

Public consultation on a retail investment strategy for Europe

Fields marked with * are mandatory.

Introduction

This consultation is now available in 23 European Union official languages.

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1. Background for this consultation

The level of retail investor participation in EU capital markets remains very low compared to other economies, despite high individual savings rates in Europe. This means that consumers may currently not fully benefit from the investment opportunities offered by capital markets.

In its September 2020 [new capital markets union \(CMU\) action plan](#), the European Commission announced its intention to publish a strategy for retail investments in Europe in the first half of 2022. Its aim will be to seek to ensure that retail investors can take full advantage of capital markets and that rules are coherent across legal instruments. An individual investor should benefit from

- i. adequate protection
- ii. bias-free advice and fair treatment
- iii. open markets with a variety of competitive and cost-efficient financial services and products, and
- iv. transparent, comparable and understandable product information

EU legislation should be forward-looking and should reflect ongoing developments in digitalisation and sustainability, as well as the increasing need for retirement savings.

In 2020, the Commission also launched an [extensive study](#), focusing on the different disclosure regimes, the extent to which advice given to prospective investors is useful and impartial and the impact of inducements paid to intermediaries. It will involve extensive consumer testing, to ensure that any future changes to the rules will be conceived from the perspective of what is useful and necessary for consumers.

In line with the Commission's stated objective of "an economy that works for people", the Commission is seeking to ensure that a legal framework for retail investments is suitably adapted to the profile and needs of consumers, helps ensure improved market outcomes and enhances their participation in the capital markets.

The Commission is looking to understand how the current framework for retail investments can be improved and is seeking your views on different aspects, including

- the limited comparability of similar investment products that are regulated by different legislation and are hence subject to different disclosure requirements, which prevents individual investors from making informed investment choices
- how to ensure access to fair advice in light of current inducement practices
- how to address the fact that many citizens lack sufficient financial literacy to make good decisions about personal finances
- the impact of increased digitalisation of financial services
- sustainable investing

Responding to this consultation and follow up

In this context and in line with [better regulation principles](#), the Commission is launching this public consultation designed to gather stakeholders' views on possible improvements to the European framework for retail investments.

Views are welcome from all stakeholders, in particular from persons/entities representing

- citizens and households (in their quality as retail investors)
- organisations representing consumer/retail investor interests
- complaint-handling bodies e.g. Alternative Dispute Resolution Bodies and European Consumer Centres
- credit institutions
- investment firms
- insurance companies
- financial intermediaries (investment/insurance brokers, online brokers, etc.)
- national and supranational authorities (e.g. national governments and EU public authorities, mandated authorities and bodies in charge of legislation in the field of retail investments)
- academics and policy think-tanks.
- entities seeking financing on capital markets

Please note: In order to ensure a fair and transparent consultation process **only responses received through our online questionnaire will be taken into account** and included in the report summarising the responses. Should you have a problem completing this questionnaire or if you require particular assistance, please contact fisma-retail-investment@ec.europa.eu.

More information on

- [this consultation](#)

- [the consultation document](#)
- [retail financial services](#)
- [the protection of personal data regime for this consultation](#)

About you

Language of my contribution

- ☐ Bulgarian
- ☐ Croatian
- ☐ Czech
- ☐ Danish
- ☐ Dutch
- ☒ English
- ☐ Estonian
- ☐ Finnish
- ☐ French
- ☐ German
- ☐ Greek
- ☐ Hungarian
- ☐ Irish
- ☐ Italian
- ☐ Latvian
- ☐ Lithuanian
- ☐ Maltese
- ☐ Polish
- ☐ Portuguese
- ☐ Romanian
- ☐ Slovak
- ☐ Slovenian
- ☐ Spanish
- ☐ Swedish

I am giving my contribution as

- ☐ Academic/research institution
- ☐ Business association
- ☐

- Company/business organisation
- ☐ Consumer organisation
 - ☐ EU citizen
 - ☐ Environmental organisation
 - ☐ Non-EU citizen
 - ☒ Non-governmental organisation (NGO)
 - ☐ Public authority
 - ☐ Trade union
 - ☐ Other

First name

Julia

Surname

Symon

Email (this won't be published)

julia.symon@finance-watch.org

Organisation name

255 character(s) maximum

Finance Watch

Organisation size

- ☐ Micro (1 to 9 employees)
- ☒ Small (10 to 49 employees)
- ☐ Medium (50 to 249 employees)
- ☐ Large (250 or more)

Transparency register number

255 character(s) maximum

Check if your organisation is on the [transparency register](#). It's a voluntary database for organisations seeking to influence EU decision-making.

37943526882-24

Country of origin

Please add your country of origin, or that of your organisation.

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| <input type="radio"/> Afghanistan | <input type="radio"/> Djibouti | <input type="radio"/> Libya | <input type="radio"/> Saint Martin |
| <input type="radio"/> Åland Islands | <input type="radio"/> Dominica | <input type="radio"/> Liechtenstein | <input type="radio"/> Saint Pierre and Miquelon |
| <input type="radio"/> Albania | <input type="radio"/> Dominican Republic | <input type="radio"/> Lithuania | <input type="radio"/> Saint Vincent and the Grenadines |
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| <input type="radio"/> Bangladesh | <input type="radio"/> French Southern and Antarctic Lands | <input type="radio"/> Moldova | <input type="radio"/> South Georgia and the South Sandwich Islands |
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| Ⓐ Botswana | Ⓐ Guatemala | Ⓐ Netherlands | Ⓐ Taiwan |
| Ⓐ Bouvet Island | Ⓐ Guernsey | Ⓐ New Caledonia | Ⓐ Tajikistan |
| Ⓐ Brazil | Ⓐ Guinea | Ⓐ New Zealand | Ⓐ Tanzania |
| Ⓐ British Indian Ocean Territory | Ⓐ Guinea-Bissau | Ⓐ Nicaragua | Ⓐ Thailand |
| Ⓐ British Virgin Islands | Ⓐ Guyana | Ⓐ Niger | Ⓐ The Gambia |
| Ⓐ Brunei | Ⓐ Haiti | Ⓐ Nigeria | Ⓐ Timor-Leste |
| Ⓐ Bulgaria | Ⓐ Heard Island and McDonald Islands | Ⓐ Niue | Ⓐ Togo |
| Ⓐ Burkina Faso | Ⓐ Honduras | Ⓐ Norfolk Island | Ⓐ Tokelau |
| Ⓐ Burundi | Ⓐ Hong Kong | Ⓐ Northern Mariana Islands | Ⓐ Tonga |
| Ⓐ Cambodia | Ⓐ Hungary | Ⓐ North Korea | Ⓐ Trinidad and Tobago |
| Ⓐ Cameroon | Ⓐ Iceland | Ⓐ North Macedonia | Ⓐ Tunisia |
| Ⓐ Canada | Ⓐ India | Ⓐ Norway | Ⓐ Turkey |
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| Ⓐ Christmas Island | Ⓐ Italy | Ⓐ Paraguay | Ⓐ United Kingdom |
| Ⓐ Clipperton | Ⓐ Jamaica | Ⓐ Peru | Ⓐ United States |
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Islands

United States
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Islands

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| <input type="radio"/> Democratic Republic of the Congo | <input type="radio"/> Lesotho | <input type="radio"/> Saint Kitts and Nevis | <input type="radio"/> Zimbabwe |
| <input type="radio"/> Denmark | <input type="radio"/> Liberia | <input type="radio"/> Saint Lucia | |

*Field of activity or sector (if applicable)

- ☐ Accounting
- ☐ Auditing
- ☐ Banking
- ☐ Credit rating agencies
- ☐ Insurance
- ☐ Pension provision
- ☐ Investment management (e.g. hedge funds, private equity funds, venture capital funds, money market funds, securities)
- ☐ Market infrastructure operation (e.g. CCPs, CSDs, Stock exchanges)
- ☐ Social entrepreneurship
- ☐ Other
- ☒ Not applicable

The Commission will publish all contributions to this public consultation. You can choose whether you would prefer to have your details published or to remain anonymous when your contribution is published. **For the purpose of transparency, the type of respondent (for example, 'business association', 'consumer association', 'EU citizen') country of origin, organisation name and size, and its transparency register number, are always published. Your e-mail address will never be published.** Opt in to select the privacy option that best suits you. Privacy options default based on the type of respondent selected

Contribution publication privacy settings

The Commission will publish the responses to this public consultation. You can choose whether you would like your details to be made public or to remain anonymous.



Anonymous

Only organisation details are published: The type of respondent that you responded to this consultation as, the name of the organisation on whose behalf you reply as well as its transparency number, its size, its country of origin and your contribution will be published as received. Your name will not be published. Please do not include any personal data in the contribution itself if you want to remain anonymous.



Public

Organisation details and respondent details are published: The type of respondent that you responded to this consultation as, the name of the organisation on whose behalf you reply as well as its transparency number, its size, its country of origin and your contribution will be published. Your name will also be published.

☒ I agree with the [personal data protection provisions](#)

1. General questions

Current EU rules regarding retail investors (e.g. [UCITS \(undertakings for the collective investment in transferable securities\)](#), [PRIIPs \(packaged retail investment and insurance products\)](#), [MiFID II \(Markets in Financial Instruments Directive\)](#), [IDD \(Insurance Distribution Directive\)](#), [PEPP \(pan european pension product\)](#), or [Solvency II \(Directive on the taking-up and pursuit of the business of insurance and reinsurance\)](#)) aim at empowering investors, in particular by creating transparency of the key features of investment and insurance products but also at protecting them, for example through safeguards against mis-selling.

Question 1.1 Does the EU retail investor protection framework sufficiently empower and protect retail investors when they invest in capital markets?



Yes



No



Don't know / no opinion / not applicable

Please explain your answer to question 1.1 and provide examples:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Important improvements are needed to the retail investor protection framework to ensure that EU citizens can safely invest in capital markets.

Building on the precedent set in the PEPP regulation, basic option products that are safe and suitable for any investors should be the default offer. This would ensure wider access and use of safe products.

Financial literacy should not be pursued as a panacea for dealing with the numerous shortcomings and issues with investment products sold to retail users. Efforts should focus on assessing the potential inclusion of financial literacy in national curricula and promoting independent and regulated educational tools.

The Distance Marketing of Financial Services Directive should be maintained and updated to ensure the proper regulation of marketing and advertising of investment products through digital media, including banning personalised advertisements.

Dashboards and comparison websites offered by public authorities may also provide an important way forward to increase investor protection. Open finance solutions could be explored to increase their effectiveness and link them with pre-contractual information. Protection of retail user data must, however, be guaranteed at all times.

The quality not the quantity of information is essential in retail investor pre-contractual information documents. The shorter the document can be, whilst accurately describing key product features, the more useful it will be to the majority of retail investors. More detailed information should always be easily available upon request. A large-scale project to consumer test pre-contractual information documents that are already available on the market and extract positive and negative points, build new improved documents and then re-test could help to take a step forward here.

In principle suitability and appropriateness assessment as tools are extremely important. However, there are currently issues over how these assessments are delivered. A starting point is to harmonise the different regimes by applying MiFID requirements to all distributors of investment products.

The quality of advice cannot be guaranteed where inducements exist and create a conflict of interests. This is the current situation for retail users in the EU and needs to be addressed. A ban could eliminate part of the existing problem, which is to remove the negative impact of conflicts of interest on advice. Additional measures would also need to be introduced to ensure that advice is widely available, independent and affordable.

Complexity of financial products is not problematic in itself. Some products may be complex, but can still be explained in a simple enough way to investors to allow them to take informed investment decisions. The real issue is excess complexity, where complexity in product design or description that has no discernible benefit to the investor. This should not be allowed and is likely to be an indication of an exploitative product.

The ESAs and NSAs do not currently have sufficient resources and enforcement powers to carry out the level of market surveillance needed to identify all the cases where they would need to use product intervention powers. As highlighted in the Finance Watch response to the Commission's consultation on supervisory convergence and the single rulebook, there is a need for stronger convergence of supervisory practices and harmonisation of the EU law application in certain areas in order to maintain high standards of retail investor protection across all the EU Member States.

There are several key obstacles to mobilising retail investments in sustainable products, including the absence of reliable and comparable sustainability-related disclosures and an insufficient consideration of investors' sustainability-related preferences at the point of sale. When developing the European standards for sustainable financial products, the Commission should also assess the capacity of financial instruments to effectively allocate capital towards sustainable transition of the economy.

While aimed at protecting retail investors, some rules may require specific procedures to be followed (e.g. the need to use investment advice and complete a suitability assessment) or may limit investment by retail investors (e.g. by warning against purchase of certain investment products or even completely prohibiting access).

Question 1.2 Are the existing limitations justified, or might they unduly hinder retail investor participation in capital markets?

- ☒ Yes, they are justified
- ☐ No, they unduly hinder retail investor participation
- ☐ Don't know / no opinion / not applicable

Please explain your answer to question 1.2:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

The level of investor protection and enforcement of the framework are not currently sufficient to avoid mis-selling, sales of exploitative products and ensure value for money for investors. There is also an inherent un-level playing field, which is a huge barrier to retail investor participation. The market is currently stacked against retail investors and until issues around high frequency trading and payment for order flow have been addressed this will remain the case.

Question 1.3 Are there any retail investment products that retail investors are prevented from buying in the EU due to constraints linked to existing existing EU regulation?

- ☐ Yes
- ☐ No
- ☒ Don't know / no opinion / not applicable

Please explain your answer to question 1.3:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Question 1.4 What do you consider to be factors which might discourage or prevent retail investors from investing?

| | 1 (strongly disagree) | 2 (rather disagree) | 3 (neutral) | 4 (rather agree) | 5 (strongly agree) | Don't know - No opinion - Not applicable |
|---|--------------------------|----------------------------------|----------------------------------|----------------------------------|----------------------------------|--|
| Lack of understanding by retail investors of products? | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input checked="" type="radio"/> | <input type="radio"/> |
| Lack of understanding of products by advisers? | <input type="radio"/> | <input type="radio"/> | <input checked="" type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |
| Lack of trust in products? | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input checked="" type="radio"/> | <input type="radio"/> | <input type="radio"/> |
| High entry or management costs? | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input checked="" type="radio"/> | <input type="radio"/> |
| Lack of access to reliable, independent advice? | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input checked="" type="radio"/> | <input type="radio"/> |
| Lack of access to redress? | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input checked="" type="radio"/> | <input type="radio"/> | <input type="radio"/> |
| Concerns about the risks of investing? | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input checked="" type="radio"/> | <input type="radio"/> |
| Uncertainties about expected returns? | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input checked="" type="radio"/> | <input type="radio"/> |
| Lack of available information about products in other EU Member States? | <input type="radio"/> | <input checked="" type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |
| Other | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input checked="" type="radio"/> | <input type="radio"/> |

Please specify what other factor(s) might discourage or prevent retail investors from investing:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Previous negative experience of using retail investment products could be a factor in preventing retail investors from investing. Insufficient supply of products matching the sustainability preferences of retail investors or lack of products claiming to be aligned with ESG objectives could also discourage retail investors.

