For better supervision and enforcement in retail finance

October 2016

Abstract

A lot of important legislation in the field of consumer protection and conduct of business in financial services has been introduced in the recent years while further initiatives are being developed. These reforms address the challenges consumers face when they use financial services. While certain reforms and improvements are still necessary, the FSUG's main argument in this case is not to necessarily call for new rules on consumer protection, but for better supervision, enforcement and regulation that will make the existing rules a reality for EU's consumers and make the Single market function more efficiently for all of its participants. The aim of this position paper is to assess the capacities of supervision and enforcement in the field of financial services in the EU at the national level in the light of consumer detriment taking place in the markets and to make recommendations on improving the regimes of consumer protection by proposing an appropriate minimum level of enforcement in Member States (MS). In this way, the FSUG would like to contribute to an EU-level dialogue.

About FSUG

The Financial Services Users Group (FSUG) consists of 20 independent experts who represent the interests of consumers, retail investors or microenterprises in the EU policymaking process.

The group's remit is to:

- advise the European Commission in the preparation of legislation or policy initiatives which affect the users of financial services,
- provide insight, opinion and advice concerning the practical implementation of such policies,
- proactively seek to identify key financial services issues which affect users of financial services,
- liaise with and provide information to financial services user representatives and representative bodies at the European Union and national level.

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Executive summary

The aim of this position paper is to assess the capacities of supervision and enforcement in the field of financial services in the EU at the national level in the light of consumer detriment taking place in the markets and to make recommendations on improving the regimes of consumer protection by proposing an appropriate minimum level of enforcement in Member States.

Retail financial markets in the EU are failing consumers

The overall performance of retail financial markets has too often been very disappointing for EU's consumers, especially when compared to other of EU's goods and services markets. The underperformance persists, even though consumers are increasingly dependent on financial services, while general economic instabilities contribute to the riskiness of consumers' financial decisions. Besides this, it has become apparent that in many key financial market segments and in a considerable number of member states, the providers are not complying with EU legislation.

National supervision and enforcement regimes often not up to their task

The central task of the institutions in charge of consumer protection in retail financial markets is to deter market participants from legislation breaches and taking disciplinary action where necessary. These supervisors also play a central role in ensuring safe and resilient markets, making these markets work, protecting consumers and making sure their needs are being met by the markets.

Widespread consumer detriment in retail finance shows a worrying gap between the mandates and the capacities of national market supervisors in charge of consumer protection and the tasks they face. It seems that national supervisors are frequently not able to ensure new consumer protection rules are being implemented, to prevent serious market failure from taking place or to intervene effectively once widespread consumer detriment has become obvious.

Focus on national supervisors revealing serious weaknesses

Since the global financial crisis consumer protection supervisory regimes have been strengthened. However, unlike in the field of prudential rules and systemic stability, this trend has not affected all member states, and there has been a notable lack of debate at the EU level on appropriate solutions.

With this paper, the FSUG addresses the lack of comparable information on the mandates and activities of national supervisors. We have conducted a basic overview of the supervisory landscape in the member states. As it has become clear that the level of disclosure on activities and capacities in some member states is very low, the FSUG members have provided their qualitative assessments on supervision and enforcement in 13 member states[1], based on their experience as experts on respective national markets.

[1] Belgium, Denmark, France, Germany, Greece, Netherlands, Italy, Poland, Romania, Slovakia, Slovenia, Spain, and United Kingdom

1. Fragmentation of supervision of consumer protection and conflicts of interest

The FSUG has found that the institutional organization of business conduct supervision and its relation to other supervisory goals could be acting as a barrier to an efficient consumer protection regime in several member states. In three out of the 13 member states observed[2], the traditional sectoral regime still exists with three or more institutions having some responsibility for consumer protection. There is a problem with inter-institutional coordination in these regimes, resulting in gaps and regulatory arbitrage as well as the business conduct objective being subordinated to the objective of prudential supervision. While there are two market supervisors in four member states[3], as some unification of sectoral supervision has already taken place, unified institutions exist in six out of the 13 member states[4]. Only three of the latter have the twin-peaks architecture[5] that addresses conflicts between different mandates in a systematic way.

2. Non-existent or weak mandates in consumer protection

Differences in consumer protection mandates lead to widely differing supervisory outcomes, while the abundant evidence of market failures in retail finance in recent years calls for a pro-active supervision, looking into how the providers and intermediaries in markets operate and to ensure that the business models and product regimes lead to fair outcomes for consumers. In five out of the 13 member[6] states observed, there are market supervisors without an explicit mandate in consumer protection other than merely being designated as responsible institutions for implementation of consumer protection legislation. Also, the supervisors with a statutory mandate differ considerably in their scope for action. A proportion of these supervisors mainly sets checks on legal compliance or on transparent disclosure of information on financial products, while only a few of them are also looking into the quality and value of products and markets for consumers. Consumers tend to be more exposed to risks of weak supervision regimes in the NMS and in southern Europe. This finding seems to correlate with the findings on market performance indicators from Consumer Market Scoreboard.

3. Insufficient supervisory capacities and lacking pro-activity

According to the evaluation of FSUG experts, in the majority of member states observed the resources available and capacities of national supervisors for consumer protection are non-existent or insufficient. The absence of active financial supervision in some member states not only entails risks for consumers in those markets, but also potential risks for consumers in other markets as well via passporting. FSUG members from only four out of 13 member states[7] have observed their national market supervisors to be pro-active in their supervisory operations.

[2] Italy, Slovenia, Spain
[3] France, Greece, Poland, Romania
[4] Belgium, Denmark, Germany, Netherlands, Slovakia, UK
[5] Belgium, Netherlands, UK
[6] Italy, Greece, Romania, Slovenia, Spain
[7] Belgium, France (only the supervisor in the field of securities), Netherlands, UK

4. Improvements needed in the field of enforcement

The FSUG experts have identified a need to introduce more concrete mandates and organizational measures that will make market supervisors less risk averse in using their enforcing powers. Furthermore, confidentiality of supervisory admonishments and penalties is a missed opportunity for improving the deterrent effect of sanctions.

5. Missing attention to consumer complaints and dialogue, low disclosure of activities

Several national supervisors are not paying enough attention to the input from consumer complaints in a systematic way, while efficient private enforcement mechanisms are non-existent or limited in the majority of observed member states. Also, the ability of the majority of national supervisors to receive early quality information on consumer detriment in the markets is limited due to unsatisfactory interaction with consumer groups is very limited, according to the FSUG experts. Finally, a significant number of national supervisors are clearly failing the accountability test by missing out on providing public with information on their supervisory and enforcement activities.

<u>A weak EU framework for consumer protection supervision</u>

On the EU level, the institutions in charge of supervisory cooperation and consistency of supervisory practices still lack the capacities to drive the efficiency of supervision on national and crossborder levels. The Consumer Protection Cooperation Network has been covering only a smaller sector of retail financial services, while not including all national enforcement agencies and lacking capacities to efficiently and quickly address EU-wide detrimental provider behaviour. After five years of existence, the effect of European Supervisory Agencies' work on consumer harm taking place in the market has so far been negligent, mostly because of a lack of direct mandates to develop detailed requirements for financial products and provider behaviour, as well as for specifying necessary supervisory approaches in the field of business conduct.

<u>Crossborder spreading of consumer detriment</u>

While it is still far from possible for consumers to reap the benefits of the single market for financial services, practices leading to consumer detriment can easily spread cross-border in the EU. The FSUG's paper concludes that although identical or ever more harmonized rules are applying for financial products across the EU, provider practices and market outcomes vary because providers adapt to the level of consumer protection in each member state. For example, whereas responsible agencies in some member states have already taken action against detrimental mis-selling practices of unit-linked life insurance, leading to more efficient market outcomes for consumers, the inactivity of enforcement in other member states still allows for product features and sales conduct that have been banned elsewhere years ago. Similarly, risky foreign currency loans were sold as an investment opportunity to households with an already resolved housing problem in Austria and France, while in the newer member states banks have offered such loans also to financially vulnerable consumers. A more harmonized level of enforcement across the national markets would reduce the incentive for providers to engage in detrimental market segmentation, while encouraging them to adapt more homogenous product development and sales procedures.

Consumer detriment and decrease of trust through diverging levels of enforcement are also possible through passporting. In such a case, a financial services provider establishes a presence in the member state with the lowest level of supervision and carries out its activities cross-border, possibly also exporting its activities to its member states of origin.

FSUG's proposals for EU-level driven improvements of national supervision regimes

More consistency and coordination is needed in enforcement on the national level, but only by bringing the lowest performing regimes to a more sufficient enforcement level. EU institutions should play a central role in steering of this catching-up process. A systematic approach is needed by first formulating a strategic consumers and markets policy, in particular defining desired consumer and market outcomes, a methodology for measuring consumer detriment and developing a root cause analysis that will lead to understanding how markets fail consumers. On the basis of this, appropriate choices in policy interventions can be identified.

The FSUG is calling for the following supervisory outcomes to be fulfilled:

1. EU coordination and common standards of supervisory practice: ESAs need to be unified into a single consumer protection authority, receive a clear mandate to lead the work on convergence of consumer protection supervision across Member States and supervise market risks at the EU level, while a strong coordination network of national authorities, in particular in the field of cross-border enforcement, is required. Also, EU law should be consistent across all relevant products and ensure a sufficient minimum level of consumer protection.
2. Independent national market supervisors: financial supervision should have a clearly defined goal of consumer protection, while this goal should not be subordinated to other supervisory goals. Supervision should cover the entire financial market without allowing for loopholes and supervisors should be equipped with sufficient resources to pro-actively fulfil their tasks.
3. The mandate of national market supervisors should be to ensure fair and appropriate treatment of consumers, protection from detriment and striving for efficient and competitive retail financial markets.
4. Market supervisors should be tasked with active monitoring of market performance on the basis of clearly defined desired market outcomes. Their monitoring should be based on systematic screening of product markets, supervision of inducement schemes and personnel training, as well as input from consumer complaints, ADR and consumer groups. Supervisors should intervene in case of risky products or market failure.
5. Enforcement regimes should be consistent and deter providers from detrimental behaviour. They should be backed up by efficient and supervised ADR private enforcement.
6. Market supervisors should ensure appropriate governance by balanced board compositions and channels for communication providing for advice and complaints from civil society groups.
7. Quality control procedures and annual reporting are needed to evaluate meeting of supervisory objectives and allow for public scrutiny.

I. Introduction

In recent years, legislation protecting consumers in the field of financial services has become increasingly harmonized. Also, important new rules have been and are being passed that will create a basis for a more efficient regime of protection of consumer interest in the EU. However, the resources employed, organizational aspects, tools of enforcement and available administrative procedures at national level are the responsibility of national institutions within MS. A variety of different institutional solutions in the implementation of EU regulation exist across the EU due to different traditions. It is also evident that there exists a variety of mandates and capacities for market supervision and enforcement of consumer law, and hence in the capacity of the responsible agencies to protect consumer interest in retail financial markets.

As a consequence, harmonization of legislation has not lead to the consumers enjoying the same level of rights and consumer protection throughout the EU. In some member states the level of actual protection of consumer interest is so low that the consumers cannot profit from the rules passed on the EU level. These disparities also lead to the spread of bad market practices into markets where EU rules are less strictly enforced, thus demonstrating a worrying level of failure of the Single Market. The differences in how legislation is enforced seem to be especially note worthy between old and new member states.

Diverging levels of enforcement across the member states are also a barrier to market integration, as they create an incentive for market segmentation. As a consequence, inefficient predominant distribution and product regimes in some member states inhibit market entry of new, more efficient business models. External providers have to adopt the same business model to gain entry into a new market – thus reinforcing or exacerbating the existing market failures.

However, market failure within a member state doesn't only harm households in that member state, but can negatively affect consumers in other member states. A notable channel of crossborder detriment spill-over is through passporting. In such a case, a financial services provider establishes a presence in the member state with the lowest level of supervision and carries out its activities cross-border, possibly also exporting its activities to its member states of origin. In this way, a high level of enforcement and consumer protection in a member state can be undermined by providers shopping around to find the most suitable jurisdiction.

This paper, after briefly describing the causes and effects of consumer detriment, looks into existing EU-wide indicators on how different EU national retail financial markets perform in terms of consumer detriment, satisfaction and prices. As a second step, we attempt to demonstrate the disparities in the level of enforcement of consumer rights in retail financial services among selected member states. Finally, assumptions on the basis of the previous findings are made on the minimum level of supervision and enforcement necessary for implementation of EU rights into market conduct.

II. Consumer detriment in retail financial markets

1. Main features of consumer detriment

Consumers increasingly rely on the use of financial products in their daily lives which can involve making important life decisions. With such increased engagement and exposure grows the potential detriment due to suboptimal decisions and unexpected developments which take place in consumers' lives. Consumers are exposed to the risk of detriment when making their daily transactions, when making savings decisions, either on building and managing their liquidity reserves or on fulfilling their mid- or long-term financial goals. Exposure to risks is further present when consumers look for financing and fulfilling their obligations therefrom, or when they are trying to protect their property, health and income from risks of life.[8]

Consumer detriment can take place through the entire life cycle of using the product, during the actual search for a suitable product, when the product is being acquired, as well as during its use and termination.

The cause of detriment can stem from three "domains":

- It can lie in **factors** that are **exogenous** to the relationship between the consumer and the provider of financial services. These can lie in the general socioeconomic and demographic environment or can be linked to macroeconomic conditions, globalization, technological change and shocks in the financial system.
- The **supply side factors** are based in the business models, sales and marketing strategies, as well as in remuneration systems, poor corporate governance and corporate culture prevalent in the financial industry. They can appear in the form of supply chain or product risks, weak system controls, or due to shareholder expectations regarding the returns on investment, as well as anti-competitive practices and behaviours.
- The **demand side factors** can be summed up as user behaviour and attitudes, as well as confidence, financial capability and cultural backgrounds.

Consumer detriment with regard to financial services can take various forms:

- **Lack of access** to products that a consumer requires to fulfil his goals, for example exclusion from having access to a bank account or to credit;
- Detriment due to low **suitability** or **appropriateness**, when a financial product does not fit with the consumer's needs. A product may lack all the necessary functionalities or not be in line with the consumer's risk profile, leading to harm through unfulfilled needs, limited adaptability to altered life circumstances or to financial losses.
- A product can be linked to very **high costs** and thus be an unnecessary financial burden for the consumer or diminish the returns on his investment.

The detriment or harm a consumer suffers can first be assessed from the financial perspective, in terms of direct costs inflicted and loss of value. Nonfinancial costs, on the

[8] BEUC/IFF: Financial Supervision in the EU: A consumer perspective, 2011; http://www.beuc.eu/publications/2011-00396-01-e.pdf

other hand, typically consist of loss of time and adverse health or psychological effects, but also negative consequences on future behaviour and decisions.[9] Detriment can be assessed from the perspective of how much harm a representative consumer suffers and what the harm is on the aggregate level.[10] While detriment suffered by an individual, representative consumer can reach levels that endanger his livelihood (e.g. lead to bankruptcy through unsustainable debt or to a loss of pension savings), low individual detriment can accumulate to significant aggregate level in the case when the factors of detriment are widespread.

