

# Targeted questionnaire on the revision of the Injunctions Directive

Fields marked with \* are mandatory.

## 1 Introduction

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1 Word version of the questionnaire:

[Injunctions\\_30-10-2017\\_EN\\_1\\_.docx](#)

**Deadline for responding: 16 November 2017**

The evidence gathered during the [2017 Fitness Check of EU consumer and marketing law](#) indicated that while the current EU consumer law acquis is still largely fit for purpose, infringements of consumer rights remain at relatively high levels and there is a need for stepping up enforcement and redress. To address these concerns, the Commission is considering the adoption of a legislative package covering two strands of follow-up actions: (1) the targeted revision of EU consumer law Directives which concerns the substantive rules of the EU consumer law acquis ([Inception Impact Assessment](#)); and (2) the revision of the Injunctions Directive, which encompasses procedural rules for the protection of the collective interests of consumers ([Inception Impact Assessment](#)).

The present consultation seeks stakeholders' views on the possible legislative changes related to the second strand of follow-up actions, namely the legislative proposal for the revision of the Injunctions Directive 2009/22/EC ("the ID").

The ID was adopted in 1998 and its Annex was recast in 2009. It imposes on Member States the obligation to enable so-called 'qualified entities' to seek an injunction in front of a court or of an administrative authority to stop an act contrary to the EU consumer law, which harms the collective interests of consumers. It is left to the discretion of each Member State whether the injunction procedure is of judicial or/and administrative nature. The Fitness Check concluded that, in its current form, the ID is not as effective as it could be. In particular, the Fitness Check determined that the possible changes should be targeted towards: **(i) facilitating access to justice and reducing costs for the 'qualified entities' that protect the collective interests of consumers; (ii) increasing the deterrent effect of injunctions; and (iii) increasing the impact of the injunction on the affected consumers** (e.g. ability to obtain redress). For further information about the evaluation of the ID, please consult the [Study supporting the Fitness Check](#), in particular its main report (Part 1) and the country reports (Part 3), which would enable you to review the specific evaluation results regarding your Member State.

The revision of the Injunctions Directive will also build on the assessment of the implementation of the **2013 Commission Recommendation on Collective Redress**, which invited Member States to ensure in their

legal systems the existence of injunctive and compensatory collective relief in all areas of EU law. This assessment found that the impact of the Recommendation has been limited: only a few Member States have introduced new collective redress procedures or amended their legislation since the adoption of the Recommendation and nine Member States still do not provide for any possibility of claiming compensation collectively. In the Member States where compensatory redress exists in the area of consumer law, it is still reported to be too complex, costly and lengthy to fully reach its objectives (*the 2017 Commission Report on the implementation of the Recommendation will be published soon*).

**Please note that the possible legislative proposal would leave to the discretion of the Member States, as under the current ID, whether the procedure would be of judicial and/or administrative nature.**

**Terminology used in the questionnaire:**

'mass harm situation' means a situation where a number of consumers suffer or may suffer harm resulting from the same illegal activity of one or more natural or legal persons;

'collective interests of consumers' means interests which go beyond the cumulation of interests of individual consumers in a mass harm situation;

'qualified or representative entity' means any body or organisation (e.g. independent public bodies, consumer organisations, business associations) that represents the interests of consumers (*excluding public enforcement authorities and individual consumers*) by bringing an injunction or redress action;

'injunction order' means an order issued by a court/authority requiring the cessation or prohibition of any infringement by a trader;

'redress order' means an order issued by a court/authority requiring the provision of redress by the trader to the victims of the infringement;

'courts/administrative authorities' means courts and/or administrative authorities competent to rule in injunctions or redress proceedings. The possible legislative proposal would leave to the discretion of the Member States, as under the current ID, whether the procedure would be of judicial and/or administrative nature;

'follow-on actions' mean actions for consumer redress following a final court/administrative decision finding that there has been a breach of EU law.

## 2 Publication of your response:

Note that responses to this consultation, without personal data, will be published on the internet in a summarised form. In addition, quotes or opinions you express in this consultation may be also published.

Note that your response may be subject to a request for public access to documents under [Regulation \(EC\) N° 1049/2001](#)

It is important to read the specific privacy statement for information on how your personal data and contribution will be dealt with.

[EN-privacy-statement-REFIT-targeted.pdf](#)

## 2 About your organisation

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\*3 Please indicate the type of entity on whose behalf you are replying.

