

Ref; The EU's new consumer agenda

Link: <https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/12464-Consumer-policy-the-EU-s-new-consumer-agenda>

---

## BETTER FINANCE Position paper on the New Consumer Agenda

### *About BETTER FINANCE*

*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.*

### Executive Summary

#### **A new coherent vision of the role of consumers in the area of the green and digital transitions**

Covid-19 pandemic has accelerated the transition towards the digital economy and digital services thus increasing the already existing risks for consumers.<sup>1</sup> In regard to the new challenges derived by **digitisation** the following measures should be considered:

- Establishing independent savings products data bases which imply standardized Key Information on actual costs, performances, and risks (“*garbage in garbage out*”).
- **Developing independent web comparative tools**
- **Rethinking mandatory disclosure documents like KIID for online/ smart phone adaptation, for example using drawdowns for more detailed information.**
- **Enabling individual shareholder engagement within the EU by enabling voting or enabling giving power to a proxy with one’s smartphone.**
- **Ensuring proper data protection.**

Regarding the increasing importance of **environmental issues**, we

---

<sup>1</sup> <https://www.beuc.eu/blog/covid-19-and-digital-health-five-risks/>

suggest considering the following recommendations:

- **Developing Ecolabels and standards** for different sustainable financial product category for individual investors:<sup>2</sup>
  - Allowing sustainable products that represent a reorientation of the capital market into sustainable investments, preventing any form of greenwashing.
  - Setting up high-level of standards regarding environmental social and governance aspects.
  - Ensuring exemplary compliance with EU investors protection rules.
  - Protecting individual investors against non-reliable impact claims, thus preventing impact-washing.
- Developing a regulatory definition of greenwashing for financial products.

---

### The role of consumers in the post-crisis economic recovery - Covid-19

in relation to the economic disruption caused by COVID-19, the following measures to enhance consumer protection should be considered:

- **Enable employee share ownership programs** in the next 24 months including tax reductions.<sup>3</sup>
- **End biased advice in “retail” distribution and strongly curb “inducements”** in MiFID 2 and in IDD-regulated investment products.<sup>4</sup>
- **Enhance financial literacy**, not for individual investors to determine the best products for them, but to make sure they can choose the adequate level of advice for them.<sup>5</sup>
- **Restore standardised disclosure of past performance** (relative to the managers’ benchmarks) and costs for all retail investment products.<sup>6</sup>
- **Ensure that the future PEPP**, the proposed Pan-European Personal Pension product, is really simple, safe and efficient.
- ESAs to build a **publicly available database** where pension products can be compared.
- **Unbundling rules for mortgages and consumers loans**. These needs to be offered separately from Payment Protection Insurance (PPI).

---

<sup>2</sup> BETTER FINANCE Response to the EU Ecolabel consultation: <https://betterfinance.eu/wp-content/uploads/BETTER-FINANCE-feedback-to-the-EC-on-the-Development-of-EU-Ecolabel.pdf>

<sup>3</sup> <https://betterfinance.eu/wp-content/uploads/PR-CORONA-PENSIONS-BETTER-FINANCE-and-CFA-Institute-call-for-Measures-to-protect-pension-contributions-savings-and-pay-outs-230420.pdf>

<sup>4</sup> Ibid.

<sup>5</sup> Ibid.

<sup>6</sup> Ibid.

---

**Gaps and discriminations in EU consumer rights and in their effective enforcement.**

The Proposal for a Directive of the European Parliament and of the Council on representative actions for the protection of the collective interests of consumers, and repealing Directive 2009/22/EC (SWD(2018) 96 final) has a number of detrimental issues for consumers:

- A. The scope of the Directive (Article 2.1) discriminates EU citizens who save in directly in shares and bonds vs. “packaged” investment products**
- B. The “opt-in” system and the cross-border dimension of the opt-out system is detrimental to consumers**
- C. ADR settlements and recourse to judicial review (Article 5(2)) and the weakening of representative organisations limits consumers’ legal protection**

---

**Redesigning the structures for stakeholder engagement on the future consumer policy.**

As communicated in the EC roadmap<sup>7</sup> a new comprehensive framework for engaging stakeholders in consumer policy formulation and enforcement is needed. In BETTER FINANCE’s opinion the new framework should include stakeholder representing financial consumers in order to address issues and challenges raising in field of EU financial services and provide an adequate response. Individual investors, savers and financial service users are in dire need of effective protection rules and enforcement mechanisms, especially in the context of numerous scandals concerning mis-selling of financial products and also in relation to the advent of new digital financial platforms.

