# Response to

**ESMA Call for evidence**

**Impact of the inducements and costs and charges disclosure requirements under MiFID II**

17 July 2019 | ESMA35-43-1905

German Banking Industry Committee

Register of Interest Representatives

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Contact:

## The German Banking Industry Committee is the joint committee operated by the central associations of the German banking industry. These associations are the Bundesverband der Deutschen Volksbanken und Raiffeisenbanken (BVR), for the cooperative banks, the Bundesverband deutscher Banken (BdB), for the private commercial banks, the Bundesverband Öffentlicher Banken Deutschlands (VÖB), for the public-sector banks, the Deutscher Sparkassen- und Giroverband (DSGV), for the savings banks financial group, and the Verband deutscher Pfandbriefbanken (vdp), for the Pfandbrief banks. Collectively, they represent more than 2,200 banks.

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| Nikolai LenarzDivision Manager Financial Markets Telephone: +49 30 1663-3301 E-Mail: nikolai.lenarz@bdb.de  |  |

 Berlin, 6 September 2019

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for the savings banks finance group, and the Verband deutscher Pfandbriefbanken (vdp), for the Pfandbrief banks. Collectively, they represent approximately 1,700 banks.

**Question A/Reply A**

1. What are the issues (if any) that you are encountering when applying theMiFID II disclosure requirements in relation to inducements?

*The obligation to calculate and report amounts in euros places an additional burden on banks. This is because the disclosure of inducements in cost and charges reporting means the exact data have to be determined at ISIN level and matched to individual investors, which is a very complex process.*

*The relationship between cost and inducement disclosure is not always totally clear since the requirements concerning inducement disclosure are sometimes worded only slightly differently to those concerning cost and charges disclosure. In practice, monetary inducements are normally reported in the context of cost and charges disclosure. It should therefore be explicitly clarified that the requirements concerning inducement disclosure can be met by fulfilling the requirements set out in Article 50 f. of the MiFID II Delegated Regulation.*

1. What would you change and why?

*Investors have now become familiar with the practice. We see no fundamental need for change. However, clarification should be added to the effect that the requirements concerning inducement disclosure can be met by fulfilling the requirements set out in Article 50 f. of the MiFID II Delegated Regulation (see our reply to Q1 above).*

**Question B/Reply B**

1. Do you use the ex-ante and ex-post costs and charges disclosures as a way to also comply with the inducements disclosure requirements?

*Yes, information on inducements is also disclosed under ex-ante and ex-post disclosures of costs and charges.*

1. At which level do you disclose inducements: instrument by instrument, investment service or another level (please specify how)?

*German banks have made use of the discretionary leeway permitted by regulators. This helps to inform investors in a targeted and consistent manner. The exact details of implementation consequently vary. Generally, however, inducements are disclosed instrument by instrument ex-ante and ex-post.*

**Question C/Reply C**

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

*No, to the best of our knowledge the disclosure rules have not led to any significant change in the range of products offered.*

**Question D/Reply D**

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

*No. The disclosure regime on inducements has had no impact to speak of. When it comes to the German market, it should be borne in mind that requirements concerning fee-based investment advice have been in place since 1 August 2014 and that these are very similar to the MiFID II requirements concerning independent investment advice. Even when these German requirements were introduced, the disclosure regime on inducements played no significant role for investment firms when deciding whether or not to offer fee-based advice.*

*Although fee-based investment advice was available in Germany even before MiFID II became applicable, take-up by German investors was and continues to be low. For this reason, many firms decided for commercial reasons not to offer fee-based investment advice of their own.*

**Question E/Reply E**

1. 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?
2. Do you encounter any specific difficulty to comply with these requirements in a cross-border context? Please explain.

