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## FREE TRADE AREA IN EUROPE AND CONSUMER PROTECTION

**Abstract:** *The internationalization of institutions raises the need for sophisticated protection of consumers, goods and services. Differences in consumer protection in financial markets between EU countries, different way of consumers and companies thinking is required to strength the harmonization in this area. This led the EU and its member states to adopt legislative rules into their national legislation. Analysis of consumer protection measures in the EU countries shows how large the differences are and indicates how long is the road for building cross-border cooperation and for reduction of restrictions on cross-border transactions. The main contribution of the article is objective evaluation and analyse of current situation in consumer protection on financial market within European Union area through chosen legislation, subjects and institutions. I analyze and describe the legislation in the area of consumer protection, recommendation in the future for improving the quality of consumer protection and initiatives of the regulators operating on the financial market.*

**Key words:** consumer protection on financial market, harmonization, subjects and institutions for consumer protection, Green book, White book,

### 1 CURRENT SITUATION IN EU AND UKRAINE

The EU is seeking an increasingly close relationship with Ukraine, going beyond mere bilateral co-operation, to gradual economic integration and a deepening of political co-operation. Ukraine is a priority partner country within the European Neighborhood Policy (ENP). In 1998 entered into force agreement The Partnership and Co-operation Agreement (PCA) which provides a comprehensive and ambitious framework for cooperation between the EU and Ukraine, in all key areas of reform. At the Paris Summit in September 2008 an agreement was reached to start negotiations on an EU-Ukraine Association Agreement, which is to be the successor agreement to the PCA. In November 2009, the Cooperation Council adopted the EU-Ukraine Association Agenda. This Agenda replaces the former Action Plan, and will prepare for and facilitate the entry into force of the new Agreement. For 2011/12, a list of 90 priorities for action was jointly agreed by Ukraine and the EU<sup>1</sup>.

Trade regimes between Ukraine and the EU, and Ukraine and Russia, Belarus and Kazakhstan (RBK CU) are different. Trade with the EU occurs under the Most Favoured Nation (MFN) regime with tariff reductions provided by the EU in accordance with Generalized System of Preferences. In trade with Russia, Belarus and Kazakhstan, free trade agreements (FTAs) are in force for almost two decades<sup>2</sup>. These agreements focus mostly on tariffs, and there are exemptions from free trade regime applied to selected commodities. Non-tariff measures play important role in commodity trade with both the RBK CU and the EU.

<sup>1</sup> European Union External Action [Webpage:[http://eeas.europa.eu/ukraine/index\\_en.htm](http://eeas.europa.eu/ukraine/index_en.htm)]

<sup>2</sup> MOVCHAN, V.: Between two customs union. 2011 Russki Vopros.

[Webpage:<http://www.russkiivopros.com/index.php?pag=one&id=380&kat=7&cs|=50>]

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Consequences of debt crisis are thenceforth persisting in European Union and Ukraine, too. The current crisis has affected the area of free trade market with the consequences of tightening conditions in the capital market. The European Commission has proposed to implement The Common European Sales Law that is assigned for all EU Member States to promote business, more choice for consumer and a high level of protection. Companies should use the single set of rules for cross-border contracts, regardless of whether they offer their services in one or more EU States. Expansion into new markets will be easier and cheaper. On the other hand, sales law ensures a high level of consumer protection. Sales law will not replace national legislation and allow vendors to use an optional system of rules for contracts, which is the same throughout the EU. The advantage is that also smaller companies could offer their services in several EU countries with lower costs and cross-border becomes cheaper. Consumers will buy any foreign goods without worries and they rely on a clear set of rules (clearly explained in the standard informative document, which consumer will obtain in advance). If you bought defective goods in abroad, you should apply the right to a remedy as refund of paid amount, the exchange of goods or reduced price. Competition among firms in the broader market brings consumers a wider range of cheaper products.

## 2 CONSUMER PROTECTION ON FINANCIAL MARKET

Consumer protection on financial market is actually in spotlight within the European union. Therefore the European union states are concentrated on protection of financial market in EU through their legislation, subjects and institutions. The states create recommendations in the future for improving the quality of customer protection and establish initiatives of the regulators operating on the financial market.