- Consumer protection authority
- Competition authority
- Consumer organisation
- Business organisation
- National ministry
- Judicial institution
- Legal practitioners
- European Consumer Centre
- Other

\*4 Are you a qualified entity authorised to bring injunctions under the Injunctions Directive?

- Yes
- No

\*5 Please provide the name of the entity on whose behalf you are replying.

BETTER FINANCE

\*6 Please give your e-mail address in case we have questions about your reply and need to ask for clarifications.

maczynska@betterfinance.eu

\*7 Please indicate the Member State(s) in which you operate.

- EU-wide
- Austria
- Belgium
- Bulgaria
- Croatia
- Cyprus
- Czech Republic
- Denmark
- Estonia
- Finland
- France
- Germany
- Greece
- Hungary
- Iceland
- Ireland
- Italy
- Latvia
-

- Lithuania
- Luxembourg
- Malta
- Netherlands
- Norway
- Poland
- Portugal
- Romania
- Slovak Republic
- Slovenia
- Spain
- Sweden
- United Kingdom

## 3 Survey

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### 3.1 Legal situation

8 Please provide information on the **action brought by qualified entities for stopping/prohibiting infringements of EU law** affecting the collective interest of consumers, as currently in force in your Member State.

	Yes	No	Do not know
Independent public bodies are qualified entities	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Consumer organisations are qualified entities	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Business associations are qualified entities	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Qualified entities benefit from facilitated access to justice if they are not able to pay the costs related to bringing the action	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Courts/administrative authorities have the power to require the trader to provide information in its possession	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Traders may be obliged to publicise the injunction order (e.g. on their website, in newspapers, via social media)	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Traders may be obliged to individually inform all concerned consumers about the injunction order	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Once the injunction order is issued, all affected consumers are able to use the injunctions order as proof of the breach of EU law for their follow-on actions for damages	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
There are maximum time-limits for issuing injunction order as an <u>interim measure</u>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

There are maximum time-limits for issuing injunction order as definitive measure




9 Please explain your reply.

Since the situation differs significantly between various Member States at the moment, it is not possible for BETTER FINANCE to respond to some of the questions from the EU perspective.

10 Please provide information on the **action brought by representative entities for consumer redress**, as currently in force in your Member State.

	Yes	No	Do not know
Independent public bodies are representative entities	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Consumer organisations are representative entities	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Business associations are representative entities	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Representative entities benefit from facilitated access to justice if they are not able to pay the costs related to bringing the action	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Representative entities are able to seek injunctions as an <u>interim measure</u> and consumer redress within a single legal procedure	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Representative entities are able to seek injunctions as a <u>definitive measure</u> and consumer redress within a single legal procedure	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Courts/administrative authorities have the power to require the trader to provide information in its possession	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Courts/administrative authorities have the power to invite the representative entity and the trader to negotiate out-of-court an amicable settlement for the consumers' redress	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
The out-of-court settlement negotiated between the representative entity and the trader is subject of the approval of a court/administrative authority	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Traders may be obliged to publicise the redress order (e.g. on their website, in newspapers, via social media)	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Traders may be obliged to individually inform all concerned consumers about the redress order	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
There are maximum time-limits for issuing redress order	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Traders who do not comply with a redress order face effective, proportionate and dissuasive penalties for non-compliance	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Traders who do not comply with an approved settlement face effective, proportionate and dissuasive penalties for non-compliance	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

11 Please explain your reply.

Since the situation differs significantly between various Member States at the moment, it is not possible for BETTER FINANCE to respond to some of the questions from the EU perspective.

### 3.2 Proposals

The Fitness Check concluded that, in its current form, the ID is not sufficiently effective in meeting its objectives. The main obstacles to its effectiveness include the injunction procedure's **cost, length, complexity and limited effects** on alleviating the harm suffered by the affected consumers.

12 Having in mind the above objective of increasing the effectiveness of the ID, **do you agree** with the following statements?

