IMPROVING RETAIL INVESTMENT IN THE EU

Key points by civil society on the RIS trilogues from the individual investors' perspective

Why it matters to consumers

The Retail Investment Strategy was launched in May 2023, due to the realisation that consumers (i.e. individual investors and policyholders) in the EU keep much of their financial savings in bank accounts and in other nominal capital guaranteed products instead of investing them. This is not only unfavourable for the creation of a strong EU capital markets union, but also undermines consumers' own financial interests as un-invested savings are more impacted by inflation and earn very small or negative real returns. The lack of investment also exacerbates the pensions gap (i.e. what consumers need for a comfortable retirement and what they actually receive). Measures to enhance the trustworthiness and independence of investment advice would have contributed greatly to solving this issue by increasing trust in the market and improving product quality. While the political discussion on this key point has now unfortunately closed, a number of other policy options may still improve the status quo for the coming years.

This two-pager summarises the recommendations of BEUC, BETTER FINANCE and Finance Watch on the available positions of the European Parliament and Council regarding the Retail Investment Strategy.

ISSUE	CONSUMER POSITION
Harmonisation of EU rules on inducements	A ban on inducements at least on non-advised sales (e.g. when a consumer independently buys a product online) was a key ask from the retail investor side in this process. It has been removed from the European Parliament's position entirely and without any replacement. The European Council's position, on the other hand, at least offers an inducements "test" and "overarching principles". **Recommendation: Endorse the Council's version.**

ISSUE	CONSUMER POSITION
Influencer marketing	The Parliament's position is the only one of the co-legislator's positions that includes any language on influencer marketing. The proposed rules are limited in scope, applying only to those influencers who promote financial products in cooperation with a regulated market participant instead of also covering independent operators. Still, it would be preferable to have at least some rules on so-called "finfluencers". **Recommendation: Endorse the Parliament position.**
Financial performance in the PRIIPs KID	Future performance scenarios are usually misleading for individual investors, but the reference to "scenarios" in the PRIIPs Regulation prevents the use of alternative ways to provide "appropriate performance information" to individual investors. **Recommendation: Remove mentions of "scenarios" in the PRIIPs Regulation.**
Value for Money	Both co-legislators endorse the idea – the Council's version, however, features more specific language and robust criteria. The Council's version also includes investment products, rather than being limited to insurance products, which is necessary to maintain a level playing field and symmetric consumer information. **Recommendation: Endorse the Council position.**

Finance Watch

BF BETTER FINANCE
The European Federation of Investors and Financial Services Users
Fédération Européenne des Épargnants et Usagers des Services Financiers

BEUC The European Consumer Organisation

	Council	Parliament	Reasoning & Comments
Financial performance information in the PRIIPs KID	PRIIPs Art. 8(3)(d)(iii) '(iii) **appropriate information on performance** and, where relevant, the assumptions made to produce them;' PRIIPs Art. 8(5): ... When developing the draft regulatory technical standards [...]. **Information on performance in the form of performance scenarios and presented in the KID for all types of PRIIPs could, if considered relevant for certain types of PRIIPs, be combined with information on performance in the form of past performance.**" [...]	PRIIPs Rec. (4a) **... In the majority of cases, the KID should include forward-looking performance scenarios.** However, in a limited number of cases, **when such scenarios could be misleading, past performance should be included** in the KID for relevant PRIIPs. PRIIPs Art. 8(3)(d)(iii) "(iii) **appropriate information on performance** and the assumptions made to produce it. **Where information on future performance is provided, it shall be based on performance scenarios;**"	Future performance scenarios are generally misleading for individual investors. This is, among other issues, due to the opaqueness of the assumptions made to produce them (what risk factors and performance drivers are considered?) and the absence of any probability weighting that would indicate which scenario is the most likely to happen (the word "moderate scenario" is often mistaken for "most likely"). For more simplicity *and* clearer investor information, the Level 1 Regulation should simply mandate the provision of "appropriate performance information", **Recommendation:** Delete any reference to future performance "scenarios" in the PRIIPs Regulation.

