



Rome, 6<sup>th</sup> September 2019

**ESMA – European Securities and Markets Authority**  
103 Rue de Grenelle  
75007 Paris  
France

Our ref: 204/19  
Your ref: ESMA35-43-1905

**Assogestioni’s Reply to ESMA’s Call for evidence on Impact of the inducements and costs and charges disclosure requirements under MiFID II.**

Assogestioni<sup>1</sup>, the Italian Investment Management Association, welcomes the opportunity to respond to the ESMA’s Call for evidence on Impact of the inducements and costs and charges disclosure requirements under MiFID II (hereinafter, the “*Call for evidence*”).

Through this document Assogestioni provides answers to the main questions that are relevant for the Italian asset managers and draws the ESMA’s attention to some general issues on costs and charges disclosure requirements.

**Questions**

**MiFID II disclosure requirements for inducements permitted under Article 24(9) of MiFID II.**

**A: What are the issues (if any) that you are encountering when applying the MiFID II disclosure requirements in relation to inducements? What would you change and why?**

The main issue that the asset managers have when applying the MiFID II disclosure requirements in relation to inducements concerns the “new” disclosure on non-monetary benefits (i.e. those ones who may not be considered as minor).

Asset managers, in providing the service of portfolio management, frequently pay or give fees, commissions or non-monetary benefits for the distribution of the portfolio management service to an intermediary who provides the service of investment advice. In our knowledge, asset managers have some difficulties to price the non-monetary benefits provided to the distributors of the portfolio management.

---

<sup>1</sup> Assogestioni represents the interests of the Italian fund and asset management industry. Its members manage funds and discretionary mandates around EUR 2.196 billion (as per June 2019).



The difficulties to price these benefits are linked to the fact that these charges could refer to activities carried out within the asset manager (and not by external subjects) so it is difficult to give a pricing to these internal costs. Moreover, these benefits can have a multi-year usefulness that is difficult to quantify. In this way it is therefore complicated to price the amount of benefits for the purposes of such disclosure. For this reason, we ask that even for benefits that are not considered as minor the disclosure should be done in a generic way as for minor non-monetary benefits.

Moreover, in case of ongoing inducements, it would be useful to clarify that the individual communication to client, at least once a year, of the actual amount of payments or benefits received or paid, must be considered related to the provision of the service and not to the incidence of the same for the client.

**B: Do you use the ex-ante and ex-post costs and charges disclosures as a way to also comply with the inducements disclosure requirements? At which level do you disclose inducements: instrument by instrument, investment service or another level (please specify how)?**

**C: Have you amended your products offer as a result of the new MiFID II disclosure rules on inducements? Please explain.**

**D: Has the disclosure regime on inducements had any role/impact in your decision to provide independent investment advice or not?**

**E: How do you apply ex-ante and ex-post disclosures obligations under Article 24 (9) of MiFID II in case of investment services provided on a cross-border basis? Do you encounter any specific difficulty to comply with these requirements in a cross-border context? Please explain.**

**F: If you have experience of the inducement disclosure requirements across several jurisdictions, (e.g. a firm operating in different jurisdictions), do you see a difference in how the disclosure requirements under Article 24(9) of MiFID II and Article 11(5) of the MiFID II Delegated Directive are applied in different jurisdictions?**

**G: Would you suggest changes to the disclosure regime on inducements so that investors or potential investors, especially retail ones, are better informed about possible conflicts between their interests and those of their investment service provider due to the MiFID II disclosure requirements in relation to inducements?**

**H: What impact do you consider that the MiFID II disclosure requirements in relation to inducements have had on how investors choose their service provider and/or the investment or ancillary services they use (for instance, between independent investment advice and non-independent investment advice)?**



## Costs and charges disclosure requirements under Article 24(4) of MiFID II

### General remarks.

The new rules on cost and charges disclosure requirements are relevant for the asset managers under a twofold perspective: (i) indirectly, considering the asset managers whose funds are distributed by investment firms; (ii) directly, when asset managers perform investments services and, in particular, the service of portfolio management.

Before going through some of the questions, it should be highlighted that the application of the new discipline raised some important interpretative and practical issues within the industry. Some of the main issues emerged were brought to the attention of ESMA through EFAMA (being Assogestioni a member of this association) and to the attention of the EU Commission (directly by Assogestioni).

Unfortunately, the tool of the Q&A used by ESMA to support the intermediaries in the first application of the discipline has not been so prompt and effective as it could be expected. We refer in particular to the clarification given about the *ex-ante* information for the service of portfolio management since the related Q&A was published only the last March<sup>2</sup>, very late respect to the date established for the application of the discipline by the intermediaries.

