

Ref: European Commission Public Consultation on the EU Strategy for Retail Investors (“Retail Investments Strategy”)

Link to consultation:

- https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/12755-EU-strategy-for-retail-investors/public-consultation_en

BETTER FINANCE input on the EU Strategy for Retail Investors

SUMMARY OF RECOMMENDATIONS

General comment

BETTER FINANCE welcomes very much this consultation from the EC on a much awaited and needed strategy for retail investors, and fully supports its clearly stated objectives, as defined in the EC CMU Action Plan and in the web consultation itself:

- (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.

The consultation webpage also rightly adds:

- ensure that a legal framework for retail investments is suitably adapted to the profile and needs of consumers,
- helps ensure improved market outcomes, (although it is difficult to identify questions related directly to this key issues except on value for money),
- empowers retail investors
- and enhances their participation in the capital markets.

In BETTER FINANCE's view, the current retail investor protection framework falls short of achieving its purpose for the following reasons:

- Very little access to bias-free investment services, resulting in little access to investment products that are closest to capital markets and to the real economy such as low cost index ETFs, listed equities and bonds;
- Different standards of investor protection across sectors / product categories;
- Inadequate key disclosures;
- Extreme difficulty to obtain redress for individual investors;
- Inadequate client categorization;
- Inadequate rules on product oversight and governance;
- Insufficient safeguards for sustainable finance;
- Under-developed employee share ownership;
- Need for an EU-wide cross-sectoral conduct of business supervision (“Twin Peaks”)

Moreover:

1. It is a challenge for EU “retail” investors to participate at this public

consultation as: it is very long, technical, and filled with jargon; authentication (on the platform) is required.

2. BETTER FINANCE regrets that the consultation is not sufficiently designed in a way that allows full expression of the views of stakeholders.

3. It is difficult to see - reading this questionnaire - what are the key retail investment strategy options proposed or envisioned by the European Commission;

4. The European Commission and the European Supervisory Authorities (ESAs) lack knowledge of the most critical information about the retail investments they regulate and/or supervise, in particular the prices (charges) and actual performances of these products. In particular, the ESAs do not have any investment product databases.

5. Last, there is no question regarding a very powerful tool to reach the above-mentioned objectives of the strategy: Employee Share Ownership, in countries where it is developed, has proven to foster equity culture among citizens, and to make companies more resilient and more sensitive to sustainability and social issues. Therefore, Employee Share Ownership, which is underdeveloped in the EU compared to the US, should be strongly promoted?

Financial literacy

The EU should promote:

1. Financial education at school: not an EU competency, but critically missing in many EU Member States.

2. Investor education for adults: there are only two main places where adults could get investor education:

- Retail point of sale: it is therefore crucial to progress towards bias-free advice, and to ensure that this advice is delivered by competent professionals;

Measure no.1: move towards bias-free advice;

- Employee Share Ownership and other corporate savings plans: very underdeveloped in the EU, albeit currently the best (unbiased) form of adult investor education, done at the workplace;

Measure no.2: promote employee share ownership and corporate savings plans;

Measure no.3: In general, we stress that investor education efforts must be independent from investment providers and distributors and should not be used to clear those from their first duty to deliver bias-free advice and clear information.

Measure no. 4: Evaluation of the effectiveness/lasting impact of Commission's financial education projects/interventions financed over the last 10-15 years (identifying what has worked and what has not and drawing up "Lessons Learned" to be applied in future initiatives).

Digital innovation

The general principles of regulating digitalization and the use of AI in financial services must be observed, i.e. legal certainty, technology neutrality, high standard of consumer and personal data protection.

It is important to note, in context of the Open Finance recommendations of the Final Report of the High-Level Forum on the Future of the CMU that the collection of user information must respect certain principles:

- first, to be compliant with the EU GDPR and not extend further than financial data and,
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- second, it must ensure that the consent of the data subject is not extorted.

Therefore, digital finance regulation must ensure that a clear distinction between data processing that is essential or part to the provision of the online financial service and what is needed to enhance outcomes or customer experience, which is based on the prior express consent of the data subject. In such latter cases, the provision of the services should not be dependent on the consent of the data subject.

Another kind of risk is the increased use of artificial intelligence (AI) in voting processes. In the EU, there do not yet exist any rules governing the use of AI in the area of vote execution or fiduciary duties, and BETTER FINANCE suggests to analyse this phenomenon further, especially in view of the Green Deal.

Disclosure requirements

Ex-ante and ex-post disclosures for retail investments should be improved. The UCITS KIID definitely helps retail investors understand, compare products, doesn't confuse them with unrealistic and misleading (because based on last 5 year past performances) future predictions, and allows comparison with other substitutable products: the abolition of the UCITS KIID in 2022 will harm retail investors very much.

Unfortunately, the new PRIIPS KID has many flaws and creates a situation very detrimental for non-professional investors: the information presented therein is mostly not intelligible, not comparable, misleading, it does not include the most relevant information (past performance and actual comparable costs) and does not provide added value for investors making an informed decision. In particular, it is not possible for the saver to know if the investment product has made any money or not, nor if the product manager has ever met its investment objectives due to the fact that long-term past performance relative to the investment objective / benchmark of the provider has been replaced by four future performance scenarios.

For listed equities and bonds, we would disagree that the current pre-contractual disclosures enable savers understand the essential information, as the summary prospectus for those should be made more standardized and comparable to the UCITS KIID.

For lower cost index ETFs domiciled in the US ("mutual funds"), we would fully agree that the disclosure enables understanding and comparing essential information, as their summary prospectus of those is quite clear, relevant, and comparable.

EU-wide KID are still missing for personal and collective pensions nor for many bank savings products (which are routinely substitutable to other retail investment product categories).

PRIIPs

The information provided in the PRIIPs KID is focused on unreliable estimations on the products' last 5 year past performance, costs, and risks (volatility) which are very unlikely to be understood by the average non-professional investor and, as such, may very likely determine "retail" clients making wrong decisions based on such disclosures:

- the information on performance, and costs sections can be misleading: in its current state;
 - the information on costs and performance is mostly not intelligible: the complex concepts used, jargon, and excessive information determines retail clients to rather guess than understand what is presented;
 - the information on performance and costs is not comparable;
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- the most important information is missing:
 - the actual cost information has been replaced by the unintelligible “future” “Reduction-in-Yield”;
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Suitability and appropriateness

The suitability assessment is not sufficiently tailored to the needs of retail investors, the suitability assessment looks more like a legal waiver for manufacturers / sellers / advisors.

Moreover, this assessment must also take into account the recommended holding period and the investment objective of the product: BETTER FINANCE had evidence from its member organisations of money market funds proposed as long-term or retirement provision vehicles.

Investor categorisation

In line with the 2020 HLF CMU discussions, we propose that the “professional investors category” is:

- extended to individual non-professional qualified investors
- the requirements of minimum holdings in financial instruments significantly lowered from the existing €and extended to other retail investment products than the ones covered by MiFID II, in particular IBIPs.

In case a threshold should be implemented, this needs to be significantly lower (we propose 100,000 EUR like for ELTIFs)

- For non-professional qualified status add a criterion on qualification via a test or an “investor license”.
- The category therefore renamed “qualified investors”.

But we warn that it is only one of the reasons why retail financial intermediaries are very often very reluctant to offer and promote simple and low cost investment products such as index TEFs, and listed equities and bonds.

Inducements & quality of advice

As unanimously recommended by the High Level Forum on the CMU last year, there should be consistent rules on conflicts of interest for all retail investment products; i.e. ban inducements for “independent advice” and for “portfolio management” not only for MiFID scope intermediated investment products (which in effect constitute about 10% only of EU households’ financial savings) but also for Insurance-based Investment Products (IBIPs), for personal pensions including PEPP and for occupational pension savings products as well (which constitute all together about 40% of total financial savings).

In addition, “inducements” should also be banned for execution only transactions and subscriptions (as done in Canada), as – by definition – they do not include any “advice” service from the provider nor from the distributor.

EU Authorities should also ensure that the developing “clean share classes” of investment funds (lower expense ratio due to the absence of “inducements”) are fully and easily available to independent advisors (in the sense of MiFID).

“Non independent advisors” should be clearly labelled as such in all communications to clients and prospective clients.

The non-intelligible “inducements” word in EU Law should be replaced by “sales commissions” or equivalent.

Product complexity

- There is no definition / categorisation of “complex” products outside of MiFID products (less than 30% of EU financial savings)
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- The definition of complexity by MIFID II is not appropriate for IBIPs, being themselves complex products because of their multi-layered structure; in consequence the definition of complexity should be amended.
 - The simplest investment products (low cost indexed ETFs, listed stocks and bonds) are very rarely talked about, explained, promoted by retail distributors as they get no annual commissions on those products.
 - Many banks also claim that MiFID constraints make it difficult and risky for them to propose listed securities, even to financially literate and less risk averse clients (see replies on client categorisation).
 - To promote simplicity is a legal duty of the ESAs (article 9.1. of the ESMA Regulation for example), but they have so far not actually focused on it.
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Redress

Obtaining redress is a major issue for savers given the high complexity and/or technicality of investment products, the low financial literacy level of the average saver and often of courts, the asymmetry of information between providers and “retail” clients, the lack of effective collective redress processes in many Member States, and at EU level for individual investors investing directly in capital markets (for example Wirecard shareholders).

Retail investor associations should have the right to represent their members victims of collective abuses before courts. For example, the Spanish regulations on the associations of minority shareholders of listed companies, which may be formed under the Law on Capital Companies. Only associations of shareholders of a specific listed company may be created (one each for each listed company). And the requirements are so strict that in our knowledge no such association has ever been created: Notarial deed, a minimum of 100 shareholders none of which may hold more than 0.5% of the capital of the company, accounting obligations, registration in the Mercantile Register and in the National Commission of the Securities Market.

At EU level, despite and in contradiction with the CMU initiative retail investors who invest directly in listed equities and bonds are excluded from the scope of the recent EU directive on representative actions for the protection of the collective interests of consumers (Directive (EU) 2020/1828).

However, individual prejudice can sometimes find solutions via mediation: public mediation can in several cases be effective: for example, the French AMF mediator who is completely independent from the financial industry.

BETTER FINANCE asks for:

- to include retail investors who invest directly in capital markets in the scope of the Directive (EU) 2020/1828 on representative actions for the protection of the collective interests of consumers;
 - To allow individual investor associations to act on behalf of their members in collective redress procedures.
 - To amend the Directive (EU) 2020/1828 on representative actions for the protection of the collective interests of consumers to establish an opt-out option by default.
 - a cooling-off period of two years minimum for mediators
 - More generally to strengthen and ensure the independence of ombudsmen from the financial industry.
 - National mediators / ombudsmen of the domicile of the client should be competent for complaints arising from products and services sold under the free provision of services regime (where the distributor/provider is domiciled in
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another EU Member State), as the language and distance barriers make it very challenging for the client to go a foreign mediator.

Product intervention powers

Apart from ESMA in very few cases (notably for binary options and CFDs), the ESAs have not used their product intervention powers to protect retail investors. BETTER FINANCE supports reinforced competencies and resources for the European Supervisory Authorities (ESAs).

The framework and governance of the ESAs should be therefore improved, by moving to a “twin-peaks” framework, instead of a “silo” approach by categories of products, which favors prudential considerations over conduct of business rules. Like the Board of ECB, the Board of ESAs should include independent members independent from the NCAs.

Sustainability

BETTER FINANCE believes that retail investors need proper information on financial returns of sustainable investments compared to mainstream investments. It is crucial to ensure that suitable sustainable financial products are proposed to individual investors. the financial advisers’ practices should be supervised in order to ensure proper implementation of the delegated acts on the obligations for entities undertaking financial advice to ask about the sustainability preference of the retail investors. The sustainable finance framework needs to be completed by developing a social and governance taxonomy. It is crucial to have a framework that improve and facilitate individual shareholder engagement. Finally, it is necessary to adequately assess the engagement of asset manager in relation to sustainable financial products and the respective marketing claims in terms of engagement policies.

Key information

Summary of the consultation (PC): The European Commission (EC) plans a series of reforms and (potentially) new legislative acts as part of a *Retail Investment Strategy* to ensure that “*retail investors can take full advantage of capital markets and that rules are coherent across legal instruments*”. Through this forward-looking policy agenda, the EC aims to deliver to retail investors:

- (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.*

To do so, the EC is seeking opinions, research, and arguments on a long list of topics covering retail investments in the EU through this consultation. Spanning across 13 sections and 111 questions, this document is structured as follows:

- *General questions* (6);
- *Financial literacy* (2);
- *Digital innovation* (11);
- *Disclosure requirements* (21);
- *The PRIIPs Regulation* (16);
- *Suitability and appropriateness* (13);
- *Investor categorisation* (6);
- *Inducements and quality of advice* (14);
- *Complexity of products* (7);
- *Redress* (6);
- *Product intervention powers* (3);
- *Sustainable investing* (5)
- *Other issues* (1).

