



Call for evidence: EU regulatory framework for financial services

Fields marked with * are mandatory.

Introduction

The Commission is looking for empirical evidence and concrete feedback on:

- A. Rules affecting the ability of the economy to finance itself and growth;
- B. Unnecessary regulatory burdens;
- C. Interactions, inconsistencies and gaps;
- D. Rules giving rise to unintended consequences.

It is expected that the outcome of this consultation will provide a clearer understanding of the interaction of the individual rules and cumulative impact of the legislation as a whole including potential overlaps, inconsistencies and gaps. It will also help inform the individual reviews and provide a basis for concrete and coherent action where required.

Evidence is sought on the impacts of the EU financial legislation but also on the impacts of national implementation (e.g. gold-plating) and enforcement.

Feedback provided should be supported by relevant and verifiable empirical evidence and concrete examples. Any underlying assumptions should be clearly set out.

Feedback should be provided only on rules adopted by co-legislators to date.

Please note: In order to ensure a fair and transparent consultation process **only responses received through our online questionnaire will be taken into account** and included in the report

summarising the responses. Should you have a problem completing this questionnaire or if you require particular assistance, please contact fisma-financial-regulatory-framework-review@ec.europa.eu.

More information:

- [on this consultation](#)
- [on the protection of personal data regime for this consultation](#) 

1. Information about you

* Are you replying as:

- a private individual
- an organisation or a company
- a public authority or an international organisation

* Name of the public authority:

Financial Services User Group (FSUG)

Contact email address:

The information you provide here is for administrative purposes only and will not be published

malgorzata.FELUCH@ec.europa.eu

* Type of public authority

- International or European organisation
- Regional or local authority
- Government or Ministry
- Regulatory authority, Supervisory authority or Central bank
- Other public authority

* Please specify the type of public authority:

COMMISSION EXPERT GROUP/CONSUMER REPRESENTATIVE GROUP

* Where are you based and/or where do you carry out your activity?

Belgium 

* Field of activity or sector (*if applicable*):

at least 1 choice(s)

- Accounting
- Auditing
- Banking
- Consumer protection

- Credit rating agencies
- Insurance
- Pension provision
- Investment management (e.g. hedge funds, private equity funds, venture capital funds, money market funds, securities)
- Market infrastructure operation (e.g. CCPs, CSDs, Stock exchanges)
- Social entrepreneurship
- Other
- Not applicable



Important notice on the publication of responses

* Contributions received are intended for publication on the Commission's website. Do you agree to your contribution being published?

(see [specific privacy statement](#) )

- Yes, I agree to my response being published under the name I indicate (*name of your organisation/company/public authority or your name if your reply as an individual*)
- No, I do not want my response to be published

2. Your feedback

In this section you will have the opportunity to provide evidence on the 15 issues set out in the consultation paper. You can provide up to 5 examples for each issue.

If you would like to submit a cover letter or executive summary of the main points you will provide below, please upload it here:

- [619e6d53-d9f0-4232-b9d2-d13257819175/FSUG EU Call for evidence Introductory Comments.pdf](#)

Please choose at least one issue from at least one of the following four thematic areas on which you would like to provide evidence:

A. Rules affecting the ability of the economy to finance itself and grow

You can select one or more issues, or leave all issues unselected

- Issue 1 - Unnecessary regulatory constraints on financing
- Issue 2 - Market liquidity
- Issue 3 - Investor and consumer protection
- Issue 4 - Proportionality / preserving diversity in the EU financial sector

Issue 3 – Investor and consumer protection

Please specify whether, and to what extent, the regulatory framework has had any major positive or negative impacts on investor and consumer protection and confidence.

How many examples do you want to provide for this issue?

- 1 example 2 examples 3 examples 4 examples 5 examples

Please fill in the fields below. For any additional documentation, please use the upload button at the end of the section dedicated to this issue.

Example 1 for Issue 3 (Investor and consumer protection)

* To which Directive(s) and/or Regulation(s) do you refer in your example?

Please select at least one item in the list of the main adopted EU legislative acts below.

Please do not tick the "other" box unless the example you want to provide refers to an legislative act which is not in the list (other adopted EU legislative acts, national legislative acts, etc..). In that case, please specify in the dedicated text box which other legislative act(s) the example refers to.

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| <input type="checkbox"/> Accounting Directive | <input type="checkbox"/> AIFMD (Alternative Investment Funds Directive) |
| <input type="checkbox"/> BRRD (Bank recovery and resolution Directive) | <input type="checkbox"/> CRAs (credit rating agencies)- Directive and Regulation |
| <input type="checkbox"/> CRR III/CRD IV (Capital Requirements Regulation/Directive) | <input type="checkbox"/> CSDR (Central Securities Depositories Regulation) |
| <input type="checkbox"/> DGS (Deposit Guarantee Schemes Directive) | <input type="checkbox"/> Directive on non-financial reporting |
| <input type="checkbox"/> ELTIF (Long-term Investment Fund Regulation) | <input type="checkbox"/> EMIR (Regulation of OTC derivatives, Central Counterparties and Trade Repositories) |
| <input type="checkbox"/> E-Money Directive | <input type="checkbox"/> ESAs regulations (European Supervisory Authorities) |
| <input type="checkbox"/> ESRB (European Systemic Risk Board Regulation) | <input type="checkbox"/> EuSEF (European Social Entrepreneurship Funds Regulation) |
| <input type="checkbox"/> EuVECA (European venture capital funds Regulation) | <input type="checkbox"/> FCD (Financial Collateral Directive) |
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| <input type="checkbox"/> MiFID II/R (Markets in Financial Instruments Directive & Regulation) | <input type="checkbox"/> Motor Insurance Directive |
| <input type="checkbox"/> Omnibus I (new EU supervisory framework) | <input type="checkbox"/> Omnibus II: new European supervisory framework for insurers |
| <input type="checkbox"/> PAD (Payments Account Directive) | <input type="checkbox"/> PD (Prospectus Directive) |
| <input type="checkbox"/> PRIPS (Packaged retail and insurance-based investment products Regulation) | <input type="checkbox"/> PSD (Payment Services Directive) |
| <input type="checkbox"/> Qualifying holdings Directive | <input type="checkbox"/> Regulations on IFRS (International Financial Reporting Standards) |
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| <input type="checkbox"/> Statutory Audit - Directive and Regulation | <input type="checkbox"/> Transparency Directive |
| <input type="checkbox"/> UCITS (Undertakings for collective investment in transferable securities) | <input checked="" type="checkbox"/> Other Directive(s) and/or Regulation(s) |

- * **Please specify to which other Directive(s) and/or Regulation(s) you refer in your example?**
(Please be short and clear: state only the common name and/or reference of the legislative act(s) you refer to.)

Consumer Credit Directive

- * **Please provide us with an executive/succinct summary of your example:**
(If applicable, mention also the articles of the Directive(s) and/or Regulation(s) selected above and referred to in your example)

The CCD adopted in 2008 covers personal loans, credit card, overdraft facilities, revolving credit or credit sale agreements. Under the CCD, lenders must provide the consumer with a standardised pre-contractual information, comparable interest rates (APRC), right of withdrawal and early repayment. When reviewing the directive last year, the Commission concluded that no revision is required for the time being, but rather its enforcement needs to be enhanced (see our comments with regard to enforcement further below). Besides several positive provisions, the CCD contains serious loopholes.

- * **Please provide us with supporting relevant and verifiable empirical evidence for your example:**
(please give references to concrete examples, reports, literature references, data, etc.)

For example, it does not address the issue of irresponsible lending. This concerns the obligation for lenders to assess the creditworthiness of

consumers prior to offering credit. Although there is a basic obligation to assess creditworthiness, the means by which this done is largely left to the creditor and the directive still does not oblige lenders to grant credit only to those borrowers who are likely to repay it. On the other hand, the recently adopted Mortgage Credit Directive obliges creditors to make the credit available to the consumer only where the result of the creditworthiness assessment indicates that the obligations resulting from credit agreement are likely to be met.

Another concern is related to the scope which covers the amounts between EUR 200–EUR 75 000. This means that small loans that are widespread in many Member States under different forms (payday loan, sms loan, etc.) fall out of the CCD scope and do not have to comply with its consumer protection provisions. Those short-term expensive loans essentially target young people and low-income consumers causing huge financial detriment and vicious debt spiral. When transposing the CCD at national level, many Member States have included small loans and short term loans in the scope. Some other Member States have adopted specific measures: In an attempt to prevent irresponsible and abusive behaviour by payday lenders, the UK regulator recently took drastic measures to clean up the market .

The Directive makes no attempt to control the cost of credit or the penalties that may apply in the event of late payment. This is a matter for the Member States to decide for themselves. Some countries, e.g. Belgium, France, Italy and Slovenia have laws setting the maximum interest rate that providers can charge to the borrower, while in many other Member States no such measures exist. After the Commission's study and consultation on this topic in 2011, no follow-up actions were taken.

*** If you have suggestions to remedy the issue(s) raised in your example, please make them here:**

Considering that irresponsible lending is one of the causes of consumer over-indebtedness, it is important to align the CCD with responsible lending principles that apply to mortgage credit.

As part of the expected measures to fight against over-indebtedness, the Commission should assess whether EU action is necessary in the area of small short-term loans.

As part of the expected measures to fight against over-indebtedness, the Commission should assess whether EU action is necessary to cap interest rates and penalties in case of default or late payment .

Example 2 for Issue 3 (Investor and consumer protection)

*** To which Directive(s) and/or Regulation(s) do you refer in your example?**

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UCITS (Undertakings for collective investment in transferable securities)

Other Directive(s) and/or Regulation(s)

*** Please provide us with an executive/succinct summary of your example:**

(If applicable, mention also the articles of the Directive(s) and/or Regulation(s) selected above and referred to in your example)

The PAD concerns consumers' right to payment (bank) accounts, comparability of payment account fees, and payment account switching (entry into force in March 2016). Probably the main achievement of the directive is that it provides all EU consumers with a right to open a payment account that allows them to perform essential operations, such as receiving their salary, pensions and allowances, payment of utility bills or making online purchases.

*** Please provide us with supporting relevant and verifiable empirical evidence for your example:**

(please give references to concrete examples, reports, literature references, data, etc.)

