European Mortgage Federation
European Covered Bond Council (EMF-ECBC)
Position Paper
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EMF-ECBC Position Paper on European Commission Call for Evidence on the operation of collective redress arrangements in the Member States of the European Union

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The European Mortgage Federation-European Covered Bond Council[1] (EMF-ECBC) welcomes the opportunity to comment on the European Commission's Call for Evidence on the operation of collective redress arrangements in the Member States of the European Union.

As background, the EMF-ECBC had strong reservations about EU intervention in the area of consumer collective redress during discussions at EU level in the past and continues to believe that more appropriate mechanisms would provide consumers with access to redress for claims of low value, for example, national ADR mechanisms. Neverthless, we are of the view that the European Commission's Recommendation of 11 June 2013 on common principles for injunctive and compensatory collective redress mechanisms in the Member States concerning violations of rights granted under Union Law sets out certain appropriate minimum standards that should be respected.

We would in particular like to comment on the following elements of the Recommendation:

1. We welcome the acknowledgement by the European Commission of the useful role of consensual dispute resolution mechanisms and, subsequently, the recommendation to Member States to develop such redress mechanisms (points 25-28 of the Recommendation).
2. We furthermore believe that the decision by the European Commission to recommend an 'opt-in' method was very sound and welcome the fact that any exception to this principle, by law or by a court, should be justified by reasons of sound administration of justice. The EMF-ECBC echoes the reasons against an 'opt-out' method as described by the European Commission in its Communication of 11 June 2013 entitled *"Towards a European Horizontal Framework for Collective Redress"*.
3. We welcome the acknowledgment of the potential dangers of contingency fees and therefore support points 29 and 30 which seek to guard against abusive litigation and which, we believe, strike a good compromise between those who would favour the abolition of contingency fees (ourselves included) and those who view contingency fees as a useful way of financing collective actions.
4. The EMF-ECBC has always taken the view that the nature of European damages actions should be strictly compensatory for damages suffered, and should not aim at excessive damage allocation as would be the case for punitive damages. We therefore strongly support the recommendation in point 31 that punitive damages should be prohibited.
5. Finally, we are strongly supportive of the recommendation in point 13 that the long established principle of 'loser pays' should be applied in any collective actions.

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[1] Established in 1967, the EMF is the voice of the European mortgage industry, representing the interests of mortgage lenders and Covered bond issuers at European level. The EMF provides data and information on European mortgage markets, which were worth over 7.0 trillion EUR at the end of 2015. As of October 2016, the EMF has 19 members across 14 EU Member States as well as a number of observer members. In 2004 the EMF founded the ECBC, a platform bringing together Covered bond issuers, analysts, investment bankers, rating agencies and a wide range of interested stakeholders. As of October 2016, the ECBC has over 100 members across 26 active Covered bond jurisdictions and many different market segments. ECBC members represent over 95% of Covered bonds outstanding, which were worth nearly 2.5 trillion EUR at the end of 2015. The EMF-ECBC is registered in the EU Transparency Register under the ID Number 24967486965-09.

In conclusion and in the context of the Commission's ongoing assessment of how collective redress mechanisms are being implemented in practice in EU Member States, the EMF-ECBC believes that whatever the outcome of the call for evidence in terms of experience, the fundamental principles outlined above should be preserved at all cost.