

BETTER FINANCE Working Paper 6

Consumer Protection Provisions in Key EU Financial Legislation Instruments

(2018/0089 COD)

Ref.: Directive on representative actions for the protection of the collective interests of consumers

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BETTER FINANCE, the European Federation of Investors and Financial Services Users, is the public interest non-governmental organisation advocating and defending the interests of European citizens as financial services users at the European level to lawmakers and the public in order to promote research, information and training on investments, savings and personal finances. It is the one and only European-level organisation solely dedicated to the representation of individual investors, savers and other financial services users.

BETTER FINANCE acts as an independent financial expertise and advocacy centre to the direct benefit of European financial services users. Since the BETTER FINANCE constituency includes individual and small shareholders, fund and retail investors, savers, pension fund participants, life insurance policy holders, borrowers, and other stakeholders who are independent from the financial industry, it has the best interests of all European citizens at heart. As such its activities are supported by the European Union since 2012.

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This Working Paper provides a targeted analysis on all the provisions contained in the EU financial legislation instruments listed in Annex I of the Directive that refer to consumer protection rights. The analysed instruments are:

1. Directive 2002/65/EC of the European Parliament and of the Council of 23 September 2002 concerning the distance marketing of consumer financial services (OJ L 271, 9.10.2002, p. 16).
2. Directive 2008/48/EC of the European Parliament and of the Council of 23 April 2008 on credit agreements for consumers and repealing Council Directive 87/102/EEC (OJ L 133, 22.5.2008, p. 66).
3. Directive 2009/65/EC of the European Parliament and of the Council of 13 July 2009 on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS) (OJ L 302, 17.11.2009, p. 32–96).
4. Regulation (EC) No 924/2009 of the European Parliament and of the Council of 16 September 2009 on cross-border payments in the Community and repealing Regulation (EC) No 2560/2001 (OJ L 266, 9.10.2009, p. 11–18).
5. Directive 2009/110/EC of the European Parliament and of the Council of 16 September 2009 on the taking up, pursuit and prudential supervision of the business of electronic money institutions amending Directives 2005/60/EC and 2006/48/EC and repealing Directive 2000/46/EC (OJ L 267, 10.10.2009, p. 7–17).
6. Directive 2009/138/EC of the European Parliament and of the Council of 25 November 2009 on the taking-up and pursuit of the business of Insurance and Reinsurance (Solvency II) (OJ L 335, 17.12.2009, p. 1–155): Articles 183, 184, 185 and 186.
7. Directive 2011/61/EU of the European Parliament and of the Council of 8 June 2011 on Alternative Investment Fund Managers and amending Directives 2003/41/EC and 2009/65/EC and Regulations (EC) No 1060/2009 and (EU) No 1095/2010 (OJ L 174, 1.7.2011, p. 1–73).
8. Regulation (EU) No 345/2013 of the European Parliament and of the Council of 17 April 2013 on European venture capital funds (OJ L 115, 25.4.2013, p. 1–17).
9. Regulation (EU) No 346/2013 of the European Parliament and of the Council of 17 April 2013 on European social entrepreneurship funds (OJ L 115, 25.4.2013, p. 18–38).
10. Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU (OJ L 173, 12.6.2014, p. 349–496).
11. Directive 2014/92/EU of the European Parliament and of the Council of 23 July 2014 on the comparability of fees related to payment accounts, payment account switching and access to payment accounts with basic features (OJ L 257, 28.8.2014, p. 214): Articles 3 to 18 and Article 20(2).
12. Regulation (EU) No 1286/2014 of the European Parliament and of the Council of 26 November 2014 on key information documents for packaged retail and insurance-based investment products (PRIIPs) (OJ L 352, 9.12.2014, p. 1–23).
13. Regulation (EU) 2015/760 of the European Parliament and of the Council of 29 April 2015 on European long-term investment funds (OJ L 123, 19.5.2015, p. 98 – 121).
14. Directive (EU) 2015/2366 of the European Parliament and of the Council of 25 November 2015 on payment services in the internal market, amending Directives 2002/65/EC, 2009/110/EC and 2013/36/EU and Regulation (EU) No 1093/2010, and repealing Directive 2007/64/EC (OJ L 337, 23.12.2015, p. 35–127).