Question 1.5 Do you consider that products available to retail investors in the EU are:

| | 1 (strongly disagree) | 2 (rather disagree) | 3 (neutral) | 4 (rather agree) | 5 (strongly agree) | Don't know - No opinion - Not applicable |
|--|----------------------------------|----------------------------------|-----------------------|----------------------------------|-----------------------|--|
| Sufficiently accessible | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input checked="" type="radio"/> | <input type="radio"/> | <input type="radio"/> |
| Understandable for retail investors | <input checked="" type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |
| Easy for retail investors to compare with other products | <input checked="" type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |
| Offered at competitively priced conditions | <input checked="" type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |
| Offered alongside a sufficient range of competitive products | <input checked="" type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |
| Adapted to modern (e.g. digital) channels | <input type="radio"/> | <input checked="" type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |
| Adapted to Environmental, Social and Governance (ESG) criteria | <input type="radio"/> | <input checked="" type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |

Question 1.6 Among the areas of retail investment policy covered by this consultation, in which area (or areas) would the main scope for improvement lie in order to increase the protection of investors?

Please select as many answers as you like

- ☐ financial literacy
- ☒ digital innovation
- ☒ disclosure requirements
- ☒ suitability and appropriateness assessment
- ☐ reviewing the framework for investor categorisation
- ☒ inducements and quality of advice
- ☒ addressing the complexity of products
- ☒ redress
- ☒ product intervention powers
- ☒ sustainable investing
- ☒ other

Please specify to what other area(s) you refer in your answer to question 1.6:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Building on the precedent set in the PEPP regulation, basic option products that are safe and suitable for any investors should be the default offer. Based on the suitability/ demands and needs/ appropriateness testing other product offers could then also be offered.
This would ensure wider access and use of safe products.

Please explain your answer to question 1.6:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

2. Financial literacy

For many individuals, financial products and services remain complex. To empower individuals to adequately manage their finances as well as invest, it is of crucial importance that they are able to understand the risks and rewards surrounding retail investing, as well as the different options available. However, as shown by the [OECD/INFE 2020 international survey of adult financial literacy](#), many adults have major gaps in understanding basic financial concepts.

While the main responsibility for financial education lies with the Member States, there is scope for Commission initiatives to support and complement their actions. In line with the [2020 capital markets union action plan](#), Directorate General for Financial Stability, Financial Services and Capital Markets Union (DG FISMA) published a [feasibility assessment report](#) and will, together with the OECD, develop a financial competence framework in the EU. In addition, the need for a legislative proposal to require Member States to promote learning measures that support the financial education of individuals, in particular in relation to investing will be assessed.

Question 2.1 Please indicate whether you agree with the following statement: Increased financial literacy will help retail investors to

| | 1 (strongly disagree) | 2 (rather disagree) | 3 (neutral) | 4 (rather agree) | 5 (strongly agree) | D kr opi app |
|---|--------------------------|------------------------|----------------------------------|----------------------------------|-----------------------|---------------------------------|
| Improve their understanding of the nature and main features of financial products | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input checked="" type="radio"/> | <input type="radio"/> | |
| Create realistic expectations about the risk and performance of financial products | <input type="radio"/> | <input type="radio"/> | <input checked="" type="radio"/> | <input type="radio"/> | <input type="radio"/> | |
| Increase their participation in financial markets | <input type="radio"/> | <input type="radio"/> | <input checked="" type="radio"/> | <input type="radio"/> | <input type="radio"/> | |
| Find objective investment information | <input type="radio"/> | <input type="radio"/> | <input checked="" type="radio"/> | <input type="radio"/> | <input type="radio"/> | |
| Better understand disclosure documents | <input type="radio"/> | <input type="radio"/> | <input checked="" type="radio"/> | <input type="radio"/> | <input type="radio"/> | |
| Better understand professional advice | <input type="radio"/> | <input type="radio"/> | <input checked="" type="radio"/> | <input type="radio"/> | <input type="radio"/> | |
| Make investment decisions that are in line with their investment needs and objectives | <input type="radio"/> | <input type="radio"/> | <input checked="" type="radio"/> | <input type="radio"/> | <input type="radio"/> | |
| Follow a long-term investment strategy | <input type="radio"/> | <input type="radio"/> | <input checked="" type="radio"/> | <input type="radio"/> | <input type="radio"/> | |

Question 2.2 Which further measures aimed at increasing financial literacy (e.g. in order to promote the OECD/Commission financial literacy competence framework) might be pursued at EU level?

Please explain your answer, taking into account that the main responsibility for financial education lies with Member States:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Financial literacy is important to achieve the above mentioned goals and the EU Member States should be encouraged to implement measures and programs aimed at increasing financial literacy such embedding courses in finance into school curricular and developing other tools (e.g. online investment courses for adults, portfolio management simulators). However, measures on financial literacy should not be pursued at EU level as a priority. The EU should focus on ensuring sufficient levels of investor protection, tackling offers of predatory and exploitative products and understanding if existing business models can genuinely provide value for money for the majority of their retail customers. The EU could consider a recommendation to promote the study and inclusion of financial education in mandatory schooling curricula.

The idea that risk is mitigated by increasing financial literacy is both a simplification of the issue and for the majority of retail users not true. It can rather have the unnerving result of increasing confidence and risk-taking, creating false expectations of high returns and little actual understanding of an individual product. This is particularly true of existing adult users.

The likely way to ensure financial literacy is effective is through mandatory schooling, with programs created by education professionals, not financial industry experts. This is a national, not EU competence. Furthermore, in Brussels the financial industry has significantly reduced trust in the work of the EU on financial literacy by strongly supporting it, whilst consistently calling for reduced investor protection in regulation- seemingly proposing it as an alternative. EU action in this area therefore risks being counterproductive at this point.

However, there is potential merit in looking into comparison and simulation tools if they are either offered by a public authority or independent actor that is monitored by a public authority. These tools can allow retail investors to learn through simulations and better understand how to compare and assess products.

A last key point is that there is currently a financial literacy opportunity for financial advisers. Under the new CMU plan, action 6 professional qualification requirements could be developed to ensure that financial advisers increase their sustainability-related knowledge when it comes to financial products. Sustainability training should also be included as a requirement within the professional training needed to distribute financial products under MiFID II and IDD.

3. Digital innovation

Digitalisation and technological innovation and the increasing popularity of investment apps and web-based platforms are having profound impacts on the way people invest, creating new opportunities (e.g. in terms of easier access to investment products and capital markets, easier comparability, lower costs, etc.). However technological change can also carry risks for consumers (e.g. easier access to potentially riskier products). These changes may pose challenges to existing retail investors, while investor protection rules may no longer be fit for purpose.

Open finance, (i.e. giving greater access to customer data held by financial institutions to third party service providers to enable them to offer more personalised services) can, in the field of investment services, lead to better financial products, better targeted

advice and improved access for consumers and greater efficiency in business-to-business transactions. In the [September 2020 digital finance strategy](#), the Commission announced its intention to propose legislation on a broader open finance framework.

Question 3.1 What might be the benefits or potential risks of an open finance approach (i.e. similar to that developed in the field of payment services which allowed greater access by third party providers to customer payment account information) in the field of retail investments (e.g. enabling more competition, tailored advice, data privacy, etc.)?

Please explain your answer

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Providing regulator or national authority offered product dashboards could be a benefit of open finance approaches. These dashboards can help citizens to better manage the different products and cost of these products. A balance needs to be found within the digital environment more generally between providing benefits to retail investors through the digitalisation of sales procedures and services, whilst ensuring that data privacy is ensured.

A key principle to adhere to should be the use of anonymised retail user data only and no further processing of user data outside of clearly defined purposes that have a value to the user. Aggregating relevant anonymised data to refine product offers could be an acceptable example, if a solution is in place to ensure at least a basic product offer to all potential users. Sharing this data with a third party would not be acceptable.

Question 3.2 What new tools or services might be enabled through open finance or other technological innovation (e.g. digital identity) in the financial sector ?

Please explain your answer

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Public authorities could explore a possible opportunity for investors to connect to a dashboard of their existing products when investing in a new product. The aim would be to give them an updated view of their product dashboard if they invested in the new product. It could include update cost projections, indicate overlaps in any associated insurance cover, compare holding periods with existing products, as well as other key information found in pre-contractual information documents. This dashboard should not be maintained by providers and providers should not have access to it, other than potentially anonymised aggregated data as part of a suitability and demands and needs assessment. Any data used for this assessment should not then be retained or used for any other purpose.

This dashboard and open finance approach could also be explored in line with work on the European Single Access Point platform and as a follow up to this work if pre-contractual information documents form part of the data that it would comprise.

By making the contents of publicly available documentation machine-readable, the data within them can be easily extracted and used for various purposes, such as aggregation, comparison, or analysis. In the field of retail investment, examples would include portfolio management apps, robo advisors, comparison websites, pension dashboards, etc. DG FISMA has already started work in

this area in the context of the European Single Access Point. Machine-readability is also required by newly proposed legislation, such as the [Markets in Crypto-Assets Regulation \(MiCA\)](#), whilst legacy legal framework will need adaptation.

In the field of retail investment, applicable EU legislation does not currently require documents to be machine-readable. However, some private initiatives are already demonstrating that there is interest from market actors in more standardisation and machine-readability of the data provided within existing retail investment information documents, such as the PRIIPs KID or MiFID disclosures. Requiring machine readability of disclosure documents from scratch could help to open business opportunities for third parties, for example by catering to the needs of advisers and retail investors who prefer direct access to execution only venues.

Question 3.3 Should the information available in various pre-contractual disclosure documents be machine-readable?

- ☒ Yes
- ☐ No
- ☐ Don't know / no opinion / not applicable

Please explain your answer to question 3.3:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Machine readability of pre-contractual disclosure documents would be a welcome development especially for institutional investors and asset managers, who demand machine readability to streamline their investment processes. Moreover, an increasing number of academics and civil society organisations are using programmes allowing to quickly process investment documents. Machine readability could be helpful in developing and enabling the use of independent tools / websites offering comparison of different investment products and supporting retail investors in taking decisions.

Machine readability of pre-contractual disclosures is also in line with the Commission's objective to develop the European Single Access Point (ESAP) platform, which Finance Watch supports. We refer to the Finance Watch response to the Commission's consultation on the ESAP, where we highlighted the importance of inclusion of product-related disclosures relevant for retail investors (<https://www.finance-watch.org/wp-content/uploads/2021/03/2021.03.11-Finance-Watch-Consultation-Response-ESAP-Final.pdf>).

At the same time, it can be questioned to what extent retail investors use tools demanding machine readability. A survey could be useful to better understand retail investors' preferences and needs. Finally, an appropriate content of pre-contractual disclosures and their presentation matching retail investors' needs, is more important than their machine-readability.

Rules on marketing and advertising of investment products remain predominantly a national competence, bound up in civil and national consumer protection law, although the [2019 legislative package on cross-border distribution of investment funds](#) does remove some cross-border national barriers.

Question 3.4 Given the increasing use of digital media, would you consider that having different rules on marketing and advertising of investment products constitutes an obstacle for retail investors to access investment products in other EU markets?

- ☒ Yes
- ☐

No

☒ Don't know / no opinion / not applicable

Please explain your answer to question 3.4:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

The question appears to refer to whether or not there is a need to maintain the Distance Marketing of Financial Services Directive. This directive clearly should be maintained and updated to ensure the proper regulation of marketing and advertising of investment products through digital media.

Advertising and marketing through these media tend to be a barrier to retail investors finding the most appropriate products to fit their needs. Different rules also leave regulatory loopholes and opportunity for exploitative products to seep into the market. Where products are advertised on trusted platforms, or in response to viewed content in a personalised form this can also create an emotional bias or unjustified trust in a product.

Under MiFID product governance rules, which also regulate marketing communication, firms are prevented from presenting products in ways which might mislead clients (e.g. the information should not disguise, diminish or obscure important items, the information should give a fair and prominent indication of any relevant risks when referencing any potential benefits of a financial instrument, all costs and charges should be disclosed, the nature of the product must be explained, etc.).

Question 3.5 Might there be a need for stricter enforcement of rules on online advertising to protect against possible mis-selling of retail investment products?

☒ Yes

☐ No

☐ Don't know / no opinion / not applicable

Please explain your answer to question 3.5:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Advertising of financial products does not seem to bring value to retail users. It a high risk of misplaced expectations and often ends up misleading users. Adverts often refer to terms and conditions in smaller text or with asterisks that do not draw attention, which are not sufficient to warn users that the advertised offer may not be the offer they can access, or that the offer is not what it appears at face value.

Short of a ban on advertising retail investment products the only viable solution may be to create non-specific, non-personalised, informational advertisements to raise user attention to the fact that investment products exist and where offers can be found. These advertisements should then only be displayed in an appropriate context, such as the website of a distributor of financial products.

There is a need to update the Distance Marketing of Financial Services Directive (DMFSD) here, which is essential to ensure that retail investors are properly protected. The DMFSD should ensure that online advertising is properly regulated. Given that under the CMU action plan and with the retail investment strategy retail investors will be encouraged to invest more and many will look to do so through online or digital channels, a proper safety net needs to be put in place. An updated DMFSD can help provide this safety net.

Question 3.6 Would you see a need for further EU coordination/harmonisation of national rules on online advertising and marketing of investment products?

- ☒ Yes
- ☐ No
- ☐ Don't know / no opinion / not applicable

Please explain your answer to question 3.6, including which rules would require particular attention:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Harmonisation would ensure that a minimum level of protection is ensured across the EU. This is essential in the context of investment products in the EU single market, where they can be and are sold across borders. An equally important point is to ensure sufficient enforcement of these rules once they have been put in place. This harmonisation of rules can be achieved through the update of the DMFSD. It will be particularly important in the context of new products and business models that will be introduced into the market in year to come. One current example of aggressive advertisement campaigns is for virtual currency exchanges. This is coupled with current high-levels of phishing and scam emails being sent out that together pose a high risk for retail users.

In February 2021, in the context of speculative trading of GameStop shares, [ESMA issued a statement](#) urging retail investors to be careful when taking investment decisions based exclusively on information from social media and other unregulated online platforms, if they cannot verify the reliability and quality of that information.

Question 3.7 How important is the role played by social media platforms in influencing retail investment behaviour (e.g. in facilitating communication between retail investors, but also increasing herding behaviour among investors or for large financial players to collect data on interest in certain stocks or financial products)?

- ☐ Not at all important
- ☐ Rather not important
- ☐ Neutral
- ☐ Somewhat important
- ☒ Very important
- ☐ Don't know / no opinion / not applicable

Please explain your answer to question 3.7:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

The GameStop situation has shown that there is a need for retail investors to access good product offers and the need for higher retail investor protection rules and enforcement. A 'get-rich-quick' fallacy and misrepresentation has been cultivated around investing. It leads some users to believe that a retail investor could take advantage of unique situations, like the GameStop case, to quickly gain large investment profits.

This is not the reality that retail users should expect or aim for given the extremely low probability of it being actually possible and the high risks of investing in these situations.

There is also the issue of advertising on social media attempting to 'gamify' investing. There is again a need here to update the DMFSD to ensure that advertising does not misrepresent or diminish perceptions of risk. Personalised advertising is not consistent with the need to assess investor suitability, appropriateness or demands and needs related to investment products. It should therefore simply be banned. This also links to the need to ensure data privacy and strictly limit the use of consumer data by providers. Please refer to the response to question 3.1.

Question 3.8 Social media platforms may be used as a vehicle by some users to help disseminate investment related information and may also pose risks for retail investment, e.g. if retail investors rely on unverified information or on information not appropriate to their individual situation. How high do you consider this risk?