Influencer marketing	No equivalent	<u>MiFIDII Art. 5a (1)</u> Member States shall ensure that where a natural or legal person provides investment services or activities online targeting clients within its territory without being authorised under Article 5(1) … the competent authority takes all appropriate and proportionate measures to prevent the offering of the unauthorised investment services or activities, including related to marketing communication, by resorting to the supervisory powers referred to in Article 69(2). … ***The first subparagraph of this paragraph shall also apply to finfluencers that are remunerated or incentivised through non-monetary compensation by a firm***	**Preference: <u>EP version</u>** The influencer marketing rules under European Parliaments version render financial institutions responsible for any influencers they use to sell their products. While this does not address independent influencers, it's a necessary step towards controlling what amounts to a surge in self-interested and effectively unregulated financial advice being provided to consumers in financial media.

		which is not authorised under Article 5(1) or national law, where such finfluencer promotes through public social media platforms services or financial instruments on behalf of such a firm.	
EIOPA involvement in NCA complaints	IDD Art. 5 (1) After having assessed the information received pursuant to the first subparagraph, the competent authority of the home Member State shall, where applicable, take appropriate measures to remedy the situation at the earliest opportunity, **and at the latest 60 working days after having received the communication** from the competent authority of the host Member State.	No equivalent	**Preference: Council's version** EIOPA's involvement was already proposed by the European Commission and is a highly reasonable addition to this legislation. Introducing the time limit proposed by the council makes it much more practical.

NCA, cross border product intervention	IDD Art. 5, (3). Where, despite the measures taken by the competent authority of the home Member State or because those measures prove to be inadequate or are lacking, the insurance, reinsurance or ancillary insurance intermediary persists in **acting in a manner that is clearly detrimental to the interests of host Member State consumers** on a large scale, or to the orderly functioning of insurance and reinsurance markets, the competent authority of the host Member State may, after having informed the competent authority of the home Member State, take appropriate measures to prevent further irregularities, including, in so far	No equivalent	**Preference: Council's version. With slight amendment, if possible.** This provision allows all member states to prohibit the sale of insurances from other EU states in their country, if the imported products violate the established consumer protection level in the receiving country. This is a sensible addition, however a safeguard on this should be established: To avoid exploitation of this provision for protectionist reasons, the NCA should be required to notify both EIOPA and the EC, and provide a reasoning on why the intermediary was blocked or otherwise penalised. The definition of "clearly detrimental" should be attached to the (vfm) rules established by EIOPA, to ensure that products with lower vfm than the domestic norm qualify for this category. We note that this is introducing a further discrepancy between IDD and MiFIDII, further removing us from a level playing field between funds and insurance-based investment products, which is regrettable. This results, however, from the distinction made between

	as is strictly necessary, **preventing that intermediary from continuing to carry on new business within its territory**.		IDD and MiFIDII rules on Value for Money that was introduced in the council's general approach.
Legal definition of "inducements" and "inducement scheme"	Insertion of legal definitions of "inducements" and "inducement scheme" (Mifid new Art. 4(1)(69) and (70); IDD new Art. 2(1)(23) and (24))	No equivalent	• **Preference: Council's version.** • Introduction of a legal definition of what is a key term of the RIS is very much welcome for legal certainty. • Proposed definition is clear and wide-reaching, so that it catches all forms of third-party payments in relation to sales of products.

Harmonisation of EU rules on inducements	No ban (including on non advised sales).
	Inducements "test" and "overarching principles" (MiFID new Art. 24a; IDD new Art. 29a)
	• MiFID vs. IDD discrepancy: Inv. firms' inducements must be "designed to enhance the quality of the relevant service" (point b) / Insurers' inducements
		No ban (including on non advised sales).
		No alternative proposal
			• **Preference: Council's version**
			• Overarching principles:
			  ○ Set the principle of non-discrimination between in-house and third-party
			  ○ Explicitly condition validity of inducements to "level of service" and "tangible benefit" to the client.
			• Inducements test:
			  ○ Generally, a step in the right direction
			  ○ Requires offering the possibility to get the inducements back.

	must merely "take into account qualitative criteria, such as [...] the quality of service" (point a). No reason for the difference in wording. • Related: the MiFID version specifies what "designed to enhance the quality of the relevant service to the client" means (Art. 24(3), 2nd subpar.). In particular, the MiFID text specifies "justified by the provision of an on-going benefit to the relevant client" (no lifelong payments for 30 seconds of "advice") "*and* it justified by the provision of an additional or higher-level service" (comes with a list of examples) • No such specifications for IBIPs in IDD		○ Requires transparency on calculation method and identification of inducements among total costs ○ Forbids "variable or contingent threshold or any other value accelerator" that would increase the amount of inducements after a certain volume of sales. ○ /!\ The discrepancy between MiFID and IDD on "designed to enhance the quality" creates an unlevel playing field that is unjustified. • Transparency on inducements ○ For the record, the Commission's version was strictly superior to both for retail investors, to establish competition for product quality, which will be critical if the EU's capital markets are to become viable competition for their US based equivalent.
Ban on inducements for sales where advice is	• Prohibition to "accept and retain inducements paid or provided by any third party" where distributor informs	• Prohibition to "accept and retain fees, commissions [etc.] paid or provided by any third party" where	• **Preference: Council's version** • Misalignment of MiFID and IDD version: ○ The IDD version of the requirement seems to allow advisors who receive