The PAD lacks ambition with regard to account switching between banks, thus we do not expect that consumer switching rates will increase in the near future. When the draft PAD was scrutinised by policy-makers, consumer organisations recommended that automatic redirection services, similar to what currently exists in the Netherlands and UK, should be introduced in all Member States, while a full payment account number portability should be assessed as a long-term solution. Instead, the PAD replicates the pre-existing self-regulation by banks that did not live to the expectations. In order to enable effective and smooth payment account mobility, consumers should be provided with a very simple and reliable switching mechanism. Difficulties transferring direct debits and standing orders have been identified as being among the main barriers to account switching. The 2010 BEUC monitoring report of the EBIC Common Principles for Bank Account Switching (banking self-regulation) revealed that problems exist in relation to the transfer of direct debits from the former bank account to the new one. The 2011 Commission mystery shopping study found that in two third of cases consumers were told that the bank could not assist them with the transfer of standing orders. Only 19% successfully switched their payment account including a standing order. The Commission impact assessment accompanying the draft PAD also stressed that the problem of potential errors occurring when in/out payments by third parties are credited/debited to the wrong account can be fully addressed only by putting in place an automatic redirection service or payment account portability.

The PAD also contains provisions on cross-border account opening. If the consumer wants to open a basic payment account in another Member State, the Member State may require the consumer to show a genuine interest to do so which could be very burdensome for the consumer (no predefined objective criteria). Besides that, Member States may identify limited and specific additional cases where credit institutions may be required or may choose to refuse a basic payment account. In our view, such restrictions go against the single market principle, free movement of people and capital.

*** If you have suggestions to remedy the issue(s) raised in your example, please make them here:**

Consumer organisations recommend that automatic redirection services, similar to what currently exists in the Netherlands and UK, should be introduced in all Member States, while a full payment account number portability should be assessed as a long-term solution.

We expect that the upcoming Green Paper consultation on financial services single market will, inter alia, look into the issue of cross-border shopping for bank accounts.

Example 3 for Issue 3 (Investor and consumer protection)

*** To which Directive(s) and/or Regulation(s) do you refer in your example?**

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| <input type="checkbox"/> UCITS (Undertakings for collective investment in transferable securities) | <input type="checkbox"/> Transparency Directive |
| | <input checked="" type="checkbox"/> Other Directive(s) and/or Regulation(s) |

*** Please specify to which other Directive(s) and/or Regulation(s) you refer in your example?**
(Please be short and clear: state only the common name and/or reference of the legislative act(s) you refer to.)

Regulation (EC) No 924/2009–Cross Border Payments

*** Please provide us with an executive/succinct summary of your example:**
(If applicable, mention also the articles of the Directive(s) and/or Regulation(s) selected above and referred to in your example)

The objective of the Regulation (EC) No 924/2009 on cross-border payments in the Community was to eliminate the differences in charges for cross-border and national payments in euro. The basic principle is that the charges for payment transactions offered by a payment service provider have to be the same, for the payment of the same value, whether the payment is national or cross-border.

All non-euro area Member States have the possibility to extend the application of this Regulation and to apply the same charges for payments in euro as for payments in their national currency. Only Sweden and Romania have done it so far.

*** Please provide us with supporting relevant and verifiable empirical evidence for your example:**
(please give references to concrete examples, reports, literature references, data, etc.)

The Regulation 924/2009 on equality of charges should be extended to all non-euro currencies in the Community. This would end the practice of banks taking exorbitant fees when e.g. workers are paid in one country for work performed for a company in another. These are often a percentage of the sum paid so can take a chunk out of someone's earnings. Exorbitant fees for cross-border money transfers in non-euro currencies have been charged to consumers: For example, a consumer was charged 48 Euros for a 10 Euros transfer to Hungary; A German consumer transferred 2,635 GBP to the UK for language courses. He was informed by his bank that the payment will cost 12 Euros. But he had to pay altogether 60 Euros in fees, which were partly charged by the receiving bank. A Romanian consumer was requested to pay 50 Euros for a 79 Euros credit transfer to the Netherland. After his rejection, the bank offered him the possibility to pay just 10 Euros for the same transaction. The current situation is not compatible with the EU objective of achieving the internal market for payments.

One of the central issues in relation to the Regulation 924/2009 is about its interpretation. Thus, Article 3(1) states that "Charges levied by a payment service provider on a payment service user in respect of cross-border payments of up to EUR 50 000 shall be the same as the charges levied by that payment service provider on payment service users for corresponding national payments of the same value and in the same currency." This provision is not explicit and leaves room for different interpretations. For example, recently in Germany there was an issue related to cross-border ATM charges. German consumers were charged very high fees (even more than 5 Euros) by their own banks for using ATMs outside Germany. If they used an ATM of another bank or a scheme at national level, fees charged by private banks were limited to EUR 1.95, while the co-operative banks and Sparkassen charged around EUR 3.95-4.95. In January 2011 the Commission issued an interpretative note, where the 'corresponding national payment' is approached from the point of view of the consumer .

*** If you have suggestions to remedy the issue(s) raised in your example, please make them here:**

- The Regulation should be extended to all non-euro currencies in the Community.
- The Regulation should be amended so as not to allow any room for different interpretations.

Example 4 for Issue 3 (Investor and consumer protection)

*** To which Directive(s) and/or Regulation(s) do you refer in your example?**

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*** Please provide us with an executive/succinct summary of your example:**

(If applicable, mention also the articles of the Directive(s) and/or Regulation(s) selected above and referred to in your example)

MiFID II/R (Markets in Financial Instruments Directive & Regulation)
PRIIPS (Packaged retail and insurance-based investment products Regulation)
In terms of raising investor protection, both MiFID II and KID for PRIIPS are not into force yet. In this perspective we would like to warn that any delay in implementing MiFID II would be a major blow for restoring retail investor trust.

Furthermore we expect that both initiatives will have a positive effect on restoring investor protection.

- The key information document (KID) standardised across the EU will explain to consumers in plain language the key features of investment products. It should also lift the misleading layers on how much an investment really costs.
- MiFID II is set to lift overall investor protection standards in the EU, inter alia, by upgrading transparency rules, tackling conflicts of interest and establishing an independent advice regime.

However, we would like to highlight shortly the main shortcomings of both texts.

*** Please provide us with supporting relevant and verifiable empirical evidence for your example:**

(please give references to concrete examples, reports, literature references, data, etc.)

- The KID failed to also cover personal pension products and simple shares and bonds.
- MiFIDII failed to adopt a full ban on commissions, which is necessary to fully align the interests of financial intermediaries with those of consumers, when providing investment advice.

*** If you have suggestions to remedy the issue(s) raised in your example, please make them here:**

On a final note we would like to urge the Commission to make sure that consumer friendly measures are not diluted in the implementation (level 2) process.

Example 5 for Issue 3 (Investor and consumer protection)

*** To which Directive(s) and/or Regulation(s) do you refer in your example?**

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| <input type="checkbox"/> ESRB (European Systemic Risk Board Regulation) | <input type="checkbox"/> EuSEF (European Social Entrepreneurship Funds Regulation) |
| <input type="checkbox"/> EuVECA (European venture capital funds Regulation) | <input type="checkbox"/> FCD (Financial Collateral Directive) |
| <input type="checkbox"/> FICOD (Financial Conglomerates Directive) | <input type="checkbox"/> IGS (Investor compensation Schemes Directive) |
| <input type="checkbox"/> IMD (Insurance Mediation Directive) | <input type="checkbox"/> IORP (Directive on Institutions of Occupational Retirement Pensions) |
| <input type="checkbox"/> Life Insurance Directive | <input type="checkbox"/> MAD/R (Market Abuse Regulation & Criminal Sanctions Directive) |
| <input type="checkbox"/> MCD (Mortgage Credit Directive) | <input type="checkbox"/> MIF (Multilateral Interchange Fees Regulation) |
| <input type="checkbox"/> MiFID II/R (Markets in Financial Instruments Directive & Regulation) | <input type="checkbox"/> Motor Insurance Directive |
| <input type="checkbox"/> Omnibus I (new EU supervisory framework) | <input type="checkbox"/> Omnibus II: new European supervisory framework for insurers |
| <input type="checkbox"/> PAD (Payments Account Directive) | <input type="checkbox"/> PD (Prospectus Directive) |
| <input type="checkbox"/> PRIIPS (Packaged retail and insurance-based investment products Regulation) | <input type="checkbox"/> PSD (Payment Services Directive) |
| <input type="checkbox"/> Qualifying holdings Directive | <input type="checkbox"/> Regulations on IFRS (International Financial Reporting Standards) |
| <input type="checkbox"/> Reinsurance Directive | <input type="checkbox"/> SEPA Regulation (Single Euro Payments Area) |
| <input type="checkbox"/> SFD (Settlement Finality Directive) | <input type="checkbox"/> SFTR (Securities Financing Transactions Regulation) |
| <input type="checkbox"/> Solvency II Directive | <input type="checkbox"/> SRM (Single Resolution Mechanism Regulation) |
| <input type="checkbox"/> SSM Regulation (Single Supervisory Mechanism) | <input type="checkbox"/> SSR (Short Selling Regulation) |

- Statutory Audit - Directive and Regulation Transparency Directive
- UCITS (Undertakings for collective investment in transferable securities) Other Directive(s) and/or Regulation(s)

- * **Please specify to which other Directive(s) and/or Regulation(s) you refer in your example?**
(Please be short and clear: state only the common name and/or reference of the legislative act(s) you refer to.)

This relates to a general problem with failing to enforce legislation and supervise the industry effectively

- * **Please provide us with an executive/succinct summary of your example:**
(If applicable, mention also the articles of the Directive(s) and/or Regulation(s) selected above and referred to in your example)

- At national level
As already mentioned elsewhere, in the past few years several EU legislative texts have been adopted in the retail financial services area as a response to the financial crisis and the difficulties faced by consumers. However, lack of appropriate enforcement and supervision in many Member States raise serious concerns.
- At cross-border level
Supervising consumer financial services requires also co-operation between national supervisors. The 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 the trader and the consumer are established in different countries, but in the financial services areas, only the Consumer Credit Directive and the Directive on the protection of consumers concerning distance marketing of consumer financial services fall under the scope of this network so far.
- Sanctioning regimes
In the financial services area, sanctioning regimes play an important role in the effectiveness of supervision. The EU retail financial services laws provide that sanctions laid down by member states for non-compliance with the law must be effective, proportionate and dissuasive. However, in practice, sanctioning regimes vary greatly across Member states, lack of dissuasiveness and in effective application of sanctions seriously undermine consumer protection and their confidence in the financial sector. Some competent authorities cannot address administrative sanctions to both natural and legal persons. Competent authorities do not take into account the same criteria in the application of sanctions. Divergence exists in the nature (administrative or criminal) of sanctions provided for in national legislation. The the level of application of sanctions varies across Member States .
Regrettably, there were no follow-up actions to the above-mentioned consultation to approximate and reinforce national sanctioning regimes in the financial services sector.