- ☐ Not at all significant
- ☐ Not so significant
- ☐ Neutral
- ☐ Somewhat significant
- ☒ Very significant
- ☐ Don't know / no opinion / not applicable

[MiFID II](#) regulates the provision of investment advice and marketing communication suggesting, explicitly or implicitly, an investment strategy. Information about investment opportunities are increasingly circulating via social media, which can prompt people to decide to invest on the basis of information that is unverified, may be incorrect or unsuited to the individual customer situation. This information may be circulated by individuals without proper qualification or authorisation to do so. The [Market Abuse Regulation \(MAR\)](#) also contains provisions which forbid the dissemination of false information and forbid collaboration between persons (e.g. brokers recommending a trading strategy) to commit market abuse.

Question 3.9 Do the rules need to be reinforced at EU level with respect to dissemination of investment related information via social media platforms?

- ☒ Yes
- ☐ No
- ☐ Don't know / no opinion / not applicable

Please explain your answer to question 3.9:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

All advice should first and foremost be in line with the MiFID II requirements and the MAR as a starting point. Now that evidence has shown that the 'recommendation and review' culture on social media also extends to retail investing measures should be taken to address this. As a starting point the hosting platform should be held responsible for all content it allows to be published. The platform can then either decide to ensure that

content respects the MiFID II and MAR rules, or can ensure that such content is presented with the equivalent of the current 'sensitive content' warning. This ensures that the content can only be viewed after the user has acknowledged a warning.

On-line investment brokers, platforms or apps, which offer execution only services to retail investors, are subject to the relevant investor protection rules for such services under the MiFID framework. While such on-line investment platforms may offer advantages for retail investors, including a low level of fees and the ease of access to a large variety of investment products, such platforms may also present risks, e.g. in case of inadequacy of appropriateness checks, lack of understanding of individual investors lack or inadequate disclosure of costs.

Question 3.10 Do you consider that retail investors are adequately protected when purchasing retail investments on-line, or do the current EU rules need to be updated?

- ☐ Yes, consumers are adequately protected
- ☒ No, the rules need to be updated
- ☐ Don't know / no opinion / not applicable

Please explain your answer to question 3.10:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

As a starting point ease of access to a large variety of products is at the moment generally a disadvantage for retail investors. As levels of protection and enforcement are low it means that within this variety of products are very large numbers of expensive, misleading or exploitative offers. This increases the chances of investors accidentally choosing one of these products and decreases the visibility of more appropriate products. There is a need to update current rules, in particular in the case of the DMFSD. Please refer to the responses to questions 3.5, 3.6 and 3.7 for more information on updating the DMFSD. MiFID II also needs to be updated here to ensure that providing comparison websites is considered as a services or ancillary services.

Question 3.11 When products are offered online (e.g. on comparison websites, apps, online brokers, etc.) how important is it that lower risk or not overly complex products appear first on listings?

- ☐ Not at all important
- ☐ Rather not important
- ☐ Neutral
- ☐ Somewhat important
- ☒ Very important
- ☐ Don't know / no opinion / not applicable

Please explain your answer to question 3.11:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

There are two key points to this discussion. The first is ensuring that comparison websites and apps are regulated and provide independent, reliable comparisons. This is what retail users generally assume that these websites or apps do. Similarly brokers only have value for retail users if they can provide real suitability and demands and needs tests, to then provide independent reliable advice. If comparison websites, app or brokers are not able to ensure that this is how they operate then there is a high risk that they will cause consumer detriment.

On the second key point, products may be complex by design but should never be presented to a retail investor in a complex way. There is a high level of distrust for complex products, as there is an often-justified fear that the complexity only benefits the provider and not the investor. Exploitative products may well be complex and presented in a complex way to deceive investors. The key then is to ensure that products can be explained in way that the investor can understand and that providers are accountable for this explanation. Here again there is a need to update the DMFSD to ensure that comparison websites, tools and apps are properly regulated.

4. Disclosure requirements

Rules on pre-contractual and on-going disclosure requirements are set out for different products in [MiFID II](#), the [Insurance Distribution Directive](#), [AIFMD \(Alternative Investment Fund Managers Directive\)](#), [UCITS](#), [PEPP](#) and the [Solvency II](#) framework, as well as in horizontal EU legislation (e.g. [PRIIPs](#) or the [Distance Marketing Directive](#)) and national legislation. The rules can differ from one instrument to another, which may render comparison of different products more difficult.

Question 4.1 Do you consider that pre-contractual disclosure documentation for retail investments, in cases where Information Document is provided, enables adequate understanding of:

| | 1 (strongly disagree) | 2 (rather disagree) | 3 (neutral) | 4 (rather agree) | 5 (strongly agree) | Don't know - No opinion - Not applicable |
|--|----------------------------------|------------------------|-----------------------|-----------------------|-----------------------|--|
| The nature and functioning of the product | <input checked="" type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |
| The costs associated with the product | <input checked="" type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |
| The expected returns under different market conditions | <input checked="" type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |
| The risks associated with the product | <input checked="" type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |

Please explain your answer to question 4.1:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

If the format that information is provided in is not regulated and standardised, then it is unlikely that it will ensure the investor is actually informed and understands key information about the product. The provision of this information tends to be rather linked to providers reducing compliance and litigation risk and showing a product in the best possible light, rather than helping to inform the retail investor. A product approval regime would eliminate the need for providers to try and address compliance and litigation risk. Information could then focus on clear, understandable product description areas, with more complex methodology behind these descriptions being submitted to regulators and only upon request to retail investors. There could be an opportunity to link the offer to investor dashboards, to provide a projection for the investor of how the product would interact with their other products. A similar link could be made to regulator-offered comparison tool to compare equivalent offers (see the response to question 3.1).

Question 4.2 Please assess the different elements for each of the following pieces of legislation:

Question 4.2.1 PRIIPs Key Information Document

Question 4.2.1 a) PRIIPS: Is the pre-contractual information provided to retail investors for each of the elements below **understandable and reliable so as to help them take retail investment decisions? Please assess the **level of understanda****

| | 1 (very low) | 2 (rather low) | 3 (neutral) | 4 (rather high) | 5 (very high) | Don't know - No opinion - Not applicable |
|--|-----------------------|----------------------------------|-----------------------|-----------------------|-----------------------|--|
| PRIIPs Key Information Document (as a whole) | <input type="radio"/> | <input checked="" type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |
| Information about the type, objectives and functioning of the product | <input type="radio"/> | <input checked="" type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |
| Information on the risk-profile of the product, and the summary risk indicator | <input type="radio"/> | <input checked="" type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |
| Information about product performance | <input type="radio"/> | <input checked="" type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |
| Information on cost and charges | <input type="radio"/> | <input checked="" type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |
| Information on sustainability-aspects of the product | <input type="radio"/> | <input checked="" type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |

Question 4.2.1 b) PRIIPS: Is the pre-contractual information provided to retail investors for each of the elements below reliable so as to help them take retail investment decisions? Please assess the level of reliability:

| | 1 (very low) | 2 (rather low) | 3 (neutral) | 4 (rather high) | 5 (very high) | Don't know - No opinion - Not applicable |
|--|-----------------------|----------------------------------|-----------------------|-----------------------|-----------------------|--|
| PRIIPs Key Information Document (as a whole) | <input type="radio"/> | <input checked="" type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |
| Information about the type, objectives and functioning of the product | <input type="radio"/> | <input checked="" type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |
| Information on the risk-profile of the product, and the summary risk indicator | <input type="radio"/> | <input checked="" type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |
| Information about product performance | <input type="radio"/> | <input checked="" type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |
| Information on cost and charges | <input type="radio"/> | <input checked="" type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |
| Information on sustainability-aspects of the product | <input type="radio"/> | <input checked="" type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |

Question 4.2.1 c) PRIIPS: Is the amount of information provided for each of the elements below insufficient, adequate, or excessive?

| | 1 (insufficient) | 2 (adequate) | 3 (excessive) | Don't know - No opinion - Not applicable |
|--|-----------------------|----------------------------------|-----------------------|--|
| PRIIPs Key Information Document (as a whole) | <input type="radio"/> | <input checked="" type="radio"/> | <input type="radio"/> | <input type="radio"/> |
| Information about the type, objectives and functioning of the product | <input type="radio"/> | <input checked="" type="radio"/> | <input type="radio"/> | <input type="radio"/> |
| Information on the risk-profile of the product, and the summary risk indicator | <input type="radio"/> | <input checked="" type="radio"/> | <input type="radio"/> | <input type="radio"/> |
| Information about product performance | <input type="radio"/> | <input checked="" type="radio"/> | <input type="radio"/> | <input type="radio"/> |
| Information on cost and charges | <input type="radio"/> | <input checked="" type="radio"/> | <input type="radio"/> | <input type="radio"/> |
| Information on sustainability-aspects of the product | <input type="radio"/> | <input checked="" type="radio"/> | <input type="radio"/> | <input type="radio"/> |

Please explain your answer to question 4.2.1:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

The essential point for key information documents is the quality not the quantity of information in the retail investor-facing document. The shorter the document can be, whilst accurately describing key product features, the more useful it will be to the majority of retail investors. More detailed, regulator-facing information should always be easily available upon request, for retail investors who want or need it. If providers cannot meet the minimum check of being able to have their product explanation easily understood by average retail users in a short document, then there is a very strong case that they should not be selling it to them.

In the digital versions of KIDs the more basic version could contain the links to the more detailed information available using a layering approach.

There is also a need to significantly improve sustainability-related disclosure in key information documents. We recognise that the page-limit prescribed by the regulation can make the inclusion of more information challenging. But at the minimum, a link / reference should be provided to where investors can find sustainability-related disclosures in line with Regulation on sustainability-related disclosure in the financial services sector (SFDR). We also strongly recommend that the percentage of product alignment with the Taxonomy Regulation is directly included in the key information document. This could take the form of a graphic representation or a label, which could use a similar logic to energy rating labels for example.

Question 4.2.2 a) IDD: Is the pre-contractual information provided to retail investors for each of the elements below sufficiently understandable and reliable so as to help them take retail investment decisions? Please assess the level of understandability:

| | 1 (very low) | 2 (rather low) | 3 (neutral) | 4 (rather high) | 5 (very high) | Don't know - No opinion - Not applicable |
|--|----------------------------------|----------------------------------|----------------------------------|-----------------------|-----------------------|--|
| Insurance Product Information Document (as a whole) | <input type="radio"/> | <input checked="" type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |
| Information about the insurance distributor and its services | <input type="radio"/> | <input checked="" type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |
| Information on the insurance product (conditions, coverage etc.) | <input type="radio"/> | <input type="radio"/> | <input checked="" type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |
| Information on cost and charges | <input checked="" type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |

Question 4.2.2 b) IDD: Is the pre-contractual information provided to retail investors for each of the elements below sufficiently reliable so as to help them take retail investment decisions? Please assess the level of reliability:

| | 1 (very low) | 2 (rather low) | 3 (neutral) | 4 (rather high) | 5 (very high) | Don't know - No opinion - Not applicable |
|-------------------|-----------------|-------------------|----------------|--------------------|------------------|--|
| Insurance Product | | | | | | |

| | | | | | | |
|--|-----------------------|----------------------------------|----------------------------------|-----------------------|-----------------------|-----------------------|
| Information Document (as a whole) | <input type="radio"/> | <input checked="" type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |
| Information about the insurance distributor and its services | <input type="radio"/> | <input checked="" type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |
| Information on the insurance product (conditions, coverage etc.) | <input type="radio"/> | <input type="radio"/> | <input checked="" type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |
| Information on cost and charges | <input type="radio"/> | <input checked="" type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |

Question 4.2.2 c) IDD: Is the amount of information provided for each of the elements below insufficient, adequate, or excessive?

| | 1 (insufficient) | 2 (adequate) | 3 (excessive) | Don't know - No opinion - Not applicable |
|--|----------------------------------|----------------------------------|-----------------------|--|
| Insurance Product Information Document (as a whole) | <input type="radio"/> | <input checked="" type="radio"/> | <input type="radio"/> | <input type="radio"/> |
| Information about the insurance distributor and its services | <input type="radio"/> | <input checked="" type="radio"/> | <input type="radio"/> | <input type="radio"/> |
| Information on the insurance product (conditions, coverage etc.) | <input type="radio"/> | <input checked="" type="radio"/> | <input type="radio"/> | <input type="radio"/> |
| Information on cost and charges | <input checked="" type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |

Please explain your answer to question 4.2.2:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Although the format of the IPID is more engaging than that of the PRIIPs KID, there are many examples where each 'box' or section is filled with text, reducing the effectiveness of having a summary of key information. There are examples of shorter IPID using bullet points to summarise key information that are much clearer and more accessible. The key point, however, is that the IPID is a document designed to illustrate the nature of insurance cover. It does not provide information on the cost of the product, but rather how premiums should be paid. In terms of ensuring that investors have a full overview of their outgoing expenditures to calculate their investment capacity, the IPID is not currently designed or used to provide this information, such as the exact or expected financial impact of the product on the investor.

Question 4.2.3 PEPP Key Information Document

Question 4.2.3 a) PEPP: Is the pre-contractual information provided to retail investors for each of the elements below sufficiently understandable and reliable so as to help them take retail investment decisions? Please assess the level of understandability:

| | 1 (very low) | 2 (rather low) | 3 (neutral) | 4 (rather high) | 5 (very high) | Don't know - No opinion - Not applicable |
|--|-----------------------|-----------------------|----------------------------------|-----------------------|-----------------------|--|
| PEPP Key Information Document (as a whole) | <input type="radio"/> | <input type="radio"/> | <input checked="" type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |
| Information about the PEPP provider and its services | <input type="radio"/> | <input type="radio"/> | <input checked="" type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |
| Information about the safeguarding of investments | <input type="radio"/> | <input type="radio"/> | <input checked="" type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |
| Information on cost and charges | <input type="radio"/> | <input type="radio"/> | <input checked="" type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |
| Information on the pay-out phase | <input type="radio"/> | <input type="radio"/> | <input checked="" type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |

Question 4.2.3 b) PEPP: Is the pre-contractual information provided to retail investors for each of the elements below sufficiently reliable so as to help them take retail investment decisions? Please assess the level of reliability:

| | 1 (very low) | 2 (rather low) | 3 (neutral) | 4 (rather high) | 5 (very high) | Don't know - No opinion - Not applicable |
|--|-----------------------|-----------------------|----------------------------------|-----------------------|-----------------------|--|
| PEPP Key Information Document (as a whole) | <input type="radio"/> | <input type="radio"/> | <input checked="" type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |
| Information about the PEPP provider and its services | <input type="radio"/> | <input type="radio"/> | <input checked="" type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |
| Information about the safeguarding of investments | <input type="radio"/> | <input type="radio"/> | <input checked="" type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |
| Information on cost and charges | <input type="radio"/> | <input type="radio"/> | <input checked="" type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |
| Information on the pay-out phase | <input type="radio"/> | <input type="radio"/> | <input checked="" type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |

Question 4.2.3 c) PEPP: Is the amount of information provided for each of the elements below insufficient, adequate, or excessive?

| | 1 (insufficient) | 2 (adequate) | 3 (excessive) | Don't know No opinion Not applicable |
|--|-----------------------|-----------------------|-----------------------|--|
| PEPP Key Information Document (as a whole) | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |
| Information about the | | | | |

| | | | | |
|---|-----------------------|-----------------------|-----------------------|----------------------------------|
| PEPP provider and its services | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input checked="" type="radio"/> |
| Information about the safeguarding of investments | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input checked="" type="radio"/> |
| Information on cost and charges | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input checked="" type="radio"/> |
| Information on the pay-out phase | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input checked="" type="radio"/> |

Please explain your answer to question 4.2.3:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Given that the PEPP regulation will only apply as from March 2022, there are not yet examples of how providers will produce and complete the PEPP template based on the requirements laid out. It may turn out to be an improvement, when compared with the PRIIPs KID, based on the template in Delegated Regulation EU 2021/473. Please refer again to the response to answer 4.2.1 here concerning how investment information is presented.