---

## **Context**

The EU Commission intends to update the current Consumer Agenda (2012)<sup>8</sup>, which expires in 2020, in light of the recent developments and the new priorities of the von der Leyden Commission. The new agenda will also take into account the impact of the COVID-19 pandemic on consumers and set new measures for the future consumer policy. This experience will be used to provide immediate measures in regard to issues such as *cancellation of travel and events, rogue trading practices such as selling products with false health claims, unsafe products and increasing household debts*. Therefore, the new Consumer Agenda will address the role of consumers in the post-crisis economic recovery, as expressed in the EU’s recovery plan adopted on 27 May 2020.<sup>9</sup> In addition, the new Consumer Agenda intends to address the new challenges derived by digitalisation, the increasing importance of environmental issues and the new economic realities caused by COVID-19.<sup>10</sup>

BETTER FINANCE welcomes the roadmap on the New Consumer Agenda<sup>11</sup> which identifies a number of challenges and issues encountered by consumers such as:

---

<sup>7</sup> [file:///C:/Users/User/Downloads/090166e5d0ac0275%20\(6\).pdf](file:///C:/Users/User/Downloads/090166e5d0ac0275%20(6).pdf)

<sup>8</sup> <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52012DC0225&from=EN>

<sup>9</sup> <https://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1590732521013&uri=COM:2020:456:FIN>

<sup>10</sup> <https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/12464-Consumer-policy-the-EU-s-new-consumer-agenda->

<sup>11</sup> [file:///C:/Users/User/Downloads/090166e5d0ac0275%20\(4\).pdf](file:///C:/Users/User/Downloads/090166e5d0ac0275%20(4).pdf)

1. a new coherent vision of the role of consumers, in particular in the area of the green and digital transitions
2. the role of consumers in the post-crisis economic recovery
3. gaps in effective enforcement of consumer rights.
4. redesigning the structures for stakeholder engagement on the future consumer policy.

BETTER FINANCE would like to underline that non-professional individual and small shareholders, fund and individual investors, savers, pension fund participants, life insurance policy holders, borrowers, are **consumers** of financial services, therefore they need to be included in the consumer policy framework and redress mechanism in order to ensure that their rights are protected.

The aim of this position paper is to address specific issues and provide policy recommendations for individual investors, savers and other financial services users according to the 4 challenges and issues identified in the roadmap:

### **1. A new coherent vision of the role of consumers, in particular in the area of the green and digital transitions**

Covid-19 pandemic has accelerated the transition towards the digital economy and digital services thus increasing the already existing risks for consumers as inappropriate use of personal data, biased Artificial Intelligence (AI) and algorithms, scams and financial crimes.<sup>12</sup>

Even if in some cases digitalising finance and enabling new technologies to enhance the provision of financial services can benefit both individual investors and the EU economy to access to the financial market, the main risk **is the lack of legal certainty for providers and users of these services**. Moreover, the risks and issues for consumers cannot be prevented or addressed **in absence of an adequate supervisory and regulatory mechanism**. There is a strong need of consistent supervision and regulation of fintech companies.:

- **Supervisory loopholes:** the scandal of wirecard is an example of the absence of adequate supervision of fintech companies. Wirecard was treated as a technology company rather than a financial service provider, putting the holding company outside Bafin's direct oversight even as it regulated Wirecard Bank. This means in this case that for payment and other financial services, there should be no different supervision whether the provider is a bank or a non-bank like for Wirecard.
- **Regulatory loopholes:** As we observed on our Robo-Advice Research for 4 consecutive years, even if these platforms are dully registered in their jurisdiction or have contractual relationship with registered investment company, they are not considered as traditional advisors from a regulatory point of view. As a first step, the European Commission could add clarity also in MiFID II and specify, for instance in the definition of investment advice of Art. 4(4) of MiFID II".