	Strongly agree	Tend to agree	Tend to disagree	Strongly disagree	Do not know
The scope of the ID should be extended to all EU law relevant for the protection of the "collective interests of consumers" (areas going beyond the existing Annex I to the ID, e.g. passenger rights, energy services, telecommunications, data protection)	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Independent public bodies should be qualified entities	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Consumer organisations should be qualified entities	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Business associations should be qualified entities	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Qualified entities should meet independence criteria (e.g. representativeness of the interests affected, no conflict of interest)	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Qualified entities should benefit, under objective criteria, from facilitated access to justice if they are not able to pay the costs related to bringing the action	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Qualified entities should be able to seek injunctions and consumer redress within a single legal procedure	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

Courts/administrative authorities should have the power to require the trader to provide information in its possession	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Courts/administrative authorities should have the power to invite the qualified entity and the trader to negotiate out-of-court an amicable settlement for the consumers' redress	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
The out-of-court settlement negotiated between the qualified entity and the trader should be subject of the approval of a court /administrative authority	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Traders should be obliged to publicise the injunction order, redress order and approved settlement (e.g. on their website, in newspapers, via social media)	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Traders should be obliged, where possible and proportionate, to individually inform all concerned consumers about the injunction order, redress order and approved settlement	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Traders who do not comply with an injunction order, redress order or approved settlement, should face effective, proportionate and dissuasive penalties for non-compliance	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Once the injunction order is issued, all affected consumers should be able to use the injunctions order as proof of the breach of EU law for their follow-on actions for damages	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Follow-on actions for damages should always be available also in the form of collective action	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
There should be maximum time-limits for all procedural steps, while leaving the necessary margin of discretion for courts and administrative authorities to take due account of the concrete circumstances of the case	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

13 Please explain your reply and list **any other procedural or practical elements** that could improve the effectiveness of the ID.

BETTER FINANCE does not see any justification for restricting the impact of the Injunctions Directive to a very limited concept of consumer protection measures, i.e. only to the areas covered by 12 directives mentioned in the

annex 1. BETTER FINANCE strongly recommends to extend the scope of the directive to, at the very least, financial services. More and more consumer protection rules in the financial services area are decided at the EU level. Therefore, rules on redress mechanisms should also be adopted at the EU level and cover financial services. Without redress mechanisms, even the best EU legislation cannot be implemented and enforced efficiently. This is all the more critical in the area of financial services as financial products and services have a huge impact on consumer welfare and they are usually quite technical and complex (if not opaque).

There have been many mis-selling scandals erupting in the financial services industry with a number of detrimental effects on consumers. Moreover, in the EC Consumer Markets Scoreboard "retail" financial services are still ranked as the worst consumer markets in the entire European Union.

BETTER FINANCE has underlined in our 2017 "Briefing Paper on mis-selling of Financial Products" ([http://betterfinance.eu/fileadmin/user\\_upload/documents/Research\\_Reports/en/Misselling\\_of\\_Financial\\_Products\\_in\\_the\\_EU\\_-\\_Briefing\\_Paper\\_2017.pdf](http://betterfinance.eu/fileadmin/user_upload/documents/Research_Reports/en/Misselling_of_Financial_Products_in_the_EU_-_Briefing_Paper_2017.pdf)) that a Pan-European collective redress mechanism, modelled on best practices in Europe, should be developed as one way of tackling the problems with mis-selling of financial products. In fact, EU consumers suffering from a damage caused by the same financial services provider and individual investors suffering damages caused by the same issuers should be able to join their claims together into one single action in all Member States. As BETTER FINANCE has demonstrated in our Paper, we have found evidence of numerous mis-selling cases, most often arising from misleading information and/or conflicts of interests in the distribution. Moreover, our experience indicates that individuals as financial services users are not equipped to assess their detriment, and even less equipped to obtain redress in court on their own: it is very often too technical and too costly for them. Also, court cases can take many years to close and contrary to consumer goods such as drugs and cars, most financial products are not pre-tested by Public Authorities. Therefore, abuses should be even more effectively identified and sanctioned, and the victims properly indemnified. This is a must if the EU truly wants to restore consumer confidence in financial services, and for those to stop being ranked as the worst consumer market of the whole EU. To this end, existing, well-established and experienced organisations representing interests of consumers as savers and financial services users as well as individual investors - that can be considered as a 'safety net' in the system - should be recognized as entities eligible to bring both injunction actions and representative actions for damages.

Furthermore, in recognition of the public interest function of the proceedings BETTER FINANCE would also suggest that the claimant should not be required to pay the trader's costs (or at least not to pay them in full amount) even where an action is unsuccessful - as long as the claimant does not act unreasonably (similar rules are in place in Portugal and Malta).