Table 1:

### Major European Union Directives - Financial Services Consumer Protection

<b>Directive 2008/48/EC of 23 April 2008</b> covers consumer credit loans from EUR 200 to EUR 75 000 and regulates advertising, precontractual and contractual information, creditworthiness assessments, adequate explanations, and disclosure requirements.
<b>Directive 2006/114/EC of 12 December 2006</b> concerning misleading and comparative advertising by securities traders, and Directive 2005/29/EC of 11 May 2005 concerning unfair business-to-consumer commercial practices by traders.
<b>Directive 2006/48/EC</b> of 14 June 2006 relates to the licensing and supervision of credit institutions to the taking up and pursuit of the business of credit institutions
Directive 2005/29/EC of 11 May 2005 concerning unfair business-to-consumer commercial practices in the internal market and amending
<b>Directive 2002/65/EC of 23 September 2002</b> concerning “distance marketing” of consumer financial services, which enhances consumer protection for services offered via Internet, telephone, or fax.
<b>Directive 93/13/EEC of 5 April 1993</b> , which introduces the notion of 'good faith' in the relationship between consumers and sellers, and establishes general requirements for “fair” contract terms.
<b>Other Directives: Directive 2009/48/EC</b> on injunctions for consumer rights; <b>Directive 94/19/EC</b> on Deposit Guarantee Schemes; <b>Directive 1997/9/EC</b> on investor compensation schemes; and <b>Directive 95/46/EC</b> on personal data protection.

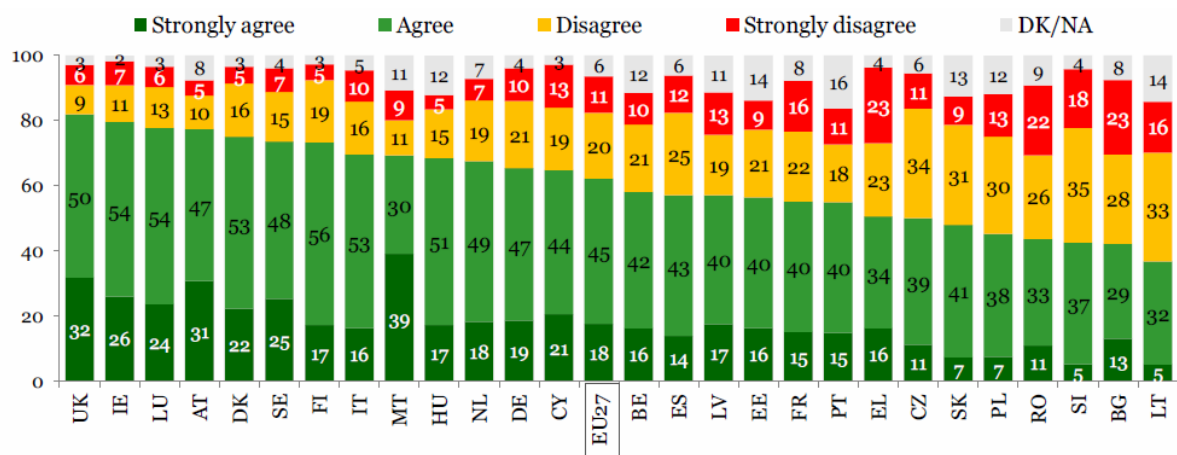
Source: KHANYK – POSPOLIAK, R.: *Financial services consumer protection in Ukraine, legal analyses. September 2011. Kyiv, Ukraine.* [http://www.finrep.kiev.ua/download/consumer\\_protection\\_sep2011\\_en.pdf](http://www.finrep.kiev.ua/download/consumer_protection_sep2011_en.pdf)

### 2.1 European Union regulators for protection the financial market

Complementary roles of local authorities and national governments provide a necessary support for the enforcement of existing and new standards. To ensure appropriate and rapid reaction for consumer protection and financial market regulation, all levels from local to the transnational must be interconnected. The job of regulators, operating on the market, is to supervise and monitor the evolving situation on the selected market.