given on an independent basis	the client that their advice is given on an independent basis • The IDD version specifies *"This paragraph shall not prevent insurance intermediaries* ***that are not employed by or contractually tied to an insurance undertaking, but receive inducements from the insurance undertaking and that fall within the scope of Article 29a,*** *from* ***presenting themselves as not contractually tied*** *to a specific insurance undertaking." (IDD Art. 30(5b), 2nd subpar.)*	distributor informs the client that their advice is given on an independent basis. • The IDD version specifies *"This paragraph shall not prevent insurance intermediaries* ***whose legal status qualifies them as independent,*** *from* ***presenting themselves as not contractually tied*** *to a specific insurance undertaking if they indicate that they receive inducements." (IDD Art. 29a(4a), 2nd subpar.)*	inducements to present themselves as "not contractually tied" to a specific provider, as long as they are not employed or tied by a contract. ○ This specificity for insurance distributors creates confusion: individual investors will be prone to consider that "not contractually tied" implies that the advice is given on an independent basis, which is not the case. ○ This possibility should be deleted from the IDD as the legal nature of the tie between provider and advisor is irrelevant for the purpose of determining whether the advice is provided on an independent basis. ○ Any reference to the national status of the advisor where that status qualifies them as "independent" should de deleted from the text, as it creates a risk of national divergence in the interpretation of the requirements on advice given on an independent basis.
Transparency on inducements	• Online sales without advice: Requirement to include an option on platforms to "easily identify financial instruments for	• Online sales without advice: No equivalent to Council's version • Separate disclosure of inducements: Information	• **Preference: Council's version** • Identification of inducements-free products online: Displaying inducements as part of the criteria for selecting products might at least give the investor a reason to do research.

	which the investment firm does not pay or receive inducements" (MiFID Art. 24a(7); IDD 29a(2e)) • Separate disclosure of inducements: Articles on inducements explicitly require the "existence, nature and amount of inducements" to be disclosed "separately from other costs and charges" (MiFID Art. 24a(6); IDD Art. 29a(2b))	"shall be aggregated", clients to be informed of their right to get an itemised breakdown of all costs "including all costs and charges relating to the distribution of the financial instrument and the cost of advice, where relevant" (MiFID Art. 24b; IDD Art.	• Separate disclosure of inducements: Council's version leads to a clear, straightforward requirement to explicitly and automatically inform about inducements, specifically. By contrast, the EP version, requires consumers to take action to get information about "cost of advice" which is different from inducements, and is likely to be hidden among all other cost items.
Review clause on inducements / Value for Money	• Timeline: 5y after entry into force of the Directive • Scope: "**effects of inducements** on retail clients, in particular in view of potential **conflicts of interest** and as regards the **availability of independent advice**, *and* shall evaluate the **impact of the relevant provisions of this Directive** on retail clients"	• Timeline: 5y after date of application of the directive • Scope: Product governance requirements (MiFID Art. 16-a; IDD Art. 25) • Mandate: Commission has to prove that new POG rules brought ***no positive change*** (not even insufficient change) for consumers	• **Preference: Council's version** • The council version features a more favourable timeline: • A much more reasonable scope: if improvements are the objective • And a more functional mandate, for the EC to work with this legislation

	• <u>Mandate:</u> "If necessary to prevent consumer detriment", EC entitled to propose legislative amendments		
Product governance – Target market definition	• No specification beyond existing MiFID and IDD requirement to identify a target market	• <u>Further specifies</u> that the definition of the target market shall include an assessment of "the **knowledge and experience level needed to understand** the product, the **ability to bear losses**, the **risk tolerance** and whether the product allows the target market to smoothly manage short-term finances to meet short-term needs, absorb economic shocks *or* reach future long-term goals" (MiFID Art. 16-a(1); IDD Art. 25(1))	• **Preference: <u>EP's version</u>** • Further specification takes target market identification beyond a mere 'tick-the-box' exercise • Useful in later establishing whether the product is being sold to the appropriate market, facilitating identification of cases of mis-selling