14 If the following procedural changes were introduced at EU-level, which elements would in your view **introduce added value in your Member State**, taking into account the nature and frequency of use of the procedures available in your Member State? (multiple options possible)

- The scope of the ID should include all EU law relevant for the protection of the "collective interests of consumers"
- Independent public bodies should be qualified entities
- Consumer organisations should be qualified entities
- Business associations should be qualified entities
- Qualified entities should meet independence criteria (e.g. representativeness of the interests affected, no conflict of interest)
- Qualified entities should benefit, under objective criteria, from facilitated access to justice if they are not able to pay the costs related to bringing the action
- Qualified entities should be able to seek injunctions and consumer redress within a single legal procedure
- Courts/administrative authorities should have the power to require the trader to provide information in its possession
- Courts/administrative authorities should have the power to invite the qualified entity and the trader to negotiate out-of-court an amicable settlement for the consumers' redress
- The out-of-court settlement negotiated between the qualified entity and the trader should be subject of the approval of a court/administrative authority
- Traders should be obliged to publicise the injunction order, redress order and approved settlement (e.g. on their website, in newspapers, via social media)
- Traders should be obliged, where possible and proportionate, to individually inform all concerned consumers about the injunction order, redress order and approved settlement
- Traders who do not comply with an injunction order, redress order or approved settlement, should face effective, proportionate and dissuasive penalties for non-compliance
- Once the injunction order is issued, all affected consumers should be able to use the injunctions order as proof of the breach of EU law for their follow-on actions for damages
- Follow-on actions for damages should always be available also in the form of collective action
- There should be maximum time-limits for all procedural steps, while leaving the necessary margin of discretion for courts and administrative authorities to take due account of the concrete circumstances of the case

15 Please explain your reply.

For the reasons mentioned in the answer to question 13, it needs to be ensured that not only general interest consumer associations but also well-established and experienced user-side organisations protecting the interest of consumers as savers and financial services users as well as individual investors will be officially designated as qualified entities that can bring both injunction actions and representative actions for damages. Additionally, already in 2011 in the Financial Services User Group (FSUG) response on "Towards a coherent European approach to collective redress" it was stressed that thanks to these organisations' experience with enforcement actions, their limited resources and their reputation towards the public it would be ensured that only meritorious claims are pursued. As experience has proven, those organisations will reflect seriously before engaging resources in litigation. In fact, this can be notably demonstrated by the high proportion of successful claims that consumer and individual investor organisations win when taking providers to court. Collective redress, if well designed and including saver and individual investor organisations, would be an effective solution that would facilitate and make legal remediation of damages easier both time and cost wise.

As regards the designation of the representative bodies that are granted standing in bringing both injunction actions and representative actions for damages, BETTER FINANCE believes these bodies might be both:

- officially designated in advance according to the criteria laid down by Member States (as long as those do not use it to restrict access to general purpose organizations only, but also, for example to individual investor and saver organisations), and/or
- certified by courts on ad hoc basis - courts would check the representativeness of the claimant taking into account the specificities of the case.

Moreover, if the court/authority invites the parties to negotiate the amicable settlement, there should be safeguards against traders using this time as delaying tactics, making it more difficult to collect evidence or to reduce the limitation periods for the claims. Interim measures such as freezing of financial assets should be possible, and the time for negotiations should be limited.

16 Do you agree that **differences between national injunction procedures** cause the following problems?

	Strongly agree	Tend to agree	Tend to disagree	Strongly disagree	Do not know
Costs for traders engaging in cross-border trade due to the need to adapt to different national procedures	<input type="radio"/>				
Costs for traders engaging in cross-border trade due to the unequal deterrent effect of national procedures	<input type="radio"/>				
Costs for qualified entities that wish to bring injunctions before the courts/authorities of other Member States	<input type="radio"/>				
Harm to consumers due the continuation of the infringement caused by the sub-optimal use of injunctions in cross-border situations	<input type="radio"/>				

17 Please explain your reply, including any other problems not listed above.

### 3.3 Case study

## **A hypothetical mass harm situation: an infringement of EU law affecting the collective interests of consumers**

A large producer and retailer of household appliances (Company X) is established in your Member State and sells its goods across all EU Member States. Company X produces and sells a fridge that is advertised as "complying with existing rules" and as "environmentally friendly" with a value of 500 EUR per fridge. Approximately 50 000 consumers in your Member State have already purchased this fridge, while a total of 8 000 000 consumers purchased the fridge across the EU. It turns out that the fridge sold by Company X does not meet existing rules and the fridge is not as environmentally friendly as advertised. Company X was deliberately misleading the consumers that bought and may still buy the fridge, which may constitute an infringement of EU law, particularly of the rules that prohibit misleading advertising in the Unfair Commercial Practices Directive 2005/29/EC. Furthermore, there is considerable evidence that Company X was involved in a price-fixing agreement with other household appliances producers for this type of fridges.