Question 4.3 Do you consider that the language used in pre-contractual documentation made available to retail investors is at an acceptable level of understandability, in particular in terms of avoiding the use of jargon and sector specific terminology?

- ☐ Yes
- ☒ No
- ☐ Don't know / no opinion / not applicable

Please explain your answer to question 4.3:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

This is likely to require a proper process to address the issue. A large-scale project over at least two years to consumer test pre-contractual information documents that are already available on the market and extract positive and negative points, build new improved documents and then re-test could help to take a step forward here. This project could also include mystery shopping exercises that check the explanations and advice, if any provided with existing pre-contractual information documents to assess if this advice and presentation helps or hinders understanding.

Question 4.4 At what stage of the retail investor decision making process should the Key Information Document (PRIIPs KID, PEPP KID, Insurance Product Information Document) be provided to the retail investor? Please explain your answer:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

As pre-contractual information documents the KIDs, PID and IPID have to be provided to in good time before the contract is signed. There is an issue over precise timing and how to avoid the situation where the investor receives pre-contractual information very close to the moment that they then sign a contract. A potential solution is to ensure cooling off periods, where the investor receives the pre-contractual information, but has to wait before they can sign a contract. They should be advised to check and compare other product offers in this period. This could help to ensure that pre-contractual information becomes more than a tick-the-box exercise in many cases.

Question 4.5 Does pre-contractual documentation for retail investments enable a clear comparison between different investment products?

- ☐ Yes
- ☒ No
- ☐ Don't know / no opinion / not applicable

Please explain your answer to question 4.5:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Pre-contractual information should ensure that retail investors can clearly compare different investment products, which is currently not the case. Refer to our response to question 4.7 below.

Question 4.6 Should pre-contractual documentation for retail investments enable as far as possible a clear comparison between different investment products, including those offered by different financial entities (for example, with one product originating from the insurance sector and another from the investment funds sectors)?

- ☒ Yes
- ☐ No
- ☐ Don't know / no opinion / not applicable

Please explain your answer to question 4.6:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

The important point about investment products offered by different financial entities here is that equivalent information should be presented in the same way. Equally specific features of the product offer that differ from other providers should make clear what these features do and explain them clearly in their own right. However, any costs associated with additional features should be presented both standalone for the feature and as part of the overall cost of the product. Otherwise investors will not be able to understand the financial impact of the product as a whole and assess alternatives.

Question 4.7 a) Are you aware of any overlaps, inconsistencies, redundancies, or gaps in the EU disclosure rules (e.g. PRIIPS, MiFID, IDD, PEPP, etc.) with respect to the way product cost information is calculated and presented?

- ☒ Yes
- ☐ No
- ☐ Don't know / no opinion / not applicable

Please explain your answer to question 4.7 a), and indicate which information documents are concerned:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Inconsistencies and gaps in the different retail products exist, which in many cases prevents retail investors from participating in the capital market or significantly limits their investment choices, as investors are rather pushed to use the investment products offered by the bank or insurance company they are already clients of. We refer to the European Commission's report "Distribution systems of retail investment products across the European Union", dated April 2018, on the results of the study of retail investment product distribution, which highlighted inconsistencies and gaps in presentation of fees across different investment products and Member States. The study also found that "in specific cases investors would need to gather information from different documents and, in some instances, combine them correctly, e.g. when investing in funds that are not in-house, additional custody charges would apply". Note that the study covered the following products - investment funds, ETFs, listed bonds and equities, life insurance products and pension products.

Question 4.7 b) Are you aware of any overlaps, inconsistencies, redundancies, or gaps in the the EU disclosure rules (e.g. PRIIPS, MiFID, IDD, PEPP, etc.) with respect to the way risk information is calculated and presented?

- ☐ Yes
- ☐ No
- ☒ Don't know / no opinion / not applicable

Please explain your answer to question 4.7 b), and indicate which information documents are concerned:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Question 4.7 c) Are you aware of any overlaps, inconsistencies, redundancies, or gaps in the the EU disclosure rules (e.g. PRIIPS, MiFID, IDD, PEPP, etc.) with respect to the way performance information is calculated and presented?

- ☐ Yes
- ☐ No
- ☒ Don't know / no opinion / not applicable

Please explain your answer to question 4.7 c), and indicate which information documents are concerned:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Question 4.7 d) Are you aware of any overlaps, inconsistencies, redundancies, or gaps in the the EU disclosure rules (e.g. PRIIPS, MiFID, IDD, PEPP, etc.) with respect to other elements?

- ☐ Yes
- ☐ No
- ☒ Don't know / no opinion / not applicable

Question 4.8 How important are the following types of product information when considering retail investment products?

| | 1 (not relevant) | 2 (relevant, but not crucial) | 3 (essential) | Don't know No opinion Not applicable |
|---|-----------------------|----------------------------------|----------------------------------|--|
| Product objectives /main product features | <input type="radio"/> | <input type="radio"/> | <input checked="" type="radio"/> | <input type="radio"/> |
| Costs | <input type="radio"/> | <input type="radio"/> | <input checked="" type="radio"/> | <input type="radio"/> |
| | | | | |

| | | | | |
|--|-----------------------|----------------------------------|----------------------------------|-----------------------|
| Past performance | <input type="radio"/> | <input type="radio"/> | <input checked="" type="radio"/> | <input type="radio"/> |
| Guaranteed returns | <input type="radio"/> | <input type="radio"/> | <input checked="" type="radio"/> | <input type="radio"/> |
| Capital protection | <input type="radio"/> | <input type="radio"/> | <input checked="" type="radio"/> | <input type="radio"/> |
| Forward-looking performance expectation | <input type="radio"/> | <input checked="" type="radio"/> | <input type="radio"/> | <input type="radio"/> |
| Risk | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |
| Ease with which the product can be converted into cash | <input type="radio"/> | <input type="radio"/> | <input checked="" type="radio"/> | <input type="radio"/> |
| Other | <input type="radio"/> | <input type="radio"/> | <input checked="" type="radio"/> | <input type="radio"/> |

Please specify to what other type(s) of product information you refer in your answer to question 4.8:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Information on investor guarantee schemes and any dashboards or comparison tools that are not offered by providers and that have been approved by supervisors should also be provided to investors considering retail investment products.

Please explain your answer to question 4.8:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

There is also a clear need to improve the information provided on the sustainability of products. Please refer to our answer to question 4.2.1 as well as to the sustainability section.

MiFID II has established a comprehensive cost disclosure regime that includes requiring that appropriate information on costs in relation to financial products as well as investment and ancillary services is provided in good time to the clients (i.e. before any transaction is concluded and on an annual basis, in certain cases).

Question 4.9 Do you consider that the current regime is sufficiently strong to ensure costs and cost impact transparency for retail investors?

In particular, would an annual ex post information on costs be useful for retail investors in all cases?

- ☒ Yes
- ☐ No
- ☐ Don't know / no opinion / not applicable

Please explain your answer to question 4.9:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Seeing the track record of the provider on costs would help to compare which are the more expensive providers. The investor can then compare this information with product performance and assess the value for money they are getting.

The ex-post information on costs would be clearly presented with the product performance to see how these costs are impacting the investment. This would mean presenting three figures, the gross performance, net costs and net performance.

Information on switching and withdrawal options should also be clearly presented, so that the investor can assess if their best option is to remain invested in a product or not.

Studies show that due to the complexity of products and the amount of the aggregate pre-contractual information provided to retail investors, there is a risk that investors are not able to absorb all the necessary information due to information overload. This can lead to suboptimal investment decisions.

Question 4.10 What should be the maximum length of the PRIIPs Key Information Document, or a similar pre-contractual disclosure document, in terms of number of words?

Please explain your answer:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

It may be useful to introduce an arbitrary limit on the number of words to ensure that pre-contractual information documents remain readable and useful for retail investors. Any such limit should take into account the font size and type of the text used, as well as the graphics, tables and overall layout of the documents.

What the word convey is obviously key to this question as well and where the balance between too much and enough information to ensure understanding must be found. Carefully constructed consumer testing should be used to give insights into how to find this balance.

Please also refer to the response to question 4.2.1.

Question 4.11 How should disclosure requirements for products with more complex structures, such as derivatives and structured products, differ compared to simpler products, for example in terms of additional information to be provided, additional explanations, additional narratives, etc.?

Please explain your answer:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

If complex structures can be explained in simple terms and if the complexity of the product has a demonstrable advantage for the investor that can be easily explained and understood, then additional explanations or narratives are not needed. If providers cannot meet the minimum check of being able to have their product explanation easily understood by average retail users in a short document, then there is a very strong case that they should not be selling it to them.
Please refer to the response to question 4.2.1.

Question 4.12 Should distributors of retail financial products be required to make pre-contractual disclosure documents available:

- ☐ On paper by default?
- ☒ In electronic format by default, but on paper upon request?
- ☐ In electronic format only?
- ☐ Don't know / no opinion / not applicable

Please explain your answer to question 4.12:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

This question points to an assumption that sales will increasingly occur through digital and online media. There is a significant risk of excluding many potential retail users here though if access to products through non-digital means becomes restricted, either through higher cost or limited availability of service. For this reason, a paper version of pre-contractual information document should be available to those that require or request it at no additional cost. Electronic format should also be retrievable, either through a downloadable document, or link.

Question 4.13 How important is it that information documents be translated into the official language of the place of distribution?

- ☐ Not at all important
- ☐ Rather not important
- ☐ Neutral
- ☐

Somewhat important

- ☒ Very important
- ☐ Don't know / no opinion / not applicable

Please explain your answer to question 4.13:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

The fact that this question has been included in this consultation and that it is not taken for granted that all retail investors should be translated into the official language of the place of distribution is disappointing. Retail investors must be able to properly assess product information to have any hope of understanding what they are investing in and what that means for their financial situation. If product information is not provided in a language that investors can understand there is no chance of this happening. The very least that providers should do is ensure that this information is available in the official language or languages of the place of distribution. Not doing so should be construed as a deliberate attempt to deceive or mislead retail investors. There is potentially a more interesting and relevant question over European citizens who move to work and live in a new EU country. They may only be learning a new language when they use their freedom of movement to do this. Their language skills may very well not extend to the kinds of terms included in pre-contractual information, even after taking language courses to a sufficiently high level to work. This may necessitate additional requirements to avoid mis-selling for investors in these situations. It could pose a particular issue in the case of sales online or through digital means and certainly for execution-only sales, where it will not be possible to determine a person's level of language comprehension in the same way as an adviser speaking to them would.

Question 4.14 How can access, readability and intelligibility of pre-contractual retail disclosure documents be improved in order to better help retail investors make investment decisions?

Please explain your answer:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Please refer to the responses to questions 4.2.1 and 4.3.

Question 4.15 When information is disclosed via digital means, how important is it that:

| | 1 (not at all important) | 2 (rather not important) | 3 (neutral) | 4 (somewhat important) | 5 (very important) |
|--|--------------------------------|--------------------------------|-----------------------|----------------------------------|----------------------------------|
| There are clear rules to prescribe presentation formats (e.g. readable font size, use of designs/colours, etc.)? | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input checked="" type="radio"/> |
| Certain key information (e.g. fees, charges, payment of inducements, information relative to performance, etc.) is displayed in ways which highlight the prominence? | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input checked="" type="radio"/> |
| Format of the information is adapted to use on different kinds of device (for example through use of layering)? | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input checked="" type="radio"/> |
| Appropriately labeled and relevant hyperlinks are used to provide access to supplementary information? | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input checked="" type="radio"/> |
| Use of hyperlinks is limited (e.g. one click only – no cascade of links)? | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input checked="" type="radio"/> |
| Contracts cannot be concluded until the consumer has scrolled to the end of the document? | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input checked="" type="radio"/> | <input type="radio"/> |
| Other? | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |

Please explain your answer to question 4.15:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Retail users accessing retail products through digital means should be encouraged to properly check product information. There is potentially a tendency for users to access digital distribution with the idea that it will be take less time to access products. They may also experience 'terms and conditions' fatigue, as using digital means in general often requires ticking boxes and confirming that terms and conditions or disclaimers have been read. This leads to users scrolling without reading, as it would otherwise consume huge amounts of time to digest all this information.

Information on investment products provided through digital means should use consumer-tested techniques to ensure that it has the best possible chance of being read and understood.

5. The PRIIPs Regulation

In accordance with the [PRIIPs Regulation](#), and as part of the retail investment strategy, the Commission is seeking views on the PRIIPs Regulation. In February 2021, [the ESAs agreed on a draft amending Regulatory Technical Standard](#) aimed at improving the delegated (level 2) regulation. The Commission is now assessing the PRIIPS Regulation level 1 rules, in line with the review clause contained in the Regulation.

Core objectives of the PRIIPs Regulation

Question 5.1 Has the PRIIPs Regulation met the following core objectives:

a) Improving the level of understanding that retail investors have of retail investment products:

- ☐ Yes
- ☐ No
- ☒ Don't know / no opinion / not applicable

Please explain your answer to question 5.1 a):

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

b) Improving the ability of retail investors to compare different retail investment products, both within and among different product types:

- ☐ Yes
- ☐ No
- ☒ Don't know / no opinion / not applicable

Please explain your answer to question 5.1 b):

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

c) Reducing the frequency of mis-selling of retail investment products and the number of complaints:

- ☐ Yes
- ☒ No
- ☐ Don't know / no opinion / not applicable

Please explain your answer to question 5.1 c):

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

The cases of mis-selling in the retail investment products persist. We refer to the conclusions made in the relevant studies based on the following reports:

- European Commission report "Distribution systems of retail investment products across the European Union", April 2018
- Study requested by the ECON Committee "Consumer credit: Mis-selling of financial products", April 2018.

d) Enabling retail investors to correctly identify and choose the investment products that are suitable for them, based on their individual sustainability preferences, financial situation, investment objectives and needs and risk tolerance:

- ☐ Yes
- ☐ No
- ☒ Don't know / no opinion / not applicable

Please explain your answer to question 5.1 d):

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Question 5.2 Are retail investors easily able to find and access PRIIPs KIDs and PEPP KIDs?

- ☐ Yes
☒ No
☐ Don't know / no opinion / not applicable

Please explain your answer to question 5.2:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

KIDs documents are not always easily accessible for retail investors: these may be placed on the sections of the webpage accessible only to clients or otherwise investors may need to spend significant time to find these in the complex website structures/hierarchies. The accessibility of the documents needs to be improved, for example, by setting up a single EU database (such as ESAP) or by requiring the documents to be placed in a dedicated section of the financial service provider's/distributor's webpage.

Question 5.2.1 What could be done to improve the access to PRIIPs KIDs and PEPP KIDs?

| | Yes | No | Don't know - No opinion - Not applicable |
|--|----------------------------------|-----------------------|---|
| Requiring PRIIPs KIDs and PEPP KIDs to be uploaded onto a searchable EU-wide database | <input checked="" type="radio"/> | <input type="radio"/> | <input type="radio"/> |
| Requiring PRIIPs KIDs and PEPP KIDs to be uploaded onto a searchable national database | <input checked="" type="radio"/> | <input type="radio"/> | <input type="radio"/> |
| Requiring PRIIPs KIDs and PEPP KIDs to be made available in a dedicated section on manufacturer and distributor websites | <input checked="" type="radio"/> | <input type="radio"/> | <input type="radio"/> |
| Other | <input checked="" type="radio"/> | <input type="radio"/> | <input type="radio"/> |

Please specify to what other improvement(s) you refer in your answer to question 5.2.1:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

PRIIPS and PEP KIDs can be made searchable and available to investors via independent comparison websites and apps. Refer to our response to question 3.11.