15. Directive (EU) 2016/97 of the European Parliament and of the Council of 20 January 2016 on insurance distribution (recast) (OJ L 26, 2.2.2016, p. 19–59).
16. Directive (EU) 2016/2341 of the European Parliament and of the Council of 14 December 2016 on the activities and supervision of institutions for occupational retirement provision (IORPs) (OJ L 354, 23.12.2016, p. 37–85).
17. Regulation (EU) 2017/1129 of the European Parliament and of the Council of 14 June 2017 on the prospectus to be published when securities are offered to the public or admitted to trading on a regulated market, and repealing Directive 2003/71/EC (OJ L 168, 30.6.2017, p. 12–82).
18. Regulation (EU) 2017/1131 of the European Parliament and of the Council of 14 June 2017 on money market funds (OJ L 169, 30.6.2017, p. 8–45).

Consumer protection provisions contained in key EU financial legislation instruments

The purpose of this paper is to show: first, that almost 40% of the legislative instruments identified by the Commission in the field of consumer protection concern financial services and, second, to show precisely which and how many provisions from each of these instruments have rights addressed or benefiting retail financial services users.

*Important note: All the below-listed provisions are addressed **directly the relationship between consumers and traders** (horizontal rules). However, it is of **utmost importance** to note that just a few of the EU consumer protection provisions are directly addressed to consumers, as **the vast majority are issued through vertical rules (concerning the legal relationship between a national competent authority and a trader)**. As such, all those latter **rules still have the aim to protect investors**, e.g. minimum capital requirements or organisational obligations to avoid conflicts of interests, and many of them are to be found in the financial services contract, Prospectus, or other documents concerning the clients. In addition, most consumer protection rules in capital markets are enshrined in the subsidiary (level 2) legislation.*

Therefore, even if a provision does not explicitly state that “the consumer has the right to...”, it will still have the vocation of protecting the consumer and conferring him indirect rights. As such, we give a couple of examples in the table below.

EU financial regulation works through the “Lamfalussy” process, by which the general principles and main policy lines are drawn by the co-legislators through Directives and Regulations (“Level 1” legislation – adopted via Article 289 TFEU), and the acts laying down the details (*delegated or implementing acts*) constitute “Level 2” legislation, being adopted by the EU Commission on the basis of Article 291 TFEU.

Therefore, the “main” consumer protection rights are listed below. Nevertheless, an entire scheme of subsequent rights were established and are enforceable by virtue of Level 2 legislation.



Name of piece of legislation	Horizontal rules (industry - consumers)	Vertical rules (Member State - industry)
Solvency II: Directive 2009/138/EC	Article 183 (1) Article 184 paras (1) to (7) Article 186(1)	
Payment accounts directive: Directive 2014/92/EU	Article 4 paras (1) to (7) Article 5 paras (1) to (5) Article 6 (1) and (2) Article 7 (1) to (4) Article 8 Article 9 Article 10 (1) to (6) Article 11 (1) and (2) Article 12 (1) to (4) Article 13 (1) to (3) Article 14 (1) and (2) Article 15 Article 16 (1) to (4), (6), (7), (9), (10) Article 17 (1) to (8) Article 18 (1) to (4) Article 20	
MMF Regulation: Regulation (EU) 2017/1131	Article 9 Article 6 Article 7 Article 10 Article 27 Article 39 Article 48 Article 50 Article 56 Article 34, paras 1, (a)(i); (b)(i) Article 36 (1) to (5)	
AIFMD: Directive 2011/61/EU on Alternative Investment Fund Managers	Article 14. (2) Article 19 (3) Article 23 (1)	Article 12 (d)
Credit transfers regulation: Regulation (EU) No 260/2012	Article 5 (3) (d). (i), (ii) and (iii) Article 5 (8) Article 9 (1) to (3)	Article 11 (1), (2) Article 12, para 1, (9)
<u>EuVECA: Regulation (EU) No 345/2013 European venture capital funds</u>	Article 7 (b), (f), (g) Article 9, (4) Article 13 (1)	Article 18 (3)
EuSEF: Regulation (EU) No 346/2013 on	Art 7 (b), (f) Article 9 (1) Article 13 (1), a) to b)	Article 20 (1)