Some further interesting conclusions on consumer detriment in financial services when compared to detriment stemming from other retail markets can for example be made from a UK government study[11] showing that financial services are the source of highest levels of financial detriment to consumers. While resolving problems with suppliers in financial services is more time consuming for consumers than problem resolution with other types of suppliers, consumers are also least likely to be successful with their complaints against financial services providers. A more recent Irish study confirms a high prevalence and magnitude of consumer detriment in financial goods and services, and also the unwillingness of providers to put things right.[12]

2. Available EU-wide data on consumer detriment

Data gathered on market failures and personal consumer detriment demonstrates the need for supervision and enforcement of rules that are to ensure the markets function to the benefit of all participants. The scale of consumer detriment in financial services is apparent from prominent mis-selling scandals in recent years. A few examples are the £24,3 billion and rising compensation payments to consumers for mis-sales of payment protection insurance in the UK, compensation to Spanish consumers for mis-sold hybrid securities in the amount of €2,9 billion, or €215 million in compensation for consumers of the failed DSB Bank in the Netherlands. [13]

Findings from Consumer Market Scoreboards

The most advanced tool for assessing consumer welfare and potential detriment on the EU level are European Commission's Consumer scoreboards. These rank the key consumer

[9] European Commission/Europe Economics: An analysis of the issue of consumer detriment and the most appropriate methodologies to estimate it, 2007; http://ec.europa.eu/consumers/archive/strategy/docs/study_consumer_detriment.pdf; IMCO/ London Economics: Consumer protection aspects of financial services, 2014; http://www.europarl.europa.eu/RegData/etudes/etudes/join/2014/507463/IPOL-IMCO_ET%282014%29507463_EN.pdf

[10] In the European Commission study from 2007 structural and personal detriment are defined. Structural detriment is the loss of consumer welfare (as measured by the ex-ante consumer surplus) in aggregate due to market failure or regulatory failure as compared to well-functioning markets. Personal detriment is determined from the difference between the value that consumers reasonably expected to get from a good or service and the value that they actually get from it, relating to problems experienced by consumers post-purchase.

[11] UK Government: Consumer Engagement and Detriment Survey 2014; https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/319043/bis-14-881-bis-consumer-detriment-survey.pdf

[12] Competition and Consumer Protection Commission: Consumer detriment survey, 2014; http://www.ccpc.ie/sites/default/files/Consumer-Detriment-Survey-2014-Report.pdf

[13] Consumers International: Risky business: The case for reform of sales incentives schemes in banks, 2014 http://www.consumersinternational.org/media/1529404/sales-incentive-report_riskybusiness_final2_151014.pdf

markets on the basis of a Market Performance Indicator (MPI) that takes into account key indicators that influence the extent a given market brings the desired outcome to consumers. These are how easily consumers compare offers, how much they trust the providers to comply with respecting their consumer rights, what problems the consumers have and to what degree they lead to complaints, as well as the way a specific market lives up to consumers' expectations. Low performance in all or some of the aspects dealt with by the MPI can be linked with widespread consumer detriment in a specific market.[14] The persistence of low performance can also be seen as sign of the national market supervisor not undertaking the necessary measures to correct the market failures.

According to the 10th edition of Consumer Market Scoreboard 2014, all main types of retail financial services except home insurance perform below the EU28 average for services markets. Bank accounts, mortgages, investment products, private pensions and securities perform particularly badly as they rank among the bottom 5 of 31 EU's services markets,[15] while they have constantly ranked very low since this survey was established. Banking services are the worst performing market cluster of all EU's services markets, where loans, credit and cards perform somewhat less negatively than bank accounts, mortgages and investments. Performance of banking services is especially low when it comes to trust, comparability, ease of switching and consumer expectations.[16] For insurance services, market performs relatively better than for banking services, while vehicle and home insurances perform considerably better than life insurance. Trust and switching issues seem to be the most common problem reported by consumers when dealing with insurances.[17]

A regional comparison of MPI for retail finance shows that financial services in the western and northern regions of EU are perceived as performing better for consumers than those in the southern and eastern EU, this disparity however being less accentuated for insurances than for banking.[18] On the national level, the variation in MPI across member states is typically larger for financial services than for other services.[19] While countries like Malta, Luxemburg and Germany clearly perform above the EU average, countries like Spain, Hungary and Ireland are clearly below. Comparing of the national MPI score of banking services with the general national services the MPI shows that only in Malta and Finland banking services outperform services in general, while banking services in Spain, Hungary and Ireland fare the worst (see Table 1). For life insurances, only 6 member states

[14] According to the European Commission's report on Monitoring Consumer Markets in the European Union 2013, consumer perceptions and expectations also play an important role in the aggregate results summed up in the MPI. Same caution goes for all measurement methods that focus on the demand side of the market. Particularly for the MPI, a mild correlation has been established between general economic conditions and the MPI. Changes in the evaluation of market performance have also been observed to be modestly influenced by changes in prices (Harmonised Index for Consumer Prices (HICP)) in a specific market. It further appears that countries with higher than average consumer confidence tend also to show higher than average market performance (Consumer Confidence Indicator CCI).

[15] European Commission: Monitoring Consumer Markets in the European Union 2013; Part 1; http://ec.europa.eu/consumers/consumer_evidence/consumer_scoreboards/market_monitoring/docs/consumer_market_monitoring_2013_part_1.pdf

[16] European Commission, 2013; Part 1

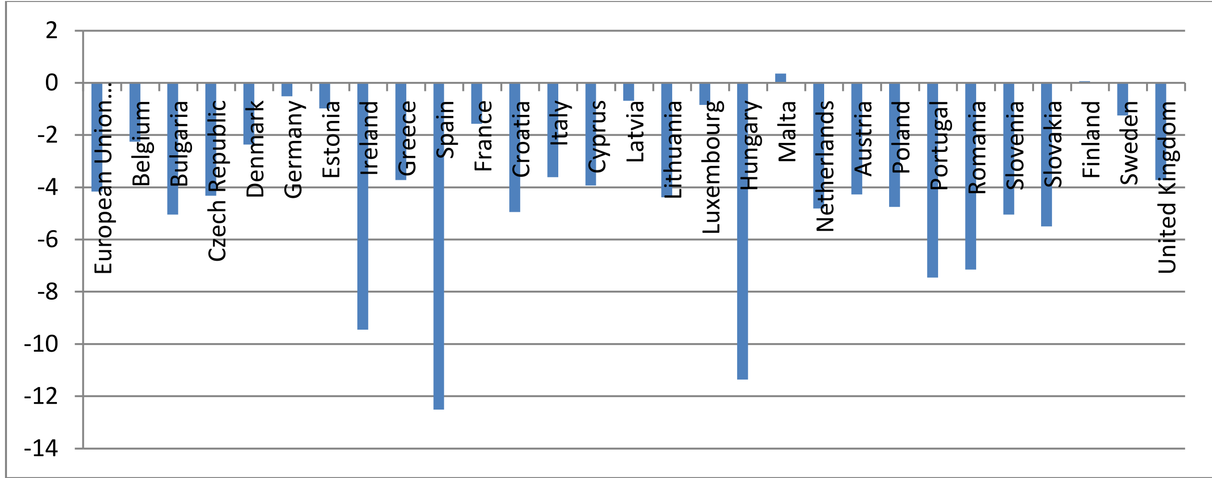
[17] European Commission, 2013; Part 1

[18] European Commission, 2013; Part 1

[19] European Commission: Monitoring Consumer Markets in the European Union 2013; Part 2; http://ec.europa.eu/consumers/consumer_evidence/consumer_scoreboards/market_monitoring/docs/consumer_market_monitoring_2013_part_2.pdf

outperform the national services average, while Slovenia, Cyprus and Slovakia underperform it most significantly.

Table 1: Relative performance of the banking services sector vs. the entire services sector (based on data from the Consumer Market Scoreboard, 10th edition, 2014)



Price levels and consumer detriment

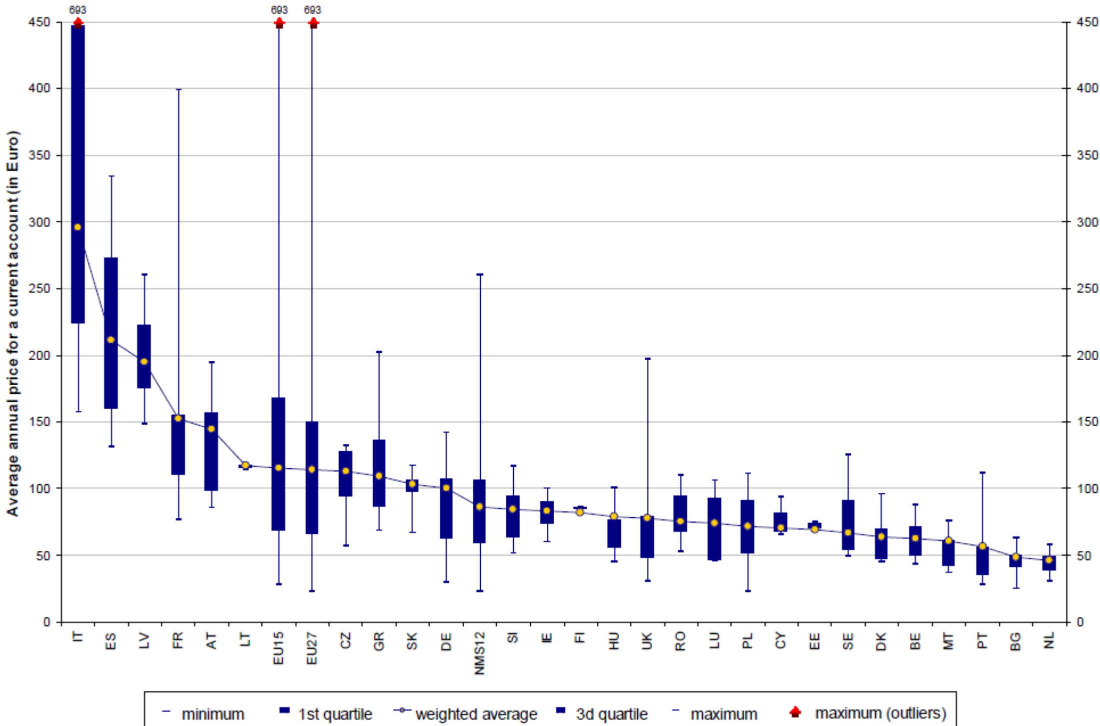
Price levels of financial products are another relevant indicator for assessing consumer detriment. Besides mirroring general economic conditions in an economy and market efficiency, they also provide conclusions on choice, search costs and other relevant factors for consumers. Those EU legislative frameworks that prescribe how financial services providers should disclose key information the consumers need in order to make an informed decision reflect the difficulties consumers typically have with acquiring financial products. Still, numerous cases demonstrate that the implemented legislation is not achieving the desired effect in all member states due to lack of enforcement and measures that are necessary to address market failures.

With regard to bank accounts costs a data collection study by the European Commission from 2009[20] has shown alarming differences in costs of consumer bank operations between member states, differences that cannot be explained solely by specifics of national payment systems and diverging national levels of economic wellbeing. The study has revealed a six fold difference in annual costs for average consumers between member states (see table 2).[21] Also, average price dispersion rates found were considerably higher than those for other EU services markets that are being monitored with the Consumer Market Scoreboard MPI index[22]. The study not only registered a considerable opacity of price data and packaging that impedes the comparability of offers, but also identified a significant link between price levels on one side and transparency and simplicity levels on the other side: countries where tariffs are more transparent and simple tend to have lower prices and inversely.[23] Some

[20] European Commission: Data collection for prices of current accounts provided to consumers, 2009; http://ec.europa.eu/consumers/archive/strategy/docs/prices_current_accounts_report_en.pdf
[21] It should be noted however when comparing bank account yearly costs on the basis of general fees that some business models rely more on punitive charges or on cross-subsidies.
[22] European Commission, 2013; Part 2
[23] European Commission, 2009

member states, in order to address market failures in the bank account market, have introduced additional measures to improve disclosure of costs or to enhance consumer mobility (for example bank account switching services in Holland and UK), while price transparency, comparability and consumer switching needs to be addressed by new EU legislation that still remains to be transposed into practice.[24]

Table 2: Average bank account user's average annual costs, by EU standards (p.20)



Related claims can be made on the basis of disparities in prices in other key sectors, for example in loans. Table 3 shows how APR rates of representative consumer loans differ considerably not only between old and new member states, but also within these two groups and within the Eurozone. These disparities remain when national credit ratings are taken into account, as the EC's Consumer Market Study has shown by comparing net lending rates, calculated as the difference between the consumer credit rate and central bank rate. Also these numbers can be linked to barriers on transparency, comparability and mobility in national markets.

[24] Directive 2014/92/EU of the European Parliament and of the Council of 23 July 2014 on the comparability of fees related to payment accounts, payment account switching and access to payment accounts

Table 3: ECB data on APR from March 2013, assembled in Consumer Credit Market Study, (2013, p. 78)

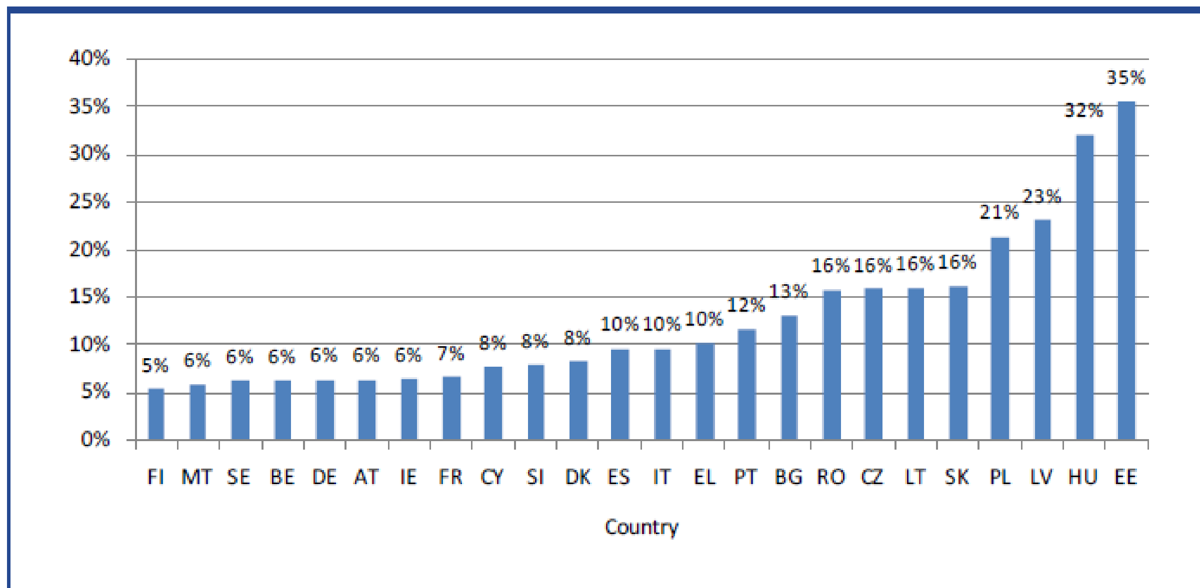
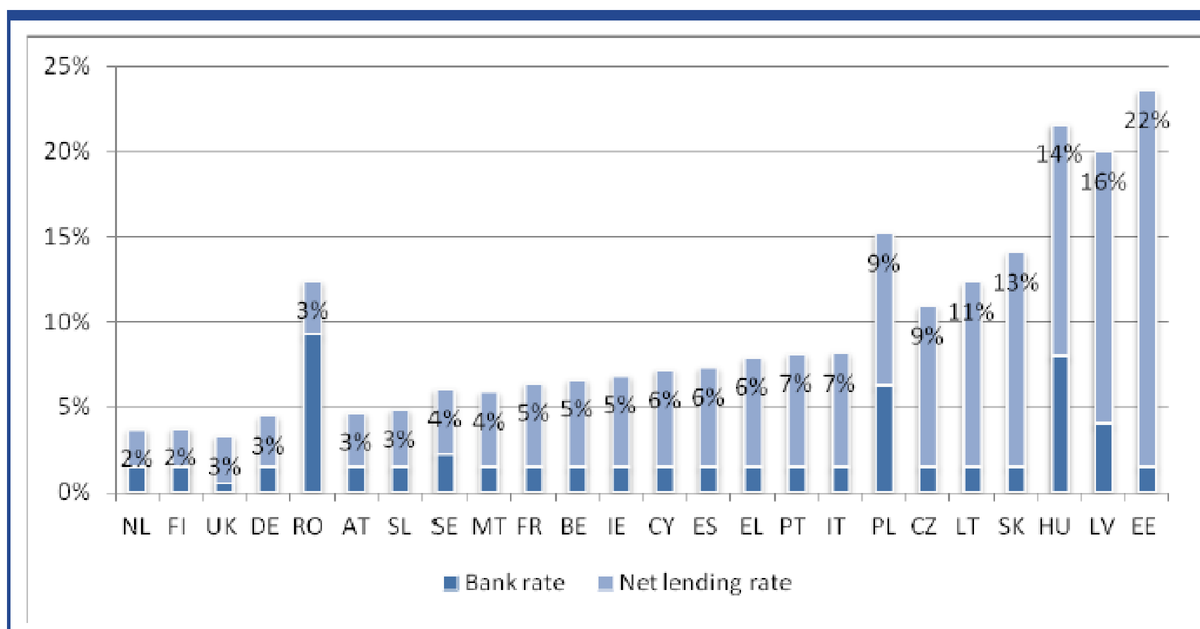