Please explain your answer to question 5.2.1:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

We support the creation of a single EU database, which would include retail investment product information. The European Single Access Point (ESAP) should be used for this. Such a database will also facilitate supervision of retail products by National Competent Authorities (NCA) and European Supervisory Authorities (ESA). The example of Norway can be used for this: an independent organisation Forbrukerrådet operates comparison tools for different types of financial products. National databases would also increase product information availability, visibility and comparability for retail investors. They could also serve as a national gateway for foreign investors. However, unlike the EU-wide database, they would not be as effective in supporting the development of the European Capital Market, as a single European database. KIDs availability via a dedicated section of the manufacturer and distributor websites is the most basic pre-condition for improving access of retail investors to product information.

The PRIIPs KID

Question 5.3 Should the PRIIPs KID be simplified, and if so, how (while still fulfilling its purpose of providing uniform rules on the content of a KID which shall be accurate, fair, clear, and not misleading)?

- ☒ Yes
- ☐ No
- ☐ Don't know / no opinion / not applicable

Please explain your answer to question 5.3:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Please refer to the response to question 4.2.1.

Implementation and supervision of the PRIIPs Regulation

Question 5.4 Can you point to any inconsistencies or discrepancies in the actual implementation of the PRIIPs Regulation across PRIIPs manufacturers, distributors, and across Member States?

- ☐ Yes
- ☐ No
- ☒ Don't know / no opinion / not applicable

Please explain your answer to question 5.4:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

5.5 In your experience, is the supervision of PRIIPs KIDs consistent across Member States?

- ☐ Yes
- ☐ No
- ☒ Don't know / no opinion / not applicable

Please explain your answer to question 5.5:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Question.5.6 What is in your experience as a product manufacturer, the cost of manufacturing:

5.6 a) A single PRIIPs KID (cost in € per individual product)

 €

Please explain your answer to question 5.6 a):

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

5.6 b) A single PEPP KID (cost in € per individual product)

 €

Please explain your answer to question 5.6 b):

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

5.6 c) A single Insurance Product Information Document (cost in € per individual product)

 €

Please explain your answer to question 5.6 c):

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Question 5.7 What is in your experience as a product manufacturer the cost of updating:

5.7 a) A single PRIIPs KID (cost in € per individual product)

 €

Please explain your answer to question 5.7 a):

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

5.7 b) A single PEPP KID (cost in € per individual product)

 €

Please explain your answer to question 5.7 b):

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

5.7 c) A single Insurance Product Information Document (cost in € per individual product)

 €

Please explain your answer to question 5.7 c):

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Question 5.8 Which factors of preparing, maintaining, and distributing the KID are the most costly?

Please select as many answers as you like

- ☐ Collecting product data/inputs
- ☐ Performing the necessary calculations
- ☐ Updating IT systems
- ☐ Quality and content check
- ☐ Outsourcing costs
- ☐ Other

Please explain your answer to question 5.8:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Multiple-Option Products

For PRIIPs offering the retail investor a range of options for investments (Multiple Option Products) the PRIIPs Regulation currently provides the manufacturer with two different approaches for how to structure the KID:

- A separate KID can be prepared for each investment option (Article 10(a))
- A generic KID covering in general terms the types of investment options offered and separate information on each underlying investment option (Article 10(b))

According to feedback, both of these options present drawbacks, including challenges for retail investors to compare multiple option products with each other, in particular regarding costs.

An alternative approach would therefore be to require the provision of only one information document for the whole Multiple-Option Product, depending on the underlying investment options that the retail investors would prefer.

Question 5.9 Should distributors and/or manufacturers of Multiple Option Products be required to provide retail investors with a single, tailor-made, KID, reflecting the preferred underlying portfolio of each investor?

What should happen in the case of ex-post switching of the underlying investment options?

- ☒ Yes
- ☐ No
- ☐ Don't know / no opinion / not applicable

Please explain your answer to question 5.9:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

This would be most consistent with the aim of trying to ensure the retail investor understands the product. The document should focus on accurately and clearly explaining the key features of the product that can be compared with equivalent products. Pre-contractual information will only be useful if it provides a basis for comparison, so if a tailor-made approach is taken this key principle must remain.

In the case of ex-post switching the investor should be provided with a clear explanation of what this is, how it will affect their investment and their contractual rights in this case if any, such as if they have an option to refuse switching or not.

Scope

The scope of the PRIIPs Regulation currently excludes certain pension products, despite qualifying under the definition of packaged retail investment products. These include pension products which, under national law, are recognised as having the primary purpose of providing the investor with an income in retirement and which entitle the investor to certain benefits. These also include individual pension products for which a financial contribution from the employer is required by national law and where the employer or the employee has no choice as to the pension product or provider.

Question 5.10 Should the scope of the PRIIPs Regulation include the following products?

a) Pension products which, under national law, are recognised as having the primary purpose of providing the investor with an income in retirement and which entitle the investor to certain benefits:

- ☒ Yes

- ☐ No
- ☐ Don't know / no opinion / not applicable

Please explain why the scope of the PRIIPs Regulation should include these pension products:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

The existing EU disclosure requirements do not cover personal pension products offered to consumers. Thus, the PRIIPs Regulation should be extended so that consumers have access to concise pre-contractual information when taking out a personal pension product.

b) Individual pension products for which a financial contribution from the employer is required by national law and where the employer or the employee has no choice as to the pension product or provider:

- ☐ Yes
- ☐ No
- ☒ Don't know / no opinion / not applicable

The ability to access past versions of PRIIPS KIDs from a manufacturer is useful in showing how its product portfolio has evolved (e.g. evolution of risk indicators, costs, investment strategies, performance scenarios, etc.) that cannot be understood from simply looking at the latest versions of PRIIPS disclosure documents of currently marketed products.

Question 5.11 Should retail investors be granted access to past versions of PRIIPs KIDs?

- ☐ Yes
- ☒ No
- ☐ Don't know / no opinion / not applicable

Please explain your answer to question 5.11:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

They should be granted access the versions of PRIIPs KIDs that have been offered to them.

Question 5.12 The PRIIPs KIDs should be reviewed at least every 12 months and if the review concludes that there is a significant change, also updated.

Question 5.12.1 Should the review and update occur more regularly?

- ☐ Yes
- ☒ No
- ☐ Don't know / no opinion / not applicable

Question 5.12.2 Should this depend on the characteristics of the PRIIPs?

- ☒ Yes
- ☐ No
- ☐ Don't know / no opinion / not applicable

Question 5.12.3 What should trigger the update of PRIIP KIDs?

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

A change in any external or internal information that relates to the PRIIP KID and effects the information that the KID displays. A general review period of 12 months is a good practice, but should not be used to avoid having up-to-date KIDs for the products being offered.

Please explain your answer to question 5.12:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Please see the response to question 5.12.3.

6. Suitability and appropriateness assessment

Under current EU rules, an investment firm providing advice or portfolio management to a retail investor must collect information about the client and make an assessment that a given investment product is suitable for them before it can recommend a product to a client or invest in it on the client's behalf. Similar rules exist for the sale of insurance-based investment products and of Pan-European Pension Products. The objective of these rules is to protect retail investors and ensure that they are not advised to buy products that may not be suitable for them. The suitability assessment process may however sometimes be perceived as lengthy and ineffective.

Question 6.1 To what extent do you agree that the suitability assessment conducted by an investment firm or by a seller of insurance-based investment products serves retail investor needs and is effective in ensuring that they are not offered unsuitable products?

- ☐ Strongly disagree
- ☒ Disagree

- ☐ Neutral
- ☐ Agree
- ☐ Strongly agree
- ☐ Don't know / no opinion / not applicable

Please explain your answer to question 6.1:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Suitability assessment as a tool requires improvements in terms of questions/structure to make it more targeted to their investment needs/preferences, risk profile and financial standing (such as inclusion of questions on the current level of debt and its servicing cost) of retail investors. Mystery shopping exercises conducted by consumer organisations (see, for example, the study by BEUC "Price of bad advice" from June 2018; https://www.beuc.eu/publications/beuc-x-2018-055_the_price_of_bad_advice.pdf) have shown numerous cases of product mis-selling by advisors, as well as pointing out inconsistent application of suitability assessment requirements across the EU Member States.

Furthermore, there is an issue over how these assessments are delivered. First of all, there is no consistency across product categories here. Refer to our response to question 6.2.

For sales with advice there is a need for further work and additional requirements to ensure that advisors go through a sufficiently rigorous process to properly assess sustainability preferences. ESMA could work to produce guidance on how this might be best achieved. This guidance should include provisions on record keeping related to how advice considered sustainability preferences, templates for suitability assessment of sustainability preferences and mandates for ESMA to assess the advice market through mystery shopping exercises.

Question 6.2 Can you identify any problems with the suitability assessment?

- ☒ Yes
- ☐ No
- ☐ Don't know / no opinion / not applicable

Please explain your answer to question 6.2. Please explain how these problems might they be addressed:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

There is no consistent approach/regime of suitability checks across different investment products under the corresponding regulations. Whilst suitability assessment requirements under MiFID are stronger in the sense of consumer protection, there is no equivalence under the IDD, even if the investment products might have similar risk characteristics. Thus, there is a need for the harmonization of the regimes by applying the MiFID requirements as a blueprint.

In terms of design of the appropriateness assessment, the following aspects should be improved:

- Questions should be more targeted to investors' preferences, risk profile and experience with financial products rather than being generic
- Appropriateness assessments should be made mandatory for all complex products rather than allowing

investment firms to waive the obligation on the grounds of insufficient client information and issuing a warning (Article 25(3) MiFID)

- Quality of warnings in case an appropriateness test is failed should be improved to ensure that they more effectively deter investors from purchasing inappropriate products.

Currently, sustainability preferences of investors are not considered as part of the suitability assessment. This is problematic given the growing interest among retail investors in sustainable products and given the objective to channel finance to transition the economy towards sustainability.

However, this will change with the amendments to the MiFID II and IDD Delegate Acts, published by the European Commission in April 2021 (COM:C(2021)2616). These changes will become applicable in approximately one year's time. However, concerns remain over whether the rules are sufficiently granular to ensure sustainability preferences are considered in an adequate and consistent way. Further measures, for instance guidance, should be considered, as well as monitoring of the implementation of the rules including consideration of whether they deliver on the objectives. Consideration should be given to advisors' training / certification to upgrade their sustainable investment knowledge and competences. Moreover, we strongly believe that investors should always be offered at least one sustainable product by default. This was supported by the majority (68%) of respondents to the Commission's consultation on the renewed sustainable finance strategy and received 100% support of consumer organisations that responded.

At the same time, it is important that investors receive full information on the product riskiness, ensuring they are aware that sustainable products are not by default less risky than others.

Please also refer to the response to question 6.1.

Question 6.3 Are the rules on suitability assessments sufficiently adapted to the increasing use of online platforms or brokers when they are providing advice?

- ☐ Yes
- ☐ No
- ☒ Don't know / no opinion / not applicable

Please explain your answer to question 6.3:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Where investment firms do not provide advice or portfolio management, they are still required to request information on the knowledge and experience of clients to assess whether the investment service or product is appropriate, and to issue a warning in case it is deemed inappropriate. Similar rules apply to sales of insurance-based investment products where in specific cases the customer has made use of a right provided under national law to opt out of a full suitability assessment.

Question 6.4 To what extent do you agree that the appropriateness test serves retail investor needs and is effective in ensuring that they do not purchase products they are not able to understand or that are too risky for their client profile?

- ☐ Strongly disagree
- ☒ Disagree
- ☐ Neutral
- ☐ Agree
- ☐ Strongly agree
- ☐ Don't know / no opinion / not applicable

Please explain your answer to question 6.4:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

The appropriateness test is very positive in principle, but it is not necessarily used as it should be.
Please refer to the response to questions 6.1. and 6.2 on non-advised sales.

Question 6.5 Can you identify any problems with the test and if so, how might they be addressed (e.g. is the appropriateness test adequate in view of the risk of investors purchasing products that may not be appropriate for them)?

- ☒ Yes
- ☐ No
- ☐ Don't know / no opinion / not applicable

Please explain your answer to question 6.5:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Please refer to our response to question 6.2.
In relation to sustainable investment products, there is a need to check that green-risk-washing does not take place and lead retail investors to discount the investment risk of a product because it is indicated as being aligned with their sustainability preferences.

Question 6.6 Are the rules on appropriateness tests sufficiently adapted to the increasing use of online platforms or brokers?

- ☐ Yes
- ☒ No

☐ Don't know / no opinion / not applicable

Please explain your answer to question 6.6:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Appropriateness testing is becoming part of the automated selling process. Here based on client feedback an automated decision is taken on product appropriateness. In order to allow this to happen a sufficient set of warnings should be put in place and depending on the automated assessment should be given to investors where products are found not to be appropriate. Please refer to the ESMA SMSG response to the Consultation Paper on "Guidelines on certain aspects of appropriateness and execution-only" [https://www.esma.europa.eu/sites/default/files/library/esma22-106-3280_smsg_advice_on_appropriateness_and_execution-only.pdf].

Question 6.7 Do you consider that providing a warning about the fact that a product is inappropriate is sufficient protection for retail investors?

- ☐ Yes
- ☒ No
- ☐ Don't know / no opinion / not applicable

Please explain your answer to question 6.7:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

The additional requirement of proposing a basic product offer in these cases should also be introduced. Please also refer to the response to question 1.6.

In case of the execution of orders or transmission and reception of orders of certain non-complex products, at the initiative of the client, no appropriateness test is required. The investment firm must only inform the client that the appropriateness of the service or product has not been assessed and that he/she does not benefit from the protection of the relevant rules on conduct of business.

Question 6.8 Do you agree that no appropriateness test should be required in such situations?

- ☐ Yes
- ☒ No
- ☐ Don't know / no opinion / not applicable

Please explain your answer to question 6.8:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Appropriateness testing should always be required, but can be adapted to automated sales processes. Depending on the results of the test, a sufficient set of warnings should be provided. Please refer to the response to question 6.6.

MiFID II requires that when investment firms manufacture financial instruments for sale to clients, they must make sure that:

- those instruments are designed to meet the needs of an identified target market of end clients
- the strategy for distribution of the financial instruments is compatible with the identified target market
- and they must take reasonable steps to ensure that the financial instrument is distributed to the identified target market

The investment firms that offer or recommend such financial instruments (the distributors) must be able to understand them, assess their compatibility with the needs of their clients and take into account the identified target market of end clients.

Question 6.9 Does the target market determination process (at the level of both manufacturers and distributors) need to be improved or clarified?

- ☒ Yes
- ☐ No
- ☐ Don't know / no opinion / not applicable

Please explain your answer to question 6.9:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

There is an issue of financial exclusion of certain retail investor profiles that may occur from the creation of target markets. This is chiefly because these profiles have never used investment products, or potentially any other financial services before and so limited data on them has been collected.