In order to ensure the effectiveness of EU law and to protect the collective interests of 50 000 consumers in your Member State that already bought the fridge and consumers that may still buy this product, legal action must be taken by a qualified/representative entity against Company X.

**Based on the facts of this case study, please consider the hypothetical application of:**

**(1) the current procedural rules in your Member State;**

**(2) the impact of the new rules that could be in place following the envisaged revision of the Injunctions Directive under option A or option B.**

### **3.3.1 (1) Current situation under national rules**

18 Under the current procedural rules of your Member State, if an **injunction action** was brought by a qualified entity, would you agree that it would be **likely to succeed** in effectively and efficiently stopping the infringement?

- Strongly agree
- Tend to agree
- Tend to disagree
- Strongly disagree
- No opinion / Do not know

19 Please explain your reply, referring to the **reasons for the success or failure**.

20 Under the current procedural rules of your Member State, if an **compensatory redress action** was brought by a qualified entity, would you agree that it would be **likely to succeed** in effectively and efficiently securing redress for consumers?

- Strongly agree
- Tend to agree
- Tend to disagree

- Strongly disagree
- No opinion / Do not know

21 Please explain your reply, referring to the **reasons for the success or failure**.

Since only some of the Member States have functioning collective redress procedures at the moment, it is not possible for BETTER FINANCE to respond to this question from the EU perspective.

22 If the **injunctions procedure** would be likely to fail in effectively stopping the breach of law, which of the following aspects would **contribute significantly to its failure** in your Member State? (multiple answers possible)

- Not all areas of law covered by the procedure
- Too strict criteria for qualified entities
- Lack of funding for qualified entities
- Complexity of the procedures
- Length of the procedures
- Cost of the procedures
- Insufficient level of traders' compliance with the injunctions order
- Lack of effective scheme for execution of injunctions order
- Lack of measures ensuring that consumers are informed about the breach of law affecting them
- Lack of a possibility to seek injunctions and redress within a single procedure
- No opinion / Do not know

23 Please explain your reply and highlight **other contributing factors** that are not listed.

24 If the **collective compensatory procedure** would be likely to fail in effectively ensuring redress, which of the following aspects would **contribute significantly to its failure** in your Member State? (multiple answers possible)

- Not all areas of law covered by the procedure
- Too strict criteria for representative entities
- Lack of funding for representative entities
- Complexity of the procedures
- Length of the procedures
- Cost of the procedures
- Courts/authorities are not obliged to encourage out-of-court settlements between the representative entities and traders
- Approval of the out-of-court settlements between the representative entities and traders by court /authority is not regulated by national law
- Insufficient level of traders' compliance with the judgments/decisions providing for redress
- Lack of effective scheme for execution of judgments/decisions providing for redress
- Lack of measures ensuring that consumers are informed about the breach of law affecting them
- Lack of measures ensuring that consumers affected by the breach can rely on injunction orders to bring their follow-on redress actions
- No opinion / Do not know

25 Please explain your reply and highlight **other contributing factors** that are not listed.

BETTER FINANCE strongly recommends that all infringements that affect the collective interest of consumers are included in the material scope of the future EU measure. To this end, considering the significant detriment that market abuse in the financial sector can cause to individual consumers it is of crucial importance for compensatory collective redress to cover also financial services where many mis-selling cases have been reported.

Another important issue is funding. Even when consumer, individual investor or saver organisations could win the case, often they would not be able to recover all the costs. Regrettably, this is especially valid for user-side organisations such as saver and individual investor organisations that, even if very experienced and well established, usually cannot count on government funding and in fact have very limited financial resources. Therefore, without appropriate funding only a very limited number of cases could be handled by them. This situation could be remedied by an adaptation of the principle of 'loser pays' that could be based on the public interest of collective actions.