In regard to the new challenges derived by **digitisation** the following measures should be considered:

---

<sup>12</sup> <https://www.beuc.eu/blog/covid-19-and-digital-health-five-risks/>

- Establishing independent savings products data bases which imply standardized Key Information on actual costs, performances, and risks (“*garbage in garbage out*”).
- **Developing independent web comparative tools** that would allow and facilitate the comparison of – and choice between different investment products; such as what has been achieved by the Norwegian platform FinansPortalen (now many web comparing tools feed on this Portal).
- **Rethinking mandatory disclosure documents like KIID for online/ smart phone adaptation**, for example using drawdowns for more detailed information.
- **Enabling individual shareholder engagement within the EU by enabling voting or enabling giving power to a proxy with one’s smartphone.** At the moment, the voting process is extremely fragmented, very ineffective specially cross-border within the EU and monopolized by banks . Such a platform would facilitate access and exercising voting rights for individual shareholders. These recommendations have also been taken into account by the High-Level Forum on Capital Markets Union (HLF CMU), which released its report on 10 June 2020.<sup>13</sup>
- **Ensuring proper data protection:** digitalisation ultimately means that users will expose more and more personal data; digital finance must ensure that, where financial data is not essential for the provision of the service, it *should not be extorted from the consumer*.

Another important aspect for consumers is the rising concern on environmental issues and climate change. There is a strong connection between the pandemic and the necessity to enhance our environmental and social priorities as the mistreatment of the environment and unsustainable living conditions are strictly interlinked with the insurgence with new pathologies, diseases and virus. It is extremely clear how human society is dependent on the state of health of the nature.<sup>14</sup>

As a consequence, Corporate social responsibility and pro-environmentalism has gained importance among consumers providing strong incentives for producers to brand unsustainable products as green or environmentally friendly. Research on product labelling suggests that “green” has become an important retail strategy and more and more products on the market are labelled as environmentally friendly. Corporate social responsibility and pro-environmentalism has gained importance among consumers providing strong incentives for producers to brand unsustainable products as green or environmentally friendly. Therefore, green labels may lead consumers to assume by default that the products are “green” even if they are not or do not comply with environmental standards.<sup>15</sup> This is particular true for sustainable retail financial products which, due to lack of common ESG standards and definition, have or may present several issues as:

- Risk of greenwashing
- Lack of comparability with similar products
- Unclear information on the sustainability criteria
- Misleading information on financial and non-financial information
- Misaligned ESG ratings

---

<sup>13</sup> [https://ec.europa.eu/info/news/cmu-high-level-forum-final-report\\_en](https://ec.europa.eu/info/news/cmu-high-level-forum-final-report_en)

<sup>14</sup> Pandemic will transform tenets of sustainable investing; Financial times, <https://www.ft.com/content/56c56791-ca0b-484c-b592-914607bd89f9>

<sup>15</sup> <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4585300/>

Regarding the increasing importance of **environmental issues**, we suggest considering the following recommendations:

- **Developing Ecolabels and standards** for different sustainable financial product category for individual investors to address pitfalls of existing national labels being granted to products not complying with existing investor protection and disclosure rules :<sup>16</sup>
  - Allowing sustainable products that represent a reorientation of the capital market into sustainable investments, preventing any form of greenwashing.
  - Setting up high-level of standards regarding environmental social and governance aspects.
  - Ensuring exemplary compliance with EU investors protection rules.
  - Protecting individual investors against non-reliable impact claims, thus preventing impact-washing.
- Developing a regulatory definition of greenwashing for financial products.