Table 4: Net lending rate, calculated from central bank rate and the consumer credit rate, from the Consumer Credit Market Study, (2013, p. 80)



Incomplete implementation of EU rules

Market practices that are in direct conflict with requirements of consumer protection legislation lead to consumer detriment. Studies by the European Commission have shown that in many key market segments, legislation on key consumer rights is often not fully implemented into practice.

In the field of consumer credit, major problems with the implementation were identified during the analysis of the implementation of the consumer credit directive (2008/48/EC). A mystery

shopping exercise has shown serious shortcomings in the field of advertising and pre-contractual information that can lead to detrimental decisions by consumers. Only 22% of advertisements containing financial information that were analyzed have fulfilled all informational requirements set by the legislation.[25] Also, reviewed market practices in the pre-contractual stage have shown that consumers are likely not to receive key information on their rights and the cost of the credit or additional explanations on the credit conditions. The findings of the research vary considerably across the member states and across types of credit products.[26] A further indicator of incomplete implementation was delivered by a consumer survey that has found substantial variations in frequency of consumers experiencing problems with credit between member states, from 3% in Sweden to 21% in Hungary.[27] In another monitoring exercise of websites offering consumer credit, a coordinated effort of national market supervisors found out that only 30% of websites passed the compliance test.[28] Research has shown that on average, credit advertisements that comply with the legislation have a lower APR.[29] One of the key conclusions was that "better enforcement would contribute to ensuring that consumers reap the full benefits of the CCD".[30]

In another study, the European Commission has analyzed whether financial advice provided to consumers across the EU is in line with the requirements of MIFID[31]. The results show that the directive was far from being fully implemented into practice. For example, the amount of information gathered by financial advisors from consumers on their financial knowledge and financial situation was very often insufficient, while the advisors focused less on due diligence than on the amount the consumers are able to invest.[32] Further on, information provision by the advisors was often found to be superficial and lacking the necessary details in order for the shopper to make a fully informed investment decision. As a result, 57% of mystery shopping cases in the study have produced an unsuitable product recommendation, mostly with the consequence of a too high investment risk[33].

3. Cross-border contagion and its risks for the Single Market

While the examples provided above demonstrate the level of consumer detriment within national markets and thus also provide information on the scope and effect of supervisory action taken there, it is important to look at cross-border dynamics that lead to market failure and consumer detriment. EU's national retail financial markets' integration is low when

[25] European Commission: Report from the Commission to the European Parliament and the Council on the implementation of Directive 2008/48/EC on credit agreements for consumers, 2014; http://ec.europa.eu/transparency/regdoc/rep/1/2014/EN/1-2014-259-EN-F1-1.Pdf
[26] European Commission, 2014
[27] European Commission/ Ipsos, London Economics: Study on the functioning of the consumer credit market in Europe, 2013; http://ec.europa.eu/consumers/archive/rights/docs/consumer_credit_market_study_en.pdf
[28] European Commission, press release, 2012: EU investigates consumer credit websites - a market underperforming for consumers; http://europa.eu/rapid/press-release_IP-12-6_en.htm
[29] Study on the functioning of the consumer credit market in Europe, 2013; This can be the result of better information leading to more competition or a consequence of stricter monitoring and enforcement by market supervisors.
[30] Study on the functioning of the consumer credit market in Europe, 2013
[31] Provisions under Directive 2004/39/EC and Directive 2006/73/EC
[32] European Commission/Synovate: Consumer Market Study on Advice within the Area of Retail Investment Services – Final Report, 2011, http://ec.europa.eu/consumers/archive/rights/docs/investment_advice_study_en.pdf
[33] European Commission 2012

compared with the level of integration of wholesale markets and of financial groups active in them. While well functioning markets in some member states that benefit the consumers with satisfactory choice of products and low prices have not led to significant spill-over effects to other, less efficient national markets, a development one would expect from a Single market, there have been a number of cases of cross-border spill-over of provider practices leading to consumer detriment. Mostly, we are talking about sales of products characterized by low suitability and high risks for a considerable number of consumers under conditions that don't allow for the consumers to properly evaluate their choice. Such business conduct typically originates in member states with more developed financial markets and spreads into less developed markets, often via national subsidiaries of EU-wide financial groups. The riskiness of such products and the way in which they are sold often seems to increase when they are sold in a national market with a weaker regime of consumer protection. Detrimental business conduct tends to persist longer in less developed markets due to lack of supervisory action, often while it is already being regulated to become less detrimental or banned in the markets of their origin.

At the same time, spill-over effects are also possible in the other direction, via passporting from less well functioning and more poorly regulated markets into markets that save consumer interests more efficiently. Such regulatory arbitrage can lead to considerable detriment, especially as consumers have difficulties with effectively making sure which national authority has licensed the provider they are dealing with or whether the redress rights and rules obliging the provider to treat their costumers fairly actually apply in each particular case. Several such cases have for example been reported from the UK, especially in the field of investment products and mortgages.[34]

Case study 1: mortgage loans in Swiss francs

An example of harmful practices spreading across borders is lending in Swiss francs CHF. This has been a common phenomenon in numerous central and eastern European member states[35]. The harm suffered by consumers began in 2008 as CHF became a safe haven currency due to turbulences in financial markets and further escalated in 2015 when monetary policy changes in Switzerland led to further appreciations of the Swiss franc affecting more than a million of EU consumers.

What is the risk of detriment

While borrowing in a foreign currency such as Swiss franc offered an immediate benefit for consumers in the form of lower interest rates, these loans also carry a significant exchange rate risk. A depreciation of the domestic currency towards the CHF can lead to increased debt service and to possible defaults on debt, especially in case of large and long-maturity mortgages. Consumers who were granted these loans typically had no income in CHF and

[34] http://www.fca.org.uk/news/self-certified-mortgages-from-firms-not-based-in-the-uk-warning-to-consumers, http://www.telegraph.co.uk/finance/personalfinance/investing/11670772/Are-Britons-unwittingly-investing-in-poorly-regulated-European-investment-firms.html

[35] A related practice are mortgage loans in Euro in non-Euro Member states. These loans have proven to be very risky for consumers especially in the countries without an immediate prospect of joining the Eurozone.

also didn't have access to hedging instruments[36] necessary for handling the exchange rate risk.

<u>How the trend developed</u>

The trend of CHF lending originated in the 1980s in Austrian border regions with Switzerland and was tailored to the needs of consumers who were working cross-border and receiving their loans in CHF. Only later, in the mid 90s, have CHF loans started to be marketed to other, un-hedged consumers in Austria. Typically, these loans were coupled with repayment vehicles, for example investment life insurances and were sold to better-off consumers as an investment opportunity. Main factors contributing to this development were relatively low costs of financing of these loans and a booming housing sector. For example, in December 2008 in Romania, interest rates for CHF and EUR denominated home loans were about 6% and 8% respectively, while loans in lei cost about 10%. In 2008, the number of CHF loans granted to consumers has peaked at 270.000, later to fall to 150.000 in 2015[37] as many have switched their loans into Euro loans while realizing high exchange rate losses.[38] Foreign currency and particularly CHF credit was relatively seldom experienced in the rest of the Old member states, with the exception of France, another country with a considerable share of population in the border regions working in Switzerland. However, with the integration of financial markets of central and eastern European member states into the EU, CHF lending has started to spread there, often introduced by subsidiaries of banks originating from members states where CHF credit was sold before. Unlike in Austria or France, CHF loans were there being sold also to more vulnerable consumer profiles in these member states, including to those who were buying their first home. CHF lending has reached a dramatic level in some of these countries. In 2008, 60% of all household debt in Hungary was denominated in CHF[39], while 35% of mortgage debt was denominated in CHF in Slovenia[40]. The levels of high exposure have persisted, in 2015 38% of Croat, 37% of Polish and 18% of Romanian mortgage loans are denominated in CHF.[41]

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[36] In Austria, a hedging instrument was available to consumers in the form of an agreement to convert the loan into a Euro loan if exchange rate fluctuations reach a certain extent. However, these instruments didn't work as expected and led to maximizing of losses because of the quick appreciation of CHF. (http://www.konsument.at/fremdwaehrungskredite-stop-loss-order). The Austrian consumer association already started collective act
ion against because the hedging instrument was mis-sold to consumers.

[37] Oesterreichische Finanzmarkaufsicht: Position der FMA zu Fremdwährungskrediten und Informationen zur derzeitigen Lage, 2016: https://www.fma.gv.at/de/sonderthemen/fremdwaehrungskredite.html

[38] The actual increase of financial burden in CHF loans depends on both the currency of the consumer's home country and the type of the loan. In Slovenia, a Eurozone member, the debt burden of a representative consumer who has taken a CHF loan in the years prior to the financial crisis has by January 2015 increased by 30-40%, while most consumers still owe the bank an amount similar to the one they have initially borrowed more than 5 years ago. In Austria, the debt principal that needs to be paid is still unclear as bullet loans were taken mostly. In non-Eurozone member states, the harm tends to be higher as their currencies have depreciated more towards the CHF than the euro, while the interest rate burden didn't decrease because it wasn't linked to the LIBOR.

[39] Hungarian National Bank: Foreign currency tenders in Hungary: a tailor-made instrument for a unique challenge; http://www.bis.org/publ/bppdf/bispap73k.pdf

[40] Source, Slovene Central Bank

[41] Source, European Commission

Drivers of CHF lending

On the demand side, the main driver was the consumers perceiving CHF loans as cheaper when compared to loans in home currency because of not properly understanding the exchange rate risks. Typically, this risk was not comprehensively explained by the bank to the consumer while the relationship between Euro and CHF was often described by bank staff as stable and taking credit in a strong currency as a wise decision.

As the sales of CHF credit were driven by bank marketing, the main question is why the risks of such loans were not properly presented by the banks and why the banks have started to offer such loans in the first place. The experience from Austria shows that sales of CHF loans, whilst appearing very attractive to consumers, were very profitable for the seller because of higher fee earnings (from both selling credit and the attached investment vehicle) and higher interest income (in most cases these were bullet loans).[42] In the affected new member states, sales of CHF loans were driven by competition for market shares, often by new market entrants and typically subsidiaries from old member states, which used their competitive advantage in refinancing of CHF loans and took advantage of weaker consumer protection standards there.[43] By transferring the exchange rate risk to borrowers, banks have been able to offer loan products with interest rates significantly below the interest rates on loans denominated in domestic currency.[44]

Recent evidence from France shows that CHF loans were marketed to consumers as stable on the eve of the financial crisis even though the banks' trading departments were already expecting CHF to become a safe haven and the exchange rate to rise, while the documents distributed to the borrowers insisted on the stability parity for many years between the euro and the Swiss franc. According to the findings of the Swiss National Bank, banks in Europe have continuously held more foreign-currency-denominated assets than liabilities, indicating their awareness of the exchange-rate-induced credit risk they face.[45]

Measures taken by authorities

The measures taken by responsible national financial market supervisors before the crisis focused on risk management by banks and provision of information to consumers. In Austria for example, the market supervisor FMA set minimal standards[46] on managing risk in FX crediting in 2003. Among other things, banks were obliged to establish a suitable procedure

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[42] The Swiss franc appreciation and the sorry saga of FX lending, http://fistfulofeuros.net/afoe/10640; Verein für Konsumenteninformation: Fremdwährungskredite - Die Beratungssituation: https://www.youtube.com/watch?v=TAealtRiWmY

[43] Oesterreichische Nationalbank: Foreign Currency Lending in Central, Eastern and Southeastern Europe: the Case of Austrian Banks, 2010: http://www.oenb.at/en/Publications/Search.html?s=foreign+currency+lending&searchtype=fulltext&journal=Financial+Stability+Report&language=nofilter

[44] European Systemic Risk Board: Recommendation of the ESRB of 21 September 2011 on lending in foreign currencies (ESRB/2011/1); https://www.esrb.europa.eu/pub/pdf/recommendations/2011/ESRB_2011_1.en.pdf

[45] Federal Reserve Bank of St. Louis: Foreign currency loans and exchange rate risk in Europe, 2013; https://research.stlouisfed.org/publications/review/13/03/219-236Yesin.pdf

[46] Oesterreichische Finanzmarktaufsicht: Mindeststandards zum Risikomanagement und zur Vergabe von Fremdwährungskrediten und Krediten mit Tilgungsträgern, 16.10.2003; https://www.fma.gv.at/typo3conf/ext/dam_download/secure.php?u=0&file=1868&t=1422392940&hash=18dea9320f531fe2eb5dfcf972faad0b

for creditworthiness assessment, including in the case of exchange rate fluctuations. Also, for foreign currency credit, higher financial literacy of the consumer and higher credit taking capacity were demanded as a pre-condition for granting of such a loan. Another example is Slovenia, where the market supervisor, between 2006 and 2008 addressed stricter instructions to banks on how to inform consumers on risks and perform creditworthiness checks.[47] These measures however did not stop the growth of the level of CHF-denominated debt, in most cases including the growth of CHF credit to consumers without financial capacity to handle the risk of a considerable increase in their credit service burden.