Demands and needs test (specific to the Insurance Distribution Directive (IDD))

Before selling an insurance product or insurance-based investment product, insurance distributors are obliged to have a dialogue with their customers to determine their demands and needs so that they are able to propose products offering adequate characteristics and coverage for the specific situation of the customer. Any products proposed must be consistent with the customer's demands and needs. In the case of insurance-based investment products, this requirement comes in addition to the suitability assessment.

Question 6.10 To what extent do you agree that, in its current form, the demands and needs test is effective in avoiding mis-selling of insurance products and in ensuring that products distributed correspond to the individual situation of the customer?

- ☐ Strongly disagree
- ☒ Disagree
- ☐

Neutral

- ☒ Agree
- ☐ Strongly agree
- ☐ Don't know / no opinion / not applicable

Please explain your answer to question 6.10:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

The sale of investment products should be covered by a single retail user protection framework in the EU. Currently MiFID II provides the highest level of protection and so should be used as the starting point to harmonise sales rules for all providers of investment products.
Please refer to the response to questions 6.1 and 6.2.

Question 6.11 Can you identify any problems with the demands and needs test, in particular its application in combination with the suitability assessment in the case of insurance-based investment products?

- ☒ Yes
- ☐ No
- ☐ Don't know / no opinion / not applicable

Please specify what problems you identify and explain your answer to question 6.11:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Please refer to the response to questions 6.1 and 6.2.

The IDD does not contain detailed rules on the demands and needs test and leaves it to Member States to decide on the details of how the test is applied in practice. This results in differences between Member States.

Question 6.12 Are more detailed rules needed in EU law regarding the demands and needs test to make sure that it is applied in the same manner throughout the internal market?

- ☒ Yes
- ☐ No
- ☐ Don't know / no opinion / not applicable

Please explain your answer to question 6.12:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Please refer to the response to questions 6.1 and 6.2.

Question 6.13.1 Is the demands and needs test sufficiently adapted to the online distribution of insurance products?

- ☐ Yes
- ☒ No
- ☐ Don't know / no opinion / not applicable

Question 6.13.2 Are procedural improvements or additional rules or guidance needed to ensure the correct and efficient application of the test in cases of online distribution?

- ☒ Yes
- ☐ No
- ☐ Don't know / no opinion / not applicable

Please explain your answer to question 6.13:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Please refer to the response to questions 6.1 and 6.2.

7. Reviewing the framework for investor categorisation

As announced under Action 8 of the [capital markets union action plan](#), the Commission intends to assess the appropriateness of the existing investor categorisation framework and, if appropriate, adopt a legislative proposal aimed at reducing the administrative burden and information requirements for a subset of retail investors. This will involve the review of the existing investor categorisation (namely the criteria required to qualify as a professional investor) or the introduction of a new category of *qualified* investor in [MiFID II](#).

Currently, under MiFID II, retail investors are defined as those that do not qualify to be professional investors. Where investors choose to opt into the professional category, the intermediary must warn the investor of the level of protection they will cease to have and the investor must comply with at least two of the three following criteria

- the client has carried out transactions, in significant size, on the relevant market for the financial instrument or for similar instruments with an average frequency of at least 10 transactions per quarter over the previous four quarters

- the size of the client's financial instrument portfolio composed of cash deposits and financial instruments must be larger than €500,000
- the client currently holds or has held for at least one year a professional position in the financial sector which requires knowledge of the envisaged financial transactions or services

Retail investors are currently subject to a number of additional investment protection measures, such as prohibition to acquire certain products as well as additional disclosure information. Some stakeholders have argued that for certain investors that currently fall under the retail investor category, these protections are not necessary. The creation of a new client category or the modification of the existing requirements for professional clients on request could thus give a subset of investors a broader and more comprehensive access to the capital markets and would bring additional sources of funding to the EU economy.

A well-developed set-up could allow the preservation of the necessary investor protection while improving the engagement in the capital markets.

The [2020 consultation on MiFID](#) already addressed the question of a possible new category of semi professional investor, and the following questions follow-up on the main findings.

Question 7.1 What would you consider the most appropriate approach for ensuring more appropriate client categorisation?

| | Yes | No | Don't know - No opinion - Not applicable |
|--|-----------------------|-----------------------|---|
| Introduction of an additional client category (semi-professional) of investors | <input type="radio"/> | <input type="radio"/> | <input checked="" type="radio"/> |
| Adjusting the definition of professional investors on request | <input type="radio"/> | <input type="radio"/> | <input checked="" type="radio"/> |
| No changes to client categorisation (other measures, i.e. increase product access and lower information requirements for all retail investors) | <input type="radio"/> | <input type="radio"/> | <input checked="" type="radio"/> |

Please explain your answer to question 7.1:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Question 7.2 How might the following criteria be amended for professional investors upon request?

a) The client has carried out transactions, in significant size, on the relevant market at an average frequency of 10 per quarter over the previous four quarters.



No change



30 transactions on financial instruments over the last 12 months, on the relevant market



10 transactions on financial instruments over the last 12 months, on the relevant market



Other criteria to measure a client's experience



Don't know / no opinion / not applicable

Please explain your answer to question 7.2 a):

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

b) The size of the client's financial instrument portfolio, defined as including cash deposits and financial instruments exceeds EUR 500,000.



No change



Exceeds EUR 250,000



Exceeds EUR 100,000



Exceeds EUR 100,000 and a minimum annual income of EUR 100,000



Other criteria to measure a client's capacity to bear loss

☐ Don't know / no opinion / not applicable

Please explain your answer to question 7.2 b):

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

c) The client works or has worked in the financial sector for at least one year in a professional position, which requires knowledge of the transactions or services envisaged.

☐ No change

☐ Extend definition to include relevant experience beyond the financial sector (e.g. in a finance department of a company)

☐ Adjust the reference to the term 'transactions' in the criteria to instead refer to 'financial instruments'

☐ Other criteria to measure a client's financial knowledge

☐ Don't know / no opinion / not applicable

Please explain your answer to question 7.2 c):

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

d) Clients need to qualify for 2 out of the existing 3 criteria to qualify as professional investors. Should there be an additional fourth criterion, and if so, which one?



No change



Relevant certified education or training that allows to understand financial instruments, markets and their related risks



An academic degree in the area of finance/business/economics



Experience as an executive or board member of a company of a significant size



Experience as a business angel (i.e. evidenced by membership of a business angel association)



Other criteria to assess a client's ability to make informed investment decisions



Don't know / no opinion / not applicable

Please explain your answer to question 7.2 d):

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Companies below the thresholds currently set out in MiFID II (2 of 3: turnover of €40 mln, balance sheet of €20 mln and own funds of €2 mln) would also qualify as retail investors.

Question 7.3 Would you see merit in reducing these thresholds in order to make it easier for companies to carry out transactions as professional clients?



No change



Reduce thresholds by half



Other criteria to allow companies to qualify as professional clients

☐ Don't know / no opinion / not applicable

Please explain your answer to question 7.3:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

8. Inducements and quality of advice

EU legislation sets out requirements on the provision of investment advice and around the payment of commissions and other forms of inducements to sellers of financial products. In the case of investment services and activities, investment firms must, for example, inform the prospective client whether any advice provided is on an independent basis, about the range of products being offered and any conflicts of interest that may impair independence. Use of inducements is restricted (i.e. any payment must be designed to enhance the quality of the relevant service to the client and it must not impair compliance with the investment firm's duty to act honestly, fairly and professionally in accordance with the best interest of its clients). Any payments to investment firms for the distribution of investment products must also be clearly disclosed. The rules slightly differ for the sale of insurance-based investment products: inducements may only be received if they do not have a detrimental impact on the quality of the service to the customer. However, there is no general prohibition on the payment of inducements if the seller declares that advice is given independently. Under [UCITS](#) and [AIFMD](#), asset managers are also subject to rules on conflict of interests and inducements.

However despite these rules, concerns have been expressed that the payment of inducements may lead to conflicts of interest and biased advice, since salespersons may be tempted to recommend products that pay the highest inducements, irrespective of whether or not it is the best product for the client. For this reason, the Netherlands has banned the payment of inducements. On the other hand, other stakeholders have argued that the consequence of banning inducements might be that certain retail investors would be unable or unwilling to obtain advice, for which they would need to pay. Questions on inducements have also been asked in the [MiFID/R consultation](#) which was conducted at the beginning of 2020.

Question 8.1 How effective do you consider the following measures to/would be in protecting retail investors against biased advice due to potential conflicts of interest?

| | 1 (not at all effective) | 2 (rather not effective) | 3 (neutral) | 4 (somewhat effective) | 5 (very effective) |
|--|-----------------------------|-----------------------------|-----------------------|----------------------------------|-----------------------|
| Ensuring transparency of inducements for clients | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input checked="" type="radio"/> | <input type="radio"/> |
| An obligation to disclose the amount of inducement paid | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input checked="" type="radio"/> | <input type="radio"/> |
| Allowing inducements only under certain conditions, e.g. if they serve the improvement of quality | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input checked="" type="radio"/> | <input type="radio"/> |
| Obliging distributors to assess the investment products they recommend against similar products available on the market in terms of overall cost and expected performance | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input checked="" type="radio"/> | <input type="radio"/> |
| Introducing specific record-keeping and reporting requirements for distributors of retail investment products to provide a breakdown of products distributed, thus allowing for supervisory scrutiny and better enforcement of the existing rules on inducements | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input checked="" type="radio"/> | <input type="radio"/> |
| Introducing a ban on all forms of inducements for every retail investment product across the Union | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input checked="" type="radio"/> | <input type="radio"/> |

Please explain your answer to question 8.1:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Inducement transparency / disclosure: With reference to our response to question 8.2 and provided that inducements are in place (i.e. no inducement ban), transparency / full disclosure of inducements paid by the investors, is key to protection of retail investor interests. The existing disclosure rules should be harmonised across the whole spectrum of financial products (MiFID and non-MiFID ones) and jurisdictions so that investors receive comparable and reliable information and, thus, are able to properly compare financial products.

Quality enhancement rules: Quality enhancement rules under MiFID II are a meaningful measure from the investors' perspective. However, currently the measure is not effectively implemented, and stronger enforcement and harmonisation of application by the EU Member States are required. ESMA's "Technical Advice to the Commission on the impact of the inducements and costs and charges disclosure requirements under MiFID II", which was issued based on a call for evidence, indicates that in different Member States criteria for permissible quality enhancements differ. Thus, there is a need for a harmonised definition of quality enhancements. Inducements for products/services without such quality enhancements should be banned.

Record-keeping requirements: Record-keeping requirements should be enhanced to increase the transparency of inducements. For example, enhanced reporting of in-house vs third-party product breakdown would allow for a better supervision of inducements to detect unfair practices by financial service providers /distributors as a result of conflicts of interest/misaligned incentives.

Ban on inducements: Inducements create a conflict of interests for distributors of investment products. They create a powerful incentive to sell certain products or kinds of products, which may not be the most suitable product for the investor. Any provider or distributor already operates under a profit-maximisation business model, which can put investor interests and value as a secondary priority in product design and distribution. Thus, an inducement ban would be the most effective measure to limit conflicts of interests in the financial advice that is given to consumers and help to ensure that advice is in the best interest of clients. However, as highlighted in our response to question 8.2, an inducement ban should be complemented by fostering alternative models for the provision of independent financial advice to mitigate the potential negative impact of reduction in the supply of financial advice.

Question 8.2 If all forms of inducement were banned for every retail investment product across the Union:

a) what impacts would this have on the availability of advice for retail investors? Please explain your answer:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

The quality of advice cannot be guaranteed where inducements exist and create a conflict of interests. This is the current situation for retail users in the EU and needs to be addressed. A ban could eliminate part of the existing problem, which is to remove the negative impact of conflicts of interest on advice.

Based on the experience of countries that have previously introduced a ban on inducements such as the Netherlands and the UK (as referred to in the European Commission's report "Distribution systems of retail investment products across the European Union", April 2018), such a ban can lead to reduction in the availability of advice investors receive from their traditional distributors such as banks or insurers. It can create

a shift towards independent financial advisers and execution-only online platforms, including the ones offered by banks and insurers themselves. The ban on inducements has been a strong driver for fund supermarkets and online brokers as well as for online investment platforms of incumbents.

Evidence from the UK and the Netherlands indicates that an inducement ban could lead to the reduction of costs for investors and increased awareness in relation to costs charged for advice and more informed investor choices. Given that the ban also reduced the availability of advice as a whole, the question remains over how to ensure the take-up and use of independent financial advisors when a ban has been introduced. The Federation of German Consumer Organisations (Verbraucherzentrale Bundesverband – vzbv) is a working model for providing independent, affordable advice through consumer centres. If a ban on inducements is introduced then this model could be the right starting point to ensure that advice is widely available, independent and affordable.

b) what impacts would this have on the quality of advice for retail investors?

Please explain your answer:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Based on the results of the study, referenced above, the impacts on the quality of advice could be positive, although the overall availability of advice would reduce. In the Netherlands and the UK, inducement bans indicate that advisors/intermediaries became more responsive to the needs of the retail clients with more tailored business models arising.

The model for providing independent advice through consumer centres of the vzbv referred to in question 8.2 (a) could be the right starting point to ensure that advice is widely available, independent and affordable.

c) what impacts would this have on the way in which retail investors would invest in financial instruments? Please explain your answer:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Please refer to our answer to question 8.2(a).

d) what impacts would this have on how much retail investors would invest in financial instruments? Please explain your answer:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Not responding to this question.

Question 8.3 Do the current rules on advice and inducements ensure sufficient protection for retail investors from receiving poor advice due to potential conflicts of interest:

| | Yes | No | Don't know - No opinion - Not applicable |
|---|-----------------------|----------------------------------|---|
| In the case of investment products distributed under the MiFID II framework? | <input type="radio"/> | <input checked="" type="radio"/> | <input type="radio"/> |
| In the case of insurance-based investment products distributed under the IDD framework? | <input type="radio"/> | <input checked="" type="radio"/> | <input type="radio"/> |
| In the case of inducements paid to providers of online platforms/comparison websites? | <input type="radio"/> | <input checked="" type="radio"/> | <input type="radio"/> |

Please explain your answer to question 8.3:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Please refer to the responses to questions 8.1 and 8.2.

Question 8.4 Should the rules on the payment of inducements paid to distributors of products sold to retail investors be aligned across MiFID and IDD?

- ☐ Yes
- ☐ No
- ☐ Don't know / no opinion / not applicable

Please explain your answer to question 8.4:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Refer to our response to question 8.2 above in regards to the inducements ban and independent advice model. In the absence of a ban, inducement and consumer protection rules under the IDD and MiFID II should be aligned to the greatest extent possible in order to ensure equal standards of investor protection, in particular guarantee the same standards for insurance-based investment products (IBIPs) as are already applicable under MiFID II. The major aspects hereby are independent advice, disclosure rules and quality enhancement rules.

Question 8.5 How should inducements be regulated?

Please select as many answers as you like



Ensuring transparency of inducements for clients



Ensuring transparency of inducements for clients, including an obligation to disclose the amount of inducement paid



Allowing inducements only under certain conditions, e.g. if they serve the improvement of quality



Obliging distributors to assess the investment products they recommend against similar products available on the market



Introducing specific record-keeping and reporting requirements for distributors of retail investment products to provide a breakdown of products distributed, thus allowing for supervisory scrutiny and better enforcement of the existing rules on inducements



Introducing a ban on all forms of inducements for every retail investment product across the Union



Other

Please explain your answer to question 8.5:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Refer to our response to question 8.1. The answers selected here are meant to highlight the measures, which we deem most effective to regulate inducements from the investor perspective. However, we emphasise that the effectiveness of these measures depends on improvements /conditions, as suggested in our response to question 8.1.

