



# AMENDMENTS to the Collective Redress Directive



BETTER FINANCE Amendments to the Directive on representative actions  
for the protection of collective interests of consumers

DISCRIMINATION OF DIRECT  
INDIVIDUAL SAVERS



└ Article 2(1)

DETRIMENTAL OPT-IN SYSTEM  
AND CROSS-BORDER DIMENSION



└ Amendments 60 and 61 JURI

ARTICULATION WITH  
ADR SETTLEMENTS



└ Article 5(2)

WEAKENING OF REPRESENTATIVE  
ORGANISATIONS



└ Amendment 49 JURI



## MAIN PROPOSALS

BETTER FINANCE amendments to the  
Collective Redress Directive



# DIRECT INDIVIDUAL SAVERS EXCLUDED



Article 2(1) defines the material scope of the Directive as "infringements of EU law provisions listed in Annex I"

Annex I does not contain any piece of EU legislation laying down obligations protecting direct securities holders

As such, the Directive grants **uneven**

**protection** of direct investors vs indirect (intermediated) ones

➔ Annex I should be extended to include:

- the Market Abuse Directive (MAD2)
- the Market Abuse Regulation (MAR)

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>	-



## Opt-in system

### Passiveness

Given the lack of expertise, trust, time or resources, individuals rarely pursue their rights or legitimate interests in court.

### Unawareness

Consumers are sometimes passive: this passiveness should not be used to exclude them from collective redress

### ➡ Preferred way: opt-out system

For reasons of legal effectiveness and certainty, EU consumers need an opt-out system



## Cross-border dimension

### Inconsistent provisions

The current wording allows Member States to establish a national opt-out system, but imposes the opt-in system at cross-border level

### Purpose of an EU Directive

The purpose of the Directive is to make it easier for consumers to engage cross-border and ease access to justice, not impede it

### ➡ Preferred way: cross-border opt-out system

In order not to create barriers within the Internal Market, EU consumers must benefit of the same opt-out system in all jurisdictions





### Opt-in system

Article 6.1 (subparagraph 1) allows Member States to require the mandate of each individual consumer before a redress order is made

EU citizens would much more **benefit** of an "opt-out system", by which all affected consumers are by default included in the collective redress action.

BETTER FINANCE strongly advises to modify the abovementioned provision and impose an "opt-out system" to Member States.

(Amendment 60 JURI)

### Cross-border dimension

This Directive must ensure consistent application and the same set of rights to consumers on a cross-border basis.

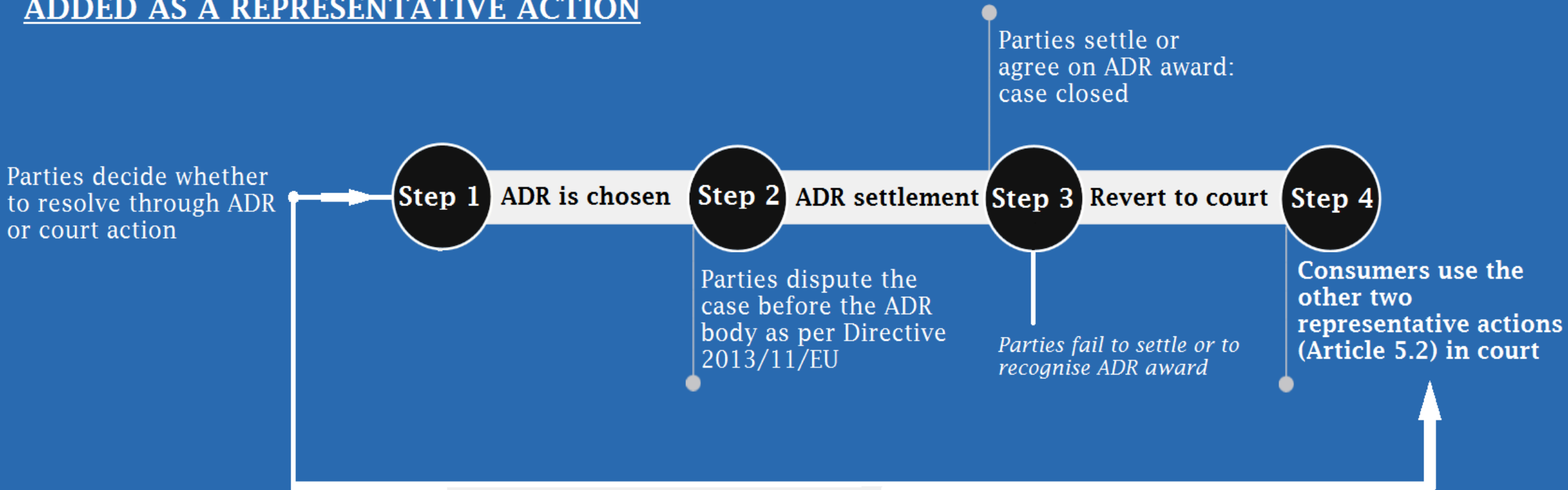
This "mirroring" provision is also necessary to ensure the same legal protection of harmed consumers in all Member States.

BETTER FINANCE **strongly advises not to add a new requirement to Article 6.1** (Amendment 61 JURI).

Article 5(2) lays down the "representative actions" eligible entities may choose under the provisions of the Directive

# ADR SETTLEMENTS

## FUNCTIONING OF AN ADR MECHANISM ADDED AS A REPRESENTATIVE ACTION



# ADVANTAGES OF USING ADR MECHANISMS

BF



## Specialisation

Expert panels are sometimes better placed to resolve highly technical legal disputes.



## Rapidity

Tailor-made procedures allow for a faster settlement.



## Judicial system relief

Out-of-court dispute resolution can reduce the overburden of courts



## EU procedure

The new representative action will be subject to the provisions of Directive 2018/11EU

# WEAKENING OF REPRESENTATIVE ORGANISATIONS

(Amendment 49 JURI)

Article 4(2) provides the possibility for entities to be established ad-hoc for the purpose of a collective redress action

This is a necessary provision since most recent class actions in the financial sector were initiated by spontaneously established entities (see Stichting Volkswagen Investor Claims

Amendment 49 (JURI report) deletes this norm and significantly weakens the position of consumer organisations to properly protect and represent the interests of their constituents

Deleting this provision would go against the purpose of avoiding abusive Litigation.



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