Additional and clearly more interventionist measures became necessary after the financial crisis. In October 2008, because of systemic risk, the Austrian market supervisor called on banks to halt foreign currency lending to consumers. The call was later extended to subsidiaries of Austrian banks in central and eastern Europe[48]. In 2010 and 2013, the standards on managing FX loans were deepened in Austria[49], so that they now also deal with resolution of problems between bank and consumer for existing credit and clearly state that foreign currency credit is not suitable for mass marketing to consumers or for resolving household's housing problems. In France, new legislation[50] was passed that, among other restrictions on foreign currency lending, prohibits crediting of consumers in other currencies unless the consumer receives at least 50% of income in CHF or if at least 20% of his assets are denominated in it.

In the new member states, the financial harm suffered by consumers was considerably higher because a lot of CHF credit was held by financially weaker households. Also, borrowers in non-Euro countries came under more pressure as these countries' currencies lost even more value to CHF than the Euro in the years following 2008. By 2015, depreciation of the currencies in countries most affected reached between a third and a half of the value prevalent in 2007. Further on, the interest rates of CHF loans in the new member states were often not linked to the reference rate LIBOR, meaning that the negative development in the exchange rate was not balanced by a fall in the interest rate. Finally, the consumer protection regimes in these countries were not sufficiently developed to mitigate the detriment. Key remedies such as free debt advice, easy access to independent ADR and representation in courts, sometimes even the institute of personal bankruptcy, are partially or entirely absent in these countries.

Due to looming social unrest, more drastic measures were taken in some of the affected countries. In Hungary, with a dramatic rise of defaults, the government in 2011 decided to

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[47] These measures have not been obligatory for the banks and seem to not have been followed by them.
[48] Oesterreichische Finanzmarktaufsicht, No more currency loans for private borrowers the FMA's strategy for long-term risk reduction, 2012;
https://www.fma.gv.at/fileadmin/media_data/1_Ueber_die_FMA/2_Publikationen/FMA_JB12_e_WEB.pdf
[49] Oesterreichische Finanzmarktaufsicht: Mindeststandards zum Risikomanagement und zur Vergabe von Fremdwährungskrediten und Krediten mit Tilgungsträgern, 2.1.2013;
http://www.fma.gv.at/typo3conf/ext/dam_download/secure.php?u=0&file=8938&t=1401271487&hash=7ab1c18d434481952e1f2c06a5d3361a
[50] France, Code de la consommation, Article L312-3-1
http://www.legifrance.gouv.fr/affichCodeArticle.do;jsessionid=9460A651EAF6716995A4753AE6A96FE4.tpdjo04v_1?idArticle=LEGIARTI000027759656&cidTexte=LEGITEXT000006069565&dateTexte=20140410&categorieLien=id&oldAction=&nbResultRech=
- Décret n° 2014-544 du 26 mai 2014 relatif aux prêts libellés en devises étrangères à l'Union européenne
http://www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000028990459&categorieLien=id

allow the households to convert their CHF debt into home currency date under preferential, pre-determined exchange rates. In Croatia, the exchange rate of national currency and CHF in consumer loans was in 2015 first frozen for a year at a level from before the plunge in CHF on the 15th of January 2015 in order to alleviate the pressure in consumers, while a law on conversion with banks carrying a high share of the cost has been introduced in autumn 2015. A similar solution is being developed in Poland and discussed in other affected countries under considerable resistance of the lending institutions and criticism of EU institutions and governments where the financial groups in question are seated.

Examples of increased debt burden for FX borrowers:

- A Polish consumer, who in 2007 borrowed CHF 250.000 (600.000 zlotys), was owing his bank 1,1 million zlotys in October 2013;
- In 2008, an Austrian consumer borrowed CHF 214.000 (EUR 131.000) where the loan was combined with an investment vehicle, i.e. monthly repayments were put in an investment fund; the investment fund collapsed and CHF soared against EUR in January 2015 (EUR 1=CHF 1.05 versus CHF 1,2 previously); the consumer's debt increased by EUR 34 000 and he had to sell his apartment to service the debt;
- Slovenia: a consumer who borrowed EUR 100.000 (in CHF) for 20 years in June 2006 would initially pay a monthly instalment of EUR 612. This would then grow to EUR 739 by the end of 2008 and to EUR 855 by January 2015. The remaining debt, to be repaid, starting at EUR 100.000, would still be at the level of EUR 99.004 in January 2015 despite high debt service. A consumer who would borrow the same amount on the same day in EUR (under conditions of EUR loans) would be owing only EUR 68.670 to the bank.

What needs to be improved

Despite the evidently high risk potential of the CHF loans and their low suitability for the needs of consumers acquiring a home, national supervising authorities were not able to contain their explosive growth. It can be concluded that the demand side oriented activities, such as provision of information by supervisors to the public, had little effect. Similarly, instructions to banks on disclosure to consumers were not effectively implemented into practice. Finally, it seems that consumer harm concerns often haven't played a role in the market supervising activities, while action that went beyond defining disclosure was only taken when CHF loans have reached a level of a systemic, macroeconomic and political concern.

In the face of the substantive consumer harm suffered, more effective ex ante measures will need to be developed to stop the growth of sales of a product that is potentially risky to consumers but very profitable, at least in the short run, for the financial industry. Equally importantly, supervisors will need more extended tools to monitor potentially harmful practices in the market and to ensure that the rules are actually implemented into practice and benefit the consumers. This also calls for a stronger role of EU-level consumer protection institutions.

There are several measures that have started to be introduced in some member states and are also being discussed on the EU level. Establishment of internal processes of product

oversight and governance can ensure that products developed and sold are suitable for their target groups, while measures banning or limiting inducements can work against harmful conflicts of interest in the sales process.

Finally, the case of CHF loans has shown how quickly sales of a risky and profitable product can spread cross-border and how providers adapt their practices to the capacities of consumer protection regimes in different member states, although these have implemented largely harmonized rules for protecting consumers.

Case study 2: Unit-linked life insurance

Unit-linked life insurance ULLI is a product that combines life insurance protection and long-term investment. Typically, it is skewed towards investment and often only provides a relatively low life risk cover. The investment part of the premium is often paid into UCITS or other investment funds while products with a one-off premium and instalment premium payments have been common.

What is the risk of detriment

In several member states, ULLI has become one of the most prominent investment products and is marketed to the broad range of consumers of all profiles who are interested in long-term saving or additional income during retirement. ULLI has become increasingly controversial because it has been a source of frequent consumer complaints and early cancelations, connected with high financial losses for consumers. The most frequent causes for these are lack of disclosure about key characteristics of the product in the sales process and the products frequent low suitability for consumers' needs. With ULLI, consumers "are often being sold complex or structured products without sales staff obtaining sufficient information regarding the financial status and investment experience of the customer to ascertain whether the product was suitable for the customer", concludes EIOPA's Consumer Trends Report from 2014.[51]

Another problem identified is the high level and lack of transparency of fees paid by consumers for such products that substantially reduce the returns consumers are expecting to achieve.

For example, in France, ULLI products have been identified by independent research[52] as the poorest performing retail long term and pension saving product category over the last 15 years (2000 - 2014) with an overall average real (after inflation) loss of 11.3%. The main factor identified for these very poor returns is overall fees. It is very difficult to assess those, as providers do not disclose total fees, but only the insurance contract fees (averaging 0.95 % on assets per annum in France not counting entry fees). But one has to add the fees also charged on the underlying "units" (typically funds). The average annual fees charged on equity type "units in France is estimated at 1.8%. Therefore, overall fees charged to savers on equity ULLI products amount to 2.75% per annum (not counting entry fees), which is an very high level and is the main driver for the poor performance of ULLI products.

[51] In 2014, EIOPA reported on poor selling practices and other issues related to ULLI being reported by market supervisors from 22 countries (BE, CZ, DE, DK, EE, ES, FI, FR, GR, HU, IE, IS, IT, LI, LT, NL, NO, PT, SE, SI, SK, UK)

[52] Better Finance : Pension Savings: The Real Return 2015 Edition; http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2695831

Again, as in the case of CHF loans, ULLI product design and sales practices seem to reflect the capacities of the regime of consumer protection in a specific member state, although the product is often sold by the same financial groups with subsidiaries in several member states. The fees are typically not obvious to consumers because of low transparency of information and the complexity and multi-layered structure of fees. Finally, the repayment of the fees from the premium is often scheduled to the first years of the contract with the consequence of consumers suffering very high losses in frequent cases of early cancelations, where they very often end up with less than they have invested.

How the trend developed

ULLIs have become a mass market product already in the 90s. In the period between 1995 and 2000 the premium income from ULLI business grew by 24% annually in western Europe, compared to the 5% growth of traditional policies.[53] Markets in central and eastern Europe mostly followed suit in the following years, often via sales by subsidiaries of financial groups with previous experience in ULLI sales in the old member states. In 2012, ULLI premiums to total life insurance premiums ratio in the EU[54] was 20,1%, with large variations between an only 5,9% ratio in Croatia and a 76% ratio in Finland.[55] The growth of ULLI has typically been more intense in the periods of stock market booms, while a further incentive in the last years has also been the relative unattractiveness of traditional life insurances with a savings component in the low interest environment.

Drivers of sales

On the demand side, consumers often decide for ULLI instead of traditional deposit or insurance products because of the suggested possibility of higher returns. ULLI is in many members states preferred to a direct purchase of mutual funds because it offers considerable tax advantages; quite often, the risk of life cover within the product is just high enough for the product to qualify as a life insurance and become subject of a preferential tax regime. Also, many consumers perceive ULLI as less risky than mutual funds because it also contains an insurance package or because they are actually not aware the product actually contains risky investment funds. Finally, many consumers are attracted to the concept of an all-in-one product or, especially those with less financial knowledge, and trust the branding of ULLI products, such as "safe old age, "guaranteed return", "aggressive", to be sufficient for the assessment of suitability of a product to their needs.

Probably the most prominent factor driving the supply of ULLI is its low risk for the insurance company in comparison with traditional participating policies, because the entire investment risk is carried by the policy holder. Additionally, lower solvency requirements are in place for ULLI than for traditional products. Historically, insurance companies introduced ULLI products in order to be able to enter the asset management market and avoid being crowded out by the mutual funds industry. Because of higher fee margins than in deposits and long-term binding of consumers in the products, ULLI could quickly spread into the sector of bank-assurance and into the broad bank distribution networks where banks offered it to their clients as preferable to traditional deposit products. For insurances, banks and other

[53] Sigma: Unit-linked life insurance in Western Europe: regaining momentum, 2003; http://down.cenet.org.cn/upfile/181/2005529205218130.pdf

[54] EU including Norway and Switzerland

[55] Insurance Europe: Insurance Data; http://www.insuranceeurope.eu/insurancedata

intermediaries, ULLI sales have been highly profitable due to higher fees and lower sales costs as the legal pre-requisites on distribution and staff qualifications are considerably lower than for MIFID investment products.

Measures taken by authorities

The national authorities have been recognizing ULLI sales as an important factor contributing to the industry's profitability and solvency. High frequency of early cancelations of contracts by consumers has also been detected, especially from the perspective of disloyal competition between intermediaries where a consumer is convinced to cancel the existing policy in order to buy a new one suggested as more appropriate, resulting in additional commission income for the intermediary.

Especially during the last years, national authorities have also increasingly been addressing the problem of consumer detriment as regards ULLI products. According to EOIPA findings[56], authorities from 19 member states have reported problematic sales practices in the field of life insurances, while ULLI products were reported as a major source of complaints in 6 member states[57]. Supervisory reactions have sometimes focused on different aspects of improving disclosure to consumers, an approach that has also been taken in the EU-wide PRIIPS regulation. Further measures have been strengthening the training of direct sales staff and intermediaries, because insurance agents selling ULLI rarely have the necessary knowledge to provide investment advice, requiring higher standards of advice for sales of complex products, as well as stricter provisions on record-keeping.

Pro-active supervisory behaviour has proven effective in preventing detriment from taking place. For example, a critical market report by the Dutch market supervisor in 2006 was followed by numerous compensation suits seeking recovery of incurred losses, resulting in changes in product design and sales practices in the face of a considerable reputational damage[58]. The strongest effect on ULLI sales and risks for consumers has however been achieved in jurisdictions where provider and intermediary incentives to sell products with higher margins have been tackled. Most notable measures taken have been an outright ban on commissions for ULLI sales, for example in the UK and Netherlands, or stricter rules on internal product oversight and governance. In Poland for example special recommendations for banks selling insurance products were issued. Also when implementing Solvency II directive particular measures were provided for all kinds of investment life insurance (not only ULLI), which require adequacy with the consumers' needs (product oversight and governance). The situation in several member states has however not improved or has even deteriorated: in France for example, the protection of ULLI products regressed in the recent years, as a rule requiring providers to disclose the total percentage of annual fees (those charged on the ULLI contract itself plus those charged at the "unit" level) has been repealed in 2006.

[56] EIOPA: Third Consumer Trends Report, 2014; https://eiopa.europa.eu/Publications/Reports/EIOPA-BoS-14-207-Third_Consumer_Trends_Report.pdf

[57] EIOPA 2014

[58] Netherlands Government/Oliver Wyman: The current Dutch life industry: challenges and opportunities, 2015; https://www.rijksoverheid.nl/binaries/rijksoverheid/documenten/rapporten/2015/03/05/rapport-oliver-wyman-voor-commissie-verzekeraars/rapport-oliver-wyman-voor-commissie-verzekeraars.pdf

What needs to be improved

Again, a wide disparity of measures is noticeable across the member states. This apparently reflects the level of consumer detriment in a certain jurisdiction to a lesser degree than the general national choices on what a suitable regulatory environment should be. In several member states, ULLI still remain a source of major consumer detriment without a regulatory response that would lead to a substantial improvement.

In the field of disclosure, the level of comparability of ULLI products to other investment products will be improved considerably by the PRIIPS initiative, whereby this will not sufficiently reduce detriment due to other risks linked to the sales process. Importantly, the required standards for suitability assessment, advice provision and staff training are generally still lower for ULLI than for MIFID products and will drive the providers and intermediaries towards the "lighter" regime. Often a more preferential national tax regime that is in place for insurances when compared to the regime for other investment products will enable the providers to present ULLI as a preferable choice to consumers without emphasizing other key aspects sufficiently.

A desirable solution would be following the recent solutions in pro-active market oversight, as well as in the field of bans on sales commissions with product oversight and governance within a regulatory environment providing the authorities with tasks and means to ensure the implementation of these rules into practice.

III. Supervision and enforcement regimes in the EU

1. The role of national systems of consumer protection in counteracting consumer detriment

The central task of the institutions in charge of consumer protection in retail financial markets is to enforce the implementation of consumer protection legislation by supervising the behaviour of market participants, deterring them from legislation breaches and taking disciplinary action where necessary. These supervisors, along with other public institutions, also play a central role in ensuring safe and resilient markets, making these markets work, protecting consumers and making sure their needs are being met by the markets. They are thus the key actor tasked with prevention of consumer detriment.