## 2. The role of consumers in the post-crisis economic recovery - Covid-19

The economic disruption of COVID-19 aggravated by national confinements and exceptional measures are having a strong impact on households and SMEs. Households are confronted with increasing difficulties as unemployment, fall in income, inability in paying rents and loans.<sup>17</sup>

Mandatory public pension (“pay-as-you-go”) systems will be further strained because of the risk of an unprecedented rise of unemployment and increased budgetary burden faced by EU Member States. Their essential role in ensuring an adequate old age income for all should be protected as recommended by the EU High Level Group on Pensions.<sup>18</sup>

The pensions time bomb is already ticking in Europe, with studies by BETTER FINANCE and the OECD demonstrating that recent real returns on long-term investments were already too often negative, and insufficient for an adequate replacement income upon retirement.<sup>19</sup> Real (after inflation) pension returns will collapse this year, mainly because of stressed equity markets but also because of the low interest in government bonds, and will struggle in the near future because of financial repression, and possibly even more so if combined with resurgent inflation. BETTER FINANCE had already advocated for several actions to tackle the overall poor long-term real returns of pension savings in the EU - including via the EU’s Capital Markets Union initiative.<sup>20</sup>

In addition, regarding the consumer credit and loans there are still several unsolved issues as listed in the **Consumer trends report 2019 of EIOPA**<sup>21</sup> that mentions the following marketing practices that are detrimental for consumers when they have been offered mortgage life and credit protection insurance products:

---

<sup>16</sup> BETTER FINANCE Response to the EU Ecolabel consultation: <https://betterfinance.eu/wp-content/uploads/BETTER-FINANCE-feedback-to-the-EC-on-the-Development-of-EU-Ecolabel.pdf>

<sup>17</sup> <https://www.ft.com/content/fcfa2827-35c7-47fb-b5c1-c97f8c841a56>

<sup>18</sup> <https://ec.europa.eu/transparency/regexpert/index.cfm?do=groupDetail.groupMeetingDoc&docid=38547>

<sup>19</sup> Ibid.

<sup>20</sup> <https://betterfinance.eu/wp-content/uploads/PR-CORONA-PENSIONS-BETTER-FINANCE-and-CFA-Institute-call-for-Measures-to-protect-pension-contributions-savings-and-pay-outs-230420.pdf>

<sup>21</sup> Consumer Trend Report 2019, EIOPA: [file:///C:/Users/User/Downloads/Consumer%20Trends%20Report%202019%20-%20EN%20\(3\).pdf](file:///C:/Users/User/Downloads/Consumer%20Trends%20Report%202019%20-%20EN%20(3).pdf)

- banks offer an interest rate discount or other type of benefits only if customers buy a credit protection / mortgage life insurance policy recommended by the bank. (**Aggressive sales techniques**).<sup>22</sup>
- banks push consumers towards buying credit protection insurance (CPI)/Payment Protection insurance (PPI)<sup>23</sup> from an insurance undertaking within the same financial conglomerate generating high commissions. (**conflict of interest**).<sup>24</sup>

Furthermore, in relation to the economic disruption caused by COVID-19, the following measures to enhance consumer protection should be considered:

- **Enable employee share ownership programs** in the next 24 months including tax reductions. Currently personnel-related expenses are the main reasons for the reduced liquidity in companies. If such programs were to be introduced immediately, a portion of the salaries could remain in companies as a capital contribution by employees. This could work well if it is linked to tax advantages.<sup>25</sup>
- **End biased advice in “retail” distribution and strongly curb “inducements”** in MiFID 2 and in IDD-regulated investment products. Ensure that financial professionals take their responsibility of offering adequate investment solutions for individual investors based on a duty of care towards their clients, at all times acting in their best interest.<sup>26</sup>
- **Enhance financial literacy**, not for individual investors to determine the best products for them, but to make sure they can choose the adequate level of advice for them. Individual investors lack the necessary knowledge, financial literacy and time to fully understand the exceedingly complex financial products offered to them. Nor should they have to.<sup>27</sup>
- **Restore standardised disclosure of past performance** (relative to the managers’ benchmarks) and costs for all retail investment products.<sup>28</sup>
- **Ensure that the future PEPP**, the proposed Pan-European Personal Pension product, is really simple, safe and efficient. This also requires EU Member States ensuring there is a level playing field on tax issues, to the extent that this is possible.
- ESAs to build a **publicly available database** where pension products can be compared.
- **Unbundling rules for mortgages and consumers loans**. These needs to be offered separately from Payment Protection Insurance (PPI). It is necessary to give the possibility to the clients to choose whether to opt for a PPI or not.