- The Committee of European Banking Supervision (CEBS)
- The Committee of European Insurance and Occupational Pensions Supervisors (CEIOPS)
- Committee of European Securities (CESR)

Eurobarometer survey "Consumer attitudes towards cross-border trade and consumer protection no. 299", (2011) was performed on a sample of citizens from all 27 European Union countries (15 years and above). Altogether approximately 25,139 interviews were submitted. Consumer confidence in public institutions for consumer protection considerably varies among Member States. In Ireland and Great Britain, 8 out of 10 consumers believe that the institution adequately ensure consumer protection (80% - 82%), Lithuania has the opposite attitude, where less than half of consumers surveyed are not inclined to this statement (37%). Roughly, every second Lithuanian expressed the confidence with institutions for consumer protection, the same with Romania, Bulgaria and Slovenia (48% - 53%).



**Graph No 1:** Trust of public authorities protecting rights of consumers

Source: Consumer attitudes towards cross-border trade and consumer protection (Analytical report, 2011)  
[http://ec.europa.eu/public\\_opinion/flash/fl\\_299\\_en.pdf](http://ec.europa.eu/public_opinion/flash/fl_299_en.pdf)

### 2.2 The consumer's right for rectification and compensation

There are organizations that endeavor to help consumers and participate in resolving their disputes out of court.

- The national consumer association within each country
- European Consumer Centers Network, ECC – Net
- Network for settling cross-border financial disputes out of Court FIN – NET
- Solvit Dispute Resolution in the single market – Solvit

Complementary roles of local authorities and national governments can provide necessary support for the enforcement of existing standards and rules. The national and international authorities must be interconnected to ensure appropriate and fast reaction to abuse of credits on financial market, consumer protection and regulation of financial institutions.

If you attempt to reach agreement does not lead to a successful conclusion, the next step is to turn to national courts or try alternative dispute resolution (ADR).

### **2.2.1 European Consumer Centers Network, ECC – Net**

The European Commission elaborated unpaid or at least affordable alternative dispute resolution mechanisms for supporting the disputes settled out of court. In 2005 was approved the directive which is establishing the prohibition of unfair commercial practices across the EU. European Consumer Centers Network deals with consumer complaints and is the next step forward in the consumer protection. In each Member State is a placed one center that is an intermediary between consumers and European Commission<sup>3</sup>.

ECC provides an advice, assistance in mediation, counselling for consumers where the rights were breached, supports them in solving their complaints on international level and provides information about the constantly changing legislation. Individual centers in the member countries cooperate with each other. The centers are interconnected by using an internal database through which they communicate for handling and resolving complaints or disputes.

### **2.2.2 Financial Dispute Resolution Network – FIN – NET**

Financial Dispute Resolution Network is an interstate network, which plays an important role by providing to users and consumers easy access to out-of-court complaint procedures in cross-border cases. Organization assists consumers in one country to solve problems with financial services and products in another country through a network of financial authorities (ombudsman or other financial authority which is empowered to make decisions regarding out-of-court complains)<sup>4</sup>.

Nowadays FIN - NET has 46 members from 21 countries of the European Economic Area (EU Member States with Iceland, Liechtenstein and Norway). Members of FIN - NET are combined through a Memorandum of understanding for the out-of-court settlement of disputes in cross-border projects in the field of financial services within European Economic Area. FIN - NET is based on the Commission recommendation 98/257/EC of 30 March 1998 on the principles applicable to the bodies responsible for the out-of-court settlement of consumer disputes. Adherence of these recommendations is particularly important because the structure, nature and competence of individual member states differ.

Three main objectives of FIN-NET:

- to provide consumers with easy and informed access to out-of-court redress in cross-border disputes: the network helps consumers to identify the right scheme for their specific complaint, and gives them all necessary information about relevant schemes in their own language
- to ensure an effective exchange of information between the different European schemes, so that cross-border complaints can be handled as quickly, efficiently and professionally as possible
- to ensure that out-of-court dispute settlement schemes from different European countries comply with a common set of principles. It is vital that consumers can trust the member schemes of FIN-NET. Without consumer confidence the network would be useless. Therefore all participating schemes comply with certain standards, which guarantee an impartial, fair and efficient dispute settlement procedure.

<sup>3</sup> Mráziková, M.: Consumer awareness of the European Union, Economic range of vision 3/2008 – scientific journal. The University of Economics in Bratislava, 2008. Str. 390-400. ISSN 0323-262X

<sup>4</sup> White Paper on Financial Services Policy (2005-2010).