- Consumer redress

The EU sectoral laws on financial services impose an obligation on Member states to set up effective out-of-court complaint and redress procedures for the settlement of disputes between providers and consumers. Yet, it is insufficient that an appropriate Alternative Dispute Resolution (ADR) scheme is merely available - if business do not subscribe to the procedure, consumers are still left empty-handed. It has been recorded that only 9% of European retailers have used an ADR scheme. Many successful European ADR schemes are mandatory for businesses. For instance, in Denmark, which has a very well developed ADR system since 35 years and where private ADR boards have long been in operation and cover most sectors, the case will be handled by the ADR body even if the trader chooses not to reply to the request from the Board. The same applies to the Swedish Dispute Resolution Board. One of the most successful schemes in Europe - the UK Financial Services Ombudsman, is mandatory for financial services providers operating in the UK.

*** Please provide us with supporting relevant and verifiable empirical evidence for your example:**

(please give references to concrete examples, reports, literature references, data, etc.)

- At national level

For example, BEUC study "Financial Supervision in the EU - A Consumer Perspective" (2011) found that: for some national financial supervisory authorities, consumer protection does not constitute a statutory objective and those having this role perform a limited number of tasks only; several national authorities have a limited number of staff in charge of consumer protection supervision and not all authorities have staff members dealing exclusively with consumer protection; the on-site inspection capacity of many authorities is limited; 70% of the authorities surveyed consider themselves unable to make binding decisions in relation to consumer complaints. In most cases, they merely send notification letters to interested parties/government authorities; several authorities do not publicise sanctions and consumer complaints. In many cases, conflicts of interests are a barrier to such publications (i.e. concerns over the detrimental effects on the financial markets). Additionally, there can be legal obstacles (including criminal penalties) to publication, or publication at an early stage. Although safeguards should remain to ensure that publication is appropriate, there should be a presumption of transparency in regulatory and supervisory activity; in the overwhelming majority of cases, consumers cannot get redress; funding of some authorities is done by financial service providers which can be a potential source for conflict of interests.

A concrete example: The Commission 2014 report on implementation of the Consumer Credit Directive found that several provisions of the CCD are not respected by creditors. This applies to advertisements and pre-contractual information, and fulfilment of the obligation to inform consumers about their rights (particularly in respect of right of withdrawal from the contract within the first 14 days and early repayment). The mystery shopping exercise confirms the results of the sweep carried out in September 2011. The consumer survey showed that consumers encounter problems when exercising those rights. In conclusion, the Commission said that 'there is a need to continue

monitoring the enforcement of the CCD in the Member States, starting with an assessment of the supervisory practices by Member States’.

- At cross-border level

Passporting regime: Financial service providers may perform their activities throughout the EU, either through the establishment of a branch or the free provision of services, based on a single authorisation (passport) issued by the competent authorities of the home Member State. While we understand the idea behind is to facilitate the single market for companies, passporting in its current form presents serious challenges for consumers. Passporting may cause regulatory arbitrage, where companies obtain the passport in a country with lower consumer protection requirements, and then operate in all other Member States. And because those companies are being supervised by their home state competent authorities, consumers in countries where companies operate may find themselves unprotected in case of incidents, such as mis-selling, low-quality advice, fraud, company going bust. For example, many financial providers registered and supervised abroad market products and services to UK consumers. And in case of an incident, out-of-court redress bodies of the consumer’s country are not competent to address the consumer’s complaint.
(continued in next text box)

*** If you have suggestions to remedy the issue(s) raised in your example, please make them here:**

- Sanctioning regimes

In the financial services area, sanctioning regimes play an important role in the effectiveness of supervision. The EU retail financial services laws provide that sanctions laid down by member states for non-compliance with the law must be effective, proportionate and dissuasive. However, in practice, sanctioning regimes vary greatly across Member states, lack of dissuasiveness and in effective application of sanctions seriously undermine consumer protection and their confidence in the financial sector. Some competent authorities cannot address administrative sanctions to both natural and legal persons. Competent authorities do not take into account the same criteria in the application of sanctions. Divergence exists in the nature (administrative or criminal) of sanctions provided for in national legislation. The the level of application of sanctions varies across Member States .

Regrettably, there were no follow-up actions to the above-mentioned consultation to approximate and reinforce national sanctioning regimes in the financial services sector.

- Consumer redress

The EU sectoral laws on financial services impose an obligation on Member states to set up effective out-of-court complaint and redress procedures for the settlement of disputes between providers and consumers. Yet, it is insufficient that an appropriate Alternative Dispute Resolution (ADR) scheme is merely available - if business do not subscribe to the procedure, consumers are still left empty-handed. It has been recorded that only 9% of European retailers have used an ADR scheme.

We call on the Commission to: ensure EU legislation is properly enforced in each member state and be vocal in cases of insufficient enforcement; take

actions toward the convergence of national supervisory practices to ensure in all Member States there are financial supervisors with a strong consumer protection mandate, sufficient resources and powers to fulfil it . In addition, it should be considered whether the consumer protection divisions at the European Supervisory Authorities (EBA, ESMA, and EIOPA) need to be merged in order to give more prominence to the conduct-of-business supervision and consumer protection issues. The Joint Committee of the three ESAs could be transformed into a formal institution.

Supervising consumer financial services requires a degree of harmonisation. A key ingredient to successfully implementing financial markets laws is to have powerful national supervisors in charge of consumer protection in all Member States. Supervisory convergence with respect to consumer protection is all the more important in the light of the Commission's plans related to single market for financial services and Capital Markets Union.

All consumers expect their financial supervisors to deal with consumer protection in a powerful and independent way. The big challenge is to ensure the legislation adopted is properly implemented and enforced at national level. However, supervision in financial services varies a lot from one Member State to another, leading all too often to poor consumer protection.

- Sanctioning regimes

The FSUG considers that the minimum level of pecuniary penalties should be quantified at European level to ensure the effective implementation of the EU law at national level.

- Consumer redress

We call on the EU policymaker to take measures to ensure that financial service providers adhere to one or more ADR bodies.

We support BEUC's call for a 'European driving license' rather than a 'European Passport'. Competent authorities of the host country should be empowered to supervise where a financial service provider is doing business and in case of relevant failure have the ability to revoke the provider's access to the market. Consumer complaints should be resolved by competent bodies of their country of residence.

Many successful European ADR schemes are mandatory for businesses. For instance, in Denmark, which has a very well developed ADR system since 35 years and where private ADR boards have long been in operation and cover most sectors, the case will be handled by the ADR body even if the trader chooses not to reply to the request from the Board. The same applies to the Swedish Dispute Resolution Board. One of the most successful schemes in Europe - the UK Financial Services Ombudsman, is mandatory for financial services providers operating in the UK.

If you have further quantitative or qualitative evidence related to issue 3 that you would like to submit, please upload it here:

Issue 4 – Proportionality / preserving diversity in the EU financial sector

Are EU rules adequately suited to the diversity of financial institutions in the EU? Are these rules adapted to the emergence of new business models and the participation of non-financial actors in the market place? Is further adaptation needed and justified from a risk perspective? If so, which, and how?

How many examples do you want to provide for this issue?

- 1 example 2 examples 3 examples 4 examples 5 examples

Please fill in the fields below. For any additional documentation, please use the upload button at the end of the section dedicated to this issue.

Example 1 for Issue 4 (Proportionality / preserving diversity in the EU financial sector)

* To which Directive(s) and/or Regulation(s) do you refer in your example?

Please select at least one item in the list of the main adopted EU legislative acts below.

Please do not tick the "other" box unless the example you want to provide refers to an legislative act which is not in the list (other adopted EU legislative acts, national legislative acts, etc..). In that case, please specify in the dedicated text box which other legislative act(s) the example refers to.

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| <input type="checkbox"/> Accounting Directive | <input type="checkbox"/> AIFMD (Alternative Investment Funds Directive) |
| <input type="checkbox"/> BRRD (Bank recovery and resolution Directive) | <input type="checkbox"/> CRAs (credit rating agencies)- Directive and Regulation |
| <input type="checkbox"/> CRR III/CRD IV (Capital Requirements Regulation/Directive) | <input type="checkbox"/> CSDR (Central Securities Depositories Regulation) |
| <input type="checkbox"/> DGS (Deposit Guarantee Schemes Directive) | <input type="checkbox"/> Directive on non-financial reporting |
| <input type="checkbox"/> ELTIF (Long-term Investment Fund Regulation) | <input type="checkbox"/> EMIR (Regulation of OTC derivatives, Central Counterparties and Trade Repositories) |
| <input type="checkbox"/> E-Money Directive | <input type="checkbox"/> ESAs regulations (European Supervisory Authorities) |
| <input type="checkbox"/> ESRB (European Systemic Risk Board Regulation) | <input type="checkbox"/> EuSEF (European Social Entrepreneurship Funds Regulation) |
| <input type="checkbox"/> EuVECA (European venture capital funds Regulation) | <input type="checkbox"/> FCD (Financial Collateral Directive) |
| <input type="checkbox"/> FICOD (Financial Conglomerates Directive) | <input type="checkbox"/> IGS (Investor compensation Schemes Directive) |
| <input type="checkbox"/> IMD (Insurance Mediation Directive) | <input type="checkbox"/> IORP (Directive on Institutions of Occupational Retirement Pensions) |
| <input type="checkbox"/> Life Insurance Directive | <input type="checkbox"/> MAD/R (Market Abuse Regulation & Criminal Sanctions Directive) |
| <input type="checkbox"/> MCD (Mortgage Credit Directive) | <input type="checkbox"/> MIF (Multilateral Interchange Fees Regulation) |

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|---|--|
| <input type="checkbox"/> MiFID II/R (Markets in Financial Instruments Directive & Regulation) | <input type="checkbox"/> Motor Insurance Directive |
| <input type="checkbox"/> Omnibus I (new EU supervisory framework) | <input type="checkbox"/> Omnibus II: new European supervisory framework for insurers |
| <input type="checkbox"/> PAD (Payments Account Directive) | <input type="checkbox"/> PD (Prospectus Directive) |
| <input type="checkbox"/> PRIPS (Packaged retail and insurance-based investment products Regulation) | <input type="checkbox"/> PSD (Payment Services Directive) |
| <input type="checkbox"/> Qualifying holdings Directive | <input type="checkbox"/> Regulations on IFRS (International Financial Reporting Standards) |
| <input type="checkbox"/> Reinsurance Directive | <input type="checkbox"/> SEPA Regulation (Single Euro Payments Area) |
| <input type="checkbox"/> SFD (Settlement Finality Directive) | <input type="checkbox"/> SFTR (Securities Financing Transactions Regulation) |
| <input type="checkbox"/> Solvency II Directive | <input type="checkbox"/> SRM (Single Resolution Mechanism Regulation) |
| <input type="checkbox"/> SSM Regulation (Single Supervisory Mechanism) | <input type="checkbox"/> SSR (Short Selling Regulation) |
| <input type="checkbox"/> Statutory Audit - Directive and Regulation | <input type="checkbox"/> Transparency Directive |
| <input type="checkbox"/> UCITS (Undertakings for collective investment in transferable securities) | <input checked="" type="checkbox"/> Other Directive(s) and/or Regulation(s) |

*** Please specify to which other Directive(s) and/or Regulation(s) you refer in your example?**
(Please be short and clear: state only the common name and/or reference of the legislative act(s) you refer to.)

general application

*** Please provide us with an executive/succinct summary of your example:**
(If applicable, mention also the articles of the Directive(s) and/or Regulation(s) selected above and referred to in your example)

Regarding consumer protection, rules should be exactly the same regardless of the type of provider, its size or its status. Adopting different rules would be completely contrary to the main objective of restoring consumer confidence.

