the European Union. *Global Finance Journal*, *62*, 101008, https://doi.org/10.1016/j.gfj.2024.101008.

Ozili P.K. (2025). Digital Markets: Formative Components, Regulation, Challenges and Insights from the European Union Digital Markets Act. *Digital Policy, Regulation and Governance*, *27*(6), 687–702, https://doi.org/10.1108/DPRG-10-2024-0244.

Polasik J., Butor-Keler A., Widawski P., Keler G. (2024). Evaluating the Regulatory Approach to Open Banking in Europe: An Empirical Study. *Financial Law Review*, *34*(2), 59–90, https://doi.org/10.4467/22996834FLR.24.007.20612.

Pozzolo A.F. (2018). Fintech and Banking. Friends or Foes? *European Economy,* https://european-economy.eu/wp-content/uploads/2018/01/EE_2.2017-2.pdf [accessed: 13 October 2025].

Preziuso M., Koefer F., Ehrenhard M. (2023). Open Banking and Inclusive Finance in the European Union. *Financial Innovation*, *9*, 111, https://doi.org/10.1186/s40854-023-00522-1.

Radhakrishnan G.V., Shankar U. (2024). The Evolution of Digital Banking: The Role of FinTech in Transforming Financial Services. *South Eastern European Journal of Public Health*, *XXV*(S1), 2939–2948, https://doi.org/10.70135/seejph.vi.2970.

Sadowski K. (2021). Impact of PSD2 on the Payment Services Market: General Objectives and Evidence from Polish and UK Legal Systems. *Wroclaw Review of Law, Administration & Economics*, *11*(1), 89–102, https://doi.org/10.2478/wrlae-2021-0008.

World Bank (2023). *Financial Consumer Protection and Fintech*. World Bank, https://documents1.worldbank.org/curated/en/099735204212299868/pdf/P173006051034 80e90baef084f653576421.pdf [accessed: 13 October 2025].

Abstract

Regulatory Overreach or Necessary Protection? The Impact of EU Consumer Protection and Digital Markets Laws on E-Banking in FinTech

The rapid growth of financial technology (FinTech) in the European Union has catalysed a complex regulatory response designed to protect consumers while sustaining digital market competition. This article undertakes a doctrinal legal analysis of the principal EU legislative instruments governing e-banking in the FinTech sector, focusing on the Payment Services Directive 2 (PSD2), the Digital Markets Act (DMA), the Digital Services Act (DSA), and the Digital Operational Resilience Act (DORA). The central argument is that the current EU regulatory framework, while broadly advancing consumer protection goals, generates structural tensions with FinTech innovation through overlapping compliance obligations, fragmented national implementation, and proportionality deficits that disproportionately burden smaller market participants. Through textual analysis of primary legislation, interpretation of CJEU jurisprudence in *Kušionová v SMART Capital a.s*. (C-34/13) and *FS and WU v First Bank SA* (C-593/22), and evaluation of authoritative institutional reports, the article identifies three normative fault lines: the PSD2 and GDPR interface and its data-sharing tensions; the gatekeeping architecture of the DMA and its competitive implications for FinTech ecosystems; and DORA's cybersecurity mandates and their asymmetric compliance burden. The article concludes that the EU is at a normative inflection point and argues for proportionate, coherent, and forward-looking legal mechanisms capable of accommodating emerging digital finance paradigms.

Key words: e-banking, FinTech, Payment Services Directive 2, Digital Markets Act, Digital Operational Resilience Act