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Background information

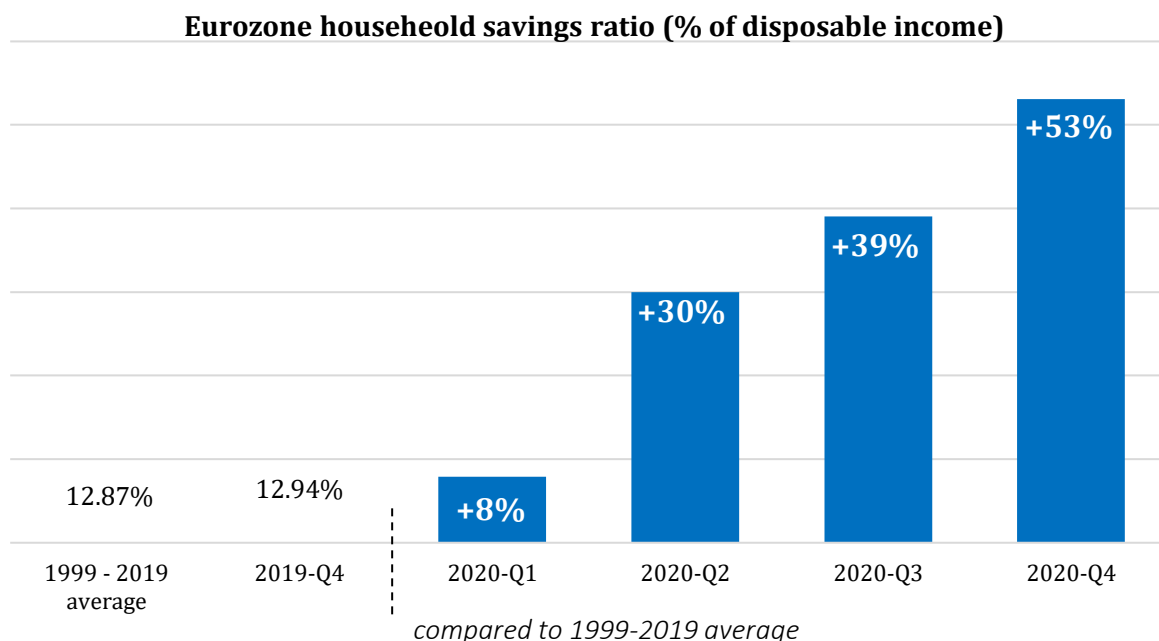
In our view, the Strategy for Retail Investors (topic of this consultation) and the Capital Markets Union project are strongly interlinked as both share the aim to promote more investments into capital markets by EU households (individual, non-professional investors) in a safe, transparent, and trustworthy environment. As such, we believe that the Strategy for Retail Investments can be seen as a sub-part (although significant) of the Capital Markets Union project, which also covers other topics, such as professional trading and investments.

BETTER FINANCE has supported the initiatives to create a Capital Markets Union since the initial Action Plan in 2015.¹ The EU needs integrated capital markets where EU citizens' long-term capital can be optimally allocated to well-performing and cost-efficient investment products across the EU, benefitting of bias-free investment services.



What is the CMU? The Capital Markets Union (CMU) is an EU political agenda to integrate all 27 local capital markets by reducing barriers to cross-border investments, harmonising applicable law and supervision, and also by improving the investment conditions across the EU.

In short, the EU needs a CMU “*That Works for People*”.² This is now all the more important as the global health pandemic brought about two significant developments. First, households started to save much more of their net disposable income in 2020, which will lose its value if kept allocated to products with low (or even negative) interest rates or not invested at all (due to inflation).



Source: BETTER FINANCE own composition based on ECB data

By the end of 2020, Eurozone households reportedly saved up to 53% more of their net disposable income³ compared to the last 20 years' average (1999 – 2019), reaching almost a fifth (19.71%).

¹ European Commission 2015 Action Plan on the Capital Markets Union.

² Mission letter from Ursula von der Leyen President-elect of the European Commission to Valdis Dombrovskis, Executive Vice-President-designate for An Economy that Works for People, 10 September 2019.

³ Net disposable income

Second, European and national supervisors, as well as BETTER FINANCE members, observed a large number of new, young investors coming to the market: either by opening brokerage accounts, buying investment products or signing-up with robo-advisors, we are seeing a particular momentum and growth perspectives for EU capital markets.

However, the landscape of retail financial savings is more relevant. As seen in the table below regarding the financial balance sheets of EU households, life insurance and pensions products have the highest share in the financial savings of EU citizens, followed by bank savings, and only a distant third-largest share for securities and funds. In our view this table is very important as it is almost always ignored in public policy statements on “retail investors”.

in € millions	EU28				Eurozone			
Type of account/year	2015	2018	2019	Δ ('15-'19) €	2015	2018	2019	Δ ('15-'19) €
Total	32,953,678	34,350,361	37,529,754	4,576,076	21,998,790	23,644,693	25,639,245	3,640,455
Currency & bank deposits	9,848,128	10,719,953	11,363,343	1,515,216	7,189,108	8,041,926	8,457,524	1,268,416
Debt securities	839,342	623,812	596,556	-242,785	780,338	564,195	528,954	-251,384
Listed equity	1,338,699	1,282,517	1,559,051	220,353	890,767	882,398	1,077,468	186,702
Investment funds	2,460,982	2,597,685	2,960,101	499,119	1,912,713	1,997,285	2,239,408	326,694
Life insurances & pensions	12,823,669	13,376,535	14,533,072	1,709,403	7,241,815	8,037,559	8,821,395	1,579,580
in % of total	EU28				Eurozone			
Type of financial savings	2015	2018	2019	Δ ('15-'19) %	2015	2018	2019	Δ ('15-'19) %
Currency & bank deposits	30%	31%	30%	▲ 1%	33%	34%	33%	▲ 1%
Debt securities	3%	2%	2%	▼ -38%	4%	2%	2%	▼ -42%
Listed equity	4%	4%	4%	▲ 2%	4%	4%	4%	▲ 4%
Investment funds	7%	8%	8%	▲ 5.6%	9%	8%	9%	▲ 0%
Life insurances & pensions	39%	39%	39%	▼ -0.5%	33%	34%	34%	▲ 4.5%

Source: BETTER FINANCE composition based on Eurostat data

As such, the CMU must create the optimal investment environment for EU citizens. To achieve the CMU, several initiatives in the past years have been put forward, most importantly: the CMU Action Plans of the European Commission (EC, 2015; 2017;⁴ 2020⁵), the Next CMU Report,⁶ the Final Report of the High-Level Forum on the Future of the CMU (HLF FMU, 2020),⁷ and the CMU Report of the Economic and Monetary Affairs Committee of the European Parliament (2020).⁸ All this work focused on the CMU as a whole and put forward recommendations on the necessary steps to achieve this common goal.



What are Action Plans? The European Commission announces its upcoming policy initiatives (reviews, reforms, or new legislative proposals) in financial services through Action Plans, which essentially analyse what areas need improvement, what the objectives are, and how the European Commission proposed to tackle them.

However, the first initiative of EU public authorities solely dedicated to individual, non-professional (“retail”) investors is the EC’s *Retail Investment Strategy*, which will be rolled-out in 2022. In short, this forward-looking policy agenda aims to ensure that “*retail investors can take full advantage of capital markets and that rules are coherent across legal instruments*” through possibly a series of reforms of applicable EU law and hopefully recommendations for EU Member States.

⁴ European Commission 2017 Mid-Term Action Plan on Building a Capital Markets Union.

⁵ European Commission 2020 New Action Plan on the Capital Markets Union.

⁶ Final Report of the NextCMU Group on the Capital Markets Union.

⁷ Final Report of the High-Level Forum on the Future of the Capital Markets Union (10 May 2020).

⁸ European Parliament Economic and Monetary Affairs (ECON) Committee Own Initiative Report on the Capital Markets Union: Further development of the Capital Markets Union (CMU): improving access to capital market finance, in particular by SMEs, and further enabling retail investor participation.

The COVID-19 lockdowns have prompted increased use of digital tools and extra savings, which brought many new, young investors to capital markets. Based on BETTER FINANCE's research on six EU Member States⁹, the most notable increase in retail investments is the acquisition of listed shares, which was observed throughout these jurisdictions, albeit at different intensities.

This increase gives momentum for the EU equity investing culture, but also for shareholder activism in EU listed companies. At the same time, it opens the appetite for investing of many previously inactive EU savers, which represents and will represent an important stimulus for the EU economy and for the post-COVID recovery.

Please refer to the Annex 1 of this Paper (link here: <https://betterfinance.eu/wp-content/uploads/BETTER-FINANCE-Response-EC-Strategu-for-Retail-Investors-03082021-Annex-1.pdf>).

In preparation of this agenda on the Strategy for Retail Investments, the EC seeks input from stakeholders on what is working well or not in a wide palette of topics related to “retail” investments. Albeit there is – at the moment of writing – no additional information on the rolling-out schedule, what it would look like, or if further public consultation processes will be necessary, the EC states ambitious objectives, such as offering *adequate protection* for non-professional investors, building towards *bias-free advice* and *fair treatment* of retail investors by professionals, improved disclosures (“*transparent, comparable and understandable product information*”) and “*open markets with a variety of competitive and cost-efficient financial services and products*”.

⁹ Belgium, Denmark, France, Germany, Italy, the Netherlands

This consultation addresses a list of topics, which are briefly described in the table below:

Topic	Summary
<i>Financial literacy</i>	EU and national authorities are considering what measures can be taken to increase the level of knowledge and awareness of the adult population of capital markets and financial services.
<i>Digital innovation</i>	New technologies are becoming incorporated into traditional financial services and new financial services are being developed through digitalisation. This section covers digital innovation in investments.
<i>Disclosure requirements</i>	This topic refers to the mandatory information financial services providers must convey to “retail” clients before and after purchasing an investment product or service, such as the <i>Key Information Document</i> (KID).
<i>The PRIIPs Regulation</i>	This is the EU Regulation that establishes the content and format of the <i>Key Information Document</i> for the majority of “retail” investment products (packaged retail and insurance-based investment products - PRIIPs).
<i>Suitability and appropriateness</i>	This topic refers to the assessment, based on a questionnaire filled in by the client, that the financial adviser or seller of investment products must undertake to ensure that the recommendation is <i>suitable</i> or <i>appropriate</i> for the client.
<i>Investor categorisation</i>	This topic refers to how clients of investment firms or insurers are treated, i.e. <i>professional</i> or “ <i>retail</i> ” clients.
<i>Inducements and quality of advice</i>	Currently, investment advice can be independent, when the advisor is paid by the client, or non-independent, when the advisor is paid (also) by product manufacturers through “inducements”. This topic seeks to improve the regulation of investment advice.
<i>Complexity of products</i>	Certain products are deemed “non-complex” if these fulfil certain criteria. The questions under this section concern the rules on how to define “complex” investment products and how can these be distributed to clients.
<i>Redress</i>	Currently there are several means to enforce a right against intermediaries, such as complaints procedures, alternative or online dispute resolution (ADR/ODR), mediators, ombud(wo)men or court action. This section seeks input on how to improve the tools available for retail clients on seeking enforcement of their rights.
<i>Product intervention powers</i>	National and EU (EIOPA, ESMA, EBA) supervisory authorities dispose of certain competencies to intervene and take decisions on certain products (limit distribution, temporary bans etc), called <i>product intervention powers</i> . This section seeks input on how should these competencies be delimited between local and EU level.
<i>Sustainable investing</i>	Reorienting capital towards sustainable activities and engaging with companies to take into account environmental, social, and governance considerations are key aspects for retail investors. This topic refers to the trend of investing sustainably and what should the EU do in order to promote such investments and provide trustworthy and high-level standards.

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

Please explain your answer and provide examples

In BETTER FINANCE's view, the current retail investor protection framework falls short of achieving its purpose ("sufficiently empower and protect retail investors when they invest in capital markets") for the following reasons:

- **Little access to bias-free investment services:** the rules on the general duty of care (*act in the best interests of clients*) and on conflicts of interests (incl. inducements) must be strengthened and harmonized; there is very currently little bias-free investment advice throughout the EU (except in the Netherlands); however, currently the retail points of sale of investment services are the main source of investor information and education for EU adult citizens.
- **Different standards of investor protection across sectors:** the EU must abandon the "silo" or "piecemeal" approach and ensure that the rules protecting and empowering financial services users are harmonized for all investment services and products (e.g. differences between MiFID II and IDD);
- **Inadequate disclosures:** the EU adopted a cross-sectoral key disclosure document which is not intelligible, not comparable, and misleading for most retail clients; at the same time, it omits the most relevant information on *past performance* and *actual costs* of investment products. With the PRIIPS KID forced upon UCITS funds next year (way before any review of the PRIIPs Regulation), EU individual investors will no longer be able to know - based on legal key disclosures - whether the product has ever made money or not for the investor and how much, and will no longer be able to know if the product provider has ever achieved his investment objectives and by how much.
- **Lack of supervisory data:** national and EU financial supervisors do not know the cost and performance of the retail investment products and services they are responsible for supervising; they have no such independent databases, for example contrary to the case of Norway or the US;
- **Extreme difficulty to obtain redress:** investors investing directly into capital markets are currently excluded from EU collective redress rules; as such, for example, the abused pension savers exposed to Wirecard spillover will again quite likely never (or very difficult and costly) obtain compensation for their losses.
- **Inadequate client categorization:** the rules of client categorization de facto prevent more experienced or financially literate to directly invest in capital markets (buy shares or bonds) or buy other financial products, such as foreign ETFs;

- **Inadequate rules on product oversight and governance:** the suitability assessment does not take into account key aspects of an investor's profile and the appropriateness assessment overburdens the bureaucratic process without a clear added value for end-users;
- **Insufficient safeguards for sustainable finance:** No empowerment of citizens as individual investors who are prevented from engaging in the investee companies (the "G" part of "ESG" finance), whether they invest directly (a minority of them) or indirectly via investment funds, pension products or unit-linked insurance;
- **Under-developed employee share ownership:** these schemes are at a very incipient level in the EU compared to the US (one hundred times less than in the US for SMEs) albeit being one of the most useful tools to re-equitise the European economy and a powerful possible complementary place for adult investor education.

These points are developed in the following sections or under Question 13 at the end.