*** Please provide us with supporting relevant and verifiable empirical evidence for your example:**
(please give references to concrete examples, reports, literature references, data, etc.)

n/a

*** If you have suggestions to remedy the issue(s) raised in your example, please make them here:**

Regarding consumer protection, rules should be exactly the same regardless of the type of provider, its size or its status. Adopting different rules would be completely contrary to the main objective of restoring consumer confidence.

If you have further quantitative or qualitative evidence related to issue 4 that you would like to submit, please upload it here:

B. Unnecessary regulatory burdens

You can select one or more issues, or leave all issues unselected

- Issue 5 - Excessive compliance costs and complexity
- Issue 6 - Reporting and disclosure obligations
- Issue 7 - Contractual documentation
- Issue 8 - Rules outdated due to technological change
- Issue 9 - Barriers to entry

Issue 6 – Reporting and disclosure obligations

The EU has put in place a range of rules designed to increase transparency and provide more information to regulators, investors and the public in general. The information contained in these requirements is necessary to improve oversight and confidence and will ultimately improve the functioning of markets. In some areas, however, the same or similar information may be required to be reported more than once, or requirements may result in information reported in a way which is not useful to provide effective oversight or added value for investors.

Please identify the reporting provisions, either publicly or to supervisory authorities, which in your view either do not meet sufficiently the objectives above or where streamlining/clarifying the obligations would improve quality, effectiveness and coherence. If applicable, please provide specific proposals.

Specifically for investors and competent authorities, please provide an assessment whether the current reporting and disclosure obligations are fit for the purpose of public oversight and ensuring transparency. If applicable, please provide specific examples of missing reporting or disclosure obligations or existing obligations without clear added value.

How many examples do you want to provide for this issue?

- 1 example 2 examples 3 examples 4 examples 5 examples

Please fill in the fields below. For any additional documentation, please use the upload button at the end of the section dedicated to this issue.

Example 1 for Issue 6 (Reporting and disclosure obligations)

* To which Directive(s) and/or Regulation(s) do you refer in your example?

Please select at least one item in the list of the main adopted EU legislative acts below.

Please do not tick the "other" box unless the example you want to provide refers to an legislative act which is not in the list (other adopted EU legislative acts, national legislative acts, etc..). In that case, please specify in the dedicated text box which other legislative act(s) the example refers to.

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| <input type="checkbox"/> Accounting Directive | <input type="checkbox"/> AIFMD (Alternative Investment Funds Directive) |
| <input type="checkbox"/> BRRD (Bank recovery and resolution Directive) | <input type="checkbox"/> CRAs (credit rating agencies)- Directive and Regulation |
| <input type="checkbox"/> CRR III/CRD IV (Capital Requirements Regulation/Directive) | <input type="checkbox"/> CSDR (Central Securities Depositories Regulation) |
| <input type="checkbox"/> DGS (Deposit Guarantee Schemes Directive) | <input type="checkbox"/> Directive on non-financial reporting |
| <input type="checkbox"/> ELTIF (Long-term Investment Fund Regulation) | <input type="checkbox"/> EMIR (Regulation of OTC derivatives, Central Counterparties and Trade Repositories) |
| <input type="checkbox"/> E-Money Directive | <input type="checkbox"/> ESAs regulations (European Supervisory Authorities) |
| <input type="checkbox"/> ESRB (European Systemic Risk Board Regulation) | <input type="checkbox"/> EuSEF (European Social Entrepreneurship Funds Regulation) |
| <input type="checkbox"/> EuVECA (European venture capital funds Regulation) | <input type="checkbox"/> FCD (Financial Collateral Directive) |
| <input type="checkbox"/> FICOD (Financial Conglomerates Directive) | <input type="checkbox"/> IGS (Investor compensation Schemes Directive) |
| <input type="checkbox"/> IMD (Insurance Mediation Directive) | <input type="checkbox"/> IORP (Directive on Institutions of Occupational Retirement Pensions) |
| <input type="checkbox"/> Life Insurance Directive | <input type="checkbox"/> MAD/R (Market Abuse Regulation & Criminal Sanctions Directive) |
| <input type="checkbox"/> MCD (Mortgage Credit Directive) | <input type="checkbox"/> MIF (Multilateral Interchange Fees Regulation) |
| <input checked="" type="checkbox"/> MiFID II/R (Markets in Financial Instruments Directive & Regulation) | <input type="checkbox"/> Motor Insurance Directive |
| <input type="checkbox"/> Omnibus I (new EU supervisory framework) | <input type="checkbox"/> Omnibus II: new European supervisory framework for insurers |
| <input type="checkbox"/> PAD (Payments Account Directive) | <input type="checkbox"/> PD (Prospectus Directive) |
| <input type="checkbox"/> PRIIPS (Packaged retail and insurance-based investment products Regulation) | <input type="checkbox"/> PSD (Payment Services Directive) |

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| <input type="checkbox"/> Qualifying holdings Directive | <input type="checkbox"/> Regulations on IFRS (International Financial Reporting Standards) |
| <input type="checkbox"/> Reinsurance Directive | <input type="checkbox"/> SEPA Regulation (Single Euro Payments Area) |
| <input type="checkbox"/> SFD (Settlement Finality Directive) | <input type="checkbox"/> SFTR (Securities Financing Transactions Regulation) |
| <input type="checkbox"/> Solvency II Directive | <input type="checkbox"/> SRM (Single Resolution Mechanism Regulation) |
| <input type="checkbox"/> SSM Regulation (Single Supervisory Mechanism) | <input type="checkbox"/> SSR (Short Selling Regulation) |
| <input type="checkbox"/> Statutory Audit - Directive and Regulation | <input type="checkbox"/> Transparency Directive |
| <input type="checkbox"/> UCITS (Undertakings for collective investment in transferable securities) | <input type="checkbox"/> Other Directive(s) and/or Regulation(s) |

*** Please provide us with an executive/succinct summary of your example:**

(If applicable, mention also the articles of the Directive(s) and/or Regulation(s) selected above and referred to in your example)

It is far too early to say whether reporting and disclosure requirements are 'unnecessary' as some of the relevant legislation has yet to be implemented, notably MiFID II and the PRIIPs Regulation. Indeed, this consultation on the regulatory framework is taking place in parallel with the ESAs' consultation on the draft technical standards for the PRIIPs KID.

*** Please provide us with supporting relevant and verifiable empirical evidence for your example:**

(please give references to concrete examples, reports, literature references, data, etc.)

The FSUG suggests that better disclosure is critical to the success of the Capital Markets Union. The Consumer Markets Scoreboard shows financial services among the least trusted of all sectors in the EU, with asset management consistently at the bottom of the table. Until potential investors can see clearly what they are paying, and what they are getting for their money, they will be reluctant to invest. The PRIIPs KID is the first attempt to display this information comprehensively and transparently, in terms EU investors can understand. It should be allowed to be in, and evaluated against its objectives, before making any judgment about whether it is fit for purpose.

However, it is clear now that there are inconsistencies between disclosure requirements under PRIIPs, MiFID II and UCITS, which reduce the efficiency and effectiveness of these legislative vehicles. Article 24 of MiFID II requires investment intermediaries to disclose transaction costs for investment products. For UCITS, the intermediary must obtain the cost information from the management company. However, the management company is not subject to MiFID II, and is under no obligation to report transaction costs under the UCITS Directive. While the PRIIPs KID will apply to manufacturers, UCITS are exempt from the PRIIPs Regulation until at least the end of 2019.

This situation both weakens the disclosure requirements of MiFID II, and delays the benefits of the PRIIPs KID disclosures for an unacceptable length of time.

In respect of disclosure gaps, we believe there are two. The first is the omission of pension products from MiFID II, the IDD and PRIIPs. Costs have a significant impact on the size of the accumulated pension pot, and hence on retirement income. Without transparent and comprehensive cost disclosure, investors and intermediaries have no basis for judging the value for money of different pension investments. Cost disclosure is also essential to build confidence in the proposed pan-European pension.

The second gap is in the disclosure of commission under the IDD. Article 24(9) of MiFID II requires intermediaries to disclose the 'existence, nature and amount' of any commission received prior to sale. The draft IDD (article 24(7)(c)) refers to 'any third-party payments' to be included in the costs and charges to be disclosed, but the costs will be presented as an aggregate figure, so the consumer would have to request a breakdown to get at the commission figure. We believe there should be a clear requirement in the IDD to disclose commission, in line with the provisions in MiFID II.

*** If you have suggestions to remedy the issue(s) raised in your example, please make them here:**

The gaps we have identified above should be closed.

If you have further quantitative or qualitative evidence related to issue 6 that you would like to submit, please upload it here:

Issue 7 – Contractual documentation

Standardised documentation is often necessary to ensure that market participants are subject to the same set of rules throughout the EU in order to facilitate the cross-border provision of services and ensure free movement of capital. When rules change, clients and counterparties are often faced with new contractual documentation. This may add costs and might not always provide greater customer/ investor protection. Please identify specific situations where contractual or regulatory documents need to be updated with unnecessary frequency or are required to contain information that does not

adequately meet the objectives above. Please indicate where digitalisation and digital standards could help to simplify and make contractual documentation less costly, and, if applicable, identify any obstacles to this happening.

How many examples do you want to provide for this issue?

- 1 example 2 examples 3 examples 4 examples 5 examples

Please fill in the fields below. For any additional documentation, please use the upload button at the end of the section dedicated to this issue.

Example 1 for Issue 7 (Contractual documentation)

* To which Directive(s) and/or Regulation(s) do you refer in your example?

Please select at least one item in the list of the main adopted EU legislative acts below.

Please do not tick the "other" box unless the example you want to provide refers to an legislative act which is not in the list (other adopted EU legislative acts, national legislative acts, etc..). In that case, please specify in the dedicated text box which other legislative act(s) the example refers to.