### 3. Gaps and discriminations in EU consumer rights and in their effective enforcement.

Studies done by the European Commission ([2008](#),<sup>29</sup>) have shown that 79% of EU citizens are willing to pursue their rights in court if collective action is available, while 76% of consumers are willing to trade cross-border if cross-border redress is available. Up to now, action at Member State level did not achieve the purpose of ensuring a pan-EU mechanism for private enforcement

---

<sup>22</sup> Ibid.

<sup>23</sup> Please note that CPI and PPI are interchangeable

<sup>24</sup> Ibid.

<sup>25</sup> <https://betterfinance.eu/wp-content/uploads/PR-CORONA-PENSIONS-BETTER-FINANCE-and-CFA-Institute-call-for-Measures-to-protect-pension-contributions-savings-and-pay-outs-230420.pdf>

<sup>26</sup> Ibid.

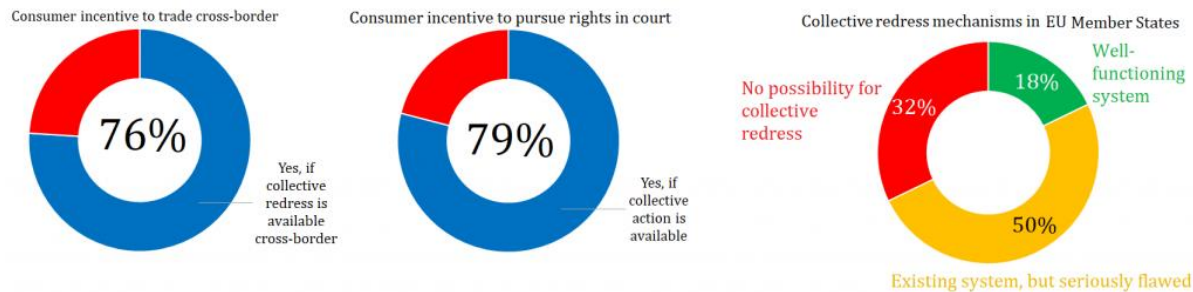
<sup>27</sup> Ibid.

<sup>28</sup> Ibid.

<sup>29</sup> European Commission, 2012: Flash Eurobarometer 57.2 – 2012.



of consumer rights, nor do similar systems even exist at national level. The EC noticed highly divergent and unequal conditions for consumer redress at national level as of 2008, which it tried to level through soft law (recommendations) in 2013.



Source, see BEUC, 2018: [Myths and Realities about Collective redress](#)

However, the 2018 review on the implementation of the recommendations on collective redress states that only one in four Member States attempted to implement the “same basic principles”, and even in those cases the “reforms have not always followed” the EC’s recommendations. What is more, in nine EU jurisdictions there is no form of collective redress at all. Consumers have to rely on traditional procedural law instruments. Also the European Parliament’s (‘EP’) report ([October 2018](#)) stresses the “strong need for a binding European instrument” concerning collective redress for consumer issues.<sup>30</sup>

The current EU Directive proposal<sup>31</sup> stipulates that it would only apply to breaches of certain directives and regulations. However, its scope does not cover individual and small equity investors, employee share-owners or bond holders, to name a few.

Application of the Collective Redress Directive - CMU perspective		
Scope		Legislative act
<b>Indirect investors</b>	✓	<b>MiFID 2</b>
<i>Fund unitholders</i>	✓	UCITS, AIFMD
<i>Insurance policy holders</i>	✓	IDD, Solvency 2
<i>Other packaged investments holders</i>	✓	PRIIPS
<b>Direct investors</b>	✗	<b>MAD2, MAR</b>
<i>Shareholders</i>	✗	-
<i>Bonds holders</i>	✗	-
<i>Other direct investors</i>	✗	-

The reality is that, based on our research<sup>32</sup>, the vast majority of affected consumers in financial scandals are direct investors (shareholders, bondholders), who would not benefit from this mechanism in its current form.