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

Please explain your answer

Some of the limitations imposed by the EU investor protection framework are justified, whereas on many occasions they generate the opposite results: many EU investors, with a low level of financial literacy, are sold only packaged, complex products (such as unit-linked insurances), either too complex, unsuitable products, whereas more experienced investors are disallowed to invest in simple, cost-efficient plain vanilla securities, such as listed equities, bonds, or units in exchange-traded funds (ETFs).

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 EU regulation?

- ☒ Yes
☐ No
☐ Don't know

Please explain your answer

Based on continuous input from BETTER FINANCE members, but also mystery shopping, many distributors (advisors or online brokers) refuse selling simple securities such as plain vanilla listed bonds, low-cost index ETFs, listed shares, low cost and performing funds not domiciled in the EU, quoting limitations under MiFID II or the PRIIPs Regulation. BETTER FINANCE's research highlights that the reluctance may come from the burdensome, often misaligned, product oversight and governance process, which either

leads to confusion or simply is interpreted as preventing certain instruments from being sold to the retail sector.

However, one BETTER FINANCE member defending and advocating for the rights of the insured, focused also on insurance-based investment products, considers that the product oversight and governance (POG) requirements may be somewhat burdensome for product providers and distributors, but the main objectives of testing and monitoring new products and of fixing a granular target market for these products are very useful instruments of consumer protection. BETTER FINANCE's observation that POG *"either leads to confusion or simply is interpreted as preventing certain instruments from being sold to the retail sector"* can only be understood in the context of a more or less deliberate misinterpretation of the POG requirements by product manufacturers and distributors. If mis-selling cases continue, this is not due to POG but despite of POG.

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

	Strongly disagree	Disagree	Neutral	Agree	Strongly Agree
Lack of understanding by retail investors of products?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Lack of understanding of products by advisers?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Lack of trust in products?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
High entry or management costs?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Lack of access to reliable, independent advice?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Lack of access to redress?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Concerns about the risks of investing?	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Uncertainties about expected returns?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Lack of available information about products in other EU Member States?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Other	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

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

	Strongly disagree	Disagree	Neutral	Agree	Strongly Agree
Sufficiently accessible	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Understandable for retail investors	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Easy for retail investors to compare with other products	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Offered at competitively priced conditions	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Offered alongside a sufficient range of competitive products	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Adapted to modern (e.g. digital) channels	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Adapted to Environmental, Social and Governance (ESG) criteria	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

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?

Select all applicable choices:

- ☒ 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, and if so what area?

Please explain your answer.

There is no silver bullet, and the review of retail investor protection rules must be holistic. Thus, we consider all the above categories important, to which we add the need for increased supervision and competencies for the EU supervisory authorities (ESMA, EIOPA). The biggest change agent though is to progress towards bias-free advice as rightly targeted by the EC CMU Action Plan of September 2020.

For example, biased “advice” is also negatively impacting investor literacy, as commission-

based intermediaries rarely tell clients about what are listed equities, bonds and index ETFs because they don't get annual commissions from providers on these investment products which are simpler, lower cost and closer to the real economy financing.

In the life insurance sector annual commissions for IBIPs are usual (for supposedly ongoing contract and "advice" services by insurers and intermediaries), but they are much less high than up-front distribution commissions in some national markets such as Germany.

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](#), 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 ...

	Strongly disagree	Disagree	Neutral	Agree	Strongly Agree
Improve their understanding of the nature and main features of financial products	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Create realistic expectations about the risk and performance of financial products	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Increase their participation in financial markets	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Find objective investment information	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Better understand disclosure documents	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Better understand professional advice	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Make investment decisions that are in line with their investment needs and objectives	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>

Follow a long- term investment strategy	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
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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).

One has to distinguish:

1. Financial education at school: not an EU competency, but critically missing in many EU Member States; in this regard, we refer to the recommendations of the High-Level Forum on the Future of the CMU (*recommendation 12 on Financial literacy, education, and investor culture*): as part of a wider framework on financial education, EU Member States were invited to consider developing a “*curricula for schools, universities, vocational schools and teacher training*”;

2. Investor education for adults: there are only two main places where adults could get investor education, and in particular on capital markets and on listed equities, i.e.

- **Retail point of sale:** by far, the main educational channel is with retail investment intermediaries; it is therefore crucial to progress towards bias-free advice, and to ensure that this advice is delivered by competent professionals; Further measure no.1: move towards bias-free advice;
- **Employee Share Ownership and other corporate savings plans:** very underdeveloped in the EU, albeit currently the best (unbiased) form of adult investor education, done at the workplace; Further measure no.2: promote employee share ownership and corporate savings plans;

Further measure no.3: In general, we stress that investor education efforts must be independent from the providers and should not be used to clear providers them from bias-free advice and clear information.

Further measure no. 4: Evaluation of the effectiveness/lasting impact of Commission’s financial education projects/interventions financed over the last 10-15 years (identifying what has worked and what has not and drawing up “Lessons Learned” to be applied in future initiatives).

Below, more detail for the arguments above.

First, for primary financial education, the EU can play a relevant coordination role in identifying and empowering initiatives for national bodies and stakeholders involved in financial education and consumer protection. Second, the EU is also in its role in linking investor protection and initial financial literacy for citizens of all age, including at the workplace (employee share ownership and corporate savings plans).

From an EU standpoint, co-working with independent NGOs and regulators would be key to consumers’ protection relying on initial financial education. To this end, EU associations, NGOs and public centres should be empowered to conduct proactive financial education initiatives. The emergence of co-funded programmes, to be held by local or transnational actors, would be fit for financial educational purposes. By seeking to create a safe EU-wide investment environments, citizens, teachers, training centres and relevant NGOs have an important independent role to play in reaching all citizens.

Financial inclusion and thus financial literacy are also at stake, as a real problem to be solved is the necessary access to basic products for each category of clients to improve everyone's financial knowledge. Indeed, in some Member States, social issues of financial inclusion directly translate into a crucial lack of financial education. Therefore, financial inclusion and education should also be endorsed by legislation allowing the market to extend offers to all individuals (in terms of monetary capacity, knowledge, residency, and other profile-related requirements). We believe that no basic investment and savings service should be beyond the reach of some citizens.

Financial education should also go hand in hand with fair and clear disclosures (on the price, performance, and risks of investing or borrowing, etc, see also answers to the questions on *disclosures* and PRIIPs below) and would therefore reduce related risks for consumers and increase the propensity of households to invest. Encouraging citizens to invest must go through proper bias-free financial guidance and advice. Indeed, marketing-led (or perceived as such) financial education is at odds with the principle of fair disclosure practices and proper financial education. Therefore, financial institutions must be incentivized in working with independent NGOs and other bodies, whereas independent financial education will enable self-judgment and evaluation. Part of this may fall under EU competences, for example by incentivizing neutral, easily accessible and understandable financial resource requirements to be provided to end-user under the MIFID review, PRIIPs, KIID, Market data accessibility.

In this vein towards improving European citizens financial literacy, we see fit, as an initial step, to set up independent financial guidance centres at national level such as recommended by the High-Level Forum on the Future of the Capital Markets Union Final Report (*Recommendation 13 on Financial Literacy/Education and Investment Culture*).

Digitalisation has brought increased access, with multiple emerging actors, which did not translate into a safer and more inclusive environment for consumers. Digitalization can help pursue such objectives, but proximity services should always remain available to the less digitalized part of the society (the elderly, disadvantaged social categories and disabled citizens).

Ultimately, similarly to actions taken at Member State-level, actions could be taken so to merge supervisory data from NCAs with transactional data from operators at EU Level. This would constitute valuable EU-wide insights in order to monitor behavioural patterns and help identify priorities in terms of financial education programmes or initiatives.

Finally, for workers, Employee Share Ownership (ESO) and other corporate savings plans remain underdeveloped in the EU despite its great potential to bring unbiased form of adult investor education at the workplace, including risk management. To assert its benefits, conducting an awareness-raising European Action Plan on ESO all over Europe is crucial. Besides, including ESO plans as part of the governance objectives of ESG-related action would be fit for this purpose.

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

To begin with, the general principles of regulating digitalization and the use of AI in financial services must be observed, i.e. legal certainty, technology neutrality, high standard of consumer and personal data protection. As such, we see the main risks of uncertainty in terms of provider liability, mis-selling due to faults by design and data protection concerns, including cyber-security risks. It must be made clear that the platform manager or owner is responsible for the information provided therein, including the algorithms used to calculate and display results based on user input. Although automated investment platforms bring many advantages and cost efficiency gains, this should not be seen as a limitation of liability in case of provided investment advice.

At the same time, digitalization involves the mass processing of user data, which brings both advantages and risks. On one side, more data can improve the distribution and execution processes, but it must not be used against or without the consent of the consumer. It is important to note, in context of the Open Finance recommendations of the Final Report of the High-Level Forum on the Future of the CMU that the collection of user information must respect certain principles:

- **first, to be compliant with the EU GDPR and not extend further than financial data and,**
- **second, it must ensure that the consent of the data subject is not extorted.**

On many instances, the provision of certain services is conditioned on the data subject expressing consent (which is a different legitimate basis for processing than what is necessary for the provision of a service or a contract); if the data subject disagrees with the processing of his or her data, in many instances the service will not be accessible, albeit the data is not an essential or central element to the provision of the service. Therefore, digital finance regulation must ensure that a clear distinction between data processing that is essential or part to the provision of the online financial service and what is needed to enhance outcomes or customer experience, which is based on the prior express consent of the data subject. In such latter cases, the provision of the services should not be dependent on the consent of the data subject. Last, there is the concern of cyber attacks, in particular when more and more information is shared and stored in electronic mediums.

Another kind of risk is the increased use of artificial intelligence (AI) in voting processes. AI is being used to provide data for voting at general meetings and it enables institutional investors to robo-vote according to pre-set instructions, or in accordance with a proxy advisor's voting policy, if the investor provides no other special instructions. Such a practice necessarily transfers fiduciary voting authority from investors to proxy advisors and consequently impacts governance and oversight of companies, as it allows investors to set their voting decisions on autopilot (set and forget). According to a study¹⁰, 114 institutional investors voted in lockstep alignment with the two largest proxy advisors and

¹⁰ Proxy Advisors And Market Power: A Review of Institutional Investor Robo-voting, Prof. Paul Rose, The Ohio State University

robo-voting institutional investors in the US managed collectively more than \$5 trillion in assets in 2020. The SEC therefore has issued guidance to make clear to institutional investors that fiduciary duties cannot be outsourced. In the EU, there do not yet exist any rules governing the use of AI in the area of vote execution or fiduciary duties and BETTER FINANCE suggests the Commission to analyse this phenomenon further, especially in view of the Green Deal.

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

The exercise of investors' voting rights, including cross-border within the EU – currently very difficult for individual shareholders – on their smart phone. Could be extended to investors into packaged products (investment funds, pension funds, personal pensions, etc.) for consulting them on key issues, including sustainability.

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

Please explain your answer

Yes, it is necessary in order to digitalise and make use of regulatory reporting information, which is now cross-sectoral and covering most retail investment products (including personal and occupational pension savings). However, it is necessary to perform a fitness check of the relevant information that can be supported for machine readability.

Even more importantly, the features and format of mandatory key disclosure documents such as UCITS KIID or PRIIPS KID must be adapted to be easily read on digital devices.

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

Please explain your answer

No, we need to harmonise key disclosure rules not only on KIDs but also with regard to marketing/advertisement material across the EU to allow full comparability between similar investment products manufactured in different EU Member States.

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

Please explain your answer

Yes, recent events have shown how easy it can be sometimes to manipulate retail investors, and how prone they are to take their information and advice on the internet (websites etc). This is even more worrying where companies use these channels to call upon the 'eco-consciousness' of consumers (e.g. German Pellets, Prokon) to mislead them. This is even more true in cases where issuers or manufacturers use online-channels to call upon the "eco-consciousness" of consumers to mislead them. Cases in Germany like German Pellets or Prokon are bad examples in that respect.

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

Please explain your answer, including which rules would require particular attention

Yes, differences in online advertising at national level can create detrimental effects for retail investors and uneven competitive environments and would further reduce investors' trust in the EU capital market.. But we believe it is mainly an issue of enforcement of existing rules and of better supervisory convergence.

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)?

<i>Not at all important</i>	<i>Rather not important</i>	<i>Neutral</i>	<i>Somewhat important</i>	<i>Very important</i>
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>

Please explain your answer:

Social media play a more and more important role, which creates a difficult situation to control and supervise. Just as citizens should not rely primarily on medical advice by non-professionals online, investors should not rely primarily on non-professional financial advice online either. However, social media do not only have a negative role, they stimulate the interest of younger investors in capital markets.

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?

<i>Not at all significant</i>	<i>Not so significant</i>	<i>Neutral</i>	<i>Somewhat significant</i>	<i>Very significant</i>
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

[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

Please explain your answer

Same answer as for Q3.5 and Q3.7 above.

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 online, 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

Please explain your answer

See reply to Q3.9 above. Investor protection rules must be consistent for all retail investment products and whatever the chosen distribution channel. It would therefore be preferable if the Commission would change its approach from a product-related regulation to an investor-centered approach. For complex products, clients and prospective clients should be able to talk to professionals if they have questions, even in an online selling process.

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?

<i>Not at all important</i>	<i>Rather not important</i>	<i>Neutral</i>	<i>Somewhat important</i>	<i>Very important</i>
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

From the retail investor's perspective it would be preferable if the most suitable, i.e. the best "value for money" product, would appear first on listings, may this be a simple or a complex product, higher or lower risk, as this should be a result of the risk and reward, performances and costs profiles and may vary.