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|---|--|
| <input type="checkbox"/> Accounting Directive | <input type="checkbox"/> AIFMD (Alternative Investment Funds Directive) |
| <input type="checkbox"/> BRRD (Bank recovery and resolution Directive) | <input type="checkbox"/> CRAs (credit rating agencies)- Directive and Regulation |
| <input type="checkbox"/> CRR III/CRD IV (Capital Requirements Regulation/Directive) | <input type="checkbox"/> CSDR (Central Securities Depositories Regulation) |
| <input type="checkbox"/> DGS (Deposit Guarantee Schemes Directive) | <input type="checkbox"/> Directive on non-financial reporting |
| <input type="checkbox"/> ELTIF (Long-term Investment Fund Regulation) | <input type="checkbox"/> EMIR (Regulation of OTC derivatives, Central Counterparties and Trade Repositories) |
| <input type="checkbox"/> E-Money Directive | <input type="checkbox"/> ESAs regulations (European Supervisory Authorities) |
| <input type="checkbox"/> ESRB (European Systemic Risk Board Regulation) | <input type="checkbox"/> EuSEF (European Social Entrepreneurship Funds Regulation) |
| <input type="checkbox"/> EuVECA (European venture capital funds Regulation) | <input type="checkbox"/> FCD (Financial Collateral Directive) |
| <input type="checkbox"/> FICOD (Financial Conglomerates Directive) | <input type="checkbox"/> IGS (Investor compensation Schemes Directive) |
| <input type="checkbox"/> IMD (Insurance Mediation Directive) | <input type="checkbox"/> IORP (Directive on Institutions of Occupational Retirement Pensions) |
| <input type="checkbox"/> Life Insurance Directive | <input type="checkbox"/> MAD/R (Market Abuse Regulation & Criminal Sanctions Directive) |
| <input type="checkbox"/> MCD (Mortgage Credit Directive) | <input type="checkbox"/> MIF (Multilateral Interchange Fees Regulation) |
| <input type="checkbox"/> MiFID II/R (Markets in Financial Instruments Directive & Regulation) | <input type="checkbox"/> Motor Insurance Directive |
| <input type="checkbox"/> Omnibus I (new EU supervisory framework) | <input type="checkbox"/> Omnibus II: new European supervisory framework for insurers |

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| <input checked="" type="checkbox"/> PAD (Payments Account Directive) | <input type="checkbox"/> PD (Prospectus Directive) |
| <input type="checkbox"/> PRIPS (Packaged retail and insurance-based investment products Regulation) | <input checked="" type="checkbox"/> PSD (Payment Services Directive) |
| <input type="checkbox"/> Qualifying holdings Directive | <input type="checkbox"/> Regulations on IFRS (International Financial Reporting Standards) |
| <input type="checkbox"/> Reinsurance Directive | <input type="checkbox"/> SEPA Regulation (Single Euro Payments Area) |
| <input type="checkbox"/> SFD (Settlement Finality Directive) | <input type="checkbox"/> SFTR (Securities Financing Transactions Regulation) |
| <input type="checkbox"/> Solvency II Directive | <input type="checkbox"/> SRM (Single Resolution Mechanism Regulation) |
| <input type="checkbox"/> SSM Regulation (Single Supervisory Mechanism) | <input type="checkbox"/> SSR (Short Selling Regulation) |
| <input type="checkbox"/> Statutory Audit - Directive and Regulation | <input type="checkbox"/> Transparency Directive |
| <input type="checkbox"/> UCITS (Undertakings for collective investment in transferable securities) | <input type="checkbox"/> Other Directive(s) and/or Regulation(s) |

*** Please provide us with an executive/succinct summary of your example:**

(If applicable, mention also the articles of the Directive(s) and/or Regulation(s) selected above and referred to in your example)

This is an important issue across financial services. However, we have specifically mentioned the Payment Accounts Directive and Payment Services Directive.

*** Please provide us with supporting relevant and verifiable empirical evidence for your example:**

(please give references to concrete examples, reports, literature references, data, etc.)

Standardised/comparable information on financial products plays an important role in helping consumer decision making. The information must be relevant (enable consumers to understand the key features of each product and compare products across the market), reliable, user-friendly (standardised format; no jargon) and timely (allow consumer sufficient time to make a decision before engaging in a contractual agreement). Recent EU financial services legislation provides for an obligation on financial service providers to present the pre-contractual information in a standardised format, with regard to personal loans and mortgage credit, bank accounts, insurance and investment products. Besides that, in line with the Payment Accounts Directive, banks and payment account providers will have to provide consumers with standardised annual statement of fees - this should help consumers compare market offers and shop for better deals. It is important to stress that besides standardised pre-contractual and post-contractual information, the consumer's decision making toolbox should include unbiased and widely available comparison tools,

and access to independent and affordable financial advice and intermediation which is far from being the case.

New technologies and digitalisation have undeniably changed the ways in which many consumers interact with financial firms, shop around the market, inform themselves and take financial decisions. Nowadays, more people opt for purely online bank accounts, rarely go to bank branches, consult their account balance online instead of printing the account statement, use peer-to-peer lending platforms and robot advice services, shop and pay through mobile devices. Market entry of new players made possible by recent regulatory developments (e.g. Payment Services Directive), digitalisation and useful financial innovations greatly benefit consumers through cutting costs, eliminating unnecessary intermediaries, and increasing choice and convenience.

However, this is far from being the case for all consumers, in particular elderly, disabled people and migrants, without forgetting those who have limited confidence in the security level of online financial services .

See for example:

<http://thefinanser.co.uk/fsclub/2015/03/is-there-a-digital-divide-in-banking.html>

*** If you have suggestions to remedy the issue(s) raised in your example, please make them here:**

Consumer choice should be respected by providers. Consumers should at any time be able to choose their preferred communication channel for receiving pre-contractual and contractual documentation, i.e. in digital or paper format.

If you have further quantitative or qualitative evidence related to issue 7 that you would like to submit, please upload it here:

Issue 8 – Rules outdated due to technological change

Please specify where the effectiveness of rules could be enhanced to respond to increasingly online-based services and the development of financial technology solutions for the financial services sector.

How many examples do you want to provide for this issue?

1 example 2 examples 3 examples 4 examples 5 examples

Please fill in the fields below. For any additional documentation, please use the upload button at the end of the section dedicated to this issue.

Example 1 for Issue 8 (Rules outdated due to technological change)

* To which Directive(s) and/or Regulation(s) do you refer in your example?

Please select at least one item in the list of the main adopted EU legislative acts below.

Please do not tick the "other" box unless the example you want to provide refers to an legislative act which is not in the list (other adopted EU legislative acts, national legislative acts, etc..). In that case, please specify in the dedicated text box which other legislative act(s) the example refers to.

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| <input type="checkbox"/> Accounting Directive | <input type="checkbox"/> AIFMD (Alternative Investment Funds Directive) |
| <input type="checkbox"/> BRRD (Bank recovery and resolution Directive) | <input type="checkbox"/> CRAs (credit rating agencies)- Directive and Regulation |
| <input type="checkbox"/> CRR III/CRD IV (Capital Requirements Regulation/Directive) | <input type="checkbox"/> CSDR (Central Securities Depositories Regulation) |
| <input type="checkbox"/> DGS (Deposit Guarantee Schemes Directive) | <input type="checkbox"/> Directive on non-financial reporting |
| <input type="checkbox"/> ELTIF (Long-term Investment Fund Regulation) | <input type="checkbox"/> EMIR (Regulation of OTC derivatives, Central Counterparties and Trade Repositories) |
| <input type="checkbox"/> E-Money Directive | <input type="checkbox"/> ESAs regulations (European Supervisory Authorities) |
| <input type="checkbox"/> ESRB (European Systemic Risk Board Regulation) | <input type="checkbox"/> EuSEF (European Social Entrepreneurship Funds Regulation) |
| <input type="checkbox"/> EuVECA (European venture capital funds Regulation) | <input type="checkbox"/> FCD (Financial Collateral Directive) |
| <input type="checkbox"/> FICOD (Financial Conglomerates Directive) | <input type="checkbox"/> IGS (Investor compensation Schemes Directive) |
| <input type="checkbox"/> IMD (Insurance Mediation Directive) | <input type="checkbox"/> IORP (Directive on Institutions of Occupational Retirement Pensions) |
| <input type="checkbox"/> Life Insurance Directive | <input type="checkbox"/> MAD/R (Market Abuse Regulation & Criminal Sanctions Directive) |
| <input type="checkbox"/> MCD (Mortgage Credit Directive) | <input type="checkbox"/> MIF (Multilateral Interchange Fees Regulation) |
| <input type="checkbox"/> MiFID II/R (Markets in Financial Instruments Directive & Regulation) | <input type="checkbox"/> Motor Insurance Directive |
| <input type="checkbox"/> Omnibus I (new EU supervisory framework) | <input type="checkbox"/> Omnibus II: new European supervisory framework for insurers |
| <input type="checkbox"/> PAD (Payments Account Directive) | <input type="checkbox"/> PD (Prospectus Directive) |
| <input type="checkbox"/> PRIIPS (Packaged retail and insurance-based investment products Regulation) | <input checked="" type="checkbox"/> PSD (Payment Services Directive) |
| <input type="checkbox"/> Qualifying holdings Directive | <input type="checkbox"/> Regulations on IFRS (International Financial Reporting Standards) |
| | <input type="checkbox"/> SEPA Regulation (Single Euro Payments |

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| <input type="checkbox"/> Reinsurance Directive | <input type="checkbox"/> Area) |
| <input type="checkbox"/> SFD (Settlement Finality Directive) | <input type="checkbox"/> SFTR (Securities Financing Transactions Regulation) |
| <input type="checkbox"/> Solvency II Directive | <input type="checkbox"/> SRM (Single Resolution Mechanism Regulation) |
| <input type="checkbox"/> SSM Regulation (Single Supervisory Mechanism) | <input type="checkbox"/> SSR (Short Selling Regulation) |
| <input type="checkbox"/> Statutory Audit - Directive and Regulation | <input type="checkbox"/> Transparency Directive |
| <input type="checkbox"/> UCITS (Undertakings for collective investment in transferable securities) | <input type="checkbox"/> Other Directive(s) and/or Regulation(s) |

*** Please provide us with an executive/succinct summary of your example:**

(If applicable, mention also the articles of the Directive(s) and/or Regulation(s) selected above and referred to in your example)

EU regulations are example of compromise, which sometimes avoids possibility to enforce modern solutions. From this perspective European rules do not forbid on-line solutions but promote them insufficiently. In case of financial services there are two areas which are crucial for new entries especially on cross-border basis. The first is concern deal with the contract. Very often paper version is preferred and traditional signature is required. The later issue is connected with payment. Quite often financial provider requires traditional bank transfer instead of internet payment (on-line). Also electronic contact with provider should be guaranteed, not mentioning access to the on-line ADR.

In the future European legislation more focus is needed on equal or at least similar accessibility of on-line services and on-line contact with a provider.

This is an issue with general application but we specifically refer to the Payment Services Directive.

*** Please provide us with supporting relevant and verifiable empirical evidence for your example:**

(please give references to concrete examples, reports, literature references, data, etc.)