Value for Money – Pricing process ("VfM assessment process")	• Requirement to "identify and quantify" all costs:
	  ○ For manufacturers, maintained and extended to "the other benefits of the product" (e.g. insurance risk cover);
	  ○ For distributors, maintained for any distribution costs not already taken into consideration by manuf.
	• Identification of Value for Money: Requirement to identify costs and charges *and* performance and assess whether the former are justified in view of the latter ("VfM assessment process")
		• Requirement to "identify and quantify" all costs:
		  ○ For manufacturers, diluted into "a clear ***assessment and description*** of both quantitative and qualitative features of the financial products.
		  ○ For distributors,
		• Identification of Value for Money: Peer-group analysis to be used to compare historical performance and costs of product to peers, and *justify and demonstrate the proportionality of costs*
			• **Preference: Council's version**
			• "Assessment and description" is insufficient and open to manipulation; quantification is necessary to compare costs and benefits of products with similar characteristics.

Value for Money - Benchmarking	*Manufacturers* • Peer-group comparison: Costs and performance of a product to be compared to costs and performance of a	Manufacturers • Peer-group comparisons: Costs and performance of a product to be compared to costs and performance of a peer-group, "on the	• **Preference: Council's version** • Peer-group comparisons of costs and performance same, but: ○ Council version mandates firms to use data published by ESAs + methodology to be

	peer group of products with similar characteristics
	• <u>What happens if product diverges from peer group average:</u>
	  ○ "value for money shall be substantiated through additional testing" + "Where necessary, the manufacturer shall take appropriate actions to ensure value for money".
	  ○ Only means of enforcement: "compliance report" (no specifics)
	• <u>Supervisory benchmarks as alternative:</u> MS option to let providers opt for comparing products to relevant "Union supervisory benchmark" instead of peer group.
	• <u>VfM assessment process for IBIPs with multiple underlying assets:</u> Should be made against combination of IBIP
		basis of a peer group defined by the investment firm [insurance undertaking]", who "shall substantiate and document the choice and definition of the peer group"
		• <u>What happens if product diverges from peer group average:</u> Not specified.
		• <u>Supervisory benchmarks to be used only by NCAs:</u>
		  ○ Use as supervisory tools only (for detection of outliers);
		  ○ Not published.
		• <u>Two tier benchmark system:</u>
		  ○ "common European benchmarks" for "groups of comparable" products "manufactured and distributed in more than one Member State"
			defined in delegated acts (MiFID Art. 16-a(1), (9) and (11); IDD Art. 25(1), (8a) and (9),
			  ○ while EP version leaves it to manufacturers to define, with no effective supervision ("substantiate and document", "guidelines"), the group they compare against + "guidelines" to determine whether costs and charges are proportionate (MiFID 16-a(4a) and (11); IDD 25(6a) and (9)).
			• National benchmarks still allowed under Council version, but as exception where they are already in place, with use conditional (NCAs need to justify that still needed). EP version creates a fragmented system where uncompetitive providers will add spurious "national specificities" to their products to eschew European-level comparisons, in direct detriment to any "Savings and Investments Union".
			• For benchmarks to be effective, they need to be tied to objective criteria. Best in class only based systems define low quality products as good provided every other choice is also bad.
			• "Union benchmarks" under Council's version to be made public (with due precautions) and can then be used by any interested party to study the analyse the market and compare individual products.

	contract + underlying asset (wrapper + units) • (MiFID Art. 16-a; IDD Art. 25) *Distributors* • MiFID: Req. to "assess whether the financial instrument offers value for money", considering total costs, performance and benefits • IDD: No such req., instead, return to manufacturer if distribution costs are found that are not already included in VfM assessment by manufacturer. • Union benchmarks to be made public: after test of relevance, including methodology and warning of indicative nature, but public (MiFID 16-a(9); IDD 25(7).	○ National benchmarks for products distributed in a single MS	

Value for Money – Reporting to NCAs	• <u>Data to be reported to NCAs by manufacturers:</u>
	  ○ "details of costs and charges […] including any distribution costs that are incorporated into costs of financial instrument, *including inducements*;"
	  ○ "data on characteristics […] in particular its performance and any additional benefits";
	  ○ MS where the product will be directly/indirectly distributed
	• Data to be reported by distributors (MiFID Art. 16-a(5):
	  ○ MiFID only, no equivalent for IDD
	  ○ "details of the costs of distribution, including any costs related to the provision of advice or any connected inducements" (but
		• <u>Data to be reported to NCAs by manufacturers:</u>
		  ○ "*details of costs and charges of any financial instrument destined for retail investors, including where relevant, distribution costs incorporated in the costs of the financial instrument and costs related to the distribution of advice.*" No mention of inducements (MiFID 16-a(7); IDD 25(7))
			• **Preference: <u>Council's version</u>**
			• This would mandate inducements to be reported to NCAs, which is necessary to pursue more evidence based legislation and action by Authorities.

