BETTER FINANCE'S FEEDBACK ON THE EUROPEAN COMMISSION'S PROPOSAL AMENDING REGULATION (EU) 2017/565 SUPPLEMENTING DIRECTIVE 2014/65/EU AS REGARDS ORGANIZATIONAL REQUIREMENTS AND OPERATING CONDITIONS FOR INVESTMENT FIRMS AND DEFINED TERMS FOR THE PURPOSE OF THAT DIRECTIVE

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. As such its activities are supported by the European Union since 2012.*

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/

I. Summary of the proposal

Background :

- The HLEG in its final report pointed out that:
    1. "*a growing body of evidence and regulatory change demonstrate that investor duties put an onus on investors to take account of sustainability when making investment decisions or engaging with investees in their portfolios. But misconceptions remain and market practices do not yet reflect this growing understanding and imperative. Today, for example, just 5% of EU pension funds have considered the investment challenges posed by climate risks to their portfolios*"[1]
    2. "*by clarifying the duties of investors such as pension funds (understood here as all retirement scheme providers), insurance companies and asset managers, the EU can encourage a greater focus on sustainability issues over the long term*".
    3. "*the 2 keys components for a meaningful investor duty requirement are* ***regulatory supervision*** *and adequate forward-looking disclosure from issuers*".

[1] HLEG Final report, page 20

- The CMU mid-term review identified one of the key areas to address as "*clarification that fiduciary duties of asset owners and asset managers includes integrating environmental, social and governance (ESG) considerations into decision-making*"

- Under the existing MiFID II framework, firms providing investment advice and portfolio management **are required to obtain the necessary information about the client's knowledge and experience in the investment field**, their ability to bear losses, and objectives including the client's risk tolerance to enable the firm to provide services and products that are suitable for the client (suitability assessment). Based on this information, investment firms assess which products are suitable for the client. The existing regime sets out **which information must be obtained from the client as part of the suitability assessment.**

  The information regarding the investment objectives of the client includes information on the length of time for which the client wishes to hold the investment, his/her preferences regarding risk taking, risk profile, and the purposes of the investment.

  However, the information about investment objectives generally relates to financial objectives, **while non-financial objectives of the client, such as environmental, social and governance (ESG) preferences, are usually not addressed**. Existing suitability assessment generally do not include questions on ESG preferences of clients, while the majority of the clients would not raise the ESG issue themselves. As a result, **investment firms consistently do not give appropriate consideration to ESG consideration in the selection process.**

- **The proposed delegated regulation aims at clarifying that ESG considerations should be taken into account in the investment and advisory process as part of the duties towards clients.**

- The proposal:

  1. clarifies **that investment firms providing financial advice and portfolio management should carry out a mandatory assessment of ESG preferences of their clients in a questionnaire addressed to them**. These investment firms should then take these ESG preferences into account in the selection process of the financial products that are offered to these clients
  2. seeks to improve the information regarding the ESG factors of financial products that is given to the clients before the provision of investment advice and portfolio management services
  3. requires investment firms to prepare **a report to the client that explains how the recommendation to this client meets his investment objectives**, risk, profile, capacity for loss bearing and ESG preferences (ex-post information disclosure)

II. BETTER FINANCE 's position

BETTER FINANCE welcomes this opportunity to comment on the proposal amending Delegated Regulation (EU) 2017/565 supplementing MiFID II as regards organizational requirements and operating conditions for investment firms and defined terms for the purpose of that directive.

Investment firms shall act in accordance with the best interest of their clients. As such, when providing investment advice and portfolio management, they must disclose information on the ESG of each financial product offered to the client before providing investment services.

The asset managers must explain to the client how his or her ESG preferences for each financial instrument is taken into consideration during the advice process.

BETTER FINANCE fully supports this proposal to include ESG considerations during the advisory and product suitability process. However, we have some concerns regarding the proposal.

Firstly, and as raised at several occasions by BETTER FINANCE[2] , before requesting institutional investors and assets managers to include ESG's client's preferences in the advice process, we must have an internationally agreed taxonomy in order to determine, for instance, what is "green and what is not".

The Commission has chosen to follow a sequencing approach by first focusing on climate only. However, the proposed amendment to the MiFID II delegated regulation includes the three components: "E", "S" and "G".

Secondly, we believe that the Commission should make a clearer reference between the proposed regulation on disclosures relating to sustainable investments and suitability risks (Proposal COM (2018) 354) 354 and the advisory and product suitability process.

Thirdly, we warn the Commission that the inclusion of ESG considerations/ preferences should not lead providers to comply with the Delegated Regulation just by constructing funds

[2] BETTER FINANCE's press release " BETTER FINANCE welcomes EC roadmap towards a more sustainable economy but once again deplores failure to take the interests of EU citizens as pension savers and individual investors into account" http://betterfinance.eu/fileadmin/user_upload/documents/Press_Releases/en/Other_investors/PR_-_HLEG_Final_Report_-_020218.pdfhttp://betterfinance.eu/fileadmin/user_upload/documents/Press_Releases/en/Other_investors/PR_-_HLEG_Final_Report_-_020218.pdf

BETTER FINANCE's press release "BETTER FINANCE welcomes the Sustainable Finance Action Plan but warns the Commission against its plans regarding taxonomy, benchmarking and an eco-label" http://betterfinance.eu/fileadmin/user_upload/documents/Press_Releases/en/Other_investors/PR_-_Sustainable_Finance_-_210318.pdf corresponding to the client ESG preferences without addressing ESG consideration for the rest of the portfolio.

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