We welcome innovation and new market actors that challenge established providers and traditional business models, bring more competition, offer broader choice, better quality, convenience and lower prices to consumers. Competition is badly needed in financial services area to help regain consumer trust; high fees, misbehaviour and mis-selling scandals involving financial firms are recurrent, e.g. LIBOR and EURIBOR manipulation, unsuitable and even toxic investment and insurance products marketed to consumers, unhedged foreign currency loans.

Currently, financial technology companies based on using software to provide financial services (the so-called 'fintech') and founded with the purpose of disrupting incumbent financial systems and corporations are more and more numerous, and many of those initiatives benefit or have the potential to benefit consumers. For example, equity crowdfunding can give savvy investors easy access to an investment; P2P lending can offer better rates for both

lenders and borrowers; consumer-to-consumer money transfer solutions in various countries like the UK and Denmark offer easy and secure service to consumers; in France, consumers can open cost-efficient online payment account through tobacco shops; Some banks have also understood the need to propose attractive online services, like Ideal in the Netherlands, an online bank account-based payment solution (developed jointly by banks) which has become the most popular online payment method for Dutch consumers and merchants. While various financial technology solutions can potentially benefit consumers, at the same time innovation and growing digitalisation present potential challenges such as information disclosure, security, privacy, liability, interoperability aspects. For example, in the last couple of years national and EU authorities issued opinions and recommendations on the risks related to virtual currencies . Consumer data used by insurance companies and social networks to offer tailored products to consumers or assess their creditworthiness also raise controversy. Policymakers must make sure that regulation and oversight keep pace with innovation, all providers are properly regulated and supervised to ensure consumer protection, level playing field and avoid regulatory arbitrage.

Payment services

One of the key objectives of the recently revised Payment Services Directive (PSD II) was to adapt to changes and innovation in the payments area. Thus, the previously unregulated 'third-party payment initiation service providers' (TPPs) have been brought under the scope of the PSD II. TPPs will have to comply with a number of requirements as regards their registration and licencing, strong customer authentication, authentication vis-à-vis the consumer's bank, and liability in case of payment incidents. The liability requirements related to TPPs under the PSD II are very consumer friendly: in case of an unauthorised transaction, the consumer will be entitled to get the refund from his bank; the ultimate liability for the fraudulent transaction will be addressed between the consumer's bank and the TPP.

A major security concern relates to the operating model where TPPs come into possession of the consumer's personal security features to access his bank account. This threatens consumer security and privacy and by far exceeds the objective - receive payment authorisation and payment guarantee for a specific payment transaction. The European Banking authority (EBA) has been mandated by the PSD II to develop Guidelines setting minimum security requirements for payment services providers across the EU, and providing enhanced protection of EU consumers against payment fraud on the Internet . We expect the EBA Guidelines will ensure the safety of consumers' personal security features with respect to payment transactions through TPPs. Besides that, policymakers must closely monitor new developments in the payments sector (such as mobile payments, virtual currencies, etc.) and make sure all payment service providers and services are properly regulated and supervised. See below our policy demands relating to specific financial services sectors.

*** If you have suggestions to remedy the issue(s) raised in your example, please make them here:**

Crowdfunding

The FSUG welcomes the development of investment-based crowdfunding and peer-to-peer platforms as it can give consumers direct access to a wider range of investment options and as it could help in building competitive pressure in their respective markets. However, we believe that a clear legal framework guaranteeing consumer rights will be necessary to empower this still maturing industry.

It is clear that the current regulatory framework is not designed with this industry in mind, as was also pointed out in the ESMA opinion on investment-based crowdfunding, which could spur regulatory arbitrage. Indeed, many platforms seem to be designed specifically to escape MiFID or Prospectus requirements, to the detriment of investor protection.

As crowd investors are prone to a high risk of capital loss and have very few options on secondary markets, there should be an effective risk warning pointing to the specific risk profile of these investments. Moreover, platforms can be exposed to conflicts of interest as they are generally remunerated on the basis of the amount of transactions on its platform. A recent study by our member AK Wien exposed the weak disclosure practices in this area.

Peer to peer lending faces similar regulatory challenges and unaddressed lending-related risks as was coined by EBA. As this business has the capacity of expanding rapidly, as is noticed in the UK, it could require swift regulatory attention.

Moreover, due to the inherent digital nature of this service, and the associated cross-border potential, we believe that an EU framework guaranteeing minimal consumer protection standards will become necessary in the near future. This could equally serve the scalability of user-friendly platforms. Regulatory efforts should focus inter alia on the following aspects: clearly visible risk notices, disclosure and organisational requirements, right of cancellation and investment amount caps. Specifically for peer to peer lending, creditworthiness checks on the borrower should be performed.

In this context, the FSUG wants to make clear that a self-regulatory approach, including the promotion of a voluntary transparency label without public enforcement, is not the best way to give investors the much needed trust in these new type of intermediaries and risks giving a false sense of security. Any regulation needs to be calibrated in order to strengthen this industry, not stifling its growth. We would also recommend the European Commission to consult on this topic more in detail before taking further action. Merely loosening prospectus' requirements for the sake of crowdfunding, without a broader regulatory approach is not the best way forward.

If you have further quantitative or qualitative evidence related to issue 8 that you would like to submit, please upload it here:

C. Interactions of individual rules, inconsistencies and gaps

You can select one or more issues, or leave all issues unselected

- Issue 10 - Links between individual rules and overall cumulative impact
- Issue 11 - Definitions
- Issue 12 - Overlaps, duplications and inconsistencies
- Issue 13 - Gaps

Issue 10 – Links between individual rules and overall cumulative impact

Given the interconnections within the financial sector, it is important to understand whether the rules on banking, insurance, asset management and other areas are interacting as intended. Please identify and explain why interactions may give rise to unintended consequences that should be taken into account in the review process. Please provide an assessment of their cumulative impact. Please consider whether changes in the sectoral rules have affected the relevancy or effectiveness of the cross-sectoral rules (for example with regard to financial conglomerates). Please explain in what way and provide concrete examples.

How many examples do you want to provide for this issue?

- 1 example 2 examples 3 examples 4 examples 5 examples

Please fill in the fields below. For any additional documentation, please use the upload button at the end of the section dedicated to this issue.

Example 1 for Issue 10 (Links between individual rules and overall cumulative impact)

* To which Directive(s) and/or Regulation(s) do you refer in your example?

Please select at least one item in the list of the main adopted EU legislative acts below.

Please do not tick the "other" box unless the example you want to provide refers to an legislative act which is not in the list (other adopted EU legislative acts, national legislative acts, etc..). In that case, please specify in the dedicated text box which other legislative act(s) the example refers to.

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| <input type="checkbox"/> Accounting Directive | <input type="checkbox"/> AIFMD (Alternative Investment Funds Directive) |
| <input type="checkbox"/> BRRD (Bank recovery and resolution Directive) | <input type="checkbox"/> CRAs (credit rating agencies)- Directive and Regulation |
| <input type="checkbox"/> CRR III/CRD IV (Capital Requirements Regulation/Directive) | <input type="checkbox"/> CSDR (Central Securities Depositories Regulation) |
| <input type="checkbox"/> DGS (Deposit Guarantee Schemes Directive) | <input type="checkbox"/> Directive on non-financial reporting |
| <input type="checkbox"/> ELTIF (Long-term Investment Fund Regulation) | <input type="checkbox"/> EMIR (Regulation of OTC derivatives, Central Counterparties and Trade Repositories) |
| <input type="checkbox"/> | <input type="checkbox"/> ESAs regulations (European Supervisory |

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| <input type="checkbox"/> E-Money Directive | <input type="checkbox"/> Authorities) |
| <input type="checkbox"/> ESRB (European Systemic Risk Board Regulation) | <input type="checkbox"/> EuSEF (European Social Entrepreneurship Funds Regulation) |
| <input type="checkbox"/> EuVECA (European venture capital funds Regulation) | <input type="checkbox"/> FCD (Financial Collateral Directive) |
| <input type="checkbox"/> FICOD (Financial Conglomerates Directive) | <input type="checkbox"/> IGS (Investor compensation Schemes Directive) |
| <input type="checkbox"/> IMD (Insurance Mediation Directive) | <input type="checkbox"/> IORP (Directive on Institutions of Occupational Retirement Pensions) |
| <input type="checkbox"/> Life Insurance Directive | <input type="checkbox"/> MAD/R (Market Abuse Regulation & Criminal Sanctions Directive) |
| <input type="checkbox"/> MCD (Mortgage Credit Directive) | <input type="checkbox"/> MIF (Multilateral Interchange Fees Regulation) |
| <input type="checkbox"/> MiFID II/R (Markets in Financial Instruments Directive & Regulation) | <input type="checkbox"/> Motor Insurance Directive |
| <input type="checkbox"/> Omnibus I (new EU supervisory framework) | <input type="checkbox"/> Omnibus II: new European supervisory framework for insurers |
| <input type="checkbox"/> PAD (Payments Account Directive) | <input type="checkbox"/> PD (Prospectus Directive) |
| <input type="checkbox"/> PRIIPS (Packaged retail and insurance-based investment products Regulation) | <input type="checkbox"/> PSD (Payment Services Directive) |
| <input type="checkbox"/> Qualifying holdings Directive | <input type="checkbox"/> Regulations on IFRS (International Financial Reporting Standards) |
| <input type="checkbox"/> Reinsurance Directive | <input type="checkbox"/> SEPA Regulation (Single Euro Payments Area) |
| <input type="checkbox"/> SFD (Settlement Finality Directive) | <input type="checkbox"/> SFTR (Securities Financing Transactions Regulation) |
| <input type="checkbox"/> Solvency II Directive | <input type="checkbox"/> SRM (Single Resolution Mechanism Regulation) |
| <input type="checkbox"/> SSM Regulation (Single Supervisory Mechanism) | <input type="checkbox"/> SSR (Short Selling Regulation) |
| <input type="checkbox"/> Statutory Audit - Directive and Regulation | <input type="checkbox"/> Transparency Directive |
| <input type="checkbox"/> UCITS (Undertakings for collective investment in transferable securities) | <input checked="" type="checkbox"/> Other Directive(s) and/or Regulation(s) |

*** Please specify to which other Directive(s) and/or Regulation(s) you refer in your example?**
(Please be short and clear: state only the common name and/or reference of the legislative act(s) you refer to.)

general application

*** Please provide us with an executive/succinct summary of your example:**
(If applicable, mention also the articles of the Directive(s) and/or Regulation(s) selected above and referred to in your example)

The FSUG is very concerned about the silo-based approach when it comes to investor protection.

*** Please provide us with supporting relevant and verifiable empirical evidence for your example:**

(please give references to concrete examples, reports, literature references, data, etc.)

We have called for a very good alignment between investor protection rules under MIFIDII and similar rules under IDD (Insurance Distribution Directive) for insurance-based investment products (IBIPs).