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 no Key Information Document is provided, enables adequate understanding of:

	Strongly disagree	Disagree	Neutral	Agree	Strongly Agree
<i>The nature and functioning of the product</i>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<i>The costs associated with the product</i>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<i>The expected returns under different market conditions</i>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<i>The risks associated with the product</i>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Please explain your answers:

It depends on the investment product categories:

For UCITS funds, we fully would fully agree. When there is no KID and investors still enjoy KIID, it definitely helps them to understand, compare better, doesn't confuse them about the unrealistic future predictions, and allows comparison with other substitutable products. the abolition of the UCITS KIID in 2022 will harm retail investors very much.

Unfortunately, the new PRIIPS KID has many flaws and creates a situation very detrimental for non-professional investors: the information presented therein is not intelligible, not comparable, misleading, it does not include the most relevant information (*past performance* and *costs*) and does not provide added value for investors making an informed decision. For example, it is not possible for the saver to know if the investment product has made any money or not, nor if the product manager has ever met its investment objectives due to the fact that past performance has been replaced by forward-looking performance scenarios.

The precise points of criticism of BETTER FINANCE towards the PRIIPs KID are detailed in the following questions.

- 1) For listed equities and bonds, we would disagree, as the summary prospectus for those should be made more standardized and comparable to the UCITS KIID.
- 2) For lower cost index ETFs domiciled outside in the US ("mutual funds"), we would fully agree, as the summary prospectus of those is quite clear, relevant, and comparable.
- 3) There is no EU-wide KID for personal pensions nor for many bank savings products (which are routinely substitutable to other retail investment product categories).

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

	Understandability (please assess on a scale of 1-5)	Reliability (please assess on a scale of 1-5)	Amount of the information (please assess as insufficient, adequate, or excessive)
PRIIPs Key Information Document (as a whole)	1	1	Excessive
Information about the type, objectives and functioning of the product	1	2	Adequate
Information on the risk-profile of the product, and the summary risk indicator	4	2	Adequate
Information about product performance	1	1	Excessive
Information on cost and charges	1	1	Excessive
Information on sustainability-aspects of the product	1	3	Excessive
Insurance Product Information Document (as a whole)	NA-	-NA	NA-
Information about the insurance distributor and its services	NA-	NA-	-
Information on the insurance product (conditions, coverage etc.)	-NA	NA-	NA-
Information on cost and charges	-	-	-
PEPP Key Information Document (as a whole)	4	-	-

Information about the PEPP provider and its services	4	4	Adequate
Information about the safeguarding of investments	4	4	Adequate
Information on cost and charges	4	4	Adequate
Information on the pay-out phase	4	4	Adequate

Question 4.2.1 (PRIIPs): Please explain your answers

The information provided in the PRIIPs KID is focused on unreliable estimations on the products' past performance, costs, and risks (volatility) which are very unlikely to be understood by the average non-professional investor and, as such, may very likely determine "retail" clients making wrong decisions based on such disclosures.

BETTER FINANCE (and many others) argued at length all issues stemming from the PRIIPs KID in two public consultations (2019 and 2020), but for ease of reference, the most important points are:

- the information on the risk, performance, and costs sections can be misleading: in its current state, especially on future performances;
- the information on costs and performance is unintelligible: the complex concepts used, jargon, and excessive information determines retail clients to rather guess than understand what is presented; on certain instances (such as the Reduction-in-Yield estimations), the reader must actually find the Methodological rules in the Annex of the Level 2 PRIIPs Regulation to understand in what scenario that "impact of costs" will be applicable; in its current state, non-professional savers require the help of professionals to read and adequately understand the limitations of the information presented therein, whereas the KID was meant as a document that could be consulted by individual, non-professional savers alone;
- the information on performance and costs is not comparable: if the products subject to comparison do not have the same intermediary and recommended holding periods (IHP and RHP), the PRIIPs KIDs cannot be used for comparison purposes;
- the most important information is missing: past performance – allowing the investor to assess whether the product did generate any positive returns and whether the manager did achieve its stated investment objectives – on the past 10 years has been eliminated; on costs, the last fiscal year's costs have been replaced with Reduction-in-Yields, which do not represent costs, but the impact of costs on a return estimation, which is by essence dependent on the performance estimation itself.

Question 4.2.2 (IDD document): Please explain your answers

The IPID document (only for non-life and not for "IBIPs" – insurance-based investment products) should not be in scope as it does not apply at all to any retail investment products.

Question 4.2.3 (PEPP KID): Please explain your answers

The PEPP KID is more fit for purpose than the general KID, but not comparable to the KID for other personal pension products within the EU. At the same time, there is no KID for occupational pension savings products regulated. As expressed before, BETTER FINANCE would have preferred to have harmonised disclosure documents for all investment products sold to retail investors, and not separate, albeit similar, documents by product category.

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

Please explain your answer

EU law, including the pre-contractual documentation, still uses jargon or difficult to understand concepts for non-professional savers, which are not explained, not even in the regulatory frameworks themselves.

Example: “reduction-in-yield” instead of “total expenses” (US mutual funds) or total ongoing charges (as is the case for the UCITS KIID).

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

At the earliest possible stage. For example, providers and distributors should make them accessible online to all prospective clients so they can start comparing products proposed by different providers / distributors, or simply be able to browse availabilities on the market. Still too many distributors do not make the KIIDs/KIDs accessible on the products sections of their websites. This should be a must for all online / digital distribution channels at least as it represents mandatory reporting documentation.

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

- ☐ Yes
☒ No
☐ Don't know

Please explain your answer

Same justification as for Answers for Q4.2.2 and Q4.2.4 above concerning PRIIPs and PEPP KIDs.

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

Please explain your answer

EU law must strive to achieve full harmonisation of pre-contractual documentation for all “substitutable” (at the point of sale) retail investment products as none embodies sufficient differences from any other category in order to justify a standalone KID (neither the PEPP): in fact, the initial name used by the EU for the “PRIIPS” was “substitutable investment products”.

Indeed, very often retail investment distributors are offering IBIPs (Insurance-based Investment Products), investment funds and personal pension products as “substitutable” options (much more rarely ETFs and other listed securities).

In particular risk indicators, actual long term past performance compared to the investment objective (benchmark) of the manager and actual costs are fully comparable between funds, IBIPs, personal pensions, etc.

Question 4.7 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:

a) Product cost information is calculated and presented?

☒ Yes

☐ No

☐ Don't know

Please explain and indicate which information documents are concerned.

PRIIPS KID and PEPP KID inconsistent with MiFID (in particular on costs and performance disclosures, IDD – same answers for the following questions as well.

b) Risk information is calculated and presented?

☒ Yes

☐ No

☐ Don't know

Please explain and indicate which information documents are concerned.

[Click or tap here to enter text.](#)

c) Performance information is calculated and presented?

☒ Yes

☐ No

☐ Don't know

Please explain and indicate which information documents are concerned.

[Click or tap here to enter text.](#)

d) Other

☒ Yes

☐ No

☐ Don't know

Please explain your answer:

No EU KID for occupational pension savings products and for many personal pension ones.

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

Information about:	Not relevant	Relevant, but not crucial	Essential
Product objectives/main product features	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Costs	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Past performance	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Guaranteed returns	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Capital protection	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Forward-looking performance expectation	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Risk	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Ease with which the product can be converted into cash	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Other (please specify)	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

Please explain your answer.

Forward-looking performance is not possible to do properly: even the best financial experts cannot adequately forecast investment performances. The one in the PRIIPs KID is misleading; “pseudo-science” according to prof. John Kay, senior expert to the UK Government) essentially because it is based on the last five years’ performance, precisely what MiFID prohibits. The four scenarios, only for three specific holding periods each, are also not comparable from one product to the other and not intelligible.

In line with BETTER FINANCE’s justification of publishing long term past performance compared to the benchmark of the provider, the key is not to be used as a basis to extrapolate future returns, but for basic crucial key information needs such as:

i) The product has ever made money or not ? and how much ?

ii) The product has ever protected the real value of savings (purchasing power : above or below inflation) ?

iii) The product provider has ever met his investment objective , and by how much ?

iv) Compare similar products long term track record versus objective (for example two European equity ETFs) .

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

Please explain your answer

Yes, but only if it is included in the KID, as we must avoid information overload, and too many information documents.

Ex-post disclosures are already required and in place for retail investment products, but this is at the point where the investment decision has already been made. Moreover, in the current form they are not understandable to the average retail investor without further explanation from the distributor.

What is important is the ex-ante cost disclosure, which has to be on actual costs as a % of the capital invested or assets under management. There could be two options: either ex-ante-disclosure of calculated costs (but then how would they be computed?), or ex-post disclosure of actual costs.

For long-term and pension products, and only to illustrate the impact of total annual costs over time, a comparison between real gross and real net hypothetical returns over the recommended or most common time horizon could also be shown.

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.

The optimal length should be that of two sides of a paper (2 pages) like the UCITS KIID, except for structured and other more complex products (as I the UCITS KIID). One more page could be allowed for non-financial (ESG) key disclosures in intelligible and comparable format and content.

Even if outside of the scope of this strategy/consultation, the IPID should not exceed the length of two pages either.

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.

First, they should have an additional label stating "COMPLEX PRODUCT" and point to the additional risks.

Second, as in the current UCITS KIID, they should fit as much as possible with the format for simpler products and add one page for additional specific features.

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

Please explain your answer

On paper upon request, but for free and very easily accessible.

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

<i>Not at all important</i>	<i>Rather not important</i>	<i>Neutral</i>	<i>Somewhat important</i>	<i>Very important</i>
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

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

BETTER FINANCE is concerned about the current disclosure paradigm and information overload – non-professional savers are faced with too much, unintelligible and lengthy information documents which will most likely have the effect to disincentivise, even discourage, them from reading and engaging with the documents. Being a “retail” investors is not a “full time job”, and reading pre-contractual documentation should enable savers to read and understand the disclosure easily.

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

	<i>Not at all important</i>	<i>Rather not important</i>	<i>Neutral</i>	<i>Somewhat important</i>	<i>Very important</i>
<i>There are clear rules to prescribe presentation formats (e.g. readable font size, use of designs/colours, etc.)?</i>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
<i>Certain key information (e.g. fees, charges, payment of inducements, information relative to performance, etc.) is displayed in ways</i>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

which highlight the prominence?					
Format of the information is adapted to use on different kinds of device (for example through use of layering)?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Appropriately labeled and relevant hyperlinks are used to provide access to supplementary information?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Use of hyperlinks is limited (e.g. one click only – no cascade of links)?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Contracts cannot be concluded until the consumer has scrolled to the end of the document?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Other (please explain)?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

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 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:

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

- ☐ Yes
☒ No
☐ Don't know

Please explain your answer

See replies to questions of section 4 above for all questions 5.1.a to 5.1.d

5.1.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

Please explain your answer

See replies to questions of section 4 above for all questions 5.1.a to 5.1.d

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

- ☐ Yes
☐ No
☒ Don't know

Please explain your answer

We cannot know yet since UCITS fund holders (plus retail AIFs in EU Member States such as France which are required to use the KIID as well) still enjoy the much better KIID. These citizens and the specialised media will realize the extent of the damage only next year when the EC eliminates the UCITS KIID.

We strongly recommend that the exemption of UCITS funds from using the PRIIPs KID be extended until the full review of the PRIIPS Regulation is completed, as this was precisely the purpose of this exemption, and was always intended as such by the EU policy makers.

It is surprising that European "retail" investors are not consulted on this critical disclosure and investor protection issue in the framework of the Strategy for retail investors.

5.1.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

Please explain your answer

[Click or tap here to enter text.](#)

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

- ☐ Yes
☒ No
☐ Don't know

Please explain your answer

Not applicable for PEPP KIDs as not yet on the market.

Due to the above-mentioned weaknesses of the PRIIPS KID, it is very rarely used / explained / promoted / shown by retail intermediaries to prospects and client.

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

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

Please explain your answer.

First and third answer are complementary– EU law should specify that the KID of a product offered – in any way to retail investors – should be available on the same webpage where the product (or other products) are available. Requiring a dedicated section will only create a difficult path for retail investors to follow to obtain the KIDs, At the same time, an EU-wide database would provide “retail” investors with a single access point through which they could search (and in best case also compare) the full range of financial products. As a “Plan B”, the database could be national only, but this goes against the single market and CMU goals.

But these actions will not make the PRIIPs KID more attractive unless it is thoroughly improved as explained in Section 4. In particular, databases will not by themselves enable the comparison of the PRIIPs key features such as costs and performances, as the content itself is not currently comparable, contrary to those of the UCITS KIID.

The PRIIPs KID

Question 5.3 Should the PRIIPs KID be simplified, and if so, how (while still fulfilling 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

Please explain your answer

Eliminate all information that requires explanations by default just to be understood. Replace the various future performance scenarios by one long term past performance compared to the provider's investment objectives / benchmarks scenario.

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

Please explain your answer

-PRIIPS KID is not yet mandatory for UCITS investment funds, the only current Pan-European retail investment product. For example, life insurance products are still Member State specific in most cases and therefore life insurance products are very rarely compared between Member States.

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

- ☐ Yes
☐ No
☒ Don't know

Please explain your answer

-See previous reply

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

	<i>Cost in € per individual product</i>
<i>A single PRIIPs KID</i>	
<i>A single PEPP KID</i>	
<i>A single Insurance Product Information Document</i>	

Please explain your answer

-

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

	<i>Cost in € per individual product</i>
<i>A single PRIIPs KID</i>	
<i>A single PEPP KID</i>	
<i>A single Insurance Product Information Document</i>	

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

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

Please explain your answer

-

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

Please explain your answer

This is very difficult to do for MOPs offering hundreds of underlying “units” (usually investment funds). BETTER FINANCE’s solution focuses on the two mediums in which the KID would be made available, i.e. either digitally or physically:

The EU Commission should adapt the PRIIPs Delegated Act to allow manufacturers or distributors to offer a drawdown menu, allowing clients or prospective clients to access the list of available options (and then to choose and customize their MOP).