Webpage [http://eur-lex.europa.eu/LexUriServ/site/sk/com/2005/com2005\\_0629sk01.pdf](http://eur-lex.europa.eu/LexUriServ/site/sk/com/2005/com2005_0629sk01.pdf)

### **2.2.3 Forum of user experts in the area of financial services – FIN – USE**

The organization was founded by the European Commission in 2004 as a forum for help and support in providing financial services. Forum for clients in the area of financial services holds an important role by providing the view of financial experts of development EC policy. To enhance or underpin deficiencies is also important for the participation of individual citizens as well as experts in the field of entrepreneurship in small and medium sized companies and academic researchers for providing different point of view on the issue. FIN-USE experts have been selected by the Commission on the strength of their user background. The primary responsibility for consumer education rests on each state, later on the Commission, which supports the opinions of whole Europe regarding financial education, consumer literacy and best practice, as well as information about the project.

Finance Forum provides services defined in the Distance Selling Directive, ie. the whole range of banking services, credit, insurance, pension, investment or payment services. Additional information regarding the forum can be found at [http://ec.europa.eu/internal\\_market/fin-use\\_forum/](http://ec.europa.eu/internal_market/fin-use_forum/).

### **2.2.4 Alternative dispute resolution ADR**

Out-of-court dispute resolution mechanisms developed within the European Union helps citizens who have outstanding consumer disputes and haven't reach an agreement with the trader. ADR mechanisms are mainly using a third party - an arbitrator, mediator or ombudsman to assist consumers in order to achieve solutions.

ADR brings a lot of advantages, offers more flexibility, considerably shorter time of process, less administrative costs and has more informal approach of compensation as a judicial settlement. Perhaps the main advantage of the ADR settlement process is price, which is significantly lower than the resolution of disputes through the courts. These mechanisms have evolved differently across the European Union, some became the results of public initiative at two levels:

- at the central level (e.g. Committee on consumer complaints Nordic countries)
- at the local level (e.g. Court of Arbitration in Spain)

Some of the initiatives flow from private initiatives - eg. mediators / ombudsman in the field of banking and insurance. Due to the diversification of mentioned bodies may be encountered with the fact that their decisions could be different - some are made as recommendations; others are binding only for professionals operating in the financial sector.

Types of ADR:

1. In negotiation, participation is voluntary and there is no third party who facilitates the resolution process or imposes a resolution. (NB – a third party like a chaplain or organizational ombudsperson or social worker or a skilled friend may be coaching one or both of the parties behind the scene)

2. In mediation, there is a third party, a mediator, who facilitates the resolution process (and may even suggest a resolution, typically known as a "mediator's proposal"), but does not impose a resolution on the parties. In some countries (for example, the United Kingdom), ADR is synonymous with what is generally referred to as mediation in other countries.

3. In collaborative law or collaborative divorce, each party has an attorney who facilitates the resolution process within specifically contracted terms. The parties reach agreement with support of the attorneys (who are trained in the process) and mutually-agreed experts. No one imposes a resolution on the parties. However, the process is a formalized process that is part of the litigation and court system. Rather than being an Alternative Resolution methodology it is a litigation variant that happens to rely on ADR like attitudes and processes.

4. In arbitration, participation is typically voluntary, and there is a third party who, as a private judge, imposes a resolution. Arbitrations often occur because parties to contracts agree that any future dispute concerning the agreement will be resolved by arbitration. Although parties may appeal arbitration outcomes to courts, such appeals face an exacting standard of review<sup>5</sup>.

### **2.3 The European Union arrangements in the area of financial market – internal market and services**

Twice a year the European Commission publishes the news in the Fin-Focus newsletter from area of financial services focused on issues relating to users and consumers. The newsletter deals with current issues for improving conditions for consumers and also for financial services providers.

In order to deep the integration of financial markets and support the current global competitiveness of the EU are gradually published by the European institutions documents called Green and White Paper. Green Paper contains thoughts and ideas centered on a particular policy area and White Papers are documents that represent proposals for action in a particular area within the EU. In some cases, represent a resumption of the Green Book.

#### **2.3.1 Retail banking**

In June 2005 the European Commission launched a sector exploration in economic competition on retail banking and commercial insurance market. The aim is to identify weaknesses, assess the overall level of competitiveness in these sectors. Research defined certain barriers to entry on market for retail financial services as consumer credits, real-estate credits and bank accounts, as well as the lack of real choice in retail banking.