In order to ensure proper functioning of markets and to prevent consumer detriment from taking place the task of supervisors is to address specific risks arising in the sectors they are overseeing, as well as risks that appear across the financial services industry, for example conflicts of interest in the sales process, product design issues, lack of access to products, advice or redress, and other market inefficiencies. Besides being focused on the detriment taking place in the market at this very moment, the supervisors need to deal with consumer detriment that has taken place in the past and its consequences, while anticipating new and future risks appearing in the market in a timely manner so as to minimize the detriment to arise from these. Understanding the macroeconomic trends that influence consumer and provider behaviour is crucial for market supervisors. Trends such as high household debt and financial uncertainty, reduced investment returns or pressure on existing business

models can increase the existing detriment and market failures, and lead to the appearance of new risks in the market.[59]

2. Findings on supervisory activities

Widespread consumer detriment in retail financial services shows a worrying gap between the mandates and the capacities of national market supervisors in charge of consumer protection and the tasks they are facing. It seems that national supervisors are frequently not able to ensure new consumer protection rules are being implemented, to prevent serious market failure from taking place or to intervene effectively once widespread consumer detriment has become obvious.

These FSUG conclusions are confirmed by the Commission's findings from the implementation reviews and market studies in the field of consumer credit. For example, according to a Commission's study from 2013, only 70% of national supervisors reported to be monitoring whether lenders are fulfilling their legal obligations to consumers.[60] Half of supervisors have taken enforcement action with regards to non-fulfilment of obligations, while only 20% have done so in the two years before the study was published.[61] While the supervisors have expressed a strong belief that at least the majority of the lenders are aware of their obligations towards the consumers, the Commission's mystery shopping exercise has put this into question: for example, the majority of consumers have not been informed about their key rights, while only 60% of mystery shoppers have received enough of information for an informed decision.[62]

Passivity of national supervisors towards consumer detriment is also reflected in consumer trust in public authorities to protect their rights. In only 12 member states do at least 2 out of 3 consumers trust the public authorities to be doing their job, while in 8 member states this share is less than 50% (6 of these are new member states).[63]

3. Lack of information and debate on consumer protection supervision

Not a lot of comparable information exists on the mandates and activities of national supervisors. However, the trend in several member states in recent years and especially since the global financial crisis has been towards strengthening the existing institutional regimes in order to prevent future market failure.

As a result of these developments, in some member states, important supervisory reforms have taken place. There have been cases were business conduct supervision tasks have become separated from the prudential supervision within newly formed independent institutions. Elsewhere, supervisors have been merged or institutions that have previously only dealt with prudential market supervision have started to receive more concrete mandates in the field of business conduct and consumer protection. However, and as an

[59] See "FSUG risk outlook 2015 and beyond" for a more detailed risk analysis; http://ec.europa.eu/finance/finservices-retail/docs/fsug/papers/1503-fsug-risk-outlook-2015_en.pdf
[60] Study on the functioning of the consumer credit market in Europe, 2013
[61] The survey was published in 2013
[62] Although, as trained mystery shoppers and unlike an average consumer, they knew which information they should seek
[63] European Commission: Consumer Markets Scoreboard 2015; http://ec.europa.eu/consumers/consumer_evidence/consumer_scoreboards/11_edition/docs/ccs2015scoreboard_en.pdf

important difference to the evolution and centralization of supervisory regimes that focus on prudential rules and systemic stability, the supervisory regimes in the field of business conduct and consumer protection seem to have not been sufficiently strengthened in all member states, while there has been a lack of debate on the EU level on appropriate solutions.

A rare example of an EU level discussion of appropriate supervisory solutions is a recent peer review by ESMA[64], assessing how national authorities approach the supervision of firms in order to ensure compliance with the MIFID suitability requirements for investment advice. The review has identified deficits in how many competent national authorities ensure that consumers receive proper investment advice, in particular a lack of a proactive and focused supervisory approach in this area of business conduct. As regards the field of supervision, ESMA encouraged national authorities to develop more tailored supervisory approaches, as well as to strengthen their guidance of the industry and fact-finding activities, including supervision of provider files and mystery shopping, as well as information exchange with consumer bodies. Also, the report identified limited use of stronger enforcement measures and lack of public communication on activities, findings and enforcement actions.

Because comparable information on supervisory mandates and capacities in consumer protection across the member states is scarce and not up to date, the FSUG has decided to conduct a basic overview of the supervisory landscape in the member states.[65] Members of the FSUG have provided their qualitative assessments on supervision and enforcement in 13 member states, based on their experience as experts on respective national markets. They have also provided general data on the main characteristics of supervision, in particular on the mandates, the supervisory architecture and capacities.[66]

4. An overview of supervisory mandates and capacities in selected Member states

Placement of consumer protection within the institutional supervisory architecture

Member states differ considerably in how consumer protection is placed within the system of supervision of financial services. In principle, three main models of institutional supervisory architectures and some mixed forms are found in the EU: sectoral supervision, integrated model with one supervisor and the twin peaks model. There is a broad general discussion on the appropriateness and effectiveness of the three models as traditional architectures of financial supervision have been coming under severe stress in the age of interlinked financial markets and complex financial crises. The question posed here is how efficient supervision of business conduct depends on the supervisory architecture.

In the traditional, sectoral system, supervision, including the supervision of business conduct and consumer protection, is split across different industry sectors, typically banking, insurance and securities markets. An increasing challenge to these systems have been developments in financial markets where delimitations among different types of financial services that are based on their sector of provenance become increasingly blurred, leading

[64] ESMA: MiFID Suitability Requirements Peer Review Report, 2016; https://www.esma.europa.eu/press-news/esma-news/esma-finds-room-improvement-in-national-supervision-investment-advice-retail

[65] As the data was gathered at the end of 2015 and beginning of 2016, the study doesn't include the newest developments, for example the recent improvements in the German supervisory regime

[66] See Annex I and II for the FSUG member questionnaires

to problems in inter-institutional coordination, overlapping jurisdictions, regulatory gaps and industry arbitrage towards weaker supervisory regimes.

A unified supervisory authority will more likely avoid the problems of inter-institutional coordination and competitive institutional inequality, as well as overlaps and gaps which can arise with an architecture basing on several agencies. Still, on the other hand, a single agency faces a risk of being overburdened with very heterogeneous tasks, while these tasks can lead to conflicting mandates resulting in imbalances, for example between monetary policy (if the supervisor is the central bank), prudential and business conduct supervision, especially if proper legal guidance and organizational structures are not in place.

The twin peaks system addresses the challenges to unified market supervisors by establishing two institutions, a prudential one focused on safety and soundness of financial institutions (increasingly on both micro and macro level), while the institution in charge of business conduct focuses on the providers' business with consumers and other costumers. As a consequence, these institutions have clearer goals and can be committed and organized according to clearly delimited tasks. A further advantage is the reduced risk that one mandate will overpower the other one. However, this risk cannot be fully extinguished through mere externalization. Clear inter-institutional procedures are necessary not only to enable efficient cooperation when facing overarching challenges for the financial system, but also when the issue of conflicts between mandates needs to be resolved.

A very varied landscape shows itself across the member states when observing where business conduct supervision is located within the supervisory architecture. The historical tendency, however, starting first with Scandinavian countries and then UK in 1997, has been towards creation of unified structures in charge of supervision across all sectors of retail finance.[67] This is today the case for six[68] out of 13 member states analysed in this paper. There are two market supervisors in four member states, as some unification of sectoral supervision has already taken place, while three[69] member states have three or more institutions in charge of consumer protection. In some cases, consumer protection is not only fragmented among different market supervisors, but at least some tasks in supervision and enforcement are handled by a separate institution in charge of consumer protection in general, thus leading to additional challenges with coordination. This is the case in three observed member states[70] where the general consumer protection authority for example has a mandate in the field of unfair commercial practices or unfair contract terms in financial services.

For the institutions in charge of both prudential and business conduct supervision, differentiation can be made along the lines of whether both tasks are equally prominent and how well separated they are organizationally in order to prevent conflicts of interest. Clear organizational separation of prudential and business conduct supervision seems to be the

[67] A more global sample of 69 countries between 1999 and 2014 confirms the finding on that there is a trend to the introduction of unified supervisors or mixed regimes, as the share of sectoral supervision has decreased from 54% to 28% (Global trends in financial sector supervisory architectures; http://www.wseas.us/e-library/conferences/2014/Istanbul/FINANCE/FINANCE-08.pdf)

[68] Single institution, also in charge of consumer protection: Belgium, Denmark, Germany, Netherlands, Slovakia, UK; More institutions: 2 in France, Greece, Poland, Romania, 3 in Spain, 4 in Italy, Slovenia

[69] Italy, Slovenia, Spain

[70] Italy, Poland, Slovenia

case in less than half of the supervisors that deal with both these tasks, with the result of the task of business conduct seeming to be subordinated and less prominent to prudential oversight where no separation is in place. However, also where intra-organizational separation is in place, the subjective opinion of the majority of FSUG experts from the member states where both tasks are joined within one institution is that the balance tips towards prudential supervision in case of conflicts between the two. All in all, 3 of 7 experts from member states where tasks are joined reported that consumer protection is treated as a subordinated task.

The twin-peaks model has been introduced in the Netherlands before the last global financial crisis, with Belgium[71] and UK following suit in 2011 and 2012, while France has introduced this model solely in the market of securities and investment funds. In these cases business conduct supervisors also have other, related tasks, for example competition protection and market integrity in the UK, stability of financial infrastructure in the Netherlands or financial education of the public in Belgium. Inter-institutional cooperation mechanisms are in place for the case of overarching issues. The subjective opinion of FSUG experts has been that the prudential view still often prevails in practice, although the existing inter-institutional arrangements have improved the situation in general.

FSUG considers that the placement of supervision and enforcement of consumer protection rules, the level of integration across different financial sectors and its relation to other supervisory tasks have important implications for the supervisory efficiency. It is especially important that competing mandates within and among supervisory institutions are handled in a way where consumer protection and business conduct oversight functions are not subordinated to other supervisory functions to the extent that effective supervision and enforcement from this perspective is not possible anymore. Such solutions can put efficient supervision at risk with the decision on how limited supervisory resources are to be split among different supervisory functions. Typical cases of competing mandates in the last years evolved around the questions of whether fines against providers because of breaches of business conduct rules would endanger the solvency of some institutions or if enforcement action against mis-selling that has the objective of deterrence could increase the risks to systemic stability.

A further related issue that can lead to conflicts of interest but receives little attention is the sometimes problematic governance of the supervisory authorities. FSUG members from some countries have reported risks stemming from inadequate rules on the required qualifications of board members and a failure to achieve board compositions that are balanced in terms of expertise and background. In several member states, as a consequence, a majority of board members come from the financial industry, while risks of revolving door practices and resulting regulatory capture are not being taken into account sufficiently. On the other hand, very few or none of the board members have a background and expertise in representing retail users. A worrying example of both regulatory capture and missing requirements on the expertise of board members is a documented case[72] of appointment of a new non-executive member to the board of the Romanian Financial Supervisory Authority (FSA) in November 2015. The applicant acknowledged in her short

[71] See Annex III for a summary of the Belgian twin peaks legal package

[72] An excerpt from the parliamentary hearing can be seen on this link: https://www.youtube.com/watch?v=IPw9AfxJ7x4

hearing by the Romanian Parliament that she knew nothing about financial regulation or about the supervisory authority she was to work for, was not aware of what her role might be and had no apparent knowledge regarding capital markets or the insurance industry. She also did not respond to the question of conflicts of interest. The Romanian FSA is an authority empowered to license financial companies that can operate throughout the European Union thanks to the passporting regime.

Summing up, the placement of business conduct supervision and its relation to other supervisory goals in several member states could be problematic, meaning that an important pre-condition for efficient supervision could be missing. FSUG therefore considers it essential that these issues receive the same level of scrutiny on the EU level as the appropriateness of institutional arrangements for prudential supervision that has been intensively debated (and reformed) in the past years. Inefficient supervisory regimes not only allow for a concerning degree of consumer detriment to take place, but can result in aggregate dimensions of consumer detriment with prudential and systemic implications.

Mandates in the field of consumer protection

The efficiency of a market supervisor in preventing consumer detriment to a large degree depends on the concreteness of the mandate it has in consumer protection. It is thus worrying to see that in five out of 13 member states observed (Italy, Greece, Romania, Slovenia, Spain)[73], there are market supervisors without an explicit mandate in consumer protection other than being merely designated as responsible institutions for implementation of consumer protection legislation into practice. All of the market supervisors without an explicit mandate were found to be sectoral supervisors. There are some further sectoral supervisors that declare having a mandate in the field of consumer protection, but this mandate is not statutory, as it is deducted from more general mandates, for example from the mandate of ensuring trust in financial markets.

The institutions with a statutory mandate differ considerably among themselves in what their objectives and tasks are, as well as in how precisely these are defined, as this is decisive for the capacity of the engagement of a supervisor. A consequence of a weaker or a narrower mandate can be a scope of action that will not ensure the markets serving the needs of consumers, restraint in acting against consumer detriment or lower capacities to engage in supervision and enforcement pro-actively. FSUG experts from three member states[74] have thus reported that the existing supervisor mandates are not efficiently contributing to consumer protection.

The most obvious difference that becomes apparent from a general overview of market supervisor mandates in the observed member states is the perceived range of tasks that should suffice for protecting the interests of financial consumers and achieving efficient markets, as well as the formulation of the desired result itself. Some market supervisors seem largely or only focus on the functionality of markets and implementation of prudential rules, while assuming that private enforcement within the existing legal system already

[73] Italy (the sectoral financial supervisory authorities have no mandate in consumer protection, while the national authority for consumer protection does), Greece, Romania (the banking supervisor without mandate in consumer protection, supervisor in the field of investment and insurance has a mandate), Slovenia (only the supervisor of nonbank credit providers has a mandate in consumer protection), Spain (only the supervisor in the field of securities has a mandate, not the supervisors in banking and insurance)
[74] Poland, Spain and Slovakia

ensures that legal rights of consumers are not breached. A proportion of the supervisors go further and set checks on legal compliance or on transparent disclosure of information on financial products in the market as a sufficient means for achieving well functioning markets. On the other hand, more far-reaching mandates postulate that disclosure is not sufficient, but that the quality and value of a product for consumers are also of interest for the supervisor. In order to achieve the desired result, which is not only a transparent market with legal certainty, but a market that is fair, and enables the consumer to make appropriate decisions, the supervisor needs to look into how the providers and intermediaries operate and ensure that the business models and product regimes lead to fair outcomes for consumers and prevent consumer detriment from taking place.[75]

The differences in mandates can lead to vastly differing supervisory outcomes. It seems that the perception of what is needed for informed consumer decisions and consequently for a well functioning market varies fundamentally across the member states. It is questionable in the face of the evidence on market failures in the last years whether the assumption that mere legal certainty, financial education or transparent disclosure (no matter how complex and scattered it is) are a sufficient pre-condition for well functioning retail financial markets. In the opinion of the FSUG experts, demand focused measures such as educating consumers about finance or ensuring them more transparency about financial products as standalone measures had had a very disappointing effect in improving consumer decision making or provider practices. It seems that this has been recognized and translated into suitable supervisory solutions only in a very limited number of member states, where the supervisors are also mandated to look into consumer needs, their capacities and risks linked to their financial transactions.