This digital solution could be adapted to be made interactive for the client and, based on the choices of the client (if applicable), the KID could be generated automatically in the same format as for normal PRIIPs (not MOPs) and could be delivered both digitally or physically to the client. Manufacturers should mention in this list the clear total annual cost figure for each option , mentioning:

- the contract (wrapper) annual cost (a)
- the option’s own annual cost (b)
- and the total annual cost (the sum of a+b). This should in practice be implemented quite easy given that most MOP holders are exposed to few options /units.

This proposal follows a rule that was in place in France in 2005-2006, adopted at the request of independent saver associations. It has been recommended again on 20 July 2021 by the CCSF (Comité Consultatif du Secteur Financier) to the French Minister of Finance (CCSF Report on the cost of personal pension plans, page 60):

i) The KID for MOP PRIIPs should include (as an attachment in case of paper KID, or as a draw down option or link in a digital KID) a the list of the the options offered with the above mentioned disclosures ofn the total ongoing annual costs.

ii) It would then be then quite easy for the distributor and/or provider to estimate the actual weighted average total annual charge of the MOP per client, as most MOP holders are exposed to few options /units.

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? If so, why?

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

Please explain your answer

Those products – in particular personal pension products – are largely “substitutable” to other investment products that already subject to the PRIIPS rules and are used exactly either mostly or entirely for retirement purposes such as:

- “lifecycle” investment funds
- IBIPs proposing annuities for the decumulation phase (the number one objective for subscribing life insurance policies - with lump sum or annuities decumulation options -is retirement)

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

Please explain your answer

Again these are usually “substitutable” pension products: the pension saver can, in most cases, decide how much (or nothing) (s)he allocates to such individual products. In those cases, they should be in scope.

Other

- ☒ Yes
☐ No
☐ Don't know

Please explain your answer

All other “individual “ pension savings products, such as the defined-contribution occupational pension products, should be also be in the PRIIPS scope for the same reason (as mentioned above). In fact, in the US the main defined-contribution plans (the famous “401k” plans) are composed of the same mutual funds that one can subscribe directly on the market as an individual saver.

In France, since the “PACTE” law of 2018, any individual pension saver can switch from/to his occupational defined-contribution pension savings plan (“PER”, Plan d’Epargne Retraite) to/from his individual/personal “PER”. In turn, the latter can either be in the form of an insurance contract (“PER-IN” assurance) or of a securities account at a bank (PER-IN, unit-linked “compte-titres”).

And the summary prospectus for listed stocks and bonds should be more standardized, more comparable and as close as possible to the format of the KID for packaged products. Issuers of listed stocks and bonds should not be obliged to produce a KID on top of the summary prospectus.

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

Please explain your answer

It is useful for savers who are already invested in these PRIIPs to keep track of the updated “key” information. It would also allow them to verify the reliability of information on the “future performance scenarios”.

And this would at least show the unreliability of relying on forecasted future performance, especially based on past performance.

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. Should the review and update occur more regularly? Should this depend on the characteristics of the PRIIPs? What should trigger the update of PRIIP KIDs?

- ☐ Yes
☒ No
☐ Don't know

Please explain your answer

Annually is sufficient, but it should be done within the same timeframe for all products (i.e. 35 business days after 31 December) as a general rule.

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
<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Please explain your answer

The suitability assessment can be improved

Question 6.2 Can you identify any problems with the suitability assessment and if so, how might they be addressed?

Please explain your answer

The suitability assessment is not sufficiently tailored to the needs of retail investors, the suitability assessment looks more like a legal waiver for manufacturers / sellers / advisors.

The EU regulatory framework on the suitability assessment (including ESMA RTS) ignores the assessment on the alignment between the total ongoing charges of the product, the recommended holding period, and the types of instruments invested in, in order to be able to generate positive real net returns. BETTER FINANCE highlights this issue, which should not be confused with *return estimations*, because we have observed in practice certain products that destroyed the real value of savings simply due to the inconsistency of the fee model and underlying investments.

Example: an EU sovereign bond fund with a 2% total annual charge (this is alas very frequent: the average total annual charge for bond “units” in French MOPs is 2,06% in 2021 - source goodvalueformoney.eu/documentation/newsletter-50-good-value-for-money-benchmark-2021-des-frais-factures-au-sein-des-unites-de-compte) is not likely to provide any positive real return to the saver, but too often sold and “advised” in unit-linked contracts. EU suitability assessment rules are not dealing with this fundamental feature of a retail investment product: it’s aim is to produce some positive real return over the recommended holding period. The same applies to money market “units” sold with 1.5% or 2% total annual charges (money market funds are currently delivering close to zero or below zero nominal gross returns). As such, if the gross return is not likely to exceed the annual costs and charges by default, then it is impossible to generate positive real net returns.

Moreover, this assessment must also take into account the recommended holding period and the investment objective of the product: BETTER FINANCE had evidence from its member organisations of money market funds proposes as long-term or retirement provision vehicles.

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

Please explain your answer

Yes, they are technology neutral, but see previous reply and the EU needs more supervision

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
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Please explain your answer

To begin with, BETTER FINANCE considers that the current appropriateness test has little added value, creates burdensome procedures for retail clients, and thus should be eliminated – in certain cases – or replaced by the suitability assessment.

For non-advised services (offered sales) – when the *appropriateness test* is required instead of the suitability assessment, the distributor has no obligation to examine whether a product is aligned with the financial situation, objectives and needs of the client, but is required to determine a target market. As such, the determination of the target market does not serve any purpose at any level because the appropriateness test only analyses the knowledge and experience in the field relevant to the service or product, aspects which answer no essential question about the investor: if the client can bear the losses, if the product's risk-return profile is aligned with that of the product or whether the recommended holding period matches the client's investment horizon.

BETTER FINANCE highlights that the appropriateness test is not fit for purpose and falls short of delivering an adequate standard of investor protection. We argue that the current provisions on appropriateness test are a middle ground between the suitability and the target market assessment and no “additional” investor protection. Our view is that either offered sales need to be subject to the suitability assessment, just as advised services, or the execution-only regime must be extended to these services as well. BETTER FINANCE's recommendation to the EU co-legislators is that only execution-only services should be exempt from the suitability assessment, where the distributor should only rely on the complex/non-complex labelling of the product, which would be done on the occasion of the target market identification.

In subsidiary – should the European Commission decide to maintain the appropriateness test for non-advised services - BETTER FINANCE recommends at the very least aligning the same factors and considerations proposed for the suitability assessment in the appropriateness test as well (reply to Q6.2 above).

However, a BETTER FINANCE member focused on insurance-based investment products (IBIPs) considers that the investment dimension of the IBIP must be "tested" by the suitability and appropriateness assessment.

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

Please explain your answer

As currently designed, it serves little purpose, just additional administrative/bureaucratic burden.

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

Please explain your answer

Technology neutral: see replies 6.2 and 6.3 above

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

Please explain your answer

If it is deemed inappropriate, it should not be proposed to the client to start with.

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

Please explain your answer

In case of "execution only" subscriptions, there is no advice, and again the current design of the appropriateness test requires a lot of paperwork from the prospective client and disclosures from the professional, but does not address at all the value for money appropriateness of the product.

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 endclients*
- *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

Please explain your answer

As underlined in BETTER FINANCE's answer to the EIOPA's consultation on 'Framework to address value for money risk in the European unit-linked market'¹¹, even though the POG processes (including product design and testing) were specifically designed to ensure that value for money in relation to the target market is delivered, many years after its application, in different sectors, we can observe that this is not the case. As EIOPA highlighted in the recent analysis on supervision of product oversight and governance procedures that manufacturers must align the design of the product with the needs, objectives, and characteristics of the identified target market. However, with lack of adequate and harmonized supervision at local level, such requirements – although aimed in the right direction – will not deliver desired results.

Streamline the process, eliminate the target market assessment at distributor level and also exempt manufacturers from undertaking an additional target market identification for simple, non-complex products with a PRIIPs KID.

Also as mentioned in Q6.2, the "target market" regulatory approach ignores the existence of toxic products (toxic in the sense that they are very likely to damage the purchasing power of the savings invested in the product). Please refer to the example given in the answer for Question 6.2. In other words, there are retail investment products for which there is not target market because they are toxic for all savers.

In certain Member States, e.g. in Germany, we note a restrictive interpretation of the target market for retail clients at distribution level wherever rules leave room for interpretation. Distributors seem to be afraid of liability claims or administrative fines and therefore interpret the target market stricter than necessary to the detriment of retail clients (self-censoring). Consequently, many products are not considered suitable and are therefore not offered to retail clients, especially in the execution-only area. In addition, distributors do

¹¹ See reply here: <https://betterfinance.eu/publication/better-finance-reply-to-eiopa-public-consultation-on-a-framework-to-address-value-for-money-risk-in-the-european-unit-linked-market/>.

not provide target market descriptions for numerous products from manufacturers not subject to MiFID II which has resulted in a reduction of the product offer for investors.

One BETTER FINANCE Member organisation argues that target market assessments must be more granular. Target markets have to be determined by the product approval procedure of the product provider, and the distributors have to be informed on the target markets (both are part of POG requirements). The distributors cannot change by themselves the determined target markets. The only exception are those independent brokers who are allowed by the product providers to change the basic product features.

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
<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Please explain your answer

As mentioned before, non "IBIPs" insurance products (non life) are out of scope as they are not retail investment products. But, as the demands and needs test is valid as well for IBIPs as for non-life insurance products, it should be quite obvious that it predominantly refers to the risk coverage assessment (death, disability, health, etc.) of the policyholder. The investment dimension of the IBIP must be "tested" by the suitability and appropriateness assessment.

We believe the retail investment product tests should be harmonized for all of them including IBIPs, and we do not see the added value of adding yet another regulatory test for those. As mentioned before, IBIPs and other retail investment products are often "advised" and sold by the very same intermediaries: it adds complexity and work for both the professional and the client.

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? If so, how might they be addressed?

- ☐ Yes
☐ No
☒ Don't know

Please explain your answer.

No empirical data available. NCAs should make empirical research on this issue.

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

Please explain your answer.

EIOPA in cooperation with NCAs should develop exemplary templates for the most basic information to be asked by the intermediaries. In some EU members states there already are initiatives aiming at establishing such a standardized questionnaires (e.g. / in Germany intermediary associations).

Question 6.13 Is the demands and needs test sufficiently adapted to the online distribution of insurance products? 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

Please explain your answer.

No empirical data available. NCAs should make empirical evidence or research on this issue.

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
Introduction of an additional client category (semi-professional) of investors.	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Adjusting the definition of professional investors on request	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
No changes to client categorisation (other measures, i.e. increase product access and lower information requirements for all retail investors)	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>

Please explain your answer

In line with the 2020 HLF CMU discussions, we propose that the “professional investors category” is :

- extended to individual non-professional qualified investors
- the requirements of minimum holdings in financial instruments significantly lowered from the existing €500K (since financial wealth is not an indicator for financial knowledge or qualification) and extended to other retail investment products than the ones covered by MiFID II (which make up for less than 30% of overall EU households financial savings), in particular IBIPs (Insurance-based Investment Products) . In case a threshold should be implemented, this needs to be significantly lower (we propose 100kEUR like for ELTIFs)

- For non-professional qualified status add a criterion on qualification via a test or an “investor license”.
- The category therefore renamed “qualified investors”.

However, the client categorization is not the only reason why retail distributors – banks in particular – restrict the offer and/or promotion of capital market investment products (such as plain vanilla listed equities and bonds) to retail clients. Banks mention also the risks and constraints they would have to take according to other provisions of MIFID. For example, banks often do not offer securities accounts, or restrict their use only to packaged intermediated products such as EU-domiciled investment funds and life insurance.

Also, a lot of retail distributors do not allow access to third-country domiciled products, in particular lower cost plain vanilla index mutual funds and ETFs domiciled in the USA, depriving access to more competitive products.

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	<input type="checkbox"/>
30 transactions on financial instruments over the last 12 months, on the relevant market	<input type="checkbox"/>
10 transactions on financial instruments over the last 12 months, on the relevant market	<input type="checkbox"/>
Other criteria to measure a client’s experience: please specify	<input checked="" type="checkbox"/>
b) the size of the client’s financial instrument portfolio, defined as including cash deposits and financial instruments exceeds EUR 500,000”	
No change	<input type="checkbox"/>
Exceeds Euro 250,000	<input type="checkbox"/>
Exceeds Euro 100,000	<input type="checkbox"/>
Exceeds Euro 100,000 and a minimum annual income of EUR 100,000	<input type="checkbox"/>
Other criteria to measure a client’s capacity to bear loss: please specify	<input checked="" type="checkbox"/>
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	<input type="checkbox"/>
Extend definition to include relevant experience beyond the financial sector (e.g. in a finance department of a company).	<input type="checkbox"/>

Adjust the reference to the term 'transactions' in the criteria to instead refer to 'financial instruments'	<input type="checkbox"/>
Other criteria to measure a client's financial knowledge: please specify	<input checked="" type="checkbox"/>
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	<input type="checkbox"/>
Relevant certified education or training that allows to understand financial instruments, markets and their related risks.	<input type="checkbox"/>
An academic degree in the area of finance/business/economics.	<input type="checkbox"/>
Experience as an executive or board member of a company of a significant size.	<input type="checkbox"/>
Experience as a business angel (i.e. evidenced by membership of a business angel association).	<input type="checkbox"/>
Other criteria to assess a client's ability to make informed investment decisions: please specify.	<input checked="" type="checkbox"/>

Please explain your answers (a)

Please refer to reply to Q 7.1 for a) to d) and to the 2020 HLF CMU report.