#### **2.3.2 Deposit protection**

The Commission is revising Directive (94/19/EC) on deposit - guarantee schemes. In the directive is described the system of compensation for depositors in case of bank failure guarantee repayment of the invested money, up to a certain height. Arrangement is intended to ensure the stability and protection of the banking system. In 2009, the directive was revised - Directive 2009/14/ES of the European parliament and the Council of 11 March 2009, amending Directive 94/19/EC on deposit-guarantee schemes as regards the coverage level and the payout delay. The current minimum coverage level appointed by Directive 94/19/EC is 20 000 euros, while member states have possibility to set higher coverage. In order to maintain depositors' confidence in the system and keep stability of financial markets, the minimum coverage level should be increased to 50 000 Euros. For the future, there is an effort to clarify the regulatory systems of the EU level<sup>6</sup>.

#### **2.3.3 Consumer credits and mortgage loans**

Another important theme are measures in the area of the consumer and mortgage loans. The main objectives are establishment of the conditions for the internal market with consumer credit and provision an adequate level of consumer protection, regardless of where in the EU credit was obtained. The consumer's right is to rescission of contract within 14 days and the cre-

<sup>5</sup> International Institute for Conflict Prevention & Resolution: Arbitration Appeal Procedure. [Webpage: <http://www.cpradr.org/ClausesRules/ArbitrationAppealProcedure/tabid/79/Default.aspx>]

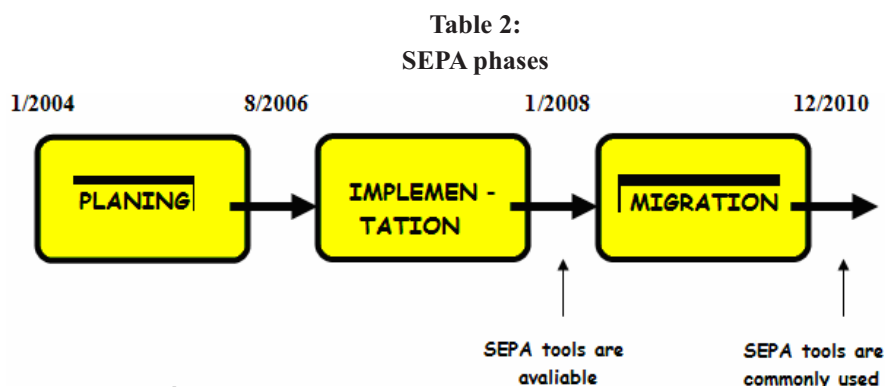
<sup>6</sup> Directive 2009/14/ES of the European parliament and of the Council of 11 March 2009, amending Directive 94/19/EC on deposit-guarantee schemes as regards the coverage level and the payout delay. Strasbourg 2009. [Webpage: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2009:068:0003:0007:SK:PDF>]

dit grantor provides to consumer necessary information for its choice. In 2005 was published a consultation paper about mortgage loans, where the question arises whether the conditions are sufficient in this area. The question is which information the credit grantor may require from the applicant, when should he receive the necessary information or if it is required to advise the applicant questions about pricing and registration of real estate ...

#### 2.3.4 Cross-border payments and SEPA (Single euro area payment)

With reference to the EU Regulation on cross-border payments should be accepted that the consumer in the euro area wouldn't pay for withdrawing of euros from ATM in abroad or for cross-border card payments in euro shouldn't pay more than for the same services at home, but not all countries have accepted this rule. The idea is to create a Single Euro Payment Area until the year 2010, where it will be possible to use one credit/debit card or bank electronic transfer, direct collection and safe and easy make payment as through domestic payments. The main problem is the diversity of rules and costs in the individual member states. All conditions and obligations regarding the payment services are located in the European Parliament and Council Directive 2007/64/EC of 13 November 2007 on payment services in the internal market, amending and amending Directives 97/7/EC, 2002/65/EC, 2005/60/EC and 2006/48/EC and repealing Directive 97/5/EC<sup>7</sup>.