*No reply.*

**Question F/Reply 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?

**Question G/Reply 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?

*No, we see no need to provide investors with even more extensive information. The regime in its present form requires investors to be informed in a manner that is comprehensive, accurate and understandable about the existence, nature and amount of the inducement or, if the amount cannot yet be determined, the method of its calculation. Investors already receive general information about inducements when a business relationship is established (normally before a service is provided for the first time). In addition, they receive specific information about inducements in the context of ex-ante and ex-post cost and charges disclosure.*

**Question H/Reply 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)?

*The MiFID II disclosure requirements concerning inducements have had no effect on the choice of investment service provider or type of investment and/or ancillary services investors use. In Germany, extensive disclosure requirements in connection with investment advice have been in force since January 2007. Their introduction did not lead to any noticeable changes either. Owing to the reluctance of investors to pay for investment advice, moreover, few independent advisory services are offered. Current German market practices allow all sections of the population, especially small investors, access to financial services.*

**Question I/Reply I**

1. 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.

*Professional clients and eligible counterparties are familiar with the way capital markets function. They have significantly more knowledge and experience than retail clients. This view is reflected in MiFID II inasmuch as no assessment of appropriateness has to be carried out for these types of client. MiFID II rightly assumes that these clients have the necessary knowledge and experience (cf. also. Articles 54(3) and 56(1) of Delegated Regulation (EU) 2017/565)). Both their need for information and their need for protection are significantly lower than those of retail investors. These client groups frequently include banks and institutional investors (which are usually classified as eligible counterparties, though sometimes as professional clients), which meet the investment firm on an equal footing. In many cases these market participants are not only familiar with the market conditions and prices of the various providers but specify the conditions of the transaction in question themselves.*

*These client groups do not generally lack information about costs and charges. Ex-ante cost information is supposed to provide investors with transparency regarding pricing and enable them to compare different offers. These clients normally already have access to this information through other channels (especially market observation and parallel price enquiries). As a result, ex-ante cost information about an individual transaction does not usually deliver the intended benefit, but is instead regarded as an annoyance. The German Ministry of Finance also came to this conclusion in a recent position paper.[[1]](#footnote-1)*

*Professional clients and eligible counterparties generally place a large number of high-value orders compared to those placed by retail investors and attach great importance to swift order execution. Transactions with professional clients and eligible counterparties are usually concluded over the phone or by chat and immediate action is expected. Ex-ante cost information, by contrast, translates into time lags and price risk, which these client groups consider disadvantageous. Professional clients and eligible counterparties are price-sensitive and normally maintain business relations with several investment firms. It is common market practice throughout the EU for professional clients and eligible counterparties to make investment decisions quickly on the basis of parallel quotes from several brokers. They neither need nor want ex-ante cost information, especially as they have to bear the market risk for the time lag between preparation and provision of the information. The market price of the product usually changes during the period needed to provide specific ex-ante cost information before concluding the transaction. To mitigate the price risk for the bank, prices would need to be raised.*

*On top of that, it is often technically unfeasible to provide ex-ante cost information owing to the order channels used – e.g. via interfaces such as FIX. “Users” of the trading platform are not in direct communication with the enquiring party. It is outside the remit and responsibility of platform users to create technical ways of exchanging instantaneous ex-ante cost information between users.*

*Given the expertise of eligible counterparties and professional clients, it should be remembered with the principle of proportionality in mind that the provision of annual ex-post cost information about costs and charges generates a lot of additional bureaucracy. This goes not only for those preparing the information but also for the recipients, who have to review and manage documents they do not need. Experience shows that these client groups feel massively over-informed and harassed as a result of the obligation to provide annual ex-post cost information. Under Section 63(12) of the German Securities Trading Act and Article 59 of Delegated Regulation 2017/565, all clients already receive a statement immediately after the execution of their order containing, in a durable medium, the essential information concerning the execution. Under Article 59(4)(m) of Delegated Regulation 2017/565, the client already has the option of requesting an itemised breakdown of the commissions and expenses charged – just as in the context of ex-post cost information. As a result, clients already have all relevant information at their disposal about the costs incurred. An annual summary of ex-post cost information is therefore merely a duplication of information already received and generates additional costs for all involved.*

*The review should therefore establish an exemption from ex-ante and ex-post cost disclosure requirements for transactions with eligible counterparties and professional clients.*

*Until the requirements amended under the review come into force, ESMA should make absolutely clear in applicable law that the cost disclosure requirements for transactions with eligible counterparties and professional clients may be met through standardised information on costs (e.g. by way of the cost grids already introduced), and in fact with regard to all financial instruments. Given the lower level of protection of eligible counterparties and professional clients, standardised information on costs is appropriate information within the meaning of Article 24(4) of MiFID II that enables these to take decisions on an informed basis as called for under Article 24(5) of MiFID II.*

1. Please describe and explain any one-off or ongoing costs or benefits.

*As banking associations, we have no information at our disposal about the implementation costs at individual member banks.*

**Question J/Reply J**

1. What would you change to the cost disclosure requirements applicable to professional clients and eligible counterparties?