26 Under the current procedural rules of your Member State, if action were to be taken to protect the collective interests of consumers (injunctions or compensatory procedures), which **costs do you consider to be highest** in such a case? (multiple answers possible)

- Costs of preparation of the case (e.g. collecting information about harmed consumers, translation, publicity)
- Lawyers' fees
- Court/administrative fees
- Reimbursement of costs of the other party in case of loss
- Reimbursement of lawyers' fees of the other party in case of loss
- Costs of settling the dispute out-of-court
- Other (please explain below)
- No significant costs
- No opinion / Do not know

27 Please explain your reply.

28 If possible, please estimate the costs for each category.

You may wish to answer either in staff time or in amount in Euros, or both. Do not consider staff time for translation. If no staff time was involved, indicate '0'.

	Estimated amount of working hours of staff	Estimated amount in EUR
Costs of preparation of the case (e.g. collecting information about harmed consumers, translation, publicity)		
Lawyers' fees		
Court/administrative fees		
Costs of settling the dispute out-of-court		
Other cost of action		
Other financial risk related to the action		

29 Please explain your reply concerning the costs listed above.

Since the situation regarding costs varies in different Member States, it is not possible for BETTER FINANCE to respond to this question from the EU perspective.

30 Please explain how **court/administrative fees** are calculated in the **injunction procedure** in your Member State.

Since the situation regarding costs varies in different Member States, it is not possible for BETTER FINANCE to respond to this question from the EU perspective.

31 Please explain how **court/administrative fees** are calculated in the **collective compensatory redress** procedure in your Member State.

Since the situation regarding costs varies in different Member States, it is not possible for BETTER FINANCE to respond to this question from the EU perspective.

32 Can **lawyers' fees** be capped in the **injunction procedure** in your Member State?

- Yes
- No
- Do not know

33 If 'yes', please explain the method of capping the fees.

Since the situation regarding costs varies in different Member States, it is not possible for BETTER FINANCE to respond to this question from the EU perspective.

34 Can **lawyers' fees** be capped in the **collective compensatory redress** procedure in your Member State?

- Yes
- No
- Do not know

35 If 'yes', please explain the method of capping the fees.

Since the situation regarding costs varies in different Member States, it is not possible for BETTER FINANCE to respond to this question from the EU perspective.

36 Can the **cost of preparation of the case** be reimbursed in the **injunction procedure** in your Member State?

- Yes
-

No

Do not know

37 If 'yes', please explain the method of reimbursement.

Since the situation regarding costs varies in different Member States, it is not possible for BETTER FINANCE to respond to this question from the EU perspective.

38 Can the **cost of preparation of the case** be reimbursed in the **collective compensatory redress** procedure in your Member State?

Yes

No

Do not know

39 If 'yes', please explain the method of reimbursement.

Since the situation regarding costs varies in different Member States, it is not possible for BETTER FINANCE to respond to this question from the EU perspective.

### 3.3.2 (2) New rules under option A

Please consider the following questions in light of the procedure, which has the following features (policy "option A"):

- The procedure covers all EU law relevant for the protection of the collective interests of consumers.
- Independent public bodies, consumer organisations and business associations are allowed to bring injunctions as qualified entities, subject to independence criteria.
- Access to justice is facilitated for qualified entities that are not able to fully cover litigation costs.
- Maximum time-limits for each stage of the procedure are defined by law, while leaving discretion for courts/administrative authorities to take due account of the concrete circumstances of the case.
- Courts/administrative authorities have the power to require the trader to provide information in its possession needed to assess the lawfulness of the practice subject to the injunctions procedure.
- The infringing trader is required to widely publicise about the injunctions order (e.g. website, newspapers, social media) and, where possible, to individually inform thereof all concerned consumers.
- Effective, proportionate and deterrent financial penalties are ensured in case of non-compliance by the trader with the outcomes of the procedure.

- All interested consumers can invoke the injunction order as proof of the breach of EU law in follow-on actions.

40 Under option A, what would be the **impact** of the introduction of the above-mentioned new rules on the following?

	Significant positive impact	Moderate positive impact	No impact	Moderate negative impact	Significant negative impact
Procedural efficiencies due to the collective resolution of mass claims	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Increased deterrence of illegal behaviour by non-compliant traders	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
More level playing field for compliant traders	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Increased consumer awareness and empowerment due to the publicity requirements at all stages of the procedure	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Reduction of consumer detriment	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>

41 Please explain your reply, including other impacts that were not listed, the reasons for your assessment and any evidence you might be aware of.

BETTER FINANCE supports the idea to facilitate the access to justice for the entities that are not able to cover litigation costs as well as the requirements to widely publicize the injunction order, together with deterrent penalties.

