



**BETTER FINANCE
FOR ALL**

The European Federation of Financial Services Users
Fédération Européenne des Usagers des Services Financiers



Draft Effective Approaches to Support the Implementation of the remaining G20/OECD High-Level Principles on Financial Consumer Protection

Better Finance Response to the Informal Consultation of 14 May 2014 by OECD (and closed 30 May 2014)

30 May 2014

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Better Finance Response to the Informal Consultation by the OECD

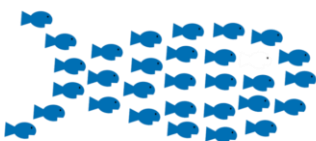
Better Finance welcomes this informal consultation by OECD, although it regrets the very short deadlines provided. Two weeks is clearly too short a time frame to consult our member organisations and to perform an in-depth review.

We would like to congratulate the OECD Task Force on Financial Consumer Protection, as these “draft effective approaches to support the G20/OECD high-level principles on financial consumer protection” include a lot of excellent recommendations that - if implemented by OECD Member States – should enhance the protection of consumers of financial services.

There are however several areas of concern that we would like to stress in the following comments.

In general, Better Finance would like to refer to its 2014 Manifesto that highlights its key request and priorities in terms of retail financial services policies.

Our specific comments refer to the numbered items of the Draft Proposals themselves, and the items commented are quoted first to facilitate reading.





20 - *To ensure that financial consumer protection (collective and/or individual) is at the centre of financial regulation and supervision, several approaches can be identified:*

- *Regulators and/or supervisors establish individual units with adequate resources, to focus on and have responsibility for financial consumer protection issues.*
- *The founding statute of an agency or agencies lists financial consumer protection as one of the main strategic objectives of that agency or agencies.*

Comment:

There is of course a third and much more effective way, which is **to create a “twin peaks” supervisory structure** clearly separating prudential supervision from conduct of business supervision.

This approach being so much more effective to ensure financial consumer protection, that it should be promoted by OECD as the most effective- approach.

24 - *Information is collected from various sources to facilitate the identification of emerging consumer protection risks. These can include the following:*

Comment: Add “And consulting consumer organisations”.

31 - *General principles of financial consumer protection are applied across provider types offering similar products and services.*

Comment: Add “Are applied consistently ...”.





47 - *For complex retail financial products, regulators and supervisors have the necessary tools to control or mitigate significant consumer risks, for example, the ability to temporarily limit or suspend the marketing and selling of such products.*

Comment:

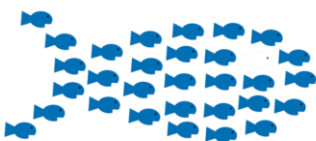
The ability for regulators and supervisors to intervene on products **should certainly not be limited to “complex” products**, but to all products that are likely to be detrimental, harmful or toxic for consumers.

Complexity is not in our view the relevant key criterion for supervisors’ product intervention.

1. Complexity has to be much **more clearly and precisely defined**: is it the internal structuring of the products, or is it the objective, service to be rendered that is complex? For example aspirin as a very complex chemical formula that almost no consumer knows and understands. However, the effects and services rendered by aspirin are quite clear for most consumers. What applies to physical health applies as well to financial health: the latter approach should be expressly chosen.
2. **Complexity is not the main issue**, like for physical health, toxicity is the main issue. It must be also clearly defined for retail financial services. In particular, Better Finance defines the **toxicity of long term retail investment products** as the high probability of returning negative real value (net of inflation) to the customer (and of course most often such a probability is not disclosed to the customer although it is well known by the provider).

50 - *Where appropriate, regulators/supervisors undertake a regulatory impact assessment to consult on the main impacts and outcomes of the proposal on financial services providers, authorised agents or the not-for-profit sector.*

Comment:





Consumer and investor organisations are much too often excluded from impact assessments performed by regulators. **They must be included along providers in our view.**

59 - *Legislation gives oversight bodies the powers to oversee market conduct activities, including powers to issue and enforce decisions or rules by administrative means, to take corrective action where necessary and provide remedies to consumers.*

Comment:

Legislation should also expressly and clearly give oversight bodies the mandate to protect consumers. See point 70.