The use of payments for order flow (PFOF), where a broker (or an investment firm) directs the orders of its clients to a single third party for execution against remuneration, appears to be increasingly popular as a business model, in particular in the context of on-line brokerage. This practice is raising concerns in terms of potential conflicts of interest due to payment of inducements and possible breach of the obligations surrounding best execution of the client's orders (i.e. an obligation to execute orders on terms that are most favourable to the client).

Question 8.6 Do you see a need for legislative changes (or other measures) to address conflicts of interest, receipt of inducements and/or best execution issues surrounding the compensation of brokers (or firms) based on payment for order flow from third parties?

- ☒ Yes
- ☐ No
- ☐ Don't know / no opinion / not applicable

If you do see a need for legislative changes, please detail the changes you would consider relevant:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Payment for order flow (PFOF) is essentially an inducement and similar to other commission based models. It is effectively a way of cross-subsidising business and making the economic activity of a broker less transparent.

We agree with the statement made by ESMA on 13 July 2021 when it says that "PFOF causes a clear conflict of interest between the firm and its clients, because it incentivises the firm to choose the third party offering the highest payment, rather than the best possible outcome for its clients when executing their orders". This is particularly true in the EU context given 1) the absence of a consolidated tape and 2) the definition of "best execution" given by financial regulation. Given the lack of perspective to develop a pre-trade consolidated tape and the distant perspective to develop a post-trade consolidated tape in the EU, and given that the definition of "best execution" will not be reformed in the foreseeable future (not precluding the debate of substance), the most effective way to improve the situation would be to ban PFOF altogether along with other inducements.

Absent such a ban, the recommendation made by ESMA to NCAs that their supervisory activities should check that firms "receiving PFOF are able to comply with relevant MiFID II requirements, most notably those on best execution, conflicts of interest, inducements and cost transparency" is without doubt the second best solution to an undesirable situation.

Investment services should be affordable, but should also be provided in a transparent and un-biased way.

Question 8.7 Do you see a need to improve the best execution regime in order to ensure that retail investors always get the best possible terms for the execution of their orders?

- ☒ Yes
- ☐ No
- ☐ Don't know / no opinion / not applicable

Please explain your answer to question 8.7:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

This issue like many others is covered by very positive regulation at level 2 and 3, like many other important issues as well. Many of these level 2 and 3 measures, such as the ESMA guidelines on best execution regimes, should now be integrated into level 1 now where possible.

Financial advisors play a critical role in the distribution of retail investment products, however standards (levels of qualifications, knowledge, skills, etc.) differ across Member States. In order to reduce the risk of mis-selling, increase individual investors' confidence in advice and create a level playing field for market operators offering advice in different Member States, the [2020 CMU action plan](#) proposed that certain professional standards for advisors should be set or further improved.

Question 8.8 Would you see merit in developing a voluntary pan-EU label for financial advisors to promote high-level common standards across the EU?

- ☐ Yes
- ☒ No
- ☐ Don't know / no opinion / not applicable

Please explain your answer to question 8.8 and indicate what would be the main advantages and disadvantages:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

There would be more merit to ensuring that all advice meets high-level common standards across the EU by simply including provisions in legislation to achieve this. Creating a voluntary label means accepting that many retail investors might not benefit from a sufficient quality of advice.

Financial advice should always be independent, affordable and accessible for all. Financial advisors should be required to complete a sufficient amount of professional training, in terms of both hours and quality to provide advice. They should also be subject to regulated ethics charters and be licenced professionals. This gives a possibility of oversight to regulators and supervisors who can then investigate and withdraw this license if advisors do not respect the rules and standards set.

Robo-advisors, i.e. online platforms providing automated investment advice (and in many cases also portfolio management) are in principle subject to the same investor protection rules as traditional "human" advisors under the MiFID and IDD frameworks. While robo-advisors may offer advantages for retail investors, in particular lower fees, accessible investment thresholds and in principle often impartial advice (unbiased by payment of inducements), robo-advisors may also present risks resulting from, e.g. simplistic non-dynamic algorithms which may not create efficient investment portfolios.

Question 8.9 Are robo-advisors (or hybrid advisors) regulated in a manner sufficient to protect retail investors?

- ☐ Yes
- ☒ No
- ☐ Don't know / no opinion / not applicable

Please explain your answer to question 8.9:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

The assumptions made in the background text to this question are questionable. For example, it should not be assumed that a robo-advisor offers impartial advice. Any advisor could offer impartial advice. Human advisors may be influenced with inducements, but robo-advisors can simply be programmed to influence decisions and can also be influenced by inducements. They would in fact almost certainly be more effective and efficient at pushing investors to certain products that generate higher income for providers than inducements provided to human advisors. This illustrates, in any case, that there is a clear need to regulate robo-advice. This relates to the design of questionnaires, asset allocations and risk profiles and, in particular, artificial intelligence algorithms, which support the decision-making. The research report on robo-advice by Better Finance (<https://betterfinance.eu/wp-content/uploads/Robo-Advice-Report-2020-25012021.pdf>) offers support for this, as the research has found “extreme divergences in asset allocation and expected returns” for the portfolios suggested by different robo-advisers for exactly the same investor profile.

It is important to look closely at what data is being collected and what is allowed to be collected for profiling in the robo-advisor context. The GDPR purpose limitation principle should be ensured above all and no data should be profiled outside explicit purpose of providing advice. Limits should also be put on collecting data from third parties and sources. The data silo principle of the EU Digital Market Act should apply and robo-advice should be considered as an intermediation process. Data must be then kept in a corresponding silo.

The machine-learning aspect of algorithms is important to mention here. It is an inductive process that self-reinforces different inherent or acquired biases. There are ways to work around this by monitoring, benchmarking and resetting algorithms. Please refer here to the ESMA SMSG consultation response on “Guidelines on certain aspects of appropriateness and execution-only” (link provided in the response to question 6.6).

Question 8.10 The use of robo-advisors, while increasing, has not taken off as might have been expected and remains limited in the EU.

What do you consider to be the main reason for this?

- ☐ Lack of awareness about the existence of robo-advisors
- ☒ Greater trust in human advice
- ☐ Other
- ☐ Don't know / no opinion / not applicable

Please explain your answer to question 8.10:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

One of main potential advantages that robo-advice could bring is reducing the cost of distribution. However, it does not seem to necessarily be cheaper at the moment and large market players seems to be able to match the cost of distribution or providers using robo-advice.

Trust is of the essence though to any future uptake is use of robo-advice. Currently the combination of a lack of sophistication of most robo-advisors and inability of the vast majority of retail investors to distinguish between quality and non-quality advice creates a significant barrier to trust as it stands.

Question 8.11 Are there any unnecessary barriers hindering the take-up of robo-advice?

- ☐ Yes
- ☒ No
- ☐ Don't know / no opinion / not applicable

Please explain your answer to question 8.11:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

This question infers that robo-advice should be developed is in essence positive, which is not proven and should not be the starting point for the retail investment strategy. Evidence does not yet suggest that robo-advice will necessarily bring benefits other than cost-reduction for providers. From the retail investor point of view robo-advice would only be beneficial if it can be trusted to provide independent, quality advice and if they can benefit from any cost-saving potential that it might bring.

9. Addressing the complexity of products

Financial products, including those targeted at retail investors, are often highly complex and often not properly understood by retail investors. Consumer representatives have therefore been regularly calling for simple, transparent and cost-efficient products. Less complex products suitable for retail investors exist in different areas, such as UCITS and certain Exchange Traded Funds (ETFs), and have been set as the default option of PEPP.

Question 9.1 Do you consider that further measures should be taken at EU level to facilitate access of retail investors to simpler investment products?

- ☒ Yes
- ☐ No
- ☐ Don't know / no opinion / not applicable

Please explain your answer to question 9.1:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Building on the precedent set in the PEPP regulation, basic option products that are safe, suitable for any investors should be the default offer. Based on the suitability/ demands and needs/ appropriateness testing other product offers could then also be offered.
This would ensure wider access and use of safe products.

Question 9.2 If further measures were to be taken by the EU to address the complexity of products:

a) Should they aim to reinforce or adapt execution of orders rules to better suit digital and online purchases of complex products by retail investors?

- ☒ Yes
- ☐ No
- ☐ Don't know / no opinion / not applicable

Please explain your answer to question 9.2 a):

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Certain products are too complex and/ or too risky for retail users and should simply be excluded from the retail market and by extension from execution only sales. A parallel can be drawn here with the purchase of over-the-counter versus prescription medicine. Certain medicines require a doctor appointment before being authorised for use. The same approach can be extended to certain investment products that should not be sold without advice, if at all.

A key point here is also that certain more complex or very risky products should not be advertised and marketed online. The DMFSD should be used to ensure that this is detailed in regulation.

b) Should they aim to make more explicit the rules which prohibit excess complexity of products that are sold to retail investors?

- ☒ Yes
- ☐ No
- ☐ Don't know / no opinion / not applicable

Please explain your answer to question 9.2 b):

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Most importantly these measures should ensure that complexity is assessed on a 'complex by design' and 'complex to describe' basis. Some products may be complex, but can still be explained in a simple enough way to investors to allow them to take informed investment decisions.

The real issue is what is potentially referred to here as excess complexity, which is complexity in product design or description that has no discernible benefit to the investor. This should not be allowed and is likely to be an indication of an exploitative product.

Please refer to the response to question 4.2.1.

c) Should they aim to develop a new label for simple products?

- ☐ Yes
- ☒ No
- ☐ Don't know / no opinion / not applicable

Please explain your answer to question 9.2 c):

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Developing a label for simple products seems to assume that the issue of product complexity will not be properly addressed.

A better solution would be to ensure that suitable, safe basic option products are always offered as the default option to investors. Please refer to the response to question 1.6 here.

Please also refer to the response to question 9.2 (a).

d) Should they aim to define and regulate simple, products (e.g. similar to PEPP)?

- ☒ Yes
- ☐ No
- ☐ Don't know / no opinion / not applicable

Please explain your answer to question 9.2 d):

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Offering a basic product that is safe and suitable for any investor as the default option would be an important step. The PEPP rules should be improved and a clear distinction needs to be made over complex by design, complex to understand and risky by design products.
Please refer to the response to question 9.1.

e) Should they aim to tighten the rules restricting the sale of very complex products to certain categories of investors?

- ☒ Yes
- ☐ No
- ☐ Don't know / no opinion / not applicable

Please explain your answer to question 9.2 e):

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

The highest level of protection should be in place for retail investors. Please refer to the response to questions 4.2.1 and 9.2.

f) Should they have another aim?

- ☐ Yes
- ☐ No
- ☒ Don't know / no opinion / not applicable

10. Redress

There will be occasions when things go wrong with an investment, e.g. if products have been mis-sold to the retail investor. Retail investors have the possibility to address their complaint directly to the firm: MiFID, for example, requires investment firms to establish, implement and maintain effective and transparent complaints management policies and procedures for the prompt

handling of clients' complaints and similar provisions are contained in the recent [Crowdfunding Regulation](#). Redress can also be sought through non-judicial dispute resolution procedures or can be obtained in national courts. In certain cases, where large numbers of consumers have suffered harm, collective redress can also be obtained.

Question 10.1 How important is it for retail investors when taking an investment decision (in particular when investing in another Member State), that they will have access to rapid and effective redress should something go wrong?

- ☐ Not at all important
- ☐ Rather not important
- ☐ Neutral
- ☐ Somewhat important
- ☒ Very important
- ☐ Don't know / no opinion / not applicable

Please explain your answer to question 10.1:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Access to rapid and effective redress is essential for consumer trust, but also as part of the balance of risk sharing that needs to be found if retail users are encouraged to invest in capital markets.

Question 10.2 According to MIFID II, investment firms must publish the details of the process to be followed when handling a complaint. Such information must be provided to the client on request or when acknowledging a complaint and the firm must enable the client to submit their complaint free of charge.

Is the MiFID II requirement sufficient to ensure an efficient and timely treatment of the clients' complaints?

- ☐ Yes
- ☐ No
- ☒ Don't know / no opinion / not applicable

Please explain your answer to question 10.2:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Question 10.3 As a retail investor, would you know where to turn in case you needed to obtain redress through an out of court (alternative dispute resolution) procedure?

- ☐ Yes
- ☒ No
- ☐ Don't know / no opinion / not applicable

Please explain your answer to question 10.3:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Evidence collected by consumer organisations (such as Que-Choisir in France and Which? In the UK) confirms that retail investors face difficulties when obtaining redress under the alternative dispute resolution (ADR) procedures. These difficulties are related to two major issues:

- Complexity of the ADR system with numerous certified ADR bodies in place per sector (such as banking sector), as well as separate ADR schemes set up by professionals (such as bank branches). In Belgium, ADR entity Consumer Mediation Ombudsman (Service de mediation pour le consommateur /Consumentenombudsdienst) concluded that numerous ADR bodies with partial sectoral coverage act as impediments for consumers to navigate the system and determine the responsible ADR entity in cases of redress (https://www.ccsfin.fr/sites/default/files/medias/documents/2021_mediation.pdf)
- Insufficient clarity/transparency and complexity of procedural rules for redress. The procedures are often quite complex, as these include multiple steps such as reaching out to bank advisors before contacting an ADR body.

Question 10.4 How effective are existing out of court/alternative dispute resolution procedures at addressing consumer complaints related to retail investments/insurance based investments?

- ☐ Not at all effective
- ☐ Rather not effective
- ☐ Neutral
- ☐ Somewhat effective
- ☐ Very effective
- ☒ Don't know / no opinion / not applicable

Please explain your answer to question 10.4:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Question 10.5 Are further efforts needed to improve redress in the context of retail investment products:

Please select as many answers as you like

- ☒ Domestically?
- ☒ In a cross border context?

Please explain your answer to question 10.5:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

In the context of retail investor rights protection, collective redress procedures are needed.

In November 2020, the Directive on Representative Actions for the Protection of the Collective Interests of Consumers was adopted establishing a collective redress mechanism for breaches of consumer rights.

However, the Directive foresees that it would only apply to breaches of certain directives and regulations, such as MiFID II, UCITS or PRIIPs. An extension of the scope to the Market Abuse Directive (MAD2) and Regulation (MAR), as well as the PEPP Regulation, was included. Therefore, individual and small equity investors, employee shareowners or bond holders are not covered by the scope of the Directive (it is actually limited to other consumers and individual investors who buy packaged investment products such as funds and life-insurance). Thus, we emphasize the need to extend the scope of the Directive.

Certain groups of consumers (e.g. the elderly, over-indebted or those with disabilities) can be particularly vulnerable and may need specific safeguards. If the process of obtaining redress is too complex and burdensome for such consumers and lacks a specially adapted process (e.g. assistance on the phone), redress may not be an effective option for them.

10.6 To what extent do you think that consumer redress in retail investment products is accessible to vulnerable consumers (e.g. over-indebted, elderly, those with disabilities)?

- ☒ Not accessible at all
- ☐ Rather not accessible
- ☐ Neutral
- ☐ Somewhat accessible
- ☐ Very accessible
- ☐ Don't know / no opinion / not applicable

Please explain your answer to question 10.6:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

A first point is that many 'vulnerable' consumers are likely to face numerous barriers to accessing retail investment products. These range from the cost of investment products, minimum required amounts to be invested, to generalisations about investment capacity based on identity characteristics that effectively equate to discrimination.