This gap in the scope of application creates **unjustified discrimination** between direct and indirect investors and creates barriers to the free movement of

capital and the right to access to justice, contrary to the Treaty on European Union (TEU) and Treaty on the Functioning of the European Union (TFEU).

<sup>30</sup> images source, see BEUC, 2018: [Myths and Realities about Collective redress](#)

<sup>31</sup> <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52018PC0184>

<sup>32</sup> <https://betterfinance.eu/collective-redress/>



The Proposal for a Directive of the European Parliament and of the Council on representative actions for the protection of the collective interests of consumers, and repealing Directive 2009/22/EC (SWD(2018) 96 final) has a number of detrimental issues for consumers:

**A. The scope of the Directive (Article 2.1) discriminates EU citizens who save in directly in shares and bonds vs. “packaged” investment products**

The “closed-list” determining the scope of the Directive does not cover direct individual investors (share- and bondholders), leaving them less protected than indirect investors (e.g. fundholders). It is paramount to add the Market Abuse Directive (MAD2), Regulation (MAR) and PEPP Regulation in Annex I of the Directive.

**B. The “opt-in” system and the cross-border dimension of the opt-out system is detrimental to consumers**

The default “opt-out” approach is essential to ensure the effectiveness of the procedure not only at national level, but most importantly cross-border. Requiring consumers from another Member State to explicitly give their mandate for the class action would defeat the purpose of the Directive and contradicts the essential principle of the internal market. In addition, in order to ensure harmonisation and equal protection for all harmed consumers across the EU, Member States must be required not to demand the mandate of the individual consumers concerned. This is referred to as an “opt-out” system.

**C. ADR settlements and recourse to judicial review (Article 5(2)) and the weakening of representative organisations limits consumers’ legal protection**

Representative associations should expressly be allowed to settle the dispute out-of-court (ADR), also allowing the possibility to revert to mandatory jurisdiction should the settlement mechanism fail. BETTER FINANCE suggests adding a new action to Article 5(2). Recent case law shows that collective actions for investors or financial services users were initiated by foundations established ad hoc. Limiting the possibility for experienced and well-established representative organisations of consumers, savers and individual investors to create spontaneously an organisation for collective redress procedures severely limits the scope and effectiveness of the provisions of the Collective Redress Directive.

In view of the current developments, we strongly encourage the Commission to, while evaluating whether cross-border representative actions could be best addressed at Union level by establishing an European Ombudsman for collective redress to also assess the need to expand the scope of the Directive in order to give protection to direct investors.

**4. Redesigning the structures for stakeholder engagement on the future consumer policy.**

As communicated in the EC roadmap<sup>33</sup> a new comprehensive framework for engaging stakeholders in consumer policy formulation and enforcement is needed. In BETTER FINANCE’s opinion the new framework should include stakeholder representing financial consumers in order to address issues and challenges raising in field of EU financial services and provide an adequate response. Individual investors, savers and financial service users are in dire need of effective protection rules and enforcement mechanisms, especially in the context of numerous scandals concerning mis-selling of financial products and also in relation to the advent of new digital financial platforms. Therefore, we believe that the composition of the new European

---

<sup>33</sup> [file:///C:/Users/User/Downloads/090166e5d0ac0275%20\(6\).pdf](file:///C:/Users/User/Downloads/090166e5d0ac0275%20(6).pdf)

Consumer Consultative Group (ECCG), the Commission's main forum to consult with national and European consumer organisations, should be expanded and include representatives of financial services users such as BETTER FINANCE and its member organisations. We would be happy to advise and engage in a regular dialogue with the Commission in the creation of policies and activities affecting financial consumers. BETTER FINANCE would as well provide data and information to the Commission on developments in financial services area.