*For the reasons set out in our above reply to Question I, an exemption should be introduced so that ex-ante and ex-post cost disclosure requirements no longer apply to eligible counterparties and professional clients.*

*There should also be an exemption from other information requirements which do not benefit these client groups but represent a bureaucratic burden, particularly client information in accordance with Article 24(1), sentence 1 of MiFID II about the investment firm and its services, the financial instruments and proposed investment strategies and execution venues.*

1. For instance, would you allow more flexibility to disapply certain of the costs and charges requirements to such categories of clients?

*For the reasons set out in our above reply to Question I, an exemption should be introduced so that ex-ante and ex-post cost disclosure requirements no longer apply to eligible counterparties and professional clients.*

1. Would you give investment firms’ clients the option to switch off the cost disclosure requirements completely or apply a different regime?

*For the reasons set out in our above reply to Question I, an exemption should be introduced so that both ex-ante and ex-post cost disclosure requirements do not apply to transactions with eligible counterparties and professional clients.*

*In our opinion, a mere option to waive these requirements would not be sufficient as both client and bank would be burdened with the administrative red tape associated with exercising the option. Given the level of professionalism of the investors in both of these client groups, this is not necessary – including from an investor protection angle.*

*We believe it would, however, make good sense to give retail clients the option to “switch off” cost disclosure requirements (see below).*

1. Would you distinguish between per se professional clients and those treated as professional clients under Section II of Annex II of MiFID II?

Please give detailed answers.

*There is no need to make a distinction between per se professional clients and professional clients treated as professional on request under Section II of Annex II of MiFID II. It should be borne in mind that European lawmakers assume that all professional clients have the necessary knowledge and experience (Article 54(3) and 56(1) of Delegated Regulation (EU) 2017/565). This means, conversely, that both clients which are professional per se and those who elect to be treated as professional need no further information. As described in our reply to Question I, we therefore recommend dropping cost transparency requirements for transactions with professional clients. Lawmakers have already decided to do the same with other information requirements such as the KID under the PRIIPs Regulation, which only has to be provided to retail clients.*

1. Would you rather align the costs and charges disclosure regime for professional clients and eligible counterparties to the one for retails?

*No, aligning requirements would only increase the practical problems for professional clients and eligible counterparties as well as for investment firms. There is a far more pressing need for exemptions from the ex-ante and ex-post cost information requirements for transactions with professional clients and eligible counterparties (for details, see our replies to Question I and Question J 1-4).*

**Question K/Reply K**

1. Do you rely on PRIIPS KIDs and/or UCITS KIIDs for your MiFID II costs disclosures?

No, the information on costs contained in these documents is not used for MiFID II cost disclosure.

1. If not, why?

*The information on costs in a UCITS KIID, for example, does not correspond to the information on costs required under MiFID II. In addition, the complex processing of the large number of different cost components needed to prepare this information on costs requires an IT solution. Distributors need to have the cost components in a machine-readable format so that information on costs for MiFID II purposes can be generated automatically. PRIIPS KIDs and/or UCITS KIIDs, by contrast, would have to be evaluated manually and it would therefore not be economically viable to reuse the information in high-volume business. Nor would it be in the interest of investors because of the delays in processing orders this would cause. Banks therefore obtain the necessary data on costs from central data providers.*

1. 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.