When consumers, whether they are considered 'vulnerable' or not, invest there is a very high chance that they will not be aware of the consumer redress options available to them. Investors will only potentially seek out options when they have an issue, or if they explicitly directed to these options. This in turn can reduce the efficacy of redress options.

An improvement would be to ensure that this information is included on all communications to the investor, using a visible 'warning' approach to indicate where the consumer can access redress options and information. If dashboards and comparison tools (see the response to question 3.1) are created in the future these option should also be displayed on a section of the dashboards and comparison tools.

11. Product intervention powers

ESMA has been given the power to temporarily prohibit or restrict the marketing, distribution or sale of financial instruments with certain specified features or a type of financial activity or practice (these are known as 'product intervention powers'). EIOPA has similar powers with regard to insurance-based investment products. These powers have been used by ESMA in the past for certain types of high risk product e.g. binary options and contracts for differences (CFDs).

Question 11.1 Are the European Supervisory Authorities and/or national supervisory authorities making sufficiently effective use of their existing product intervention powers?

- ☐ Yes
- ☒ No
- ☐ Don't know / no opinion / not applicable

Please explain your answer to question 11.1:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

The ESAs and NSAs do not currently have sufficient resources to carry out the level of market surveillance needed to identify all the cases where they would need to use product intervention powers.

Question 11.2 Does the application of product intervention powers available to national supervisory authorities need to be further converged?

- ☒ Yes
- ☐ No
- ☐ Don't know / no opinion / not applicable

Please explain your answer to question 11.2:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Refer to our response to question 11.3 below.

Question 11.3 Do the product intervention powers of the European Supervisory Authorities need to be reinforced?

- ☒ Yes
- ☐ No
- ☐ Don't know / no opinion / not applicable

Please explain your answer to question 11.3:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

This question needs to be taken with the question of reforming the ESAs as a whole. In particular, in Finance Watch's response to the Commission's consultation on supervisory convergence and the single rulebook we emphasised the importance of:

- Strengthening the enforcement powers of ESAs in those domains, which are already part of the ESAs mandate, as well as in certain cross-sectoral domains, among these the consumer and investor protection. Some of the existing supervisory convergence tools are not matched by the necessary enforcement powers to fully utilise their potential and effectively execute the ESAs mandates. This particularly relates to peer reviews, breach of Union law procedures, acting in emergency situations and binding mediation. The underlying reasons lay in the ESAs' governance and own resource deficiencies and ESAs' insufficient access to information, refer to the Consultation Response for the details.
- Expanding the ESA's toolkit to achieve: i) stronger convergence of National Competent Authorities' (NCA) practices (mandates, supervisory independence, enforcement powers, access to information, sanction procedures), ii) more consistent supervisory approach in cross-sectoral domains like consumer and investor protection, as well as sustainable finance, technological innovation and digital finance, outsourcing and delegation, all of which are also relevant from the retail investor protection perspective; iii) stronger surveillance and investigation of market abuse powers by ESMA.
- In particular, in the above context – harmonisation of national sanctions regimes and their application. This relates to the procedural rules, disclosure and types of sanctions and amounts of pecuniary sanctions being imposed by NCAs. The great variability in the sanctions imposed by NCAs has been evidenced in numerous ESAs reports such as ESMA's reports on sanctions application under UCITS and AIFM Directives (November 2020), MiFID II/MiFIR (March 2021), short selling and credit default swaps (January 2021), EIOPA's report on sanctions under the Insurance Distribution Directive" (December 2020)
- More harmonised application of Union law in certain areas of particular relevance for the retail investor protection, specifically in the area of financial services provider authorization and product passporting, exercise of the freedom to provide services (FPS) and right of establishment (ROE) in the cross-border context. We have already mentioned the need for a stronger cooperation between ESAs and NCAs in this domain, including the need for additional guidance on the supervisory responsibilities of home and host NCAs

in case of cross-border product distribution/service provision. We refer to the Joint Committee Report on cross-border supervision of retail financial services (July 2019), which highlighted a number of issues in this respect and provided recommendations on these.

As mentioned above, effective implementation of product intervention powers currently critically depends on the ESAs' resources, which are not sufficient to execute the powers, i.e. conduct mystery shopping exercises, investigate cases of consumer/investor rights infringements or unfair/fraudulent practices of financial service providers and/or inappropriately designed financial products. In fact, across the three ESAs, there has been one case where product intervention powers were used: In June 2018 ESMA adopted temporary product intervention measures on the provision of contracts for differences (CFDs) and binary options to retail investors in the EU.

Further, we emphasized the need to grant direct supervisory and product intervention powers to the EBA Committee on consumer protection and financial innovation in the cases relevant for consumer protection. Currently, the Committee's tasks are limited to "soft" ones such as promoting transparency, simplicity and fairness for cross-sectoral financial products and services, monitoring of cross-sectoral activities and are not supported by effective enforcement powers.

In addition to product intervention powers, product approval at some level could be considered to ensure that all retail-facing offers have been through a minimum set of checks and balances.

12. Sustainable investing

Citizens are today increasingly aware of the serious economic, environmental and social risks arising from climate change. As retail investors, they are also becoming conscious of the potential contribution they might make towards mitigating those risks by making more sustainable choices when investing and managing their savings. The [2018 European Commission's action plan on financing sustainable growth](#) set the basis for increasing the level of transparency on sustainability investments, through disclosure rules (e.g. Sustainable Finance Disclosure Regulation) and labels (e.g. EU Ecolabel), thereby substantially reducing the risk of greenwashing. In addition, the integration of retail investors' sustainability preferences as a top-up to the suitability assessment and financial advice in IDD and MIFID II delegated acts will ensure that clients are offered financial products and instruments that meet their sustainability preferences.

Question 12.1 What is most important to you when investing your savings?

| | 1 (most important) | 2 | 3 (least important) |
|--|----------------------------------|-----------------------|------------------------|
| An investment that contributes positively to the environment and society | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |
| An investment that reduces the harm on the environment and society (e.g. environmental pollution, child labour etc.) | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |
| Financial returns | <input checked="" type="radio"/> | <input type="radio"/> | <input type="radio"/> |

Question 12.2 What would help you most to take an informed decision as regards a sustainable investment?

| | 1 (not at all helpful) | 2 (rather not helpful) | 3 (neutral) | 4 (somewhat helpful) | 5 (very helpful) |
|--|---------------------------|---------------------------|-----------------------|----------------------------------|----------------------------------|
| Measurements demonstrating positive sustainability impacts of investments | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input checked="" type="radio"/> |
| Measurements demonstrating negative or low sustainability impacts of investments | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input checked="" type="radio"/> |
| Information on financial returns of sustainable investments compared to those of mainstream investments | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input checked="" type="radio"/> |
| Information on the share of financial institutions' activities that are sustainable | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input checked="" type="radio"/> | <input type="radio"/> |
| Require all financial products and instruments to inform about their sustainability ambition | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input checked="" type="radio"/> |
| Obligation for financial advisers to offer at least one financial product with minimum sustainability ambition | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input checked="" type="radio"/> |
| All financial products offered should have a minimum of sustainability ambition | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input checked="" type="radio"/> | <input type="radio"/> |

Question 12.3 What are the main factors preventing more sustainable investment?

| | 1 (not at all important) | 2 (rather not important) | 3 (neutral) | 4 (somewhat important) | 5 (very important) |
|---|--------------------------------|--------------------------------|-----------------------|----------------------------------|----------------------------------|
| Poor financial advice on sustainable investment opportunities | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input checked="" type="radio"/> |
| Lack of sustainability-related information in pre-contractual disclosure | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input checked="" type="radio"/> |
| Lack of EU label on sustainability related information | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input checked="" type="radio"/> |
| Lack of financial products that would meet sustainability preferences | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input checked="" type="radio"/> | <input type="radio"/> |
| Financial products, although containing some sustainability ambition, focus primarily on financial performance | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input checked="" type="radio"/> |
| Fear of greenwashing (i.e. where the deceptive appearance is given that investment products are environmentally, socially or from a governance point of view, friendly) | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input checked="" type="radio"/> |
| Other | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input checked="" type="radio"/> |

Please specify to what other factor(s) you refer in your answer to question

12.3:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Overall, the main obstacles to mobilising retail investments in sustainable products are the absence of reliable and comparable sustainability-related disclosures and an insufficient consideration of investors' sustainability-related preferences at the point of sale (on the latter point please see the responses to questions to 6.1, 6.2 and 6.3).

With regards to sustainability-related disclosures, work is in progress. The regulation on sustainability-related disclosure in the financial services sector (SFDR), which - apart from some provisions – in force since 10 March 2021, is expected to improve sustainability-related disclosures of financial products as well as entity-level disclosures of financial institutions.

SFDR will create two new product categories: Art. 9 (so called "dark green") products and Art. 8 (so called "light green") products. Products marketed as qualifying for those categories will need to disclose certain sustainability-related aspects in their pre-contractual, website and periodic disclosures, including the proportion of the underlying investment alignment with the EU taxonomy.

Level 2 measures, stemming directly from SFDR and the EU Taxonomy regulation, are still under development, and they will largely define the success of this new sustainability-related disclosures framework. For more details and our key recommendations, please refer to:

- Finance Watch's feedback on the Draft Delegated Act on Art. 8 of the Taxonomy Regulation;
- Finance Watch's response to the ESAs consultation on EU taxonomy-related sustainability product-level disclosures under SFDR;
- Finance Watch's response to the ESAs survey on environmental and/or social financial product templates pursuant to Article 8(3), Article 9(5) and Article 11(4) of SFDR.

Concerns also mount over the potential of SFDR to mislead retail investors. Art. 8 and Art. 9 products may be seen as creating a pseudo-standard/label, while SFDR is primarily about disclosures and not setting minimum requirements. For instance, the only minimum criterion that Art. 9 products need to meet is to pursue sustainable investment as an objective. This triggers a requirement to disclose certain specific sustainability-related information, including a proportion of alignment with the EU taxonomy. However, in practice Art. 9 products can be 0% taxonomy aligned and, for instance, contain investments in fossil fuel exposures. Meanwhile, they can be referred to as sustainable products or the so called "dark green" products.

The situation is even worse with regards to Art. 8 products where the regulation is not specific enough, leaving room for diverging interpretations and greenwashing. In a recent article, Capital Monitor observed that eight in ten 'sustainable' funds in Europe hold fossil fuel stocks based on Morningstar data (<https://capitalmonitor.ai/institution/government/is-sfdr-failing-eight-in-ten-sustainable-funds-in-europe-hold-fossil-fuel-stocks/>).

On another front, when developing European standards for sustainable financial products, the Commission should also assess the capacity of financial instruments to effectively allocate capital towards sustainable transition of the economy.

To prevent greenwashing, it is important to consider that not all financial instruments have the same capacity to i) allocate capital to the economy and ii) contribute to financing transition towards sustainability. For instance, actively managed shares and bonds meet the criteria to allocate capital to a sustainable economy. By contrast, we question whether ETFs, passively managed funds, money market funds, structured products

or derivatives have such an ability. The results of this assessment should inform the creation of the European standards for sustainable financial products.

Please also refer to the response to question 4.2.1 on the need to improve sustainability related information with regards to the PRIIPs key investor document.

Question 12.4 Do you consider that detailed guidance for financial advisers would be useful to ensure simple, adequate and sufficiently granular implementation of sustainable investment measures?

- ☒ Yes
- ☐ No
- ☐ Don't know / no opinion / not applicable

Please explain your answer to question 12.4:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

There is a clear need to improve financial advisers approach to the sustainability preferences of retail investors, where more detailed and updated requirements that go beyond the amendments to the MiFID II and IDD delegated acts would be needed.

Please refer to the responses to questions to 6.1, 6.2 and 6.3 for more information on the need to improve advice relating to sustainability preferences of investors.

MiFID II regulates the way investment firms produce or arrange for the production of investment research to be disseminated to their clients or to the public. This concerns investment research i.e. research or other information recommending or suggesting an investment strategy, explicitly or implicitly, concerning one or several financial instruments or the issuer of financial instruments. In the context of the COVID-19 pandemic, the research regime has been reviewed in order to facilitate the production of research on the small and medium enterprises and encourage more funding from the capital markets. In order to also encourage more sustainable investments, it is fundamental that investment research consider the E (environmental,) S (social) and G (corporate governance) factors of the Issuers and financial instruments covered by that research.

Question 12.5 Would you see any need to reinforce the current research regime in order to ensure that ESG criteria are always considered?

- ☒ Yes
- ☐ No
- ☐ Don't know / no opinion / not applicable

Please explain your answer to question 12.5:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Sustainability risks may have a material financial impact on businesses and therefore also on investments in those businesses. Climate change and other environment and social challenges will have an impact on financial returns and also on business viability as such. Therefore, it is important that ESG risks are systematically considered in analyst's research. Moreover, incorporation of the analysis of business and investments impacts on environment and society should be promoted. There is a growing interest from both

institutional and retail investors in such an analysis. Financial institutions will also need this information for the purpose of their adverse impact disclosures under SFDR.

There is a need to regulate the market for ESG data, rating and research providers. 68% of respondents to the Commission's consultation on the renewed sustainable finance strategy suggested that the EU should take action in the areas of sustainability research and ratings. 27% of respondents judged the quality and relevance of ESG research material currently available in the market as poor or very poor. Overall, the results indicate a consensus on the need to improve transparency, reliability and management of conflicts of interest in the market for ESG data, research and rating providers, which currently remains largely unregulated.

13. Other issues

Question 13. Are there any other issues that have not been raised in this questionnaire that you think would be relevant to the future retail investments strategy? Please explain your answer:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

We would like to provide a comment on the consultation as a whole and in particular on question 12.1, which does not offer an opportunity to comment. We are concerned about relying on the responses to this question in the framework of this consultation. Given the limited representation of actual retail investors there may not be sufficient information provided to allow meaningful conclusions to be drawn on the most important factors for individual savings decisions. We therefore believe that it would be useful to conduct a survey disseminated among retail investors across the EU to have a truly representative view of the retail investors' preferences. Moreover, we would like to highlight that question 12.1 is missing a consideration of sustainability risk of investment which, unlike its positive or negative impact on the environment or society, can have direct material financial implications in terms of investment return. Some investors that may choose sustainable investment because they want to "do good", but other investors may choose sustainable investments knowing that sustainability risks need to be considered to ensure mid- and long-term viability of their investments. It is noteworthy that there are even more nuances to investors' preferences. Investors may be equally interested in having decent financial returns as well as supporting a positive impact on the environment and society or at least ensuring that investments do not result in significant harm. We therefore suggest that the survey targeted to retail investors is constructed in a way that reflects all these aspects.

Additional information

Should you wish to provide additional information (e.g. a position paper, report) or raise specific points not covered by the questionnaire, you can upload your additional document(s) below. **Please make sure you do not include any personal data in the file you upload if you want to remain anonymous.**

The maximum file size is 1 MB.

You can upload several files.

Only files of the type pdf,txt,doc,docx,odt,rtf are allowed

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[More on retail financial services \(https://ec.europa.eu/info/business-economy-euro/banking-and-finance/consumers/finance-and-payments/retail-financial-services_en\)](https://ec.europa.eu/info/business-economy-euro/banking-and-finance/consumers/finance-and-payments/retail-financial-services_en)

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[More on the Transparency register \(http://ec.europa.eu/transparencyregister/public/homePage.do?locale=en\)](http://ec.europa.eu/transparencyregister/public/homePage.do?locale=en)

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