The Proposed Retail Investment Strategy Shows Potential for Investor Protection Progress, but Fails to Meet its Own Key Targets

BETTER FINANCE, the European Federation of Investors and Financial Services Users, welcomed the European Commission's launch of a Retail Investor Strategy in September 2020, as a once in a lifetime opportunity to create a capital markets Union that works for people. Nevertheless, the legislative proposal, despite incorporating certain positive advancements, falls short of fulfilling several of its own key objectives in enabling EU individual investors to benefit from:

- *"bias free advice",*
- *"coherent rules across legal instruments",*
- *"transparent, comparable and understandable product information",*
- *and "open markets with a variety of competitive and cost-efficient financial services".*

The present document sets out the main concerns and positions from BETTER FINANCE regarding the European Commission's legislative proposals for the Retail Investment Strategy.

"Bias-free advice"

One of the major disappointments regards the so-called "inducements", in reality mostly trailing sales commissions paid by providers to distributors of packaged retail investment products. BETTER FINANCE does welcome the proposals to extend the ban on inducements to insurance-based investment products ("IBIPs"), and to ban inducements on "execution-only" (non-advised) sales of investment products, two measures that BETTER FINANCE strongly advocated for. However, this specific and limited ban on "non-advised" sales seems to apply de facto only to the small minority of MiFID regulated products (essentially investment funds sold directly). Indeed, the Proposal allows Member States to prohibit "non-advised" sales of the much more widely used life insurance and pension products. Consequently, if the sale of IBIPs without advice is disallowed, it would essentially render the ban on inducements for non-advised sales of IBIPs ineffective.

"Coherent rules across legal instruments"

BETTER FINANCE notes more generally that the proposal crucially fails to adequately tackle the requirement for consistent conflict-of-interest rules across diverse categories of retail savings products. In addition to the aforementioned points, it is worth noting that the proposal fails to extend the prohibition of inducements for portfolio management services under MiFID to portfolio management services for insurance-based investment products (IBIPs) and pension products.

BETTER FINANCE has also been a vocal advocate for this necessary consistency of investor protection rules across various categories of retail investment products. However, the failure to address this issue leaves the conflicts of interest associated with portfolio managers receiving mandates from retail investors for IBIPs unresolved. As a result, there remains a significant opportunity for regulatory arbitrage to the detriment of IBIPs investors.

"Transparent, comparable and understandable product information"

In relation to the Packaged Retail and Insurance-based Investment Products (PRIIPs) Key Information Document (KID), BETTER FINANCE identifies several key unresolved concerns in the proposal. These include the lack of measures to address the issues of comparability and intelligibility, as well as the "pseudo-science"[1] of disclosing non-comparable, non-probability-weighted future performance projections based solely on past five-year performances. This approach is misleading and rightly discouraged by MiFID. In this regard, the Proposal does not even mention the recent regulatory improvement[2] achieved by BETTER FINANCE and others, requiring the inclusion of an internet link in the Key Information Document (KID) of UCITS investment funds, leading to disclosures of long-term actual performance of the funds compared to their benchmarks. Despite the positive focus on digitalisation in the proposal, retail investors still urgently require clear and comparable disclosures of actual performance and costs.

Last but not least, BETTER FINANCE finds the Value for Money proposals to be of interest. However, BETTER FINANCE expresses concern regarding the prolonged process envisaged to finalise these measures and their effectiveness in **enforcing existing regulations that prohibit "undue costs"**, as well as their ability to match or improve on the effectiveness of measures already implemented by regulatory bodies such as the UK's Financial Conduct Authority (FCA), for example.

BETTER FINANCE also calls for clear inspection powers and modification requirements for interactive tools to ensure compliance, an aspect that the proposal does not seem to address.

BETTER FINANCE, actively involved in the policy debate

The present document constitutes a summary of our positions and proposals. We will keep working on this important legislative initiative and welcome exchanges and discussions with policy-makers at the national as well as European Union level. Should you like to discuss our analyses of and proposals for the RIS legislative proposals, please feel welcome to contact us to arrange a meeting at your earliest convenience.

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[1] As highlighted by Professor John Kay.
[2] EU delegated Regulation 2021/2268c of 6 September 2021, articles 8 and 17a