Please explain your answers (b)

[Click or tap here to enter text.](#)

Please explain your answers (c)

[Click or tap here to enter text.](#)

Please explain your answers (d)

[Click or tap here to enter text.](#)

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: please specify.

☒ Don't know / no opinion / not applicable

Please explain your answers

N/A

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 receiving biased advice due to potential conflicts of interest?

	Not at all effective	Rather not effective	Neutral	Somewhat effective	Very effective
Ensuring transparency of inducements for clients	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
An obligation to disclose the amount of inducement paid	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Allowing inducements only under certain conditions, e.g. if they serve the improvement of quality	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
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="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

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 checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Introducing a ban on all forms of inducements for every retail investment product across the Union	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

Please explain your answers

BETTER FINANCE wishes to congratulate the EC for having identified bias-free advice as one of its main goals.

Indeed “inducements” are not only very detrimental to retail investors (see for example as attachment, evidence of their devastating impact on one of the biggest long term investment products in France – unit-linked IBIPs), they are also the major obstacle to the success of the CMU and of one of its main goal, which is to foster retail investments into capital markets.

And this is because low cost and simple products that are closest to capital markets and to the funding of the real economy (such as plain vanilla listed equities and bonds and low cost plain vanilla ETFs) do not provide any commission (“inducements”) to retail distributors. Therefore, for the last decades not only those have not explained and a fortiori promoted these investment products (for example, the market of ETFs is 90/10 institutional / retail in the EU versus 50/50 in the US according to ESMA), but even themselves have little knowledge of those as it is not usually their job to deal with them.

However, getting to bias-free advice throughout the EU will require much more effective policy measures than the existing ones.

In an ideal world, there should be no “inducements” (most EU non-professional savers may likely not understand this term to start with, in stark contrast with the MiFID II requirement that information provided to investors should be clear and intelligible to those it is meant for), as they - by essence - bear the risk of conflicts of interests for the distributor. It is the only way to achieve a completely “*bias-free advice*” as targeted by the EC in its CMU Action Plan OF 2020. Moreover, many stakeholders believe that “no advice” is better than biased advice.

For others, a total ban would deprive many savers – in particular the most vulnerable - of any advice, as they could not afford to pay for it separately. Some also argue that a total ban would not really address the “closed architecture” distribution models where retail distributors do not get commissions or other inducements but sell mostly or solely inhouse products from the same group of companies.

We ask that the European Commission follows at least the recommendations of the 2020 High Level Forum on the CMU that it set up, and comprised of 30 members, mostly from the

financial industry, and two from the consumer/retail investor side): these recommendations can be found here on page 98. In particular:

- There should be consistent rules on conflicts of interest for all retail investment products; i.e. ban inducements for “independent advice” and for “portfolio management” not only for MiFID scope investment products (which in effect constitute about 10% only of EU households’ financial savings) but also for Insurance-based Investment Products (IBIPs), for personal pensions including PEPP and for occupational pension savings products as well (which constitute all together about 40% of total financial savings).
- In addition, “inducements” should also be banned for execution only transactions and subscriptions (as done in Canada), as – by definition – they do not include any “advice” service from the provider nor from the distributor.

Also (not in the HLF CMU Report):

- Ensure that the developing “clean share classes” of investment funds (lower expense ratio due to the absence of “inducements”) are fully and easily available to independent advisors (in the sense of MiFID).
- “Non independent advisors” should be clearly labelled as such in all communications to clients and prospective clients.

At the same time, the EC should review the notion of investment “advice” in EU rules. This is because inducements were never designed to remunerate “advice”: they always remunerate the sale of investment products, regardless of whether the sale has also involved “advice”, marketing or no additional service. There is a legal confusion between “investment advice” and “sales”. Most “inducements” are sales commissions. To BETTER FINANCE’s knowledge, there is no such thing as advice commissions or “payment for advice” by product providers to distributors. Distributors are always and only compensated by providers for selling their products, never for “advising” them: distributors usually receive the same sales commissions (and every year over the whole holding period of the sold product) whether it was an “advised” transaction or an “execution only” one (by definition without any advice).

Car dealers do not label themselves as “transportation advisors”. Why would investment product dealers label themselves “investment advisors”?

- The word “inducement” itself is not intelligible for the vast majority of retail investors. Therefore, it is not complying with MiFID rules on clear information. The former chair of EIOPA, Gabriel Bernardino, publicly referred to those as ‘kickbacks’, which is a much clearer word for the average retail investor. BETTER FINANCE asks that this word be changed into an intelligible one for the people.

These moderate policy actions are the minimum requisite to make any significant progress towards the crucial goal of the European Commission: to ensure investors get bias-free advice.

MiFID II creates a confusion between selling of investment products and investment advice, which should always be independent. We believe that many consumers do sense the conflict and mistrust of commission-based “advisers” and shy away from participating in the capital markets altogether. For this reason, BETTER FINANCE is of the view that prohibiting “inducements” from all advised-services products across the EU may actually lead to an increase in capital market participation. We believe that the “safeguards” imposed by MiFID II (such as the quality enhancement requirement) simply come in

conflict with the overarching requirement to act in the best interest of the client and will leave EU households in the same “saving, but not investing” spiral for the decade to come.

For instance, in the US market, in 2019 the Securities and Exchange Commission adopted the Regulation “Best Interest”¹² (regulating the client to broker-dealer relationships) and qualified “*advising on proprietary products*” as a conflict of interests. There is no prohibition for “in-house” distribution (i.e. products manufactured within the same group of companies, such as *bancassurance*), but they must state clearly from the beginning the limitations and that these represent proprietary products. Moreover, the “Best Interests Regulation” also included a definition for conflicts of interests, which would be very helpful in clarifying MiFID II and enforcement of rules.

Question 8.2 If all forms of inducement were banned for every retail investment product across the Union, what impacts would this have on:

- The availability of advice for retail investors? Please explain your answers

Based on available evidence from jurisdictions where “inducements” have been banned in retail distribution channels, BETTER FINANCE firmly believes it will lead to significant improvements not only in the quality of the advice service, but also on the investment products themselves.

In the UK, the Financial Conduct Authority analysed the effects of this prohibition (of investment providers paying distributors for selling retail investment products). The latest FCA study¹³ found that:

- consumers are often not encouraged to seek advice;
- since 2017, an additional 1 million UK consumers accessed advice in 2020 (32.25% increase, or 3.1 million in 2017 vs 4.1 million in 2020);
- of the UK consumers accessing advice, 56% of them were satisfied of the service received (vs 48% in 2017);
- the most common reason for not seeking advice is that consumers (respondents) deemed that it is not necessary (67% of cases);
 - *only 11% of consumers said they cannot afford financial advice;*
- in terms of costs, UK traditional advisors (as opposed to automated/robo-advisors) charge on average 0.8% p.a. for ongoing advice and 1.1% for the investment portfolio charges, which results in an average of 1.9% total costs p.a. for UK consumers;
- the FCA UK analysis suggests there are no strongly perceivable different or additional features between more expensive and cheaper advice (0.5% vs 1% for ongoing advice and 2% vs 3% for the initial advice).

Moreover, BETTER FINANCE attempted to analyse the level of fees and charges paid by retail investors on investment products in jurisdictions where inducements are banned compared to those where inducements are allowed. Although fully comparable data is not available (thus, the following findings are subject to methodological limitations as it does not concern IBIPs), available evidence suggests:

¹² See the Securities Exchange Commission Regulation Best Interest: The Broker-Dealer Standard of Conduct, Federal Register (82)13, 12 July 2019, available at: <https://www.govinfo.gov/content/pkg/FR-2019-07-12/pdf/2019-12164.pdf>.

¹³ UK Financial Conduct Authority, *Evaluation of the Impact of the Retail Distribution Review and the Financial Advice Market Review* (December 2020) available at: <https://www.fca.org.uk/publication/corporate/evaluation-of-the-impact-of-the-rdr-and-famr.pdf>.

- (based on a Morningstar report¹⁴) the cheapest investment funds (judging by the median and annual cost range) in Europe are sold in the Netherlands and in the UK;
 - only one exception stands out, i.e. fixed income funds sold in the UK, which are among the most expensive out of the 10 European jurisdictions observed;
- (based on ESMA Annual Statistical Report on Cost and Performance of Retail Investment Products¹⁵) on the long-term (past 10 years), NL-based UCITS eroded 40% less the nominal gross returns of EU investors compared to the EU average.
- also, within the limit of data availability, UK-domiciled UCITS are in almost all cases cheaper (and well below) the EU average, with the exception of bond UCITS between 2011 and 2020;

ESMA	TER	2020	2018-2020	2014-2020	2011-2020
	EU	1Y	3Y	7Y	10Y
Equity	EU	1.47%	1.51%	1.59%	1.63%
	NL	0.52%	0.61%	0.86%	0.99%
	UK	1.26%	1.30%	1.41%	1.46%
Bonds	EU	0.98%	1.01%	1.08%	1.09%
	NL	0.57%	0.58%	0.62%	-
	UK	0.96%	1.00%	1.07%	1.10%
Mixed	EU	1.49%	1.52%	1.55%	1.54%
	NL	0.64%	0.71%	0.87%	0.90%
	UK	1.27%	1.32%	1.42%	1.45%
Alternative	EU	1.51%	1.58%	1.64%	1.57%
	NL	-	-	-	-
	UK	0.89%	0.95%	1.08%	1.18%
MMF	EU	0.19%	0.20%	0.23%	0.27%
	NL	-	-	-	-
	UK	0.14%	0.17%	-	-

Based on this data, two findings could be inferred:

- that independent advisers may recommend less costly investment funds; and/or
- investment funds may be cheaper due to the fact that initial and trailing commissions are not embedded in the total expense ratio borne by the retail client.

- The quality of advice for retail investors? Please explain your answers

Increase:

A qualitative assessment on the different fees and charges paid by retail investors in 10 EU jurisdictions (among other jurisdictions included in a Morningstar report¹⁶) analysed also distribution or advice fees, as well as availability of independent advice. From this assessment (quoted already above), BETTER FINANCE infers four findings:

¹⁴ Grant Kennaway, Christina West, Wing Chan, Jackie Choy, Jose Garcia Zarate CFA, Jonathan Miller, Germaine Share, Jackie Beard FCSI, Global Investor Experience Study: Fees and Expenses (17 September 2019) Morningstar, available at: https://www.morningstar.com/content/dam/marketing/shared/pdfs/Research/GIE_2019_v4.5.pdf?utm_source=eloqua&utm_medium=email&utm_campaign=&utm_content=18780.

¹⁵ ESMA Annual Statistical Report on Cost & Performance of EU Retail Investment Products (2021), available at: https://www.esma.europa.eu/sites/default/files/library/esma_50-165-1710_asr_performance_and_costs_of_eu_retail_investment_products.pdf.

¹⁶ Grant Kennaway, Christina West, Wing Chan, Jackie Choy, Jose Garcia Zarate CFA, Jonathan Miller, Germaine Share, Jackie Beard FCSI, Global Investor Experience Study: Fees and Expenses (17 September 2019) Morningstar, available at: https://www.morningstar.com/content/dam/marketing/shared/pdfs/Research/GIE_2019_v4.5.pdf?utm_source=eloqua&utm_medium=email&utm_campaign=&utm_content=18780.

- 1) retail investors rarely pay for advice directly
- 2) the availability of independent advisors is limited;
- 3) retail investors have little access to low-cost ETFs or clean share classes of investment funds;
- 4) the fund distribution market is dominated by banks in several jurisdictions, which have very few incentives to sell low-cost ETFs or clean share classes.

- The way in which retail investors would invest in financial instruments? Please explain your answers

More diversified, better products, less complex, more cost-efficient, better tailored to their needs and investor profiles, better returns.

The available evidence on the portfolios of consumers who have access to truly independent advice first comes from the UK. The FCA UK study (quoted already in Q8.2 above) shows the portfolios of consumers who, among other, received only advice and those who did not receive any form of support (advice, guidance etc) at all:

	Advice only	No support
Only cash	11%	49%
Mostly cash	9%	18%
Mix of cash and investments	39%	21%
Mostly Investments	41%	12%

(based on Figure 2.17, p. 14)

- How much retail investors would invest in financial instruments? Please explain your answers

More investments due to an increase of trust in the market

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
<i>In the case of investment products distributed under the MiFID II framework?</i>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
<i>In the case of insurance-based investment products distributed under the IDD framework?</i>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
<i>In the case of inducements paid to providers of online platforms/comparison websites?</i>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>

Please explain your answers

It is worse for IBIPs (Insurance-based Investment Products), for pension savings products and for web comparing tools for which EU rules are even less effective than for securities and investment funds (the scope of MiFID - see reply to Q 8.1 and additional evidence in annexed document).

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

Please explain your answer

See reply to Q 8.1. and 8.3. towards achieving a level playing field – eliminate loopholes and biases towards certain products, especially the more expensive and poor performing ones.

Question 8.5 How should inducements be regulated?

- ☐ 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

Please explain your answers

None of those (except the last one, but the total ban of kickbacks was recommended already during the MiFID II political debate without success and is again alas unlikely to prosper given the power of the EU industry lobbies who have successfully blocked it in the past, and are very opposed to it): see reply to Q8.1.

The first four options have already been in force in EU retail distribution markets and have not reached their purpose, whereas the fifth option (*specific record-keeping*) will not improve the situation as it would require a significant increase of supervisory action (resources and competencies) to analyse, investigate, and evaluate whether all legal requirements have been fulfilled, even if easier through the record-keeping obligation. BETTER FINANCE notes that none of the options recommended by the HLF CMU (and in our reply to Q 8.1) were considered by the European Commission, and they have obviously not been tried yet, at least in the EU.