However, if injunction orders could only be invoked as proof in follow-on individual actions, the impact on reduction of consumer detriment would be very limited as consumers will refrain from going to court to claim damages individually. Especially in the context of typically complex and technical financial products and services, that have a huge impact on consumers' and individual investors' well-being, the damage itself is very often difficult to quantify, even for specialised lawyers. As BETTER FINANCE has already pointed out in its 2017 "Briefing Paper on Mis-selling of Financial Products", collective procedures are necessary to remedy the current situation and a well designed collective redress, including saver and individual investor organisations recognised as qualified entities, would be an effective solution that would facilitate and make legal remediation of damages easier both time- and cost- wise.

42 Under option A, what would be the **cost impact** of the introduction of the above-mentioned new rules on the following?

	Significant reduction of costs	Moderate reduction of costs	No impact	Moderate increase of costs	Significant increase of costs
Costs for qualified entities: legal advice costs	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Costs for qualified entities: litigation costs	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Costs for consumers: costs of seeking injunctions	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Costs for consumers: costs of seeking redress through follow-on actions (relying on injunction order as proof)	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Costs for courts: implementation costs	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Costs for administrative authorities: implementation costs	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Costs for courts: running costs	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Costs for administrative authorities: running costs	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Costs for businesses: legal advice costs	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Costs for businesses: litigation costs	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Costs for businesses: insurance premium for coverage against claims in mass harm situations	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Costs for business: publicity requirements concerning the injunction order	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Costs for business: obligation to individually inform all concerned consumers	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

43 Please explain your reply and the reasons for your assessment.

Since the situation regarding costs varies in different Member States, it is not possible for BETTER FINANCE to respond to this question from the EU perspective.

44 Which **other significant impacts**, which are not listed above, do you expect from the introduction of the new rules of Option A?

45 What would be the impact of introducing the new rules of Option A on the **costs of your institution or business**?

- There will be no impact on my costs
- My costs will increase
- My costs will decrease
- Do not know

46 Please explain your reply and quantify to the extent possible.

Since the situation regarding costs varies in different Member States, it is not possible for BETTER FINANCE to respond to this question from the EU perspective.

47 Do you agree that these **costs are reasonable**, when taking into account the possible benefits for consumers?

- Strongly agree
- Tend to agree
- Tend to disagree
- Strongly disagree
- No opinion / Do not know

48 Please explain your reply.

49 If it is possible to quantify such costs, what would be the **estimated costs** of adjusting to the new rules of Option A **for your institution or business**?

You may wish to answer either in staff time or in amount in Euros, or both. "One-off costs" are the one-off resources you need to invest. "Annual costs" are the resources you need to invest on a regular basis to comply with rules. Do not consider staff time for translation. If no staff time was involved, indicate '0'.

	Estimated amount of working hours of staff	Estimated amount in EUR
Absolute costs for adjustment to the new rules for implementation ( <b>one-off costs</b> )		
Absolute annual additional costs due to new rules ( <b>annual costs</b> )		

50 Please explain how you calculated the costs.

### 3.3.3 (2) New rules under option B

Please consider the following questions in light of the procedure described as policy "option B", which **in addition to the features of policy option A**, has the following features concerning **redress**:

- A single procedure ("one stop shop") whereby qualified entities would be able to ask courts /administrative authorities for stopping a breach of the collective interests of consumers (injunction order) and for redress (redress order).
- The court/administrative authority would have the power to invite the qualified entity and the trader to negotiate an amicable settlement out-of-court.
- If settlement is reached it would be subject to the approval of the court/administrative authority.
- If no amicable settlement is reached or if it is not approved, the court/administrative authority would continue collective redress procedures according to national law.
- The infringing trader is required to widely publicise about the injunction/redress order and/or approved settlement (e.g. website, newspapers, social media) and, where possible, to individually inform thereof all concerned consumers.

51 Under option B, what would be the **impact** of the introduction of the above-mentioned new rules on the following?

	Significant positive impact	Moderate positive impact	No impact	Moderate negative impact	Significant negative impact
Procedural efficiencies due to the collective resolution of mass claims	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Increased deterrence of illegal behaviour by non-compliant traders	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
More level playing field for compliant traders	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

Increased consumer awareness and empowerment due to the publicity requirements at all stages of the procedure	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Reduction of consumer detriment	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

52 Please explain your reply, including other impacts that were not listed, the reasons for your assessment and any evidence you might be aware of.

