



in the attention of the Speaker of the Folketing

Parliament of the Kingdom of Denmark,

Brussels, 28 October 2019

Ref.: OPEN LETTER ON THE DIRECTIVE ON REPRESENTATIVE ACTIONS FOR THE PROTECTION OF THE COLLECTIVE INTERESTS OF CONSUMERS (2018/0089 COD)

Dear Mr. Kristensen,

I am writing to you on behalf of BETTER FINANCE, the European Federation of Investors and Financial Services Users. We are the public interest non-governmental organisation advocating and defending the interests of European citizens as financial services users at the European level to lawmakers and the public and promote research, information and training on investments, savings and personal finances. We are the only European-level organisation solely dedicated to the representation of individual investors, savers and other financial services users.

We are contacting you regarding the necessity to adopt a pan-European mechanism for collective enforcement of consumer rights, a debate which started more than 22 years ago. The EU has achieved significant progress since then, enlarging with 13 new Member States, adopting a single currency and pursuing a Capital Markets Union for jobs, growth and citizens, among other.

The EU Single Market, in particular that for financial services and investment products, is becoming more integrated, having a strong cross-border nature, and harmonised substantive rules on consumer protection. However, businesses and citizens lack a cornerstone instrument to ensure the effectiveness of the EU acquis to safeguard a competitive and level playing field in the economy: ***a harmonised mechanism for collective redress against breaches of consumer rights.***

The Directive on Representative actions for the protection of the collective interests of consumers is the long-awaited opportunity to eventually achieve that.

The mechanism to be instituted by the Directive must reflect a holistic approach in protecting consumer rights in the EU. Collective redress mechanisms that work in practice for consumers, for example in Italy or the Netherlands, capture several key features:

- they cover the entire spectrum of consumers;
- their adherence system is an **opt-out**;
- the criteria for standing for NGOs are flexible and fit-for-purpose;
- they are coupled with alternative dispute resolution procedures.

BETTER FINANCE has been actively advocating for a proper private enforcement mechanism for **all** retail financial services users since 2014. We have been fighting counterproductive arguments such as “risk of U.S. class action style of litigation”, “abuse and blackmail”, or “impossible due to practical difficulties” in implementing this unadopted Directive. None of these have been properly substantiated with evidence. However:

“The most relevant sector concerning observed mass claims/issues is the financial services sector”.¹

¹ European Commission, Directorate-General for Health and Consumers, ‘Study Regarding the Problems Faced by Consumers in Obtaining Redress for Infringements of Consumer Protection Legislation, and the Economic Consequences of such Problems: Final Report’, part I (26 August 2008), p. 4.

EU financial services users are in a dire need of an attractive and efficient mechanism that would allow **their representative organisations** to stand in court **on their behalf against breaches** of rights that generate mass harm, affect millions of consumers and create damages worth of billions.

*“As governments around the world withdraw from welfare provision and promote long-term savings by households through the financial markets, **the protection of retail investors has become critically important.**”²*

On a small sample of mis-selling cases in the area of capital markets, the findings are catastrophic: over €45 billion estimated in losses, more than 13 million investors affected, of which very small part compensated many years later.³

The Council of the EU is expected to reach a common position soon and enter into “trilogues” with the European Parliament and Commission. National Parliaments of EU Member States now play an essential role in ensuring that the mandate of the co-legislators builds towards a proper collective enforcement mechanism.

BETTER FINANCE urges National Parliaments to step in and ensure that **all** consumers and retail financial services users benefit from an **opt-out** collective enforcement mechanism enabling **consumer protection NGOs** to defend their rights in justice against breaches of consumer protection rights.

This Directive must reflect an EU innovative approach and create a mechanism that ensures a high level of consumer and investor protection (in accordance with Articles 38 and 47 of the Charter of Fundamental Rights), and equal conditions for access to justice (pursuant to Article 67 of the Treaty on the Functioning of the European Union) for the entire spectrum of retail financial services users.

Annexed to this letter you will find the [Collective Redress Booklet](#), containing all position documents and working papers prepared by BETTER FINANCE to support our demands concerning the procedure file in question. You can also access <http://betterfinance.eu/collective-redress/> for more information.

Strongly believing in the success of the EU project, the BETTER FINANCE team remains open for any further discussions or enquiries on this subject matter.

Yours respectfully,

Guillaume Prache
Managing Director of BETTER FINANCE



² Niamh Moloney, *How to Protect Investors: Lessons from the EC and UK* (2010) Cambridge University Press; emphasis added.

³ See the BETTER FINANCE Collective Redress Booklet, available here: <http://betterfinance.eu/collective-redress/>.