For example, the third option proposed by this consultation is already in force for MiFID-regulated products, so it has already been tried. In particular, MiFID II adds a second – almost always overlooked and little enforced – condition for allowing “inducements” to “quality enhancement”: that those do not impair the duty to act honestly, fairly, and professionally in accordance with the best interests of their clients.

It is quite surprising that none of the options unanimously recommended by the HLF CMU to the EC last year (report page 98) (and in our reply to Q 8.1) are listed in this closed list of six choices to ensure bias-free advice , and they have obviously not been tried yet, at least in the EU:

- **Align IDD rules to the much better ones of MIFID II to ensure bias-free advice (ban for independent advisors and for portfolio management also for IBIPs)**
- **Ban inducements for execution only transactions that do not include advice and/or recommendations**

We reiterate our requests mentioned in our reply to Q8.1, the minimum requirements to progress towards the critical EC goal to ensure bias-free advice.

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

If yes, please detail the changes you would consider relevant?

There is divergence in whether PFOF and other inducements are allowed or not among member States. Therefore it would be clearer to ban the PFOF. At the very least, there should be full transparency on PFOF practices, firms involved and flows like in the US (SEC rule 606).

Moreover, in its recent statement ESMA expressed doubts as whether the receipt of PFOF by firms from third parties would be compatible with MiFID II and stated clearly 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 order".

However, one BETTER FINANCE member considers that from an advocacy point of view I am - as you - against PFOF, from an individual investor's perspective it can be very useful if best execution rules are strengthened and observed and inducements are fully disclosed to clients. Those practices have brought a huge number of (especially younger) investors into the market. Asking to ban such practices completely may have the adverse effect (even though from a macro perspective this seems to be advisable).

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

Please explain your answer

Yes, first (see reply to previous question) eliminate conflicts of interests.

Second, the existing best execution rules are too vague, too complex and allow for loopholes such as PFOF. They should be simplified and made easier to comply with and to check their enforcement: therefore, they should be mostly be based on best price, like in the US.

Also, regarding access to equity and bond markets data for retail investors, we saw no

question about this but it is very important for the protection of retail investors (we refer to our research report on this issue from 25 March 2021 (*Consumer Access to EU Equity Trade Data*, available at: <https://betterfinance.eu/publication/capital-markets-union-at-risk-as-european-retail-investors-have-less-and-less-access-to-equity-market-data/>) and was publicly praised by Commissioner McGuinness last April.

This access to market data issue is linked to the best execution one. It would seem that the preferred envisaged action from the EC about these issues would be to focus on a “consolidated tape” for equities. BETTER FINANCE already expressed its positions and policy recommendations on such an approach, which we reiterate in the following:

1) There are other more urgent and more serious issues to address to improve EU capital market structures for the real economy.

We are concerned an EU focus on the consolidated tape (CT) would divert a lot of attention, time, and efforts of the EC for a long time from the very urgent problems to fix:

- the fast expanding and now dominating share of dark and so-called internalising traders (SIs) who are also dealing directly or indirectly with “retail” orders and trades to profit from the bid-ask spreads;
- the lack of easy and intelligible access to market data from “non-lit” market venues for EU citizens as individual investors (as evidenced by our recently published findings on access to equity trade data for retail investors);
- the highly questionable data quality of “non-lit” venues also for EU regulators themselves as some financial institutions are even challenging the correctness of ESMA’s equity trading statistics. One cannot manage what he cannot measure: this must be fixed now in our view.
- Payments For (retail) Order Flows (“PFOF”): these practices which work to the sole detriment of “retail” investors and on which the EU regulator is blind, should at the very least be subject to full disclosure like in the US (SEC rule 606) or – better – banned, as some Member States have already decided.

2) A CT is very unlikely to bring any tangible benefits to “retail” investors and would likely increase costs of trading for them.

- “Retail” investors enjoyed a de facto CT until 2007: 70% of trades were on “lit” markets. We had 70% of the data very easily and intelligible for non-professional investors. Addressing the issues above would already get us back closer to this situation we enjoyed prior to MiFID I.
- Assuming “retail” investors would have easy, free and intelligible access to a CT of trade data (this is a huge “if”, see below para. 3 and our recent report on retail access to equity trade data), this would be of little use to them due to the lack of electronic connectivity of retail brokers to a majority of the many EU market venues. Most of the MTFs and SIs have never invested in being able to interconnect with the local clearing and settlement infrastructure on which most retail brokers and end investors rely on. In other words, a CT would not help the best execution of “retail” orders.
- It will be a long-term project, more difficult and more costly to achieve than in the US due to the much higher fragmentation of EU capital markets, and the current large gap in terms of data quality between “lit” RMs and the now dominant new “darker” market operators. In the meantime, the share of “lit” market venues is likely to continue dwindling, hurting “retail” equity investors even further.

3) However, if this elusive CT would be the main approach of EU policymakers to all the problems mentioned above, then we plead for at least three requisites:

Start with bond markets which are much worse markets than equity ones in terms of transparency, liquidity and “retail” access: we have been literally “kicked out” in recent years from

bond markets (EU households' listed bonds assets are down 38% since 2015, the starting year of the CMU initiative): we are now left with no real alternative to the negative net real yields of bank savings for capital guaranteed (at maturity) short to mid-term investments.

- **Make the CT work for people:** The CT is de facto not accessible to “retail” investors in the US. An EU one, on the contrary, should be easy and free to access, as well as intelligible for “retail” investors.
- Of course (like in the US this time) it should be **governed (not run) by EU public authorities**, not by the financial industry.
-

Financial advisors play a critical role in the distribution of retail investment products, however standards (levels of qualifications, knowledge, skills, etc.) differ across MemberStates. 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

Please explain your answer and indicate what would be the main advantages and disadvantages.

Neutral. Any Pan-EU label would have to be fully independent and supervised by Public Authorities to gain the trust of EU savers. It would add another label to the already many existing or upcoming, like the EU Ecolabel on investment products.

Also, a lot of Member States already have processes to certify the minimum training and competencies of financial advisors.

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

Please explain your answer

For the third time in a row, the findings of Robo-Advice reports¹⁷ of BETTER FINANCE show that several platforms provide investment advice that seems inconsistent with the investor and risk profile of the mystery shoppers. In addition, the strong discrepancy in terms of investment gains and high dispersion of asset allocation for the same investor profile is concerning. This may stem

¹⁷ <https://betterfinance.eu/wp-content/uploads/Robo-Advice-Report-2020-25012021.pdf>

from how the investor questionnaires are designed or how the background information of the mystery shoppers is analysed (algorithms). Therefore, the EU authorities should consider policy actions to improve these processes, such as developing more detailed guidelines on investor questionnaires, on asset allocations or risk profiles.

For instance, ESMA could require investment advisors to use the same scale to measure the risk profile of the client and assign an equivalent portfolio. To this end, ESMA could use the current Committee of European Securities Regulators (CESR) Guidelines for the SRI3 (UCITS KIID). In addition, the MiFID II framework should be much clearer regarding investment advice and the necessary disclosures to clients or potential clients. In light of these technological developments and the change from “traditional” advice processes, the definition of “investment advice” comprised in Art. 4(1)(4) MiFID II should be amended to specify exactly when a recommendation is considered “advice”, what “personal” means, and what criteria are attached to it.

Second, the provisions of Art. 24 MiFID II regarding the disclosure of independent/non-independent advice should be amended to make it clear: (i) when exactly, in what format and medium, can an investment firm be considered to fulfil its disclosure obligations: the “provision in good time” is not sufficient and may allow the circumvention of the obligations enshrined in Art. 24; (ii) the implementing provisions of Art. 52 and Art. 53 of MiFID II DR should be amended as to specify that the disclosures related to investment advice must be separate from other disclosures (i.e. should not be put together with the policies on conflicts of interest as per Art. 16(3) MiFID II), should be clearly distinguishable and prominently shown to clients or potential clients, in the same manner as the cost, risk and performance requirements are to be made pursuant to Art. 44 MiFID II DR.

The European Commission should refrain from designing special rules for robo-advisors but rather try an investor-centred approach - no matter what distribution channel, investors should be equally protected.

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

Please explain your answer

Robo-advisors were expected to grow quickly to significant scales (in terms of users and assets under management), but data show this has not been the case.¹⁸ The fast evolution of the robo-advice market has been hampered by a generalised distrust in financial services, limited awareness of this business model and a low level of financial literacy. The value proposition of robo advisors is too complex for the average saver, who is confused by the terms “no commissions”, “fee-based”, “ETF”, etc. It is more successful with qualified non professional investors who are also comfortable with a virtual only (or almost only) client relationship.

Question 8.11 Are there any unnecessary barriers hindering the take-up of robo- advice? If so, which measures could be taken to address them?

¹⁸ <https://betterfinance.eu/wp-content/uploads/Robo-Advice-Report-2020-25012021.pdf>

- ☐ Yes
☒ No
☐ Don't know

Please explain your answer

Click or tap here to enter text.

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

Please explain your answer

- **There is no definition / categorisation of “complex” products outside of MiFID products (less than 30% of EU financial savings)**
- **The definition of complexity by MiFID II is not appropriate for IBIPs, being themselves complex products because of their multi-layered structure (combination of risk coverage and investment options as well as inherent non-transparent benefits mechanisms and cost structures). In consequence the definition of complexity should be amended.**
- **The simplest investment products (low cost indexed ETFs, listed stocks and bonds) are very rarely talked about, explained, promoted by retail distributors as they get no annual commissions on those products. As confirmed by the EC study “ETFs are amongst the most commonly-available products on websites in many Member States, but seem to be almost completely absent from traditional distributors’ online offering in markets such as Czech Republic, Romania, Poland, and Italy. Although marketed through online, ETFs were almost never proposed by human advisors across Member States” (source: Distribution systems of retail investment products across the European Union**
https://ec.europa.eu/info/sites/default/files/180425-retail-investment-products-distribution-systems_en.pdf)
- **Many banks also claim that MiFID constraints make it difficult and risky for them to propose listed securities, even to financially literate and less risk averse clients (see replies on client categorisation).**
- **To promote simplicity is a legal duty of the ESAs (article 9.1. of the ESMA Regulation for example), but they have so far failed to do that.**

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

Please explain your answer

This does not address the issues listed in our reply to Q9.1

Make more explicit the rules which prohibit excess complexity of products that are sold to retail investors

- ☒ Yes
☐ No
☐ Don't know

Please explain your answer

Some NCAs (Belgium for example) are already forbidding the distribution of complex products such as structured products to “retail” investors, but again only for MiFID regulated products.

Develop a new label for simple products

- ☐ Yes
☐ No
☒ Don't know

Please explain your answer

There should be first a common Eu legal definition applicable to all complex retail investment products (as mentioned above , the MiFID one applies only to securities and investment funds. Then, EU retail investors are already threatened to be submerged by a plethora of labels for products and/or for advisors, etc. (see our reply to Q8.8 on a label for investment advisors).

Define and regulate simple, products (e.g. similar to PEPP)

- ☒ Yes
☐ No
☐ Don't know

Please explain your answer

As mentioned earlier, they are defined and regulated for a minority of retail investment products: those regulated by MiFID. And these rules should be more precise.

Tighten the rules restricting the sale of very complex products to certain categories of investors

- ☒ Yes
☐ No
☐ Don't know

Please explain your answer

Some NCAs (Belgium for example) are already forbidding the distribution of complex products such as structured products to “retail” investors, but again only for MiFID regulated products.

Other (please explain)

- ☒ Yes
☐ No
☐ Don't know

Please explain your answer

Prominent warning on the Key Information Document for complex products

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?

<i>Not at all important</i>	<i>Rather not important</i>	<i>Neutral</i>	<i>Somewhat important</i>	<i>Very important</i>
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

Please explain your answer

This is a major issue for savers given the high complexity and/or technicality of investment products, the low financial literacy level of the average saver and often of courts, the asymmetry of information between providers and “retail” clients, the lack of effective collective redress processes in many Member States, and at EU level for individual investors investing directly in capital markets (for example Wirecard shareholders).

This access to information on the means he can have to obtain redress for a possible harm or abuse must be provided before his investment decision, especially if this decision is executed electronically, without any contact with the distributor.

This is very important as it reinforces the confidence of retail investor in the process of investment as they know they would have a chance of repair if something does not satisfy them by using a specific process in case of complaint.

The possibility to obtain redress is very important as it is the sine qua non condition of the responsibility principle. The investor accepts to take risks, but not the one of bearing the consequences of fault. The good functioning of a market economy implies that faults - either regarding market information or profit sharing or value - must be sanctioned and the prejudice redressed by the culprits.

Retail investor associations should have the right to represent their members victims of collective abuses before courts. For example, the Spanish regulations on the associations of minority shareholders of listed companies, which may be formed under the Law on Capital Companies. Only associations of shareholders of a specific listed company may be created (one each for each listed company). And the requirements are so strict that in our knowledge no such association has ever been created: Notarial deed, a minimum of 100 shareholders none of which may hold more than 0.5% of the capital of the company, accounting obligations, registration in the Mercantile Register and in the National Commission of the Securities Market.

An investor association representing and defending investors in several companies or in listed companies in general and created under the general Organic Law on Associations of 2002 is not given legal standing to represent them in court, especially in proceedings relating to the functioning of the Market, for example, in corporate matters, in market abuser and so on.

By contrast, the Consumer Associations do have legal standing to represent the consumers in general in court proceedings affecting their rights. The minority shareholders are not considered as consumers even though they “consume” financial instruments.

The same flaw harms retail investors in France: only general-purpose consumer associations have the right to represent their members in court for collective redress actions.

Worse, at EU level, despite and in contradiction with - the CMU initiative retail investors who invest directly in listed equities and bonds are excluded from the scope of the recent EU directive on representative actions for the protection of the collective interests of consumers (Directive (EU) 2020/1828).