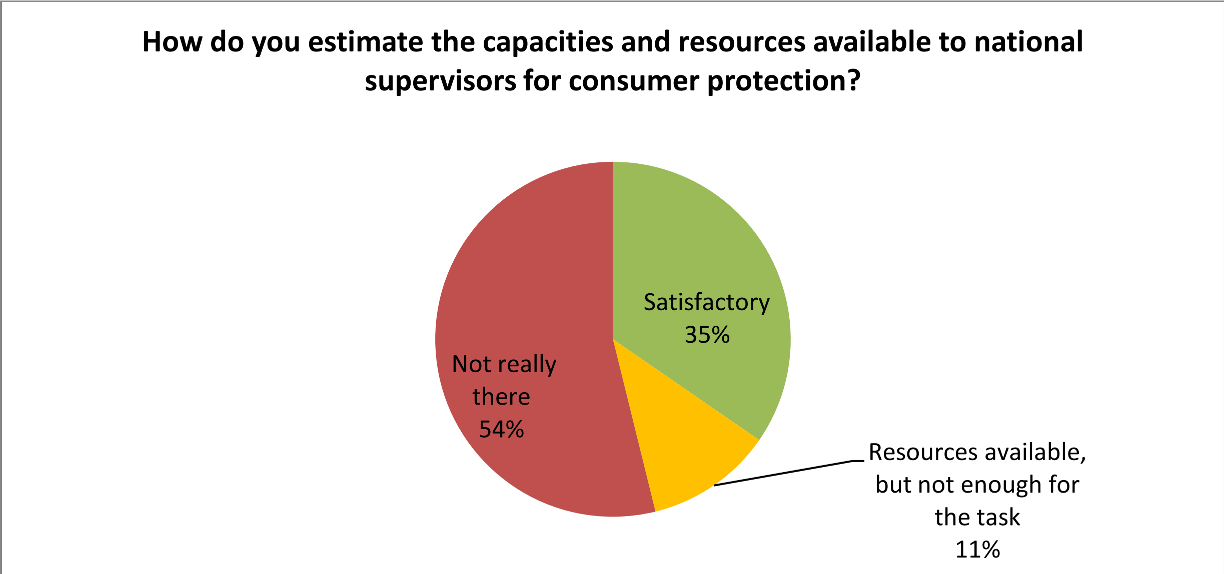
Supervisory capacities and resources in consumer protection

The resources available for the task of executing the consumer protection mandate will be decisive in respect of the extent to which the supervisory goals are to be met. Without sufficient resources, the supervisor will not be able to detect market failures and arising risks at the moment in time when the detriment can still be prevented from taking place, so its activities will be reduced to a very reactive role and interventions, if any, will be very late.

It was impossible to assess the supervisory capacities across the member states observed, because only very few supervisors disclose the number of personnel employed in the field of business conduct supervision and the overall budget allocated to it. Table 5 shows that, on the basis of their knowledge of the national markets, only a third of the FSUG experts evaluated the available capacities and resources of their national market supervisors as satisfactory, while for over half of the member states observed it was reported that the resources needed for consumer protection are in principle not available. The experts further reported that the distribution of resources is unbalanced to the disadvantage of consumer protection for supervisors with a mixed mandate, while two experts reported that the austerity measures linked to the economic crisis have led to a reduction or are impeding the provision of all government services for consumers, including supervision of business conduct in the financial market.

[75] See Annex IV for a summary of the mandate of the UK's Financial Conduct Authority

Table 5:



It seems that missing resources and capacities are making several EU's national supervisor unable to fulfil the task of applying EU consumer law into practice. Also, when new EU law is being transposed in the member states, this does not necessarily mean that additional resources are made available to national competent authorities to ensure the providers abide by it. The absence of active financial supervision in some member states not only entails risks for consumers in those markets, but potential risks for other markets as well via passporting.

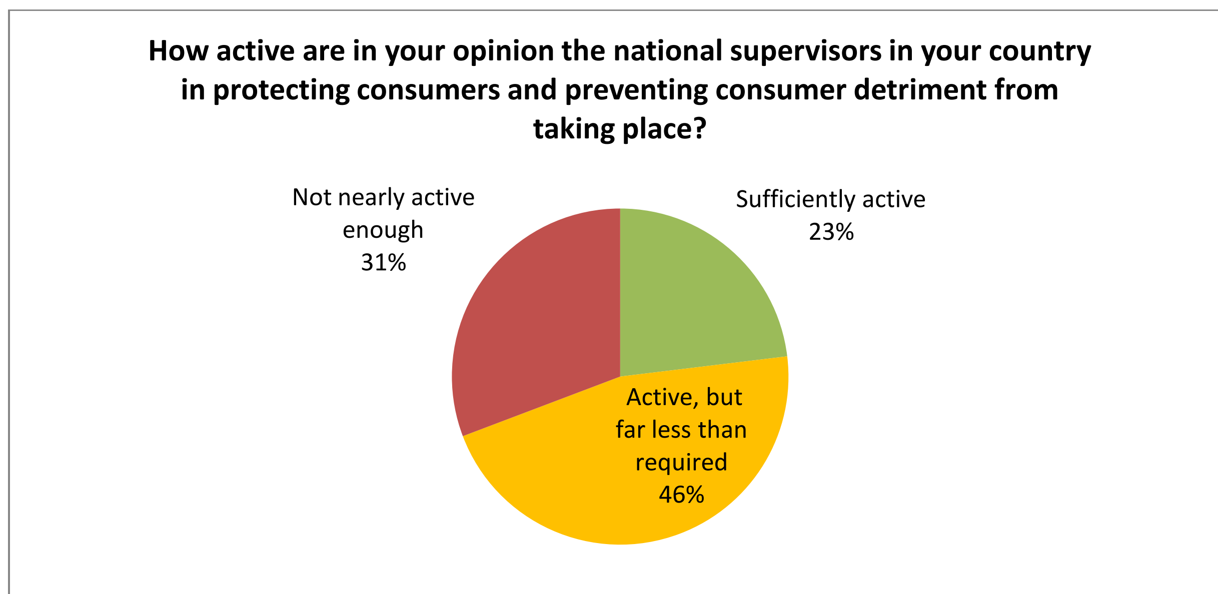
Activities in the field of market supervision

It is difficult to compare the level of activity by national supervisors in the field of supervision due to limited information disclosure. Only FSUG members from UK, Netherlands, Belgium and France[76] have reported their supervisors to be pro-active in their supervisory activities. As one can see from Table 6, half of the FSUG members evaluate the supervisors not to be active enough, while almost a third of the country evaluations in this field where thoroughly negative.

It seems that the availability of different supervisory tools is not the principle reason for the supervisors' passivity, as 3 out of 4 FSUG experts confirmed that the available tools are sufficient but considered the willingness to use these tools being the more significant problem.

[76] For France, only the securities market supervisor was evaluated as pro-active.

Table 6:



Besides the traditional tools of on-site inspections and provider reporting, some national supervisors also use consumer complaints and inquiries as supervisory tools. The specialized business conduct supervisors also list further tools, such as thematic reviews for assessing consumer detriment in specific markets and possibility of product bans in the UK, regular research studies and pro-active market monitoring in the Netherlands, or conduct of business mystery shopping on the basis of a legal mandate in Belgium. The product testing and screening tool, also reported to be applied in Belgium, was also mentioned by some experts from other member states as a desirable tool for the supervisor to assess whether suitable products are at all being offered to consumers.

FSUG therefore concludes that supervisors in the majority of the observed member states require a more precise mandate that will specify the extent of use of supervisory tools. Further on, introduction of new supervisory tools that will enable earlier detection of detriment in the market seems to be advisable.

Activities in the field of enforcement

Enforcement activity by national supervisors has proven very difficult to analyse and compare. Research by FSUG members has shown that some supervisors publish extensive information on the activities executed in the field of enforcement, in several cases showing a high level of enforcement activity.[77] Other supervisors, when reporting on enforcement, don't differentiate between measures taken in the fields of prudential or business conduct, while it is not entirely clear for some supervisors whether activities in this field are simply chosen not be disclosed or if they are actually not taking place at all.

When inquiring with FSUG experts on their opinion on for which product group they perceive supervision and enforcement in their country to be the weakest and for which market the most efficient, it turned out that the replies can more often be explained by the relative

[77] For example, for the last available year, penalties in the amount of 1.960 million Euro have been reported from the UK, followed by 33 million Euro in France, 7,3 million Euro in the Netherlands and 3,8 million Euro in Germany

strength of the mandate and available capacities in a particular market than by the complexity of a specific product group.[78]

Clearly more research is needed into how the available enforcement mechanisms contribute to the supervisory efficiency in deterring market participants from detrimental behaviour and encouraging positive behaviour. It however, similar as with our findings on supervision, which again seems that the reported problems with enforcement stem less from the lack of tools (including a scaling of sanctions, from instructive conversations to warnings, financial sanctions and limitations or withdrawals of licences) than from a reluctance by several supervisors to use their enforcement powers to the full. In the Netherlands, for example, in order to counter the traditional supervision culture of preferring moral suasion over corrective action, a specialized department for corrective action has been created within the market supervisor.[79] In the UK, credible deterrence has been defined as the supervisor's statutory aim. Sometimes, the case law of administrative courts leading to frequent annulments of sanctions can deter national supervisors from sanctioning or force them to pronounce only very low sanctions, as has been reported by experts from Poland and Slovenia.

In terms of disclosure of actions taken, naming and shaming on formal sanctions, where it doesn't lead to negative market outcomes, has been recognized as a tool to strengthen deterrence from detrimental provider behaviour in five observed member states.[80] In several other member states, notices on admonishments and penalties remain confidential.

FSUG is of the opinion that convergence and minimal standards of operation for enforcement on the national level would be beneficial for the safety and soundness of the financial markets, contribute to ensuring the same level of consumer protection, raising the level of awareness among the regulators and the regulated parties and help creating a level playing field for financial service providers.[81] Both findings of FSUG experts and conclusions of the mystery shopping executed by the European Commission in the field of consumer credit show it would be advisable to introduce more concrete mandates and organizational measures that will make market supervisors less risk averse in using their enforcing powers. Also, publishing more information on the content of sanctions and on which providers have been sanctioned could improve the deterring effect of sanctions, provide valuable information to the public on legal conformity of market participants' operations and serve as an indicator whether a market supervisor is at all using the enforcement tools at its disposal.

Interaction of supervisors with consumer representatives

Input from the demand side of the market, typically from consumer groups and other user NGOs, is crucial for early detection of mis-selling practices and consumer detriment in general. Despite this, only in three member states there are special bodies existing that ensure a certain interaction between the supervisor and the civil society dealing with consumer rights. The most advanced case is the UK, where the supervisor maintains a

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[78] The only product group to be clearly ranked as not supervised enough across several observed member state were pension products

[79] International Monetary Fund: Financial sector supervision: twin peaks, Technical note, 2011, https://www.imf.org/external/pubs/ft/scr/2011/cr11208.pdf

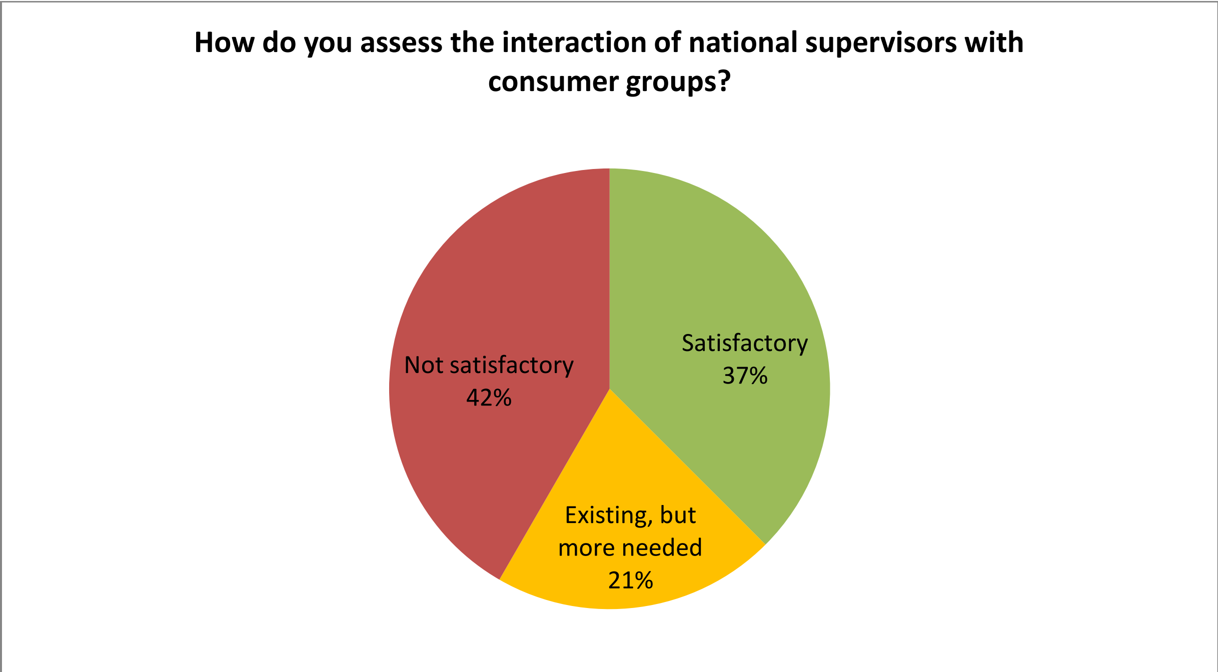
[80] France, Netherlands, Poland, Romania, UK

[81] FSUG: Reinforcing sanctioning regimes in the financial services sector, 2011; http://ec.europa.eu/finance/finservices-retail/docs/fsug/opinions/sanction_regimes-2011_02_19_en.pdf

statutory body representing consumers that not only provides regular input, but has its own budget, interacts with the public and the industry and is able to question the supervisor's policies. The UK also foresees the possibility of super-complaints by designated bodies (e.g. by consumer NGOs) in the case of detected high detriment in the market to which the supervisor must deliver a substantiated response and take action if necessary. The French securities supervisor has an investor panel with no industry representation but also with no budget or autonomy, while the German supervisor has a formalized statutory consumer panel. Both of these bodies have a merely consultative role. For Germany, criticism of confidentiality of the panel's work and no duty for the supervisor to reply to the panel has been reported. In Germany, an important improvement has been the establishment of a financial market watchdog within the structure of consumer advice bureaus. Its objective is to use the data obtained through consumer complaints and empirical research as a direct input into the work of the supervisory authorities.

As no institutionalized interaction with consumers or mere interaction with broader stakeholder panels where consumer representatives only constitute a small minority were reported from the majority of other observed member states (see Table 7), the ability of these supervisors to receive early and high quality information on consumer detriment can be seen as low and putting the supervisory outcomes at risk.