BETTER FINANCE strongly supports Option B that would ensure introducing procedures for collective redress in all Member States as an element of a “one stop shop” procedure. This would finally provide access to justice for European consumers, and enable them to get compensation in cases of mass harm.

However, for this option to be truly successful several additional conditions have to be fulfilled:

- qualified entities officially designated in the law as eligible to bring both injunctions actions and and representative actions for damages have to include individual investor and saver organisations
- the scope of the injunction and compensatory procedures is extended beyond the far too narrow list of 12 directives as in the current annex 1 to the Injunctions Directive. In fact, the procedures should be applicable to all infringements that bring harm to consumers (in line with Article 169 TFEU), and - at the very least - ID scope should be extended to financial services as this is the most relevant sector concerning observed mass claims/issues (demonstrated e.g. in the findings of Civic Consulting Studies in 2008);
- derogation from "loser pays" principle - as the costs and financial risks of collective actions may prohibit qualified entities from taking even the most important cases, the judge or the authority should have a discretion not to apply or to adapt the “loser pays” principle.

53 Under option B, what would be the **cost impact** of the introduction of the above-mentioned new rules on the following?

	Significant reduction of costs	Moderate reduction of costs	No impact	Moderate increase of costs	Significant increase of costs
Costs for qualified entities: legal advice costs	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Costs for qualified entities: litigation costs	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Costs for consumers: costs of seeking redress	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Costs for courts: implementation costs	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

Costs for administrative authorities: implementation costs	<input type="radio"/>				
Costs for courts: running costs	<input type="radio"/>				
Costs for administrative authorities: running costs	<input type="radio"/>				
Costs for businesses: legal advice costs	<input type="radio"/>				
Costs for businesses: litigation costs	<input type="radio"/>				
Costs for businesses: insurance premium for coverage against claims in mass harm situations	<input type="radio"/>				
Costs for business: publicity requirements concerning the injunction order, redress order and approved settlement	<input type="radio"/>				
Costs for business: obligation to individually inform all concerned consumers	<input type="radio"/>				

54 Please explain your reply and the reasons for your assessment.

Since the situation regarding costs varies in different Member States, it is not possible for BETTER FINANCE to respond to this question from the EU perspective.

55 Which **other significant impacts**, which are not listed above, do you expect from the introduction of the new rules of Option B?

Option B would be truly revolutionary as long as the future measure would cover all areas of consumer law and qualified entities would include consumer, saver and individual investor organisations. Only then, it would finally reduce the gap in access to justice for EU consumers, including financial services end-users and individual investors, and make it possible for them to get compensation in cases of mass harm, also in such crucial area as financial services where the consumer harm is enormous.

BETTER FINANCE would like to underline that individuals as financial services users are not able to properly assess their detriment, and even less equipped to obtain redress in court on their own. With experienced and well-established saver and individual investor organisations able to bring both injunction actions and representative actions for damages, at last, the deterrence against consumer laws infringements would be significantly increased, creating a level playing field for businesses operating in the EU.

56 What would be the impact of introducing the new rules of Option B on the **costs of your institution or business**?

- There will be no impact on my costs
- My costs will increase
- My costs will decrease
- Do not know

57 Please explain your reply and quantify to the extent possible.

Since the situation regarding costs varies in different Member States, it is not possible for BETTER FINANCE to respond to this question from the EU perspective.

58 Do you agree that these **costs are reasonable**, when taking into account the possible benefits for consumers?

- Strongly agree
- Tend to agree
- Tend to disagree
- Strongly disagree
- No opinion / Do not know

59 Please explain your reply.

60 If it is possible to quantify such costs, what would be the **estimated costs** of adjusting to the new rules of Option B **for your institution or business**?

You may wish to answer either in staff time or in amount in Euros, or both. "One-off costs" are the one-off resources you need to invest. "Annual costs" are the resources you need to invest on a regular basis to comply with rules. Do not consider staff time for translation. If no staff time was involved, indicate '0'.

	Estimated amount of working hours of staff	Estimated amount in EUR
Absolute costs for adjustment to the new rules for implementation ( <b>one-off costs</b> )		
Absolute annual additional costs due to new rules ( <b>annual costs</b> )		

61 Please explain how you calculated the costs.

### 3.4 Policy paper / other comments

62 Please upload your policy paper or other comments in a Word or PDF file.

#### **Contact**

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