

**ECON Public Hearing on the Mis-selling of financial products
Brussels, 19 of June 2018**

Opening Statement by Jella Benner-Heinacher, President BETTER FINANCE

Dear Chairman, dear Honorable Members of the European Parliament,

thank you for inviting me along to the Panel today to talk about the mis-selling of financial products- a topic which is of major importance since it concerns all financial users in Europe whom I represent today as President of BETTER FINANCE.

In fact, in May last year, BETTER FINANCE published its Briefing Paper *“A major enforcement issue: the mis-selling of financial products”*. This briefing paper and the follow-up debate cover the five studies ordered by the ECON committee reaching from the marketing of financial products up to investor compensation.

Today’s discussion is very important, as there is still ongoing and widespread mis-selling of financial products in the EU. Let me give you two examples where investors are currently left behind by regulators and supervisors:

1. PRIIPs KID

The current disclosures made in the PRIIP KIDs particularly in **relation to performance and costs** are partially misleading and confusing to the investor. Already in the past BETTER FINANCE criticized and warned about the very negative consequences of **the elimination of the relative past performance in the KID** in favor of four future performance scenarios. Providers now have to use forecasts of future returns to inform retail investors who will no longer know whether the product has made any money in the past and they will no longer know whether the product has met its investment objectives or not. Therefore, we request that the PRIIPS delegated Regulation at the very least complies with MIFID II rules on performance disclosure: any **future performance information** must be accompanied by a **prominent warning** stating that such forecasts **are not a reliable indicator of future performance** (as provided in article 44(6)(e) of MiFID II Delegated Regulation). In view of an urgently needed future review of the PRIIPs regulation, we also ask for the **reintroduction of relative past performances**. Regarding the **disclosure of costs**, the new approach does not allow investors to compare the costs from one product to the other and will not allow them to understand the impact of entry and exit fees. On the contrary, we see more and more cases of **negative transaction costs** being disclosed in the KIID which create confusion on the investors’ side. Thereby the original objective of this KIID, namely to reach a common level playing field, cannot be achieved.

Therefore, BETTER FINANCE is asking for:

- An early targeted review the PRIIPs Regulation this year.
- A three years extension of the exemption of UCITS funds and other funds already following the provisions of the KIID Regulation. (such exemption would enable at least fund investors to continue to enjoy the benefits of the 2-pages KIID).

2. UCITS KID

Let me turn to my second example: Just recently a renewed research by BETTER FINANCE that we published found that at least 30% of the main actively managed UCITS equity funds (those with a 'fund benchmark') do not comply with key disclosure requirements for benchmarks as stipulated in EU Rules. This means that although these funds were legally required to disclose information on their benchmark, they simply didn't. Private investors relying on such KIDs when making their investment decision are misinformed or at best misled by a large number of Key Information Documents. This situation is all the more concerning as our organization has pointed to this detrimental situation for private investors already in 2017 and informed ESMA about it. Given that the large majority of non-compliant funds are located in two EU Member States the question of public enforcement and supervisory convergence needs to be raised.

Dear Chairman, dear Honorable Members of the European Parliament, these examples of shortcomings show that there is a need for significant improvements in the enforcement and supervision of EU rules both on the public and on the private side.

3. The ESAs reform

In terms of public enforcement, there is **room for improvement** especially as far as the **ESA's scope, governance and effective supervision and enforcement** is concerned. BETTER FINANCE has created an Alliance to represent the interests of consumers and users of financial services in the legislative process of the ESAs reform and prepared a set of amendments in order to improve the situation for all financial services users. I therefore suggest that the ESA's reform ensures:

- to strengthen the investor/consumer protection tasks by making sure that all national supervisory authorities name investor/consumer protection as statutory objective
- to **strengthen the governance** in particular the **independence of the ESA boards** to ensure a real balance between the financial industry and retail user experts and the same should be the case for the ESAs "stakeholder groups"
- a balanced representation of industry and investors/consumers in the stakeholder groups.

4. Collective redress

In terms of private enforcement, we regret that the latest proposal for the Injunctions Directive by the Commission only offers protection and collective redress tools to consumers who invest their money in capital markets indirectly (in intermediated, "packaged" investment products). Unfortunately, the Commission's proposal excludes an equivalent level of protection for EU citizens investing directly in the economy (i.e. individual shareholders). An EU collective redress system covering also individual shareholders is however a **must** if the EU truly wants to restore individual and public confidence in the financial services market and to enforce legislation in the area of investor protection. I believe that the **Volkswagen case** with thousands of investors in Europe who were misled and cheated is an excellent example for the urgent need to establish a well-functioning collective redress system to compensate these investors. It is hard to imagine how the Commission wants to regain trust of EU citizens as investors and win them back into a European Capital Markets' Union without it.