Table 7:



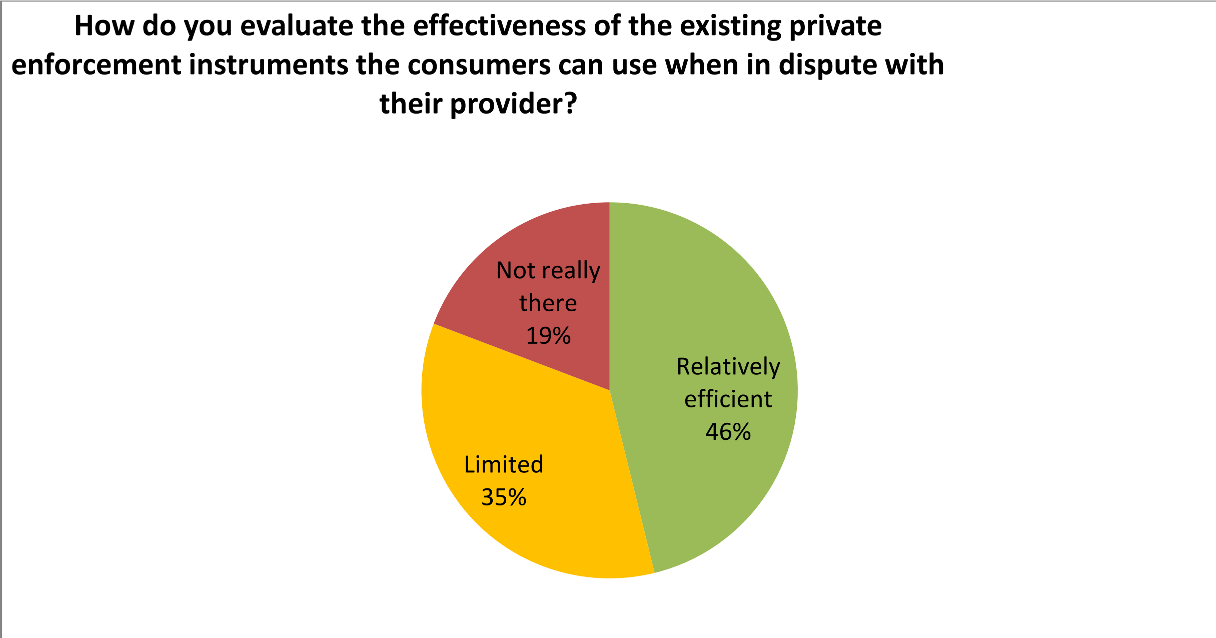
Input from complaint bodies and alternative dispute resolution

Efficient private enforcement of consumer rights is of crucial importance for a functioning regime of consumer protection and for deterring the providers from engaging in practices detrimental for consumers, while input from concrete consumer complaints and mechanisms for alternative resolution of disputes is of high importance for the supervisor as an early warning of detriment in the market. Several, but not all national supervisors have specialized departments for consumer complaints, while some of them also follow the activities of other

complaint bodies or ombudsmen if these exist. The Dutch supervisor runs a special platform where consumers can direct queries and provide input on financial matters. The French securities supervisor has an ombudsman within its own structure, while the UK supervisor has a statutory obligation to take ombudsman's activities into concern when carrying out its own policies.

The FSUG expert input (see Table 8) on the efficiency of private enforcement instruments and on input from consumer complaints to supervisory activities shows that in several member states both capacities could be strengthened.

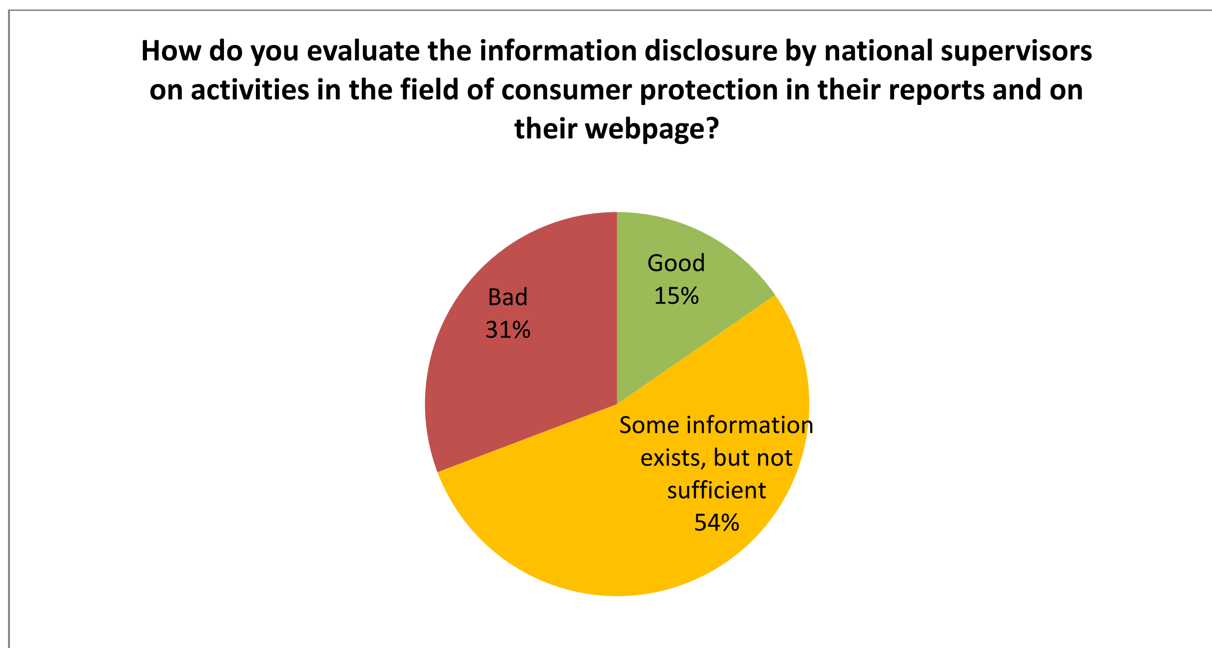
Table 8:



Disclosure on supervisory actions and relevant consumer issues

Research by FSUG experts of supervisor webpages and annual reports has shown wide disparities in the level of disclosure between member states and sometimes between different national market supervisors. While several supervisors are missing or are only starting to recognize the opportunity their webpages offer for disseminating information and educational materials that are relevant for consumers, an even more worrying finding (see also Table 9) has been the lack of information provided on supervisory and enforcement activities and the resulting lack of public scrutiny of whether the supervisor is fulfilling its tasks in a satisfactory way. FSUG considers that transparent operations and comprehensive disclosure of activities need to become a part of supervisory culture in all member states.

Table 9:



5. Impact of EU level supervision and enforcement institutions

Limited mechanisms for engaging with supervision and enforcement also exist on the EU level.

Regulation (EC) No 2006/2004 on consumer protection cooperation (the CPC Regulation) lays down the general conditions and a framework for cooperation between national enforcement authorities. It covers situations when the collective interests of consumers are at stake and allows authorities to stop breaches of consumer rules when consumers in several countries are concerned. The CPC Regulation links national Competent Authorities from all countries in the European Economic Area to form a European enforcement network, the "CPC Network".

The cooperation is applicable to horizontal consumer rules covering directives on consumer rights, unfair commercial practices, unfair term terms, e-commerce and comparative advertising. However, only two specific retail finance fields are also covered: consumer credit and distance marketing of financial services, while not all national enforcement agencies in the financial area are part of the network. So far the positive impact of the cooperation framework has been limited by factors such as low capacity for systematic screening of current problems and trends in the market, often limited capacities and tools available to national authorities for participating in the CPC activities, lack of mechanisms to efficiently and quickly address EU-wide detrimental provider behaviour, as well as insufficient information sharing on infringements with consumer or user organizations and lack of access to redress for consumers after infringements have been detected.

However, the Commission's proposal for a modernised CPC Regulation, adopted on 25 May 2016, extends the scope to relevant provisions of the Payment Accounts Directive and the Mortgage Credit Directive. Besides the extension of the scope of the CPC Regulation, the modernisation's aim is to increase the powers for enforcement authorities and establish a

new EU level procedure with a stronger coordination role for the Commission to ensure a faster more efficient response across all Member States.

As regards the three European Financial Supervision Authorities, a significant part of consumer protection in the field of retail finance falls within their tasks and powers. The ESAs' founding regulations provide on several occasions reference to them playing an active role in building a common EU supervisory culture and consistent supervisory practices, and in ensuring uniform procedures and consistent approaches throughout the Union.

After five years of existence, the effect of ESAs' work on consumer harm taking place in the market has been negligent. On the one hand, it should be noted that the ESAs have received very few direct mandates in Level 1 legislation to develop detailed requirements for any of the retail products falling into their scope of action that the national competent authorities could then enforce. Furthermore, public financial contributions to the ESAs have been significantly cut in 2015 forcing them to scale back certain operations. On the other hand, the specific powers relating to the protection of consumers, for example to issue warnings or to prohibit certain activities, have been poorly used so far. Rules in some key areas are currently being developed by the ESAs that address the root causes of consumer detriment in the EU market, for example the guidelines on product oversight and governance or on remuneration policies of sales staff. As a necessary improvement in the way financial products are developed and sold in the EU will require a fundamental change in the provider culture, it needs to be seen though whether the ESAs possess the necessary tools, capacities and autonomy to act in order to provide for effective implementation of these rules into practice.

IV. Conclusions and recommendations

The overall performance of retail financial markets has too often been very disappointing for EU's consumers, especially when compared to other of EU's goods and services markets. Across numerous product groups and across several member states, the national retail financial markets are continuously, according to EU-wide monitoring and inter-country price comparisons, failing to meet consumers' expectations. It has also been shown that in many key financial market segments and in a considerable number of member states, the providers are to a worrying degree not complying with the EU legislation.

In this paper we have also shown that, while it is still impossible for consumers to take advantage of the single market for financial services, practices leading to consumer detriment can easily spread cross-border in the EU. It became evident that detrimental business conduct tends to persist longer due to lack of supervisory action in some member states while such conduct is being regulated to become less detrimental or banned in other markets, although in both markets identical or very similar rules apply.

The disappointing performance of many retail financial markets in the EU is persisting although the growing financialization of the societies is increasing consumer dependence on financial services, while general economic instabilities contribute to the riskiness of consumers' financial decisions.

These developments call for an increased focus on how financial markets are performing and on concrete measures needed to improve their performance. At the EU level, the introduction of new regulation on consumer protection in recent years has concretised the mandate the

EU has in the field of consumer protection. These regulations are also the result of the lections of the last financial crisis showing that an appropriate level of consumer protection is not a side-show, but an essential pre-condition for the functioning of financial markets.

The overview of national supervisory regimes in this paper has demonstrated that the developments described above have often not been followed by national measures providing national market supervisors mandates and capacities necessary to implement new rules of consumer protection into practice and to start efficiently pursuing the goal of consumer protection. Consumers tend to be more exposed to risks of weak supervision regimes in the NMS and in southern Europe. This finding seems to correlate with the findings on market performance indicators from Consumer Market Scoreboard.

In particular, this study has demonstrated that, while important improvements in consumer protection have taken place in the past years in some member states, several national market supervisors:

- still lack a clear statutory objective of consumer protection and a suitable institutional setting for the performance of this task,
- do not possess sufficient resources and capacities to engage in consumer protection,
- are not using their existing supervising and enforcement tools to ensure legal compliance and proper functioning of markets,
- lack tools that would enable them to monitor the occurrence of consumer detriment in the market and take timely and efficient measures against it,
- lack tools and mandates to coordinate their actions with other countries' national supervisors in case of detriment spreading cross-border,
- do not sufficiently take into account consumer complaints and the decisions of ADR bodies (sometimes because such mechanisms don't exist) or consult with consumer and user NGOs,
- do not adequately disclose sufficient information on their activities or provide essential financial information to the public.

It seems that supervisory and enforcement regimes prevailing in several member states have been failing because of

- being based on the wrong assumption that the markets are performing in a satisfying manner and that all market actors, including the consumers, behave in a rational way,
- applying a regulatory model that fails to recognize market failure in a timely manner,
- under-resourcing of market supervisors,
- inconsistent and weak implementation of supervision and enforcement tasks across the EU and lack of cross border cooperation.

The supervisory failures in member states urgently need to be addressed on the EU level. A set of minimal standards for supervision and enforcement needs to be defined and a regime of checks and balances established in order to enable the implementation of EU law into practice and remove the barrier that failing national markets represent to development of an effective, integrated Single Market.

Recommendations for a supervisory reform in the EU

The FSUG therefore calls on the European Commission to initiate measures that will make markets deliver efficient results for consumer protection and consumer rights. We advise the Commission to apply a strategic approach to improving the situation by first formulating an appropriate strategic consumer and markets policy, consisting of:

- a definition of desired consumer and market outcomes,
- a formulation of methodology for identifying and measuring existing consumer detriment/market failure and risk analysis,
- a development of a root cause analysis that will lead to understanding why markets fail;
- an identification process for appropriate choices in policy interventions and remedies,
- a methodology for prioritising interventions basing on level of impact, effectiveness and available resources.[82]

In particular, the following basic supervisory outcomes need to be fulfilled:

1. EU coordination and standards of supervisory practice:

- merge consumer protection divisions at the European Supervisory Authorities (ESAs - EBA, ESMA, and EIOPA) in order to give more prominence to the conduct-of-business supervision and consumer protection issues, while reducing conflicts of interest with other supervisory goals;
- to ensure the definition, implementation and monitoring of minimal standards of supervision of business conduct and consumer protection on the national level, and empower ESAs to promote the development of the Single market and supervise market risks on the EU level. A clear mandate of ESAs is required for them to lead the work on the convergence of conduct-of-business supervision practices across Member States;
- to ensure coordination of supervisory and enforcement activities between national supervisory authorities, as well as their coordination with the ESAs. Strengthening and widening of the scope of cooperation of national authorities, for example within the existing cross-border enforcement and cooperation network is required;
- to ensure that EU law on consumer protection in retail finance is consistent across all relevant products and that it recognizes the need for a sufficient minimum level of legislation, whereby this shouldn't prevent member states or national competent agencies from keeping or introducing stronger requirements;
- to ensure that the initiatives of the European Commission's fitness-check of EU legislative acts ('REFIT') affecting consumer interest aims at a solid and enforceable legal framework for consumers.
- To ensure that the ESAs are provided with sufficient resources to adequately fulfil their tasks related to consumer protection

2. Independent national market supervisors in the field of consumer protection:

- financial supervision should have a clearly defined goal of consumer protection,

[82] FSUG: Making financial services work for financial users: New model financial regulation, 2012; http://ec.europa.eu/finance/finservices-retail/docs/fsug/papers/new_model_fin_regulation-2012_09_en.pdf

- the goal of consumer protection should not be subordinated but equal to other supervisory goals, either within the institution or within an infrastructure with more supervisors. The “twin peaks” supervision framework, as implemented in some national markets, has proven successful in addressing the challenge of consumer protection being subordinated to prudential and financial stability oriented supervisory goals,
- supervision should cover the entire retail financial market, the entire product life-cycles and not allow for loopholes or regulatory arbitrage,
- supervisors should have sufficient resources to pro-actively fulfil their tasks.

3. The mandate of national market supervisors should

- ensure fair and appropriate treatment of consumers by financial providers,
- protect consumers from suffering detriment in the financial services markets,
- ensure efficient and competitive financial services markets for consumers.

4. Tasks in market supervision

- engage in active monitoring and assessment of how markets are performing on the basis of clearly defined desired market outcomes[83],
- ensure the necessary input from consumer complaints, ADR mechanisms and consumer NGOs,
- screen products and assess their impact on consumers, with particular attention to new products and sales practices,
- intervene in case of risky products and failure of the market to offer suitable products,
- assess business models of providers and intermediaries from the perspective of fair treatment and potentially detrimental behaviour for consumers,
- supervise training of personnel and inducement schemes at providers and intermediaries.