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

Please explain your answer

This would be sufficient as long as the company is required to respond to the complaint within a specific and reasonable time frame. Please note that this provision regards only a minority of EU households' financial savings (only those covered by MiFID). Some members feel that MIFID II requirement is sufficient as there is requirement of highlighting internal process on how lodging a claim and as the time of handling complaints is framed.

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

Please explain your answer

In several instances, it is de facto not possible to obtain redress through an out of court procedure.

Several categories of prejudice must be distinguished:

- **The prejudice born by clients due to a fault of the intermediary who sold the investment products: in this case it is an individual prejudice, specific to the case. They can be dealt with through mediation, provided that the company publishes and regularly updates its complaint resolution procedure.**

Too often, savers have to make lengthy inquiries to identify precisely the entity to go to.

In compliance with the EU Directive on consumer rights, France has instituted a free recourse to a mediator in case the request addressed to the provider has not been answered or has not been satisfied. The name and postal and email address of this mediator must be disclosed in the documents communicated to the consumer.

At EU level, nonprofessional investors should have this same information and have a free recourse to a mediator.

It would also be appropriate that an investor who believes he is a victim of an abuse be informed that he can complain in particular to the NCA. In France, AMF does not have the power to require redress, but it has several powers to push for redress: control of the provider, letter asking to fix the issues identified, notification of issues that could lead to an administrative procedure requiring redress, administrative sanction procedure that can also lead to redress.

- **The prejudice born by clients due to a faulty product: it is then common to all buyers of the same product. The stakes are therefore important for the provider or issuer, and it will probably be difficult to obtain redress without going to court. Due to the cost of such court procedures, it is unlikely that they can be started without collective mobilization, very difficult to generate and manage when there is no effective collective redress procedure in place for investors, which is the case in France.: French class action created by a 2014 law is a failure. The French courts consider that French legislation on class action must be considered in the light of national law and not in the light of European texts. The French courts therefore exclude from its scope any dispute which does not fall within the scope of a contract for services or a sale of goods (excluding insurance for example). The rules of the French class action prevent consumer associations from having the financial means**

necessary for a real and effective defense of consumers' interests (ability to pay specialist lawyers). The inequality of arms between consumer associations and professionals is real. Besides, saver and investor associations are not even allowed to initiate such actions.

- The prejudice born by shareholders due to a fault from the issuer: any corporation (not true e.g. for French cooperatives at least) having to comply with the principle of equality of treatment of its shareholders, the mediation procedure seems not applicable. Only a court decision can require that certain shareholders are indemnified (the ones who asked for redress) at the exclusion of the others.

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?

<i>Not at all effective</i>	<i>Rather not effective</i>	<i>Neutral</i>	<i>Somewhat effective</i>	<i>Very effective</i>
<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Please explain your answer

In France, there are two types of mediators for handling individual complaints in retail investment products matters :

- Public mediator - the AMF (Financial Markets Authority) has a general authority on all complaints related to the retail investment products covered by MiFID, i.e. a small portion of them)
- For all other retail investment products (insurance-based, banking, etc.), the consumer mediator chosen by the professional (banks) or by a special national committee (insurance); several banking mediators have signed a specific agreement with the AMF.

Mediation can however in several cases be very effective: for example with the French AMF mediator who is completely independent from the financial industry.

But, collective prejudices – the most important ones in the retail investment sector – are very rarely redressed: court actions are costly , much too long and with very uncertain results. And, as mentioned above on Q 10.3), the French collective actions regime is not effective. The result is that victims either give up or more rarely turn to criminal indemnification procedures.

However, individual prejudice can find solutions via mediation: public mediation can in several cases be very effective: for example, the French AMF mediator who is completely independent from the financial industry.

Criminal procedures can be a bit less costly than civil ones; but they are often the exception, most cases belonging more to civil law. However, criminal proceedings are adapted to the cases of misleading information.

Individual prejudice can find solutions via public mediation, which can in several cases be very effective: for example, via the French AMF mediator who is completely independent from the financial industry.

As also pointed out by a [recent report of the French CCSF](#) (Consultative Committee for the financial Sector), mediators must be indeed independent (including economically) from

the financial industry (example, in France, the national insurance mediator's previous job was senior executive of the insurance national lobby without any cooling off period). Good governance of independent institutions should require a minimum of two years cooling off period, and to disclose any remuneration coming from providers of services in scope of the mediation, like French Law requires for directors of independent savers associations which subscribe insurance and pension contracts for their members.

The report also points to the fragmentation of the mediation in banking (one per banking group, and paid by it)

The mediator answers by applying the law but also referring to equity. Mediator's advices are not compulsory for the parties. Some mediators do not always answer complaints or very late, and these tend to be in the best interests of the professional. Repeated individual prejudices of the same nature identified by the insurance mediator are rarely followed-up by the Supervisor (ACPR).

In line with the CSSF Report, we recommend:

- a cooling-off period of two years minimum for mediators
- To move towards a single banking mediator to increase the independence of banking mediation
- To move towards public mediation for banking and insurance services like for services in the scope of the MiFID directive: a national mediator for banking and one for insurance, both pertaining to the French public supervisor of banking and insurance, ACPR.

We do encourage the Commission to analyse Best Practises in different Member States: in Germany the ombudsman for banks is partially effective. As long as the case brought by a non-professional investor is below 10,000 EUR, the decision of the ombudsman is binding for the bank; the ombudsman is a former judge, meaning that he or she is in principle independent from the industry. However, the ombudsman office is part of the German Banking Association.

- National mediators / ombudsmen of the domicile of the client should be competent for complaints arising from products and services sold under the free provision of services regime (where the distributor/provider is domiciled in another EU Member State), as the language and distance barriers make it very challenging for the client to go a foreign mediator.

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

☒ Domestically?

☒ In a cross border context?

Please explain your answer

Many countries require reforms for adequate redress tools and the EU needs to improve and stimulate cross-border redress as well.

The guarantees of impartiality when the complaint is managed by the professional himself are missing.

If complaints are not always answered in the way who would satisfy fully or partly the customer or if the customer had no answer regarding his claim he has the resource to go to Mediator and as the intervention of the Mediator is accessible to customer justifying having exhausted channels of claims, a clear understanding of the complaint process is the key point to improve redress in the context of retail investment products as it would help to

resolve more situation of conflicts, and avoid having mediation taking place too much time after the conflict has begun. Further efforts would be needed then to highlight and/ or regularly refresh information dedicated to complaint and mediation process in order to improve redress in the context of retail investment products.

National ombudsmen / mediators must be independent (including economically) from the financial industry (example, in France, the national insurance mediator whose previous job was senior executive of the insurance lobby).

Out of court processes like mediation do not deal with collective abuses. There is a lack of effective collective redress processes:

- in many Member States for all savers,
- and at EU level for individual investors investing directly in capital markets (for example Wirecard shareholders).

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.

Question 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)?

<i>Not accessible at all</i>	<i>Rather not accessible</i>	<i>Neutral</i>	<i>Somewhat accessible</i>	<i>Very accessible</i>
<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Please explain your answer

To our knowledge, there is nothing specific for vulnerable consumers.

Not accessible for the reasons mentioned above, and also because the culprits (in particular when they are natural persons) are not solvable to the extent of the damages (example : the GESPAC case in France) or die before the end of the legal proceedings .

For some members, it is somewhat accessible as vulnerable customers may be lead to renounce to action due to their inability but in that case action brought by an approved consumer protection association, savers' association (provided such organizations exist and are active) or any third party to which they refer could be a good way of protecting them.

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

Please explain your answer

Apart from ESMA in very few cases (notably for binary options and CFDs), the ESAs have not used their product intervention powers to protect retail investors.

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

Please explain your answer

Yes, see for example the payment for retail order flow that is de facto forbidden in certain Member States and fully accepted in others.

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

- ☒ Yes
☐ No
☐ Don't know

Please explain your answer

See replies for the last two questions.

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

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

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

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

	1	2	3	4	5	Don't know
Poor financial advice on sustainable investment opportunities	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Lack of sustainability-related information in pre-contractual disclosure	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Lack of EU label on sustainability related information	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>

Lack of financial products that would meet sustainability preferences	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Financial products, although containing some sustainability ambition, focus primarily on financial performance	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
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 checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Other, please explain	<input checked="" type="checkbox"/>		Little offer of impact investment products: products which have measurable goals in terms of improve ESG impact, alongside positive financial return, and , in particular the fight against climate change			

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

Please explain your answer

We believe that the delegated acts on the obligations for entities undertaking financial advice to ask about the sustainability preference of the retail investors was a step forward into the right direction. However, this might not enough to ensure that the suitable sustainable financial products are proposed to individual investors. It is necessary to establish more granular measures in order to avoid that sustainability is a mere box ticking exercise.

ESAs should provide template questionnaires for financial advisors, insurance intermediaries etc. in order to reduce risks in terms of non-compliance and liabilities. In addition, we suggest that ESAs in coordination with national competent authorities should supervise the financial advisers' practices in order to ensure proper implementation of the delegated acts.

Following to regulation (EU) 2019/2088 since March of this year insurance intermediaries have to give advice on ESG issues to their customers alike.

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

Please explain your answer

We believe that ESG criteria should be always considered as long as the actual framework on sustainability is reinforced and based on strong and clear standards. As the EU taxonomy only comprise environmental and climate criteria much work is needed to reach a complete framework. In order to achieve this framework, it is necessary to improve the following dimensions:

- 1) **Impact dimension:** to develop an impact measurement framework for ESG investments that can allow to gather evidence on the concrete impact of these type of investments in the real economy.
- 2) **"S" dimension:** to develop a social taxonomy in order to set indicator on social contribution of ESG investments. In particular, the importance of employee share ownership for the stability of capital and the economic and social cohesion of companies, for value sharing, for the cohesion, sovereignty and independence of the Union's capital markets, should justify considering it as an extra-financial criteria and major social responsibility issue for Europe. Employee shareholding plans and any form of employee participation to companies' capital should be considered as a key factor of a social taxonomy and key indicator of the social contribution of ESG investments.
- 3) **"G" dimension:** to provide a framework that improve and facilitate individual shareholder engagement. It is necessary to adequately assess the engagement of asset manager in relation to sustainable financial products and the respective marketing claims in terms of engagement policies.

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

Yes, we believe there are other issues:

1. First, it is a challenge for the target beneficiaries of this public consultation – EU citizens as savers and individual investors - to participate to it, as:

- the technical jargon used, and the length and technicality of many questions will discourage most of them given their financial literacy level. Many parts do not comply with the MiFID II requirement of providing clear information, i.e. intelligible for the majority of

the people to whom it is addressed. For example, as pointed out before by BETTER FINANCE, “inducements” is not understood by most EU citizens;

- to access the consultation, an authentication process is required, with providing personal data. This is also discouraging for EU citizens;

- the title is referring to “retail” investors, which is mostly a MiFID semantic to designate citizens as individual nonprofessional savers and investors, but it seems more like a marketing categorization by professionals (“retail” versus “wholesale” or “institutional”).

2. Second, BETTER FINANCE regrets that the consultation is not sufficiently designed in a way that allows full expression of the views of stakeholders. This is unfortunate as the consultation is the most important one for individual investors launched in the past 10 years. In several instances, BETTER FINANCE felt that especially the box-ticking approach enables the Commission to pre-select allowed options to answer and to steer answers in a certain direction. This is not the purpose of a public consultation, which should form a comprehensive base for decision, based on the views of stakeholders affected.

In addition, we voice our general concerns over the fact that the “public” consultations of the EU Commission are nowadays only accessible after registration on the Commission’s website. This is a hurdle which prevents especially individuals and organisations not so familiar with the EU consultation processes to easily and quickly access the form and participate in the consultation process (particularly where it affects mainly individual investors and savers).

3. Third, it is difficult to see - reading this questionnaire - what is the retail investment strategy options proposed or envisioned by the European Commission: the objectives are clear (as defined in the EC CMU Action Plan) and we support them:

- (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.

The consultation webpage also mentions:

- ensure that a legal framework for retail investments is suitably adapted to the profile and needs of consumers,
- helps ensure improved market outcomes, (although it is difficult to identify questions related directly to this key issues except on value for money),
- empowers retail investors
- and enhances their participation in the capital markets.

But there seem to be no questions on the envisioned vision and possible strategy to reach these objectives.

4. Fourth, the European Commission and the European Supervisory Authorities (ESAs) lack knowledge of the most critical information about the retail investments they regulate and/or supervise, in particular the prices (charges) and actual performances of these products. In particular, the ESAs do not have any product databases. As part of CMU 1.0, the

EC asked the ESAs in 2017 to report on cost and performance of the principal categories of long-term retail investment and pension products. The ESAs started in 2019 but are struggling to achieve this by their own reckoning, and ESMA has to work using commercial third-party databases. The abolition of the UCITS KIID will reduce further standardized and comparable relevant price and performance information available to the ESAs, the ones disclosed in the new PRIIPS KID being usable for this purpose.

We ask therefore that the ESAs build up independent retail investment products databases, starting with the existing Pan-European ones - the UCITS funds. These data bases should also be accessible by EU citizens like in the US (FINRA fund database) and could form the reliable basis for web comparing tools, like Norway has done.

5. Last, there is no question regarding a very powerful tool to reach the above-mentioned objectives of the strategy: the development of employee share ownership, as recommended by the HLF CMU and by the European Parliament last year. Employee Share Ownership, in countries where it is developed, has proven to foster equity culture among citizens, and to make companies more resilient and more sensitive to sustainability issues. Therefore, Employee Share Ownership should be considered as a key factor of a social taxonomy and key indicator of the social contribution of ESG investments.