

PRESS RELEASE

A TWIN-PEAKS APPROACH TO THE EUROPEAN SYSTEM OF FINANCIAL SUPERVISION: TURNING CONSUMER PROTECTION INTO A REAL PRIORITY

22 May 2017 – With up to 20 expert members taking part in the four stakeholder groups of the European Supervisory Authorities (ESAs), including 3 vice-chairs, Better Finance is the user-side NGO that is most actively involved with the work of the ESAs. It is therefore particular well-placed to [contribute to this very welcome and crucial review](#)¹ by the European Commission (EC) of their work.

Over the last decade, as the representative of European citizens as savers and investors, Better Finance frequently criticised the systematic focus on prudential matters at the detriment of consumer protection. Whereas some timid evidence suggests a new focus on consumer protection, this will come to nothing if such a shift is not reflected in the review of the European System of Financial Supervision (ESFS). Currently customer protection features as the sixth and very last legal objective of the ESAs.

It is safe to say that the ESAs have not fulfilled significant parts of their mandates and failed to make use of the powers granted to them:

- The supervision and enforcement of EU rules with regard to fair, clear and not misleading information as well as to the prevention of conflicts of interests in the distribution of financial products and services, has been poor.
- The obligation to collect, analyse and report on consumer trends and market developments with regard to the performance and fees of retail financial products, has been disregarded.
- Product intervention powers have not been deployed and so far do not apply to toxic financial products, nor have their powers to intervene in the case of non-implementation of EU Law.

In order for the ESAs to properly carry out their responsibilities in terms of consumer protection, some structural deficiencies in the functioning of the ESAs need to be addressed. This review is the ideal opportunity to look into the shortcomings of the current setup of the ESFS and establish a more adequate governance of the ESAs.

As things stand, the governance of the ESAs is such that the industry still has a disproportionate influence on matters of financial supervision, to the detriment of parties representing financial end-users and civil society. A new governance framework should, as a matter of priority, ensure that those who are less well-funded than industry representatives can take part in the debate on financial regulation, that texts are made available in languages other than English with plain language executive summaries, and that adequate compensation and adequate secretarial support is provided for the not-for-profit user-side members who are not even remotely as well-resourced as the industry members.

¹ Better Finance [response](#) to the CONSULTATION ON THE OPERATIONS OF THE EUROPEAN SUPERVISORY AUTHORITIES, 16 May 2017

Furthermore, the boards of supervisors of the ESAs are solely composed of Member State Supervisors, thereby making it very difficult for the ESAs to properly supervise their own supervisors... It is high time to introduce independent members to the supervisory and management boards of the ESAs, like it has been done for the ECB.

On a more structural level, the 'silo approach' has proven over and over again to be deficient, creating an inconsistent level of consumer protection at the point of sale. Better Finance sees no compelling rationale for not having a single public supervisor of business conduct for all financial products sold to EU citizens and instating a 'Twin Peaks' approach to EU financial supervision, separating prudential supervision from conduct of business and client protection supervision.

Such a 'Twin Peaks' approach should be complemented by broader product intervention powers, no longer solely on the basis of financial risks and stability considerations but including the power to ban or put on hold the selling of financial products that are toxic or not suited for retail clients, and not only those supervised by ESMA . The same goes for market abuse, for which the ESAs should have the necessary tools to track abuse and impose proportional financial sanctions.

Contact: Chief Communications Officer | Arnaud Houdmont | +32 (0)2 514 37 77 |
houdmont@betterfinance.eu