5. Tasks in enforcement of rules

- establish a consistent sanctioning regime in terms of types of sanctions, both administrative and criminal, and level of sanctions that will credibly deter providers from detrimental behaviour,
- establish rules for early intervention and consistent application of sanctions,
- introduce publication of warnings, sanctions and results of market monitoring as a rule,
- set up efficient ADR schemes or supervise the efficiency of ADR schemes,
- set up a consistent and strong enforcement cooperation system in the cross border context.

6. Governance

- ensure that supervisory board compositions of national authorities are balanced in terms of background and experience,
- ensure balanced representation of consumer interest in the advisory boards,
- establish independent panels for consulting consumer experts and the institute of super-complaints.

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[83] FSUG 2012

7. Quality control

- establish procedures for effective evaluation of success in meeting the supervisory objectives,
- publish annual reports and other relevant information on activities that will allow for public scrutiny of the supervisory impact.

Annex I: **Overview of supervisory authorities, questionnaire**

ID	Name of the institution
	Link to webpage
Mandate	Is consumer protection explicitly mentioned among the tasks of the supervisor/is it subordinate or equal to other tasks?
	Is the mandate statutory?
	Mandate in the field of consumer protection (short summary, together with a link to the specific regulation)?
	Does the mandate include MSMEs? If so to what extent?
Competing mandates/conflicts of interest	Same institution also in charge of prudential supervision (macro/micro)?
	If yes how is consumer protection supervision separated from prudential supervision within the institution?
	How are conflicts between prudential and consumer protection mandates resolved?
	Does the institution have other mandates (eg competition, financial education?)
Capacities	Total personnel/ personnel in consumer protection (last year)
	Overall budget/ budget in the field of consumer protection (last year)
Supervision	Are risks for consumers in the market supervised pro-actively?
	What are the tools for assessing risk in the market (inspections, research studies, mystery shopping exercises, consumer inquiries)?
	How much direct risk assessment has taken place in the market (inspections, research studies, mystery shopping exercises, consumer inquiries) (last year)
Tools available	Examples of tools: product intervention, including banning of products, requiring changes, imposing tests, pre-approval,
	Codes of conduct, regulations, guidelines,...
	Involvement in product governance and supervision

	Are there regulated products in the market
Enforcement	Warning notices issued (last year)
	Withdrawn authorizations to companies/professionals (last year)
	Total fines in the field of enforcement of consumer protection rules (last year)
	Other sanctions, like ‘naming & shaming’
Disclosure	Are the names of fined providers and/or concrete breaches disclosed?
	Issuing of warnings and alerts for the public
	Disclosure on past and future activities to the public (mandate/actual)
Interaction with consumers/users	Institutional provisions for receiving input on consumer matters and communication with consumer NGOs
	Is there a statutory advisory body with consumer participation and what is its role?
	Is there a possibility of consumer complaints to the institution or an alternative dispute resolution mechanism (eg Ombudsman) in case of a dispute with the provider?
	Does a specialized department or institution exist for consumer complaints?
	Is the supervisor/ADR institution able to take a binding decision in the matter after receiving a consumer complaint?
	Total amount of compensation awarded to consumers for misselling or other mistreatment (last year)
Data sources	Were there any problems with obtaining the data? How informative was the institution’s webpage?

Annex II: Evaluation questionnaire, excerpt

(Data was gathered in November 2015)

	UK	Netherlands	Germany	Italy	Belgium	Greece	France	Denmark	Spain	Slovenia	Poland	Romania	Slovakia	All member states	Old member states	New member states
Evaluation of the capacities of national supervisors in consumer protection in the field of financial services																
Country: (box)														13	9	4
Name and organization of the respondent: (box)																
1. How active are in your opinion the national supervisors in your country in protecting consumers and preventing consumer detriment from taking place?																
Sufficiently active	0.5			1	1							0,5		3	2,5	0,5
Active, but far less than required	0.5	1	1			1	0,5	1			1			6	5	1
Not nearly active enough							0,5		1	1		0,5	1	4	1,5	2,5
2. How do you estimate the capacities and resources available to national supervisors for consumer protection?																
Satisfactory	1	1		1	1							0,5		4,5	4	0,5
Resources available, but not enough for to the task							0,5	1						1,5	1,5	0
Not really there			1			1	0,5		1	1	1	0,5	1	7	3,5	3,5
3. Do you think the tools available to national supervisors for their tasks in supervision and enforcement are sufficient or would they need further tools?																
The tools available are sufficient	1	1	1	1	1	0	0,5		1		0		1	7,5	6,5	1
Not sufficient						0	0,5	1		1	0	1		3,5	1,5	2
4. Please specify in which market or for which product group are supervision and enforcement in your country the weakest, and in which market and for which product group most efficient. (box)																
5. How do you evaluate the effectiveness of the existing private enforcement instruments the consumers can use when in dispute with their provider (p.e. ombudsman, ADR systems, court action)																
Relatively efficient	1	1	1	1	1			1						6	6	0
Limited						1	0,5		1			1	1	4,5	2,5	2
Not really there							0,5			1	1			2,5	0,5	2

6. How do you assess the interaction of national supervisors with consumer groups?																
Satisfactory	1	1		0	1			1				0,5		**4,5**	**4**	**0,5**
Existing, but more needed			1	0			0,5						1	**2,5**	**1,5**	**1**
Not satisfactory				0		1	0,5		1	1	1	0,5		**5**	**2,5**	**2,5**
7. How do you evaluate the information disclosure by national supervisors on activities in the field of consumer protection in their reports and on their webpage?																
Good		1			1									**2**	**2**	**0**
Some information exists, but not sufficient	1		1	1			0,5	1	1			0,5	1	**7**	**5,5**	**1,5**
Bad						1	0,5			1	1	0,5		**4**	**1,5**	**2,5**

Annex III: The twin peaks reform in Belgium

“Twin Peaks I” package

The “Twin Peaks I” supervision architecture for the Belgian financial sector became effective on 1 April 2011.

In short:

1. The prudential supervision of most financial institutions was in the hands of the NBB with, however, certain types of financial institutions with a lower risk profile still subject to prudential supervision by the FSMA and
2. The supervision of the financial markets and of the conduct of business (COB) rules was concentrated in the hands of the FSMA.

The competences of the NBB:

1. Macro-prudential supervision of the financial sector:
   (a) Identify threats to the stability of the financial sector,
   (b) Advise the Parliament and the Government on measures to be taken to maintain financial stability and to ensure the Belgian financial system works smoothly,
   (c) Coordinate the financial crisis management, etc.;
2. Reinforced supervision of systemically important financial institutions (“SIFIs”):
   (a) Supervise “strategic decisions” envisaged by SIFIs and right to oppose such strategic decisions if they create a material risk for the stability of the financial sector,
   (b) Impose additional specific measures to SIFIs if needed, including the ones in relation to liquidity, solvability, concentration of risks, etc. if necessary to ensure the stability of the financial system, etc.;
3. Micro-prudential supervision of most of the Belgian financial institutions, including:
   (a) Credit institutions;
   (b) Insurance and reinsurance companies;
   (c) MiFID brokers;
   (d) Settlement institutions and clearing institutions;
   (e) E-money and payment institutions.

The prudential powers of the NBB in relation to the above financial institutions include the supervision of all aspects related to capital, liquidity and solvency requirements, internal governance and organisation, fit and proper assessment of management and shareholders, etc.

The NBB will be empowered to take administrative measures and, through the NBB Sanctions Commission, impose administrative sanctions in case of non-compliance with applicable prudential regulation.

The competences of the FSMA:

1. Micro-prudential supervision of the financial institutions that are not subject to NBB supervision, including:

   (a) MiFID portfolio management and investment advice companies;

   (b) Fund management companies and collective investment undertakings;

   (c) Foreign exchange offices;

   (d) Mortgage credit undertakings and consumer credit undertakings;

   (e) Insurance and reinsurance intermediaries, intermediaries in bank- and investment services;

   (f) Occupational pension institutions.

As is the case with the NBB, the prudential powers of the FSMA in relation to the above financial institutions include the supervision of all aspects related to capital requirements, internal governance and organisation, fit and proper assessment of management and shareholders, etc.

2. Supervision of financial markets, including the control of financial products (public offers, listings, takeover bids, etc.), the control of information to the market by listed companies and market abuse.

3. Financial education of investors and their protection against illicit provision of financial products and services.

4. Supervision of conduct of business ("COB") rules by financial institutions, regardless of whether they are subject to prudential supervision by the NBB or the FSMA.

"Twin Peaks II" package

On 9 September 2013, a number of measures to improve the protection of Belgian investors and to strengthen the supervisory powers of the FSMA entered into force (the so-called Twin Peaks II package). Twin Peaks II substantially strengthens the supervisory powers of the FSMA and aims to improve market transparency and the protection of investors. Mainly it aims to:

1. Strengthen the supervisory and sanctioning powers of the FSMA.

   (a) Broaden the FSMA's investigative powers:

      i. The FSMA is authorised to engage in "mystery shopping" (i.e. to approach regulated entities as a client, without mentioning its capacity as a regulator) in order to verify that applicable conduct of business rules are being complied with. For this, the FSMA may rely on its own staff or on external shoppers.

ii. Financial institutions, if requested, must provide the FSMA with permanent remote access to their Internet banking websites on which information or offers are made available to clients. The FSMA is, however, not entitled to gain access to clients' individual protected website pages.

(b) Reinforce the sanctioning regime.

(c) Restrict trading and products ban.

2. Improve the protection of clients.

Twin Peaks II contains a number of measures aimed at creating a level playing field for all financial institutions. The purpose of these measures is to provide the same level of protection to customers, regardless of the type or nature of the investment product (financial instrument, insurance contract, savings account, etc.) and of the status of the financial institution (credit institution, investment firm, insurance company, financial intermediaries).

(a) Extension of conduct of business rules to insurance companies and intermediaries : Twin Peaks II extended the existing MiFID conduct of business rules to insurance companies and intermediaries.

(b) Know Your Product (KYP) obligation : Twin Peaks II requires that anyone (sales teams) in contact with investors to have the necessary knowledge to advise them on the services and products they are selling (i.e. a KYP obligation).

3. Tighten the civil liability regime.

(a) Presumption of causal link between a breach of applicable conduct of business rules and the investors' decision to enter into the relevant transaction: this – rebuttable – presumption of causal link applies in connection with all types of investments relating to financial products or services in case of breach of conduct of business rules.

(b) Presumption of causal link between breaches of licensing, prospectus or pre-approval requirements, and investors' damages: in case of breach of banking, investment or funds licensing requirements or prospectus and marketing documents approval requirements, Twin Peaks II provides an irrefutable presumption that damages suffered further to purchases of, or transactions in, financial products are caused by such breach.

This presumption will, however, not apply in relation to EU financial institutions and issuers that have obtained all relevant authorisations in their home Member State but have failed to comply with the applicable passporting requirements (e.g. it does not apply to a public offer made in Belgium on the basis of a prospectus duly approved by the Luxembourg authorities but which has not been duly passported in Belgium).

(c) Nullity of transactions or services provided in breach of licensing, prospectus or pre-approval requirements: in addition to the above presumption regimes, Twin Peaks II introduces a regime of nullity for transactions or services provided in breach of licensing, prospectus and marketing document pre-approval requirements; for example, an investor may now request the cancellation of a

subscription of shares in an investment fund if the relevant investment fund has been sold to the public in Belgium in breach of applicable authorisation obligations and/or without a duly approved prospectus or he can request the cancellation of a purchase of securities issued in the framework of a public offer in Belgium if no prospectus has been approved or if the marketing documents used in Belgium have not been cleared beforehand by the FSMA.

This rule will, however, not apply in relation to EU financial institutions and issuers that have obtained all relevant authorisations in their home Member State but have failed to comply with the applicable passporting requirements.

4. Extend the market abuse regime: Belgium has decided to move faster than the European Union on the review of the market abuse regime and to extend its scope of application as follows.

   (a) Expanding the market manipulation prohibition to derivatives, i.e. financial instruments that are not listed and whose value depends on listed financial instruments (by making this change Twin Peaks II aligns the insider trading and the market manipulation prohibitions as far as derivatives are concerned);

   (b) Expanding the market manipulation and insider trading prohibitions to credit default swaps relating to listed issuers and

   (c) Creating a new market abuse prohibition in relation to benchmarks (such as Euribor): this new prohibition applies to market manipulation conducted in Belgium or from the Belgian territory, regardless of the place where the benchmark is determined.

5. Increase transparency and comparability of savings accounts.

6. Revise judicial injunctions regime.

7. Implement the Omnibus I Directive.

Annex IV: Mandate of the UK's Financial Conduct Authority

The FCA has three statutory objectives:

- To protect consumers
- To enhance the integrity of the UK financial system
- To help maintain competitive markets and promote effective competition in the interests of consumers

As set out in the Financial Services Act 2012, the **consumer protection objective** is: "securing an appropriate degree of protection for consumers.

In considering what degree of protection for consumers may be appropriate, the FCA must have regard to

(a) the differing degrees of risk involved in different kinds of investment or other transaction;

(b) the differing degrees of experience and expertise that different consumers may have;

(c) the needs that consumers may have for the timely provision of information and advice that is accurate and fit for purpose;

(d) the general principle that consumers should take responsibility for their decisions;

(e) the general principle that those providing regulated financial services should be expected to provide consumers with a level of care that is appropriate having regard to the degree of risk involved in relation to the investment or other transaction and the capabilities of the consumers in question;

(f) the differing expectations that consumers may have in relation to different kinds of investment or other transaction;

(g) any information which the consumer financial education body has provided to the FCA in the exercise of the consumer financial education function;

(h) any information which the scheme operator of the ombudsman scheme has provided to the FCA pursuant to section 232A".

FCA's **approach to delivering the statutory objectives** aims to:
- ensure customers are treated in a way that is appropriate for their level of financial knowledge and understanding
- be more outward looking, by engaging more with consumers and understanding more about their concerns and behaviour
- set clear expectations for firms and be clear about what firms can expect from us
- intervene early to tackle potential risks to consumers before they take shape
- be tougher and bolder, following a strategy of credible deterrence, using new powers of intervention and enforcement.

The six outcomes set out in the FSA's Treating Customers Fairly (TCF) initiative remain central to their consumer protection objective. They guide the general policy and principles

by which the FCA makes rules, prepares and issues codes, and gives general guidance. Getting a fair deal for consumers is at the heart of our approach.

The six outcomes to treating customers fairly

- Outcome 1: Consumers can be confident that they are dealing with firms where the fair treatment of customers is central to the corporate culture.
- Outcome 2: Products and services marketed and sold in the retail market are designed to meet the needs of identified consumer groups and are targeted accordingly.
- Outcome 3: Consumers are provided with clear information and are kept appropriately informed before, during and after the point of sale.
- Outcome 4: Where consumers receive advice, the advice is suitable and takes account of their circumstances.
- Outcome 5: Consumers are provided with products that perform as firms have led them to expect, and the associated service is of an acceptable standard and as they have been led to expect.
- Outcome 6: Consumers do not face unreasonable post-sale barriers imposed by firms to change product, switch provider, submit a claim or make a complaint.

Firms are expected to base their business models, their culture and how they run their businesses on the principle of treating customers fairly and to demonstrate good conduct through their dealings with consumers, each other and the market.