Indeed, for consumers a mutual fund (governed by MIFIDII) or an IBIP are often substitutable products and therefore they should enjoy the same level of investor protection when buying them.

However, the final IDD deal failed to accommodate a full alignment, hereby giving further leeway to regulatory arbitrage in the future. Two major upgrades of investor protection, for which many stakeholders warned for, were incomprehensibly left out in the end:

- The establishment of an independent advice regime, where inducements are banned. This is a major blow for the development of truly independent advice.
- The mandatory disclosure of the amount of commissions.

Cross-selling practices

The retail financial services sector is far from functioning properly. One of the crucial issues is related to cross-selling practices, particularly tying, which is widespread across EU Member States. Cross-selling limits competition, consumer choice and too often simply makes it impossible for the consumer to estimate whether he is financially gaining from it or not. The financial benefits are not always obvious, although cross-selling is marketed in such a way. For example, bundled items are not included into the APR (Annual Percentage Rate) of credit products. It should also be strongly nuanced that, not only costs at the time of purchase, but overall costs for the consumer in the long run (i.e. in the life span of the contract) must be considered. This implies taking into account potential tariff increases for individual services included in the package as well as switching costs for the consumer.

There are plenty of detrimental examples of cross-selling practices in different Member States: bank account packages that include overdraft facility and credit card on a take it or leave it basis; ancillary products (bank account, multi-risk insurance contracts) tied with mortgage credit; "optional" insurance bundled with credit. In France, consumer associations regularly point out that bank packaged accounts sold in "package" are often more expensive than services bought separately. In addition, many packages include services consumers do not need. In Slovenia, with travel or accident insurance linked to credit cards, consumers cannot opt-out or adapt insurance premiums. All the legislative texts on retail financial services adopted following the EC consultation in 2010 contain provisions related to tying and bundling. Although all those texts (MiFID II, MCD, PAD and IDD) recognise the harmful impact of tying on competition and consumers, none of them has ultimately introduced a ban on that practice. In general, firms are only required to inform the consumer whether the service can be purchased separately and

provide the price of individual items included in the package. Only the Mortgage Credit Directive instructs Member States to allow bundling and prohibit tying practices, but this general provision has been considerably weakened by a Member State option allowing all kinds of tying justified on the grounds of providing additional security to the creditor in the event of default.

*** If you have suggestions to remedy the issue(s) raised in your example, please make them here:**

The Commission should adopt a horizontal approach and ban tying in retail financial services. Moreover, the Commission should regulate financial products according to their purpose - for example, long term savings and investments - rather than legal or corporate form which suits the needs of industry.

If you have further quantitative or qualitative evidence related to issue 10 that you would like to submit, please upload it here:

Issue 12 – Overlaps, duplications and inconsistencies

Please indicate specific areas of financial services legislation where there are overlapping, duplicative or inconsistent requirements.

How many examples do you want to provide for this issue?

1 example 2 examples 3 examples 4 examples 5 examples

Please fill in the fields below. For any additional documentation, please use the upload button at the end of the section dedicated to this issue.

Example 1 for Issue 12 (Overlaps, duplications and inconsistencies)

*** To which Directive(s) and/or Regulation(s) do you refer in your example?**

Please select at least one item in the list of the main adopted EU legislative acts below.

Please do not tick the "other" box unless the example you want to provide refers to an legislative act which is not in the list (other adopted EU legislative acts, national legislative acts, etc..). In that case, please specify in the dedicated text box which other legislative act(s) the example refers to.

- Accounting Directive
- BRRD (Bank recovery and resolution Directive)
- CRR III/CRD IV (Capital Requirements Regulation/Directive)
- DGS (Deposit Guarantee Schemes Directive)
- ELTIF (Long-term Investment Fund Regulation)
- E-Money Directive
- ESRB (European Systemic Risk Board Regulation)
- EuVECA (European venture capital funds Regulation)
- FICOD (Financial Conglomerates Directive)
- IMD (Insurance Mediation Directive)
- Life Insurance Directive
- MCD (Mortgage Credit Directive)
- MiFID II/R (Markets in Financial Instruments Directive & Regulation)
- Omnibus I (new EU supervisory framework)
- PAD (Payments Account Directive)
- PRIIPS (Packaged retail and insurance-based investment products Regulation)
- Qualifying holdings Directive
- Reinsurance Directive
- SFD (Settlement Finality Directive)
- Solvency II Directive
- SSM Regulation (Single Supervisory Mechanism)
- Statutory Audit - Directive and Regulation
- UCITS (Undertakings for collective investment in transferable securities)
- AIFMD (Alternative Investment Funds Directive)
- CRAs (credit rating agencies)- Directive and Regulation
- CSDR (Central Securities Depositories Regulation)
- Directive on non-financial reporting
- EMIR (Regulation of OTC derivatives, Central Counterparties and Trade Repositories)
- ESAs regulations (European Supervisory Authorities)
- EuSEF (European Social Entrepreneurship Funds Regulation)
- FCD (Financial Collateral Directive)
- IGS (Investor compensation Schemes Directive)
- IORP (Directive on Institutions of Occupational Retirement Pensions)
- MAD/R (Market Abuse Regulation & Criminal Sanctions Directive)
- MIF (Multilateral Interchange Fees Regulation)
- Motor Insurance Directive
- Omnibus II: new European supervisory framework for insurers
- PD (Prospectus Directive)
- PSD (Payment Services Directive)
- Regulations on IFRS (International Financial Reporting Standards)
- SEPA Regulation (Single Euro Payments Area)
- SFTR (Securities Financing Transactions Regulation)
- SRM (Single Resolution Mechanism Regulation)
- SSR (Short Selling Regulation)
- Transparency Directive
- Other Directive(s) and/or Regulation(s)

*

Please specify to which other Directive(s) and/or Regulation(s) you refer in your example?
(Please be short and clear: state only the common name and/or reference of the legislative act(s) you refer to.)

Consumer Credit Directive

- * **Please provide us with an executive/succinct summary of your example:**
(If applicable, mention also the articles of the Directive(s) and/or Regulation(s) selected above and referred to in your example)

The FSUG is generally satisfied with the quality of financial services legislation. But we consider that there are some areas where we can see overlaps, duplications and inconsistencies. Moreover, as we mention elsewhere, there is a real concern about the lack of consistent enforcement of regulation.

- * **Please provide us with supporting relevant and verifiable empirical evidence for your example:**
(please give references to concrete examples, reports, literature references, data, etc.)

One of the areas identified by the FSUG is creditworthiness assessment. Consumer Credit Directive (2008/48/EU) and Mortgage Credit Directive (2014/17/EU)

Although there is a basic obligation to assess creditworthiness in the CCD, the means by which this done is largely left to the creditor and the directive still does not oblige lenders to grant credit only to those borrowers who are likely to repay it. On the other hand, the recently adopted Mortgage Credit Directive obliges creditors to make the credit available to the consumer only where the result of the creditworthiness assessment indicates that the obligations resulting from credit agreement are likely to be met. Considering that poor creditworthiness assessment leading to irresponsible lending is one of the causes of consumer over-indebtedness, it is important to align the CCD with responsible lending principles that apply to mortgage credit.

Another area identified by the FSUG regards to remuneration. CRD IV (Directive 2013/36/EU)

There are inconsistencies between banking/insurance companies on the one side and all other listed companies on the other side - which is also true for a couple of other governance issues (eg. number of mandates a member of the supervisory board/board of directors may have - more restrictive for banks/insurers). Regarding remuneration, this is a result of CRD IV which only applies to the banking/insurance industry. It says that the variable remuneration of managers/executives may not exceed 100% of the fixed remuneration unless the general meeting decides to increase this amount to up to 200%. From the German point of view, CRD IV in that respect however was not at all helpful to fulfill its aim (ie. reducing the variable part of the compensation and reduce short-term risk taking) This shows clearly how

banks/insurers (or at least Deutsche Bank) circumvent the CRD IV regulation simply by increasing the fixed part of the remuneration to ensure that managers will get the amount they have asked for.

PRIIPs (Regulation (EU) No 1286/2014) and MiFID (Directive 2004/39/EC)
There are also inconsistencies arising with respect to the application of ADR principles, which are missing from PRIIPs, although they were been incorporated into MiFID.

MiFID (Directive 2004/39/EU), MiFID II (Directive 2014/65/EU), PRIIPs (Regulation no 1286/2014), Payment Account Directive (2014/92/EU) and Prospectus Directive (Directive 2003/71/EU)

The “duty of care” principle is also applied in an inconsistent way. While there is a duty of care principle in MiFID I and II, it was not included in PRIIPs Regulation, the Payments Account Directive and in the Prospectus Directive.

For references see the documentation for the general meeting 2014 of Deutsche Bank -

https://hauptversammlung.db.com/en/docs/Compensation_system_for_the_Management_Board_members_-_Increase_in_the_limit_for_variable_compensation_components_0904.pdf and

https://hauptversammlung.db.com/en/docs/Compensation_for_employees_and_for_members_of_management_bodies_of_subsidiaries_-_Increase_in_the_limit_for_variable_compents_1004.pdf

<http://data.parliament.uk/writtenevidence/committeeevidence.svc/evidencedocument/eu-sub-a-economic-and-financial-affairs-committee/review-of-the-eu-financial-regulatory-framework/oral/14797.html>

*** If you have suggestions to remedy the issue(s) raised in your example, please make them here:**

see above

If you have further quantitative or qualitative evidence related to issue 12 that you would like to submit, please upload it here:

Issue 13 – Gaps

While the recently adopted financial legislation has addressed the most pressing issues identified following the financial crisis, it is also important to consider whether there are any significant regulatory gaps. Please indicate to what extent the existing rules have met their objectives and identify any remaining gaps that should be addressed.

How many examples do you want to provide for this issue?

- 1 example 2 examples 3 examples 4 examples 5 examples

Please fill in the fields below. For any additional documentation, please use the upload button at the end of the section dedicated to this issue.

Example 1 for Issue 13 (Gaps)

* To which Directive(s) and/or Regulation(s) do you refer in your example?

Please select at least one item in the list of the main adopted EU legislative acts below.

Please do not tick the "other" box unless the example you want to provide refers to an legislative act which is not in the list (other adopted EU legislative acts, national legislative acts, etc..). In that case, please specify in the dedicated text box which other legislative act(s) the example refers to.

