

BETTER FINANCE's Answer on Inception Impact Assessment- A new deal for consumers- revision of the Injunctions Directive

BETTER FINANCE (BF) welcomes the opportunity to comment on the Inception Impact Assessment on the revision of the Injunctions Directive. We strongly support option 4 which would provide for a targeted revision of the Injunction Directive and introduce further procedural efficiencies and redress opportunities in mass harm situations.

BF believes that the Option 4 would be truly revolutionary for savers, individual investors and consumers under the below mentioned conditions. Please see our position in attachment.

1. Extending the scope of the directive

The right to claim compensation and the right to access to justice should not remain theoretical for consumers and investors. It is especially important in the area of financial services where quite technical and complex financial products have a serious impact on the quality of life of active and retired citizens and where due to the lack of an effective redress mechanism many consumers are unable to exercise their rights. Therefore, BETTER FINANCE strongly supports extending the scope of the directive a. to all consumer law areas (in line with article 169 of the TFEU) or at least to financial services, and to a collective redress mechanism.

There have been many mis-selling scandals erupting in the financial services industry with a number of detrimental effects on consumers. Consequently, in the EC Consumer Markets Scoreboard "retail" financial services are ranked as the worst consumer markets in the entire EU – consumers and investors have lost their trust in financial services and their providers. 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 caused by mis-selling of financial products. To this end, 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 – not only to stop infringements and seek injunctions but also to be compensated for their losses. As we demonstrated in our Briefing Paper, we have found evidence of numerous mis-selling cases, most often arising from misleading information and/or conflicts of interests in the distribution chain. 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. This is even more true in light of the envisaged CMU and the increasing cross-border situations financial services users find themselves in. Therefore, abuses should be even more effectively identified and sanctioned, and the victims need to be properly indemnified. A combination of both collective mechanism opportunities at EU level is a

must if the EU truly wants to restore consumer confidence in financial services and to enforce legislation in the area of consumer/investor protection.

2. Standing of consumer, saver and individual investor organizations

BETTER FINANCE believes that experienced and well-established organizations representing the interests of consumers, savers and individual investors, should be recognized in the future measure as entities eligible to bring both injunction actions and collective redress actions in a “one stop shop” procedure.

Moreover, it has to be ensured that conditions for eligibility to bring representative actions are not used to the detriment of consumers, savers and individual investors organisations. In some cases, the financial resources of these organisations are very limited as they are independent, thus not funded by the industry, and often they do not receive public funding either. In this context, it is very important for those organisations to be designated in the law as qualified entities able to bring both injunctions and collective redress actions. Otherwise, the 2013 *Recommendation* criterion in Article 4c) concerning organisation’s “sufficient capacity in terms of financial resources, human resources, and legal expertise to represent multiple claimants acting in their best interest” would make it easy for traders to challenge these organisations in the court, prolong the proceedings and use this criterion against the interests of consumers.