*The fact that product costs are calculated differently under MiFID II and the PRIIPs regime causes major practical problems. Among other things, there is a difference in the treatment of inducements. While product costs under the PRIIPs Regulation include inducements, inducements under MiFID II are part of service costs, so MiFID II product costs have to be disclosed without inducements.[[2]](#footnote-2)*

*This means clients are given different information about the product costs of one and the same product (if it is both a PRIIP and a financial instrument within the meaning of MiFID II) even if both information sheets base their calculations on the same investment amount of €10,000. In an example provided by a large German bank, the same product was shown to have product costs of €246.28 or 1.38% p.a. based on an investment of €10,000 when calculated under the PRIIPs Regulation and product costs of €111.27 or 0.56% p.a. based on the same investment amount but calculated in accordance with MiFID II.*

*This discrepancy, which has to be explained to investors and which they find difficult to understand, results from a lack of consistency in the rules governing the calculation of costs. In future, care should be taken when developing legislation to ensure greater consistency between thematically related legislative projects. This applies particularly to the upcoming reviews of MiFID II and the PRIIPs Regulation, but also to the current legislative process in the area of sustainability.*

*The aim should be to ensure that uniformly defined terms are used in all legislative texts and that interplay between regimes is taken into account.*

*As regards the relationship between the PRIIPs Regulation and its Delegated Regulation, on the one hand, and MiFID II on the other, one way of achieving greater consistency would be to dispense with the presentation of costs in the KID if the product in question is a financial instrument within the meaning of MIFID II. This would avoid discrepancies while nevertheless informing the customer about costs by way of the MiFID II requirements.*

**Question L/Reply L**

1. 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?
2. In such case, do you see such differences as an obstacle to comparability between products and firms? Please explain.

*No reply.*

**Question M/Reply M**

1. 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.

*No. This applies in particular to the presentation of information on costs. In the legislative process for Delegated Regulation 2017/565, European lawmakers consciously refrained from setting detailed requirements concerning the presentation of costs. In this respect, lawmakers chose a different approach to that in the PRIIPs Regulation, which sets highly detailed requirements (which have often caused huge problems with the result that there has been severe criticism of KIDs from all sides). The existing rules are perfectly sufficient to ensure that adequate information about costs is provided in a readily understandable manner. The important point now is to ensure that these existing requirements are complied with throughout Europe.*

*More detailed rules and possible requirements concerning the format would tend towards a “one-size-fits-all” solution, which would no longer be able to accommodate all possible situations. Instead, it would make the information about costs more difficult to understand or it would no longer “fit” certain circumstances, which would be to the detriment of investors. As things stand, the focus is on ensuring that the information provided to investors is appropriate and readily understandable. If an overly standardised, rigid approach were taken, it would no longer be possible to take account of the entire range of possible applications and adressees. As experience with the rules governing the PRIIPs KID strikingly shows, rules standardising the format of information with the aim of making things simpler for investors can end up achieving the exact opposite if a mandatory “one-size-fits-all” design is unable to capture the full range of all possible situations. When it comes to MiFID II cost disclosure, attempts at standardisation would encounter even greater obstacles since the requirements concerning cost transparency – unlike those governing the PRIIPs KID – apply not just to a particular type of product but to the costs of all financial instruments and, in addition, the costs of investment services. The range of possible situations and combinations would consequently be even broader – dramatically so.*

*Replacing existing implementation solutions with a single solution would, in addition, be extremely expensive for the market. It should be borne in mind that implementing the requirements governing ex-post cost transparency necessitate highly complex and costly IT solutions, the development of which requires a considerable amount of time and effort.*

*Investors, on the other hand, have comparatively little interest in the content of the information. According to a consumer survey commissioned by the German Federal Financial Supervisory Authority (BaFin) (source: publication of 7 June 2019 on BaFin’s website [www.bafin.de]),*

* *more than half of the respondents (53%) who had carried out a securities transaction since 3 January 2018 said that they had not read the information on ex-ante costs, with a further 5% saying that they did not know whether they had looked at the document or not.*

*Even today, investors complain about being bombarded with information which they cannot reject due to mandatory legal requirements. According to an impact study by the Ruhr University Bochum (source: ZBB/JBB 2019, p. 126 ff. [p. 136, 133]).*

* *only 42.7% of investors see a benefit in the ex-ante information on costs. 54.2% of investors even find the additional information annoying or very annoying.*
* *As a result, also according to the study, the wish to be able to opt out of receiving the