63 - *The governance structure of oversight bodies is clearly defined.*

Comment:

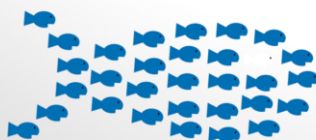
The governance structure should either be neutral or balanced vis-à-vis financial industry and/or financial consumers as members of the oversight / governing bodies of the supervisors.

70 - *Oversight bodies have a mandate for maintaining financial stability within the financial sector and financial consumer protection, particularly with regard to unfair financial trade practices.*

Comment:

The mandate for financial consumer protection must also be general, **not only linked to trade practices.**

137 - *Principles, requirements and standards related to “treating consumers equitably, honestly and fairly” can be set out clearly in the laws, codes and guidelines. This encompasses the obligation for parties to deal in good faith with each other under contract law. Regulators/supervisors seek to impose appropriate and consistent principles, requirements and standards to the financial services providers and authorised agents they oversee but in certain instances they can develop a sectorial regulation model imposing tailored requirements in specific fields.*





Comment: “should” instead of “can”.

141 - Breaching the duty to treat consumers equitably and fairly can result in the imposition of enforcement actions (*including but not limited to fines*) on financial services providers and their authorised agents, either by financial authorities (in the case of financial sectorial or general legislation) or by judicial courts (in the case of contract law). Action may result from the breach of either a general principle and/or a specific rule.

Comment: add “and remedies to abused consumers”.

147- By law, financial services providers can be subject to consumer protection obligations which set specific standards on the treatment of consumers.

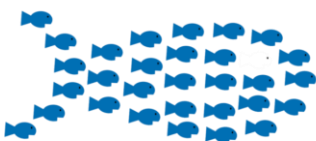
Comment: “should” instead of “can”.

155 - Several tools¹ exist to communicate how regulators/supervisors view treating consumers equitably and fairly, which may include some of the following:

- Ongoing dialogue with market regulated entities (financial services providers and authorised agents);
- Joint work with market stakeholders, *including industry associations*, in order to promote a clear and common understanding. This can include instruments like public consultations, the establishment of working groups, conferences or interpretation guidelines;

Comment: add “and financial consumer organisations”.

¹ Some of the tools identified have been in use for a considerable time and are considered as being innovative practices rather than emerging.





- *Multi-stakeholder consultation forums made up of industry and professional bodies;*

Comment: add “and financial consumer organisations”.

195 - *There are specific provisions in order to cover insider trading, market manipulation and fraudulent misrepresentation.*

Comment: add “to detect and to sanction”.

226 - *Every natural or legal person is entitled to ask financial services providers about an existing stipulation made in his or her favor in a life insurance policy contracted by a deceased person.*

Comment:

Excellent proposal and in that case financial services providers must investigate and respond to the request within a reasonable time limit.

237 - *The law requires supervised financial services providers (e.g., bank or other deposit taking institutions, life insurance company, non-life insurance company, investment trader and broker, merchant bank and mutual savings bank) to subscribe to a compulsory guarantee scheme or a deposit insurance policy, in order to protect consumers’ depositors, policyholders’ or investors’ assets, and to maintain the stability of the financial system.*

Comment:

Excellent proposal. Add “Including mutual companies”





244 - Consumers' claims may take precedence over any other claim on the financial services provider undertaking with the exception of others preferred claims such as claims by employees arising from employment contracts and employment relationships, claims by public bodies on taxes, claims by social security systems or claims on assets subject to rights in rem, as it is commonly the case in insurance sector for policyholders and beneficiaries.

Comment: "should" instead of "can".