**I: What are the issues that you are encountering when applying the MiFID II costs disclosure requirements to professional clients and eligible counterparties, if any? Please explain why. Please describe and explain any one-off or ongoing costs or benefits.**

**J: What would you change to the cost disclosure requirements applicable to professional clients and eligible counterparties? For instance, would you allow more flexibility to disapply certain of the costs and charges requirements to such categories of clients? Would you give investment firms' clients the option to switch off the cost disclosure requirements completely or apply a different regime? Would you distinguish between per se professional clients and those treated as professional clients under Section II of Annex II of MiFID II? Would you rather align the costs and charges disclosure regime for professional clients and eligible counterparties to the one for retails? Please give detailed answers.**

**K: Do you rely on PRIIPS KIDs and/or UCITS KIIDs for your MiFID II costs disclosures? If not, why? Do you see more possible synergies between the MiFID II regime and the PRIIPS KID and UCITS KIID regimes? Please provide any qualitative and/or quantitative information you may have.**

---

<sup>2</sup> We refer to the Q&A no. 24 published on the 28<sup>th</sup> of March.



With regard to the cost and charges of the financial instruments (respectively UCITS or PRIIP), we believe that when the KIID or the KID are available the intermediary should be allowed to rely exclusively on the information included in the abovementioned documents. About this, the Recital 78 of MiFID II states that “*where sufficient information in relation to the costs and associated charges or to the risks in respect of the financial instrument itself is provided in accordance with other Union law that information should be regarded as appropriate for the purposes of providing information to clients under this Directive*”. However, article 51 of the Delegated Regulation provides that the intermediary that distributes UCITS or PRIIPs informs the client also of other related costs and charges concerning the product that may not have been included in the UCITS KIID or in the PRIIPs KID. In the view of a cost-benefit assessment of the regulation, this burden seems too severe; moreover, given that there is already a specific EU regulation (UCITS) aimed at highlighting the main aspects of the product to be made transparent to the client, to which MiFID II has intended to refer in full (pursuant to Recital 78 above), we do believe that it is considered “improperly” in the service regulation (MiFID II).

We also believe that the UCITS methodology behind such indicators has proven valuable and practical over the years and helped investors in the understanding of the essential characteristic of the products. So, based on our experience, we would like to propose to maintain, to the possible extent, the principles developed for the UCITS KIID also in the MiFID context, since a balanced, stable and realistic representation of cost (and performance) has been reached and consumer-tested with the UCITS KIID.

Indeed, we have some concerns with the ex-ante cost representation.

We believe that a fair representation of aggregate information on costs and charges can ensure that investors are not deprived of the information they need and could help them in their investment choices. However, it may be difficult for investors to understand that such aggregation (and the illustration showing the cumulative effect of costs on return) includes not only known fees but also incidental costs (i.e. transaction costs and performance fees), which reflect the asset management strategy and/or the underlying market volatility/liquidity.

We do believe that because costs cannot be exactly asserted in the ex-ante disclosure, the investors could potentially receive misleading information.

To better enhance investors’ understanding, transaction costs, and more in general all incidental costs, like performance fees, should be excluded from ex-ante aggregate information about all cost and should be disclosed separately instead (in line with UCITS KIID).

In the ex-post reporting on costs, all the costs should be disclosed even if it could be an issue the disclosure of (or the estimation of) implicit transactions costs, especially if the methodology to be used do not give appropriate (or give misleading) information to the investor (please refer to our response to question R).



As regards the use of cost disclosures on UCITS KIIDs and PRIIPs KID, third parties have requested raw data, especially where a PRIIPs KID was available. It is worth noting that the PRIIPs costs are annualized figures calculated with assumptions on return over the recommended holding period. The information included in the UCITS KIID, based on actual cost data (no assumptions on estimated return and recommended holding period) are more in line with the distributors needs, even if it does not contain all cost elements in MiFID II (for example transaction costs). The use of raw data (actual) helps intermediaries to show only the cost information relevant for the investment service/product. For example, if for a PRIIPs KID some entry costs apply, but the distributor does not actually apply them, should the distributor use the PRIIPs KID data it will show a bigger cost to the investors (0,64% rather than 0). On the contrary where some exit costs apply before the RHP, these costs are not indicated in the PRIIPs KID. In addition, the longer the RHP, the greater are the effect of costs on the performance. So, in a positive performance scenario, products with longer RHP are, other things be equal, more costly.

| Cost item                              | Actual fund cost in % of the amount invested or NAV   | UCITS KIID                 | PRIIPs KID Simulation*<br>Moderate scenario: 5%<br>RHP= 5 years |
|--|---|----------------------------|---|
| Entry charge                           | 3%  | 3%                         | 0,64%   |
| Exit charge                            | 2% in the 1 <sup>st</sup> year<br>1,5% in the 2 <sup>nd</sup> year<br>1% in the 3 <sup>rd</sup> year<br>0,5% in the 4 <sup>th</sup> year<br>0% year onwards | 2%                         | 0%  |
| On-going charges                       | 0,85%   | 0,85%                      | 0,90%   |
| Transaction costs                      | 0,66% (3 years average)   | (excluded from UCITS KIID) | 0,69%   |
| Performance fee                        | 0% last year<br>0,15% (5 years average)   | 0%                         | 0,16%   |
| <b>Summary cost indicator</b>          |   |                            |   |
| Total cost (for an 10.000€ investment) |   |                            | 1.478 €   |
| Impact on return (RIY) per year        |   |                            | 2,38%   |

\*Simplified simulation

In this context, the development at European level of standardised templates to exchange raw data between European financial sector institutions was a positive experience and it is broadly used by different stakeholders in Italy. Its improvement is ongoing, taking into account existing practices and issues, costs and timing of the implementation.



