

## **BETTER FINANCE’s feedback on the “New deal for consumers”- Proposal for a 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 dedicated representative of financial services users at European level. It counts about fifty national and international members and sub-member organizations in turn comprising about 4.5 million individual members. Our organization acts as an independent financial expertise centre to the direct benefit of the European financial services users (shareholders, other investors, savers, pension fund participants, life insurance policy holders, borrowers, etc.) and other stakeholders of the European financial services who are independent from the financial industry. As such its activities are supported by the European Union since 2012.

**BETTER FINANCE** is the most involved European end user and civil society organisation in the EU Authorities’ financial advisory groups, with experts participating in the Securities & Markets, the Banking, the Occupational Pensions and Insurance and Reinsurance Stakeholder Groups of the European Supervisory Authorities; as well as in the European Commission’s Financial Services User Group (FSUG), and in the European Financial Reporting advisory Group (EFRAG). Its national members also participate in national financial regulators and supervisors bodies when possible.

For further details please see our website: <http://betterfinance.eu/>

### *A collective redress scheme for financial services users*

BETTER FINANCE welcomes and supports this proposal setting a minimum EU-wide framework for collective redress mechanisms across Member States which will be available for financial services users. Like for other sectors, there is indeed a clear need for collective redress scheme for financial services. This proposal is in the interest of EU citizens as retails investors and pension savers since the current EU legislative framework lacks any effective redress mechanism, leaving many consumers unable to exercise their rights.

There have been numerous mis-selling scandals in the financial services industry that have harmed savers and individual investors. In many of these cases (e.g. the French COREM, formerly CREF) the lack of collective redress mechanisms prevented most victims from seeking compensation for losses and damages suffered.

An EU-wide collective redress mechanism for all financial services users such as savers, retail investors, life insurance policy holders, pension fund participants, small and individual shareholders or employee shareholders is therefore more than needed as pointed out by BETTER FINANCE<sup>1</sup>.

The right to redress and the right to access to justice is especially important in the area of financial services as financial products have a serious impact on the quality of life of active and retired citizens. Moreover, financial products are often technical and complex making it very difficult for users to even evaluate the extent of their detriment.

However, BETTER FINANCE would like to raise concern on the following points:

***1. Requirement to obtain a final injunction***

As provided in articles 5(2) and 10 of the proposal, the procedure requires claimants to first obtain a final injunction order from a court before the judge decides whether to allow for some form of collective compensation. This requirement may severely prolong the procedure and increase its cost to the detriment of consumers.

***2. Redress measures at the discretion of Member States***

BETTER FINANCE regrets that the proposal lacks ambition as regards the effectiveness of the redress tool.

Indeed, as provided in article 6(1) of the proposal, both the form of the representative action and the requirement for an official mandate from each victim (i.e. the choice between the “opt-in” or “opt-out” procedure) are left at the discretion of Member States.

This is all the more unfortunate as it has been already proven that the opt-out system offers victims better protection, especially when they are not aware of their rights and many times even the detriment itself. Furthermore, since the rate of participation in the opt-out system is much higher, many more abused EU financial users would be reached and indemnified.

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<sup>1</sup> Please see BETTER FINANCE’s Briefing Paper on Mis-selling of Financial Products, page 27, Section 5.2 [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)

### ***3. Exclusion of EU citizens/consumers directly investing in capital markets from the collective redress scheme***

Even though the proposal represents a significant progress for financial services users, it seems inconsistent and discriminatory.

In fact, on the one hand it offers protection to consumers who invest their money in capital markets indirectly (in intermediated, “packaged” investment products), but on the other hand it excludes such protection for EU citizens investing directly in the economy (i.e. individual shareholders), since the Market Abuse Directive and Regulation provisions are most unfortunately excluded from the EC proposal’s scope.

Consequently, individual investors suffering damage by the issuer, which e.g. has violated ad-hoc disclosure rules, like allegedly VW, still won’t be able to join their claims together and claim collectively across all Member States.

As it stands now, the New Deal will not help regain the badly needed EU investors’ trust and boost their confidence and is quite in contradiction with the Commission’s flagship project – the Capital Markets Union which aims at “fostering investments into capital markets”.