European social
entrepreneurship funds

Article 13(2)
Article 14
Article 19
Article 20
Article 22
Article 24
Article 25
Article 30
Article 32
Article 44
Article 45
Article 46
Article 48, para (1), point b)
Para (2), point b)
Para (3), point b)
Article 50
Article 63
Articles 68 to 82
Articles 84 to 89

UCITS Directive: Directive
2009/65/EC relating to
undertakings for
collective investment in
transferable securities
(UCITS)

Cross-border payments:
Regulation (EC) No
924/2009 on cross-
border payments in the
Community

Article 3(1)
Article 4
Articles 6 to 8

E-money Institutions:
Directive 2009/110/EC
on the taking up, pursuit
and prudential
supervision of the
business of electronic
money institutions

Article 3(3)
Article 6(2)

MiFID II: Directive
2014/65/EU on markets
in financial instruments

Main investor protection rules
Article 23
Articles 24-30

PRIIPs: Regulation (EU)
1286/2014 on key
information documents
for packaged retail and
insurance-based
investment products

Article 5
Article 6 (1), (4) - (6)
Article 7(1)
Article 9
Article 13 (1), (3) and (4)
Article 14 (1), (2)
Article 19

IDD: Directive (EU)
2016/97 on insurance
distribution (recast)

Article 14
Article 15
Articles 17-24
Articles 27-30

Prospectus Regulation:
Regulation (EU)
2017/1129 on the
prospectus to be
published when securities

Articles 4-9
Article 11
Article 18
Article 21
Article 22

are offered to the public
or admitted to trading on
a regulated market

Directive concerning the distance marketing of consumer financial services and amending Council Directive 90/619/EEC and Directives 97/7/EC and 98/27/EC	Art 3 Art 5 Art 7 51), (3), (4) Art 10 (1), (3)	Art 4 (2) Art 6 (1) Art 7 (2) Art 8 Art 9 Art 10 (2), (3) Art 11 Art 12 Art 13 Art 15 Art 17
ELTIF: Regulation 2015/760 on European long-term investment funds	Art 14 Art 18 (2), c, e, (4), (5), (6) a & b Art 19 (2), (4) Art 20 (2) Art 21 (1), (2) Art 22 (1) Art 23 (1), (2), (3) c, 4, 6 ART 25 (1), (2) ART 26 (1) ART 28 ART 29 (2), (3), (4), (5) ART 30	Art 5, (1), d & (5), b Art 24 (2), (3), (4)
Directive 2015/2366 on payment services in the internal market	Art 46 Art 47 Art 48 Art 56 Art 57 Art 58 (1), (2) Art 89 (1)	Art 45 Art 58 (3) Art 64 (1) Art 76 (1), (4) Art 87 (3) Art 97
IORP II: Directive (EU) 2016/2341 on the activities and supervision of institutions for occupational retirement provision	Article 19 Article 20 Article 21 Article 22 Article 23 Article 25 Article 30 Articles 36-44	

Table source: BETTER FINANCE own assessment

Additional information on the three key legislative instruments proposed by BETTER FINANCE to be included in the material scope of coverage of the collective redress Directive:

1. Directive 2014/57/EU of the European Parliament and of the Council of 16 April 2014 on criminal sanctions for market abuse (market abuse directive), OJ L 173, 12.6.2014,
2. Regulation (EU) No 596/2014 of the European Parliament and of the Council of 16 April 2014 on market abuse (market abuse regulation) and repealing Directive 2003/6/EC of the European Parliament and of the Council and Commission Directives 2003/124/EC, 2003/125/EC and 2004/72/EC, OJ L 173, 12.6.2014.
3. PEPP Regulation: Regulation (EU) of the European Parliament and of the Council on a pan-European personal pension product (PEPP) – 2014/0143/COD

Name of piece of legislation	Horizontal rules (industry – consumers)	Vertical rules (Member State – industry)
Market Abuse Directive (II): Directive 2014/57/EU on criminal sanctions for market abuse	Article 3 Article 4 Article 5 Article 6	
Market Abuse Regulation: Regulation (EU) 596/2014 on market abuse	Articles 4-12 Article 14 Article 15 Articles 17-21	
PEPP Regulation (<i>not yet in force</i>) 2017/0143/COD	Article 4 Article 10 Article 17 Article 18 Article 19 Article 20 Articles 22-39 Articles 41-60	