SEPA act (Single Euro Payments Area) represents a significant step towards european integration. Progress occurs when will be eliminated differences between the payments and services in foreign and domestic payments and all differences disappear. Managing and coordinating body of SEPA is the European Payments Council - EPC based by representatives of 50 - european banks and associations. It sets out new procedures for payments in euro, and liquidates the boundaries for making cross/border payments in Euros. The main aim is create the one single euro area where will be enable consumers, businesses and other economic actors to make and receive payments in euro without distinction within domestic country or in abroad. In cooperation with the European Central Bank and European Commission are introducing SEPA standards and practices and contribute to creating a single market for payment services. Except of the euro area in the project were involved other countries as Iceland, Liechtenstein, Norway and Switzerland. The whole project was officially launched in 2008 but preparations for the implementation took place much earlier<sup>8</sup>.



Source: KLIMIKOVÁ, M. 2008. *Payment system*. Bratislava: Marada, 2008

<sup>7</sup> Directive 2007/64/EC of The European Parliament and of The council of 13 November 2007 on payment services in the internal market, amending and amending Directives 97/7/EC, 2002/65/EC, 2005/60/EC and 2006/48/EC and repealing Directive 97/5/EC. Strasburg, 2009.

[Webpage:<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2009:266:0011:0018:SK:PDF>]

<sup>8</sup> KLIMIKOVÁ, M. 2008. *Payment system*. Bratislava: Marada, 2008. 123 – 136 s. ISBN 978 – 80 – 968458 – 9 – 7

### ***2.3.5 Long-term savings institutions for occupational pension schemes and investment funds***

Long-term savings are often dismantling issue in response to the ongoing crisis, the population is aging and public social security systems are gradually coming under pressure and needed restructuring. Workers and depositors in the EU have many options of long-term savings including investments in property, in equity markets, the life insurance and on other side investments in to an occupational pension and investment funds, which represent the future of pension funding. Occupational retirement provision directive (IORP - Directive 2003/41/EC of the European Parliament and of the Council of 3 June 2003 on the activities and supervision of institutions for occupational retirement provision) provides the framework for prudential regulation of occupational pension scheme which operates upon fund facilities and do not fall within the scope of social security. The occupational pension schemes provide rules of providing pension benefits to employees. Payments are contributed by employers, but the employee also should contribute.

Investment funds are specially constituted investment portfolios that are exclusively dedicated to the professional investment in assets acquired from individual investors. Included among the long-term savings products and may contribute to the financing of pensions in Europe.

### ***2.3.6 Financial education***

Educated citizens who know to assess certain financial products and choose the one which is most suitable, have sufficient financial literacy, have general overview and are able to make responsible decisions, creating an effective functioning of the effective single market and also provides positive long-term impact on the economy as a whole unit. The European Commission included in its initiatives the raise of the financial population literacy The initiative by the EU in the field of financial education is highlighted in the White Paper on Financial Services Policy (2005 - 2010), in Green Paper on Retail Financial Services from May 2007, European Parliament resolution on financial services policy adopted in July 2007, in the conclusions ECOFIN Council in May 2007 and in the Commission report „The Single Market for 21st century ”.

Financial education is a complement to measures aimed at ensuring the proper provision of information, consumer protection and advice for consumers. Researches consistently show that consumers' level of knowledge about financial matters and the foundation of economics is generally low. Education is becoming increasingly important aspect of the growing globalization, which expands the scope and increasing complexity of financial services on offer. Evaluation of improvement or deterioration in financial literacy can be assessed in terms of the following indicators: increase in the number of participants, required publications, the number of website visitors, received questions etc. .. In order to facilitate the integration of financial literacy in school programs, the Commission sponsor the development of a new internet-based tool intended for voluntary use by teachers, which will provide the completed materials to the needs of each member state. This tool will be a new module Dolceta, online educational tool for adults, <http://www.dolceta.eu/>.

## **3 CONCLUSION**

Differences in consumer protection on financial markets among EU countries and Ukraine, varies in the consumers thinking and culture leads companies to raise the demand for harmonization. Analysis of consumer protection measures between EU and Ukraine shows the huge differences and indicates how long will be the road of building the cross-border cooperation and the reduction of restrictions on cross-border transactions.



The acts made by the European Commission have in most cases only recommendatory character and it depends on the each member state whether will accept them and incorporate into the national framework. The process used in the European Union for development, acceleration of the implementation the new standards and harmonization of legislation of EU member states are in the financial sector called Lamfalussy process

It is questionable whether the EU will be able to provide homogeneous conditions for all consumers, regardless of country of origin, despite the myriad differences between member countries.

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