

## **BETTER FINANCE's response to consultation on the Proposal for a DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL amending Directive 2014/65/EU on markets in financial instruments and Directive 2009/138/EC on the taking-up and pursuit of the business of Insurance and Reinsurance (Solvency II)**

**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.

**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/>

BETTER FINANCE welcomes the opportunity to comment on the Commission's proposal in the wider context of the review of the European Supervisory Authorities (ESAs).

BF agrees that financial markets are inherently cross-border in nature and are becoming more so, and that financial markets data intensity is growing fast. BF supports initiatives aiming at improving supervisory convergence as well as enhancing efficiency of handling data relevant aspects of the MIFID II framework. However, transferring the powers to authorise and supervise data reporting service providers (DRSPs) from national competent authorities (NCAs) to the European Securities and Markets Authority (ESMA) should allow for the

knowledge and understanding of the local markets to be sufficiently involved in the decision making process.

Similarly, BF agrees that divergence in the supervision and approval of internal models for Solvency Capital Requirement (SCR) leads to inconsistencies and can create both an uneven level playing field for market participants, and an inconsistent protection of EU citizens as insured persons. Actually, BETTER FINANCE believes that the use of “internal models” is an advantage given to the larger insurance institutions over smaller ones, and even more importantly is a barrier to a fair, clear and not misleading information to the customers, as it is almost impossible for them to evaluate those “internal models”. This is why the use of these highly non-transparent and unclear (in the sense of consumer protection rules) “internal models” should be restricted as much as possible.

Therefore, promoting supervisory convergence by enhancing EIOPA’s role as far as internal models are concerned should lead to streamlined application processes and requirements across the EU. However, also here it should be ensured that the knowledge and understanding of the local markets to be sufficiently involved in the decision making process

Moreover, BETTER FINANCE underlines that proposed reform of ESAs lacks ambition with regard to consumer and investor protection and fails to give the ESAs teeth with which to enforce EU Law.

### **Low level of individual user protection**

The proposal fails to address aspects crucial to the effective protection of financial services end-users such as:

- at least ring-fencing the user protection objective from the prudential one within the existing ESAs,
- and having a strong mandate and the necessary resources with regard to risky or toxic products sold to EU citizens.

Additionally, even if it grants ESMA some direct supervisory powers, it refers mostly to non- user related areas.

### **Weak public enforcement**

BETTER FINANCE has been pointing out for some time now (please find below the list of its positions and briefing papers) that, in terms of public enforcement, there is room for improvement especially as far as the scope and governance of the ESAs are concerned as

well as effective supervision. We have underlined that it is high time for ESAs to finally get and use their product intervention powers to protect consumers.

Moreover, BETTER FINANCE is very concerned the EC empowers the industry to challenge the ESAs guidelines and recommendations more easily and reserves itself the right to withdraw guidelines issued by the ESAs if, for instance, a majority of two thirds of the ESAs' Stakeholder Groups asks for it. This approach is un-democratic, as the ESAs stakeholder groups are dominated by financial industry representatives and members who are economically dependent of the industry. It will therefore be quite easy for them to get such a majority.

Therefore, BETTER FINANCE with other user-side organisations in an open letter sent to the European Commission and European Parliament proposed recommendations for a reform of the ESAs that would truly deliver for consumers (letter attached).

Links to BETTER FINANCE's documents

[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)

[http://betterfinance.eu/fileadmin/user\\_upload/documents/Position\\_Papers/Financial\\_Supervision/en/PP\\_-\\_Response\\_CONSULTATION\\_ON\\_THE\\_OPERATIONS\\_OF\\_THE\\_EUROPEAN\\_SUPERVISORY\\_AUTHORITIES\\_160517.pdf](http://betterfinance.eu/fileadmin/user_upload/documents/Position_Papers/Financial_Supervision/en/PP_-_Response_CONSULTATION_ON_THE_OPERATIONS_OF_THE_EUROPEAN_SUPERVISORY_AUTHORITIES_160517.pdf)