As regard possible synergies between MiFID, UCITS and PRIIPs, we deem that they could be in the interest of investors but comparability should not come at the cost of misleading information. In addition, since disclosure in PRIIPs and UCITS is ex-ante, when it comes to ex-post disclosure some further reflections are needed.

**L: If you have experience of the MiFID II costs disclosure requirements across several jurisdictions, (e.g. a firm operating in different jurisdictions), do you see a difference in how the costs disclosure requirements are applied in different jurisdictions? In such case, do you see such differences as an obstacle to comparability between products and firms? Please explain your reasons.**

**M: Do you think that MiFID II should provide more detailed rules governing the timing, format and presentation of the ex-ante and ex-post disclosures (including the illustration showing the cumulative impact of costs on return)? Please explain why. What would you change?**

In the perspective of providing investors with comparable information, it can certainly be useful to have more standardized format and presentation of the ex-ante and ex-post disclosure. However, this standardization should necessarily be carried out with the contribution of the intermediaries and not simply adding “more detailed rules”. Further harmonization on this subject should be made with an appropriate consultation process through the definition of guidelines. Moreover, adequate period for their implementation should be provided, with the aim of avoiding excessive and avoidable costs for the operators as well as confusion for the final client.

**N: For ex-ante illustrations of the impact of costs on return, which methodology are you using to simulate returns? Or are you using assumptions (if so, how are you choosing the return figures displayed in the disclosures)? Do you provide an illustration without any return figure?**

In our knowledge, in the illustration made by Italian asset managers no estimations of the potential return of the investment are usually made. The return assumed is equal to the costs, i.e. using a net return assumption of zero presuming that the investors get back their original investment.

We believe that such assumption is clear, ready understandable for the client, appropriate for comparison between different services and not deceptive for investors (performance estimates used for the illustrations can be considered as promised return by investors). These assumptions avoid incurring the same critical issues emerged in the PRIIPs framework with performance scenarios.

**O: For ex-post illustrations of the impact of costs on return, which methodology are you using to calculate returns on an ex-post basis (if you are making any calculations)? Do you use assumptions or do you provide an illustration without any return figure?**



For ex-post illustrations of the impact of costs on return, Italian asset managers use the actual return figures. Since the values of investor's cash flows in the period affect the return, it is calculated a money-weighted return. Actual figures are represented.

**P: Do you think that the application of the MiFID II rules governing the timing of the ex-ante costs disclosure requirements should be further clarified in relation to telephone trading? What would you change?**

**Q: Do you think that the application of Article 50(10) of the MiFID II Delegated Regulation (illustration showing the cumulative impact of costs on return) helps clients further understand the overall costs and their effect on the return of their investment? Which format/presentation do you think the most appropriate to foster clients' understanding in this respect (graph/table, period covered by the illustration, assumed return (on an ex-ante basis), others)?**

**R: Are there any other aspects of the MiFID II costs disclosure requirements that you believe would need to be amended or further clarified? How? Please explain why.**

In line with our response to question K, we are concerned about the general application of the PRIIPs methodologies into the MiFID context. In fact, the PRIIPs methodology is causing widespread problems in its application, generating figures that in some occasions may be even misleading for clients, in particular in relation to the calculation of implicit transaction costs when the actual transaction cost methodology (arrival price) is used.

In addition, MiFID II Article 24(4) specifies that the "*occurrence of underlying market risk*" (i.e. market movements/slippage) should not be considered as a cost, so it would not be possible, more than unfair, to use the PRIIP KID's actual transaction cost methodology for MiFID II disclosures.

Since synergies between regulations aimed to improve a consistent transparency to final investor and, at the same time, to avoid not necessary burdens to intermediaries, we would support any necessary change in the PRIIPs regulation and we believe that these changes could be reflected, where appropriate, also in the MiFID context.

In this regard, in line with the MiFID II requirements and applying a proportionate approach, implicit costs should be estimated using alternatively the spread of the transaction without slippage or a standard spread (half-spread per asset-class - standard table).

There is no hierarchy or priority implied between or within these two options. Each firm should determine the most appropriate way to calculate the implicit transaction costs, given the asset classes traded, the trading set-up of the firm, the availability





of market data, the characteristics of the transaction and the firm's best execution framework. However, this approach must be applied in a consistent manner.

When a standard spread table is used, the firm should establish appropriate controls within its best execution framework to monitor that the use of the table does not materially underestimate the implicit costs disclosed to the investor (compared to a calculation based on the transaction spread option).

The proposal suggested in this answer would be a valuable method consistent with the disclosures of all costs and charges, significantly less complex and subject to "errors" and easier to monitor (even by the NCA).

Fabio Galli  
Director General