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| <input type="checkbox"/> Accounting Directive | <input type="checkbox"/> AIFMD (Alternative Investment Funds Directive) |
| <input type="checkbox"/> BRRD (Bank recovery and resolution Directive) | <input type="checkbox"/> CRAs (credit rating agencies)- Directive and Regulation |
| <input type="checkbox"/> CRR III/CRD IV (Capital Requirements Regulation/Directive) | <input type="checkbox"/> CSDR (Central Securities Depositories Regulation) |
| <input type="checkbox"/> DGS (Deposit Guarantee Schemes Directive) | <input type="checkbox"/> Directive on non-financial reporting |
| <input type="checkbox"/> ELTIF (Long-term Investment Fund Regulation) | <input type="checkbox"/> EMIR (Regulation of OTC derivatives, Central Counterparties and Trade Repositories) |
| <input type="checkbox"/> E-Money Directive | <input type="checkbox"/> ESAs regulations (European Supervisory Authorities) |
| <input type="checkbox"/> ESRB (European Systemic Risk Board Regulation) | <input type="checkbox"/> EuSEF (European Social Entrepreneurship Funds Regulation) |
| <input type="checkbox"/> EuVECA (European venture capital funds Regulation) | <input type="checkbox"/> FCD (Financial Collateral Directive) |
| <input type="checkbox"/> FICOD (Financial Conglomerates Directive) | <input type="checkbox"/> IGS (Investor compensation Schemes Directive) |
| <input type="checkbox"/> IMD (Insurance Mediation Directive) | <input type="checkbox"/> IORP (Directive on Institutions of Occupational Retirement Pensions) |
| <input type="checkbox"/> Life Insurance Directive | <input type="checkbox"/> MAD/R (Market Abuse Regulation & Criminal Sanctions Directive) |
| <input type="checkbox"/> MCD (Mortgage Credit Directive) | <input type="checkbox"/> MIF (Multilateral Interchange Fees Regulation) |

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| <input type="checkbox"/> MiFID II/R (Markets in Financial Instruments Directive & Regulation) | <input type="checkbox"/> Motor Insurance Directive |
| <input type="checkbox"/> Omnibus I (new EU supervisory framework) | <input type="checkbox"/> Omnibus II: new European supervisory framework for insurers |
| <input type="checkbox"/> PAD (Payments Account Directive) | <input type="checkbox"/> PD (Prospectus Directive) |
| <input type="checkbox"/> PRIPS (Packaged retail and insurance-based investment products Regulation) | <input type="checkbox"/> PSD (Payment Services Directive) |
| <input type="checkbox"/> Qualifying holdings Directive | <input type="checkbox"/> Regulations on IFRS (International Financial Reporting Standards) |
| <input type="checkbox"/> Reinsurance Directive | <input type="checkbox"/> SEPA Regulation (Single Euro Payments Area) |
| <input type="checkbox"/> SFD (Settlement Finality Directive) | <input type="checkbox"/> SFTR (Securities Financing Transactions Regulation) |
| <input type="checkbox"/> Solvency II Directive | <input type="checkbox"/> SRM (Single Resolution Mechanism Regulation) |
| <input type="checkbox"/> SSM Regulation (Single Supervisory Mechanism) | <input type="checkbox"/> SSR (Short Selling Regulation) |
| <input type="checkbox"/> Statutory Audit - Directive and Regulation | <input type="checkbox"/> Transparency Directive |
| <input type="checkbox"/> UCITS (Undertakings for collective investment in transferable securities) | <input checked="" type="checkbox"/> Other Directive(s) and/or Regulation(s) |

- * **Please specify to which other Directive(s) and/or Regulation(s) you refer in your example?**
(Please be short and clear: state only the common name and/or reference of the legislative act(s) you refer to.)

these comments relate to a number of directives including CCD, MCD, PAD, PSD2, MIFID2 and IDD

- * **Please provide us with an executive/succinct summary of your example:**
(If applicable, mention also the articles of the Directive(s) and/or Regulation(s) selected above and referred to in your example)

Although significant progress has been achieved in the recent years by introduction of new legislation in key areas of concern for consumer protection, important work still remains to be done. Main challenges can be summed up as:

- Gaps and loopholes in existing legislation,
- Unregulated areas,
- Areas that are regulated to a diverging and uneven degree,
- Regulation not being implemented into practice.
- Gaps and loopholes in existing legislation

Because assessment of new legislation on financial services is only possible in full extent after implementation, when it becomes clear if there is an actual decrease in consumer detriment and an improvement of market practices, it is at the moment very difficult to judge the effect of new rules and where the most crucial gaps and loopholes are in these new rules (the FSUG is summing up the weaknesses evident already in this moment under question 3).

Vigilant monitoring by the Commission, national market supervisors and user NGOs is therefore crucial once the new rules such as the MCD, PAD, PSD2, MIFID2 and IDD are to be implemented.

The FSUG would however like to draw attention to some gaps and loopholes in the existing legislation that can already be assessed to a larger extent at this moment.

In the field of consumer credit, there are important gaps and loopholes that need to be addressed in order to prevent further consumer detriment (see Question 3 for further analysis):

- The limitation of CCD scope to 200-75.000€ leaves small loans outside of the provisions, although these have proven to be a huge concern in terms of mis-selling and driving consumers into overindebtedness,
- The CCD doesn't address the problem of high penalties applying in case of late credit repayment in several member states,
- The CCD doesn't oblige the creditors to make the credit available to the consumer only when the result of the creditworthiness assessment indicates that the obligations resulting from credit agreement are likely to be met, thus failing to prevent irresponsible lending from taking place.

(continued in next test box)

*** Please provide us with supporting relevant and verifiable empirical evidence for your example:**

(please give references to concrete examples, reports, literature references, data, etc.)

In the field of cross border payments in the EU, following weaknesses in the Regulation 924/2009 lead to considerable consumer harm ((see Question 3 for further analysis):

- The basic principle of the Regulation is that, for Euro payments, the charges for payment transactions offered by a payment service provider have to be the same, for the payment of the same value, whether the payment is national or cross-border. Because the regulation is not extended to non-euro payments, high costs of crossborder payments in several member states are hampering development of the internal market in payments,
- Because of unclear wording of the Article 3(1) of the Regulation, equal charging for crossborder payments and national payments in the same amount up to the limit of 50.000€ is still not guaranteed for all EU's consumers.

A further gap the FSUG would like to address is the non-application of legislation on key consumer rights to SMEs. Although these often have very similar needs, behaviour and financial expertise as consumers do, they have traditionally been treated by regulators as requiring less protection than consumers. Recent findings have however shown that SMEs are often victims of bad market practices and seem to be challenged by product complexity, limited choice of financial products, as well as in obtaining redress to a similar degree as consumers are. A widely publicized case during the financial crisis has been mis-selling of risk hedging instruments to SMEs. In the UK, microenterprises are already able to use ombudsman service for redress purposes, while a discussion paper has been launched in November 2015 by the

FCA on how the level of protection of SMEs should be raised in an adequate way when investing, borrowing or buying insurance. In FSUG's opinion, it is time to widen this discussion to the EU level in order to assess how and to what degree the SMEs should become subject to EU consumer protection legislation.

- Unregulated areas

Although innovation in financial services can be very beneficial for consumers, introduction of new technologies and products is always linked to emerging risks in the field of information disclosure, security, privacy, liability and interoperability aspects. The FSUG's reply under Question 8 already provides examples of innovative payment solutions and crowdfunding. It is paramount that policymakers make sure that regulation and market supervision keep pace with innovation and that all providers are properly regulated and supervised to ensure consumer protection, level playing field across the EU and avoid regulatory arbitrage. At the same time, new regulation shouldn't restrict market access for new players and take into account the sustainability of new business models.

A key area left unregulated on the EU level is the field of consumer indebtedness, although this has become an even larger concern in the years following the financial crisis. A mapping study by the Commission has shown high rates of indebtedness across the EU, but at the same time a lack of unified tools for measuring debt across the member states and widely differing engagement of member states in debt monitoring. Further on, the ongoing crisis is reinforcing the value and need for every Member State having a regime for the protection of consumers in financial distress and for the treatment of the insolvency of natural persons. As FSUG research has shown, currently there are individual, but uncoordinated regimes or many initiatives under way in the various Member States, which expose the absence of common, harmonized and appropriately resourced strategies at EU level.

*** If you have suggestions to remedy the issue(s) raised in your example, please make them here:**

- Areas that are unequally regulated

Unequally regulated markets lead to regulatory arbitrage and the consumers not benefiting from key EU protection rules. It is important that all product types in question for fulfilling a particular consumer need are regulated in a way that doesn't encourage the providers to move their product supply towards a regime with lower consumer protection and product quality standards.

The most prominent field where protection has been unequal continuously is the retail investment market. Unfortunately, as already mentioned under Question 10, the opportunity to fully align the measures of MIFID2 and IDD has been missed, thus leaving the leeway for arbitrage open for the future. Further on, the PRIIPs legislation is excluding important market segments such as shares, bonds and personal pensions.

- Regulation not being implemented into practice

As already described under Question 3, a key problem in several Member states is the non-implementation of EU law into practice. Supervising and enforcing

agencies on the national level often lack a clear mandate on consumer protection, as well as the tools, capacities and sanctioning regimes to fulfil their tasks. Further on, only few national agencies are actively monitoring retail financial markets in order to prevent consumer detriment from taking place and ensuring fair market outcomes for consumers.

Besides a common monitoring approach is on the EU level as a basis for a common comprehensive regime is necessary for addressing all stages of consumers' financial difficulties:

- Early pre-emption of problems,
- Mitigation and early intervention at first sign of financial difficulties,
- Fair treatment in debt management, enforcement, and collection at the stage when consumers are financial difficulties,
- Appropriate protection during cancellation of debt, bankruptcy, debt restructuring, relief, adjustment and discharge,
- Effective measures for recovery and rebuilding,
- Protection after restructuring and recovery aiming at re-integration and future indebtedness prevention.

The FSUG has identified different legal techniques and best practices to enhance as much as possible the protection of consumers in financial difficulty in three selected areas - personal bankruptcy, datio in solutum of mortgages, and restrictions on debt collection abusive practice.

Without EU wide minimal standards on supervision and enforcement the consumers will not be able to benefit from their EU rights everywhere, while different levels of consumer protection will continue to encourage 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.

If you have further quantitative or qualitative evidence related to issue 13 that you would like to submit, please upload it here:

D. Rules giving rise to possible other unintended consequences

You can select one or more issues, or leave all issues unselected

- Issue 14 - Risk
 - Issue 15 - Procyclicality
-
-

Useful links

Consultation details

(http://ec.europa.eu/finance/consultations/2015/financial-regulatory-framework-review/index_en.htm)

Consultation document

(<http://ec.europa.eu/finance/consultations/2015/financial-regulatory-framework-review/docs/consultation-document>)

Specific privacy statement

(http://ec.europa.eu/finance/consultations/2015/financial-regulatory-framework-review/docs/privacy-statement_en)

More on the Transparency register (<http://ec.europa.eu/transparencyregister/public/homePage.do?locale=en>)

Contact

✉ financial-regulatory-framework-review@ec.europa.eu