	2nd subpar adds conditions and exceptions making the requirement meaningless). ○ "the Member State(s) where it will distribute the financial instrument"		
Best interest of the client – test criteria	• <u>Appropriate range of products:</u> ○ "appropriate range of financial instruments […] from *one* or more manufacturers" ○ "The appropriate range of products can also be met by tied insurance intermediaries through products from one manufacturer." (Recital 6b) ○ "This requirement *can also be met by offering a single*	• <u>Appropriate range of products:</u> ○ Requirement maintained and complemented with a duty to inform the consumer of the range of products assessed. ○ Possible to meet the requirement even when intermediary is "*tied by exclusive partnerships* […] among products […] *offered by only*	• Preference: A Mixture of both ○ Appropriate range of products: EP's version ○ Recommend most cost-efficient product: Combination of the Council's version with the EP's addition on the need to justify recommending a higher-cost product. ○ Recommend at least one product without unnecessary features. Examples of such unnecessary features in life insurance are professional disability, long-term care guarantees or accident guarantees, which are often sold to customers without a need for them, making contracts much more expensive for policyholders.

	insurance-based investment product with an appropriate range of underlying investment assets" (IDD) • <u>Recommend most cost-efficient product</u> ○ EC proposal to require distributors to recommend the most cost-efficient product is maintained. ○ Further specified: "assessment of cost-efficiency shall take into accounts the costs and associated charges of these products as well as other factors of the financial instruments relevant to the client, such as the performance and the expected return." ○ Integration of cost-efficiency assessment within advice process specified in Recital 6b.	*one insurance undertaking*". ○ Not as bold as Council: no explicit mention that an "appropriate range" can mean a single IBIP… • <u>Recommend "most efficient" product:</u> ○ "cost-efficiency" out, but "efficiency" to be assessed based on "performance, level of risk, costs and charges…" ○ Adds: "if an equivalent product with higher costs is recommended", need "to justify this on objective grounds and keep records of that justification" • <u>Recommend at least one product without unnecessary features:</u> Deleted	

	• Recommend at least one product without unnecessary features: Deleted • MiFID 24(1a); IDD 29b(1)		

Best interest of the client – Independent advice on well diversified, non-complex and cost-efficient products	• Waiver to collect information about clients' knowledge and experience / existing portfolios:
	  ○ Confirmed by Council, with requirement that client be informed about possibility and conditions to get standard independent advice (MiFID 24(7a), IDD 30(1));
	  ○ Adding definition of "Cost-efficient products are those that carry lower costs in relation to their performance" (Recital (8))
	  ○ Adding definition of "Well-diversified products are products that allow for the
		• Waiver to collect information about clients' knowledge and experience / existing portfolios:
		  ○ Deleted (no support for independent advice)
		  ○ No definition of "well-diversified" or "cost-efficient".
			• **Preference: Council's version**
			• Defines two terms that are key for the VfM discussion (still missing "non-complex", though)
			• Although imperfect as a general solution to the unlevel playing field between independent and inducements-based advice, it at least attempts to balance this to a degree.

	diversification of the risks for the client due to their underlying asset composition" (Recital (8)		
Knowledge and competence of financial advisors	• Obligation to demonstrate that staff has knowledge and competence • Requirement for at least 15h of professional training per year • Have in place mechanisms to assess compliance by natural persons • Proof by certificate "or equivalent proof of completion" of training • MiFID 24d; IDD 10	• Part of yearly training to be dedicated to sustainable investing: "*An **appropriate number of hours** of professional training shall be allocated by national competent authorities to the minimum necessary **knowledge in sustainable investments** contributing to an environmental or social objective, including **how to consider and integrate sustainability factors and clients' sustainability preferences** into the advisory processes.*" • Catch up: Requires MS to foresee cases in which training hours beyond the	• **Preference: EP version** ○ Acknowledges the particular need to improve competence on sustainable investing ○ Makes it possible to speed up catching up on knowledge and competence where it is most necessary.

		minimum 15h should be required from an advisor "based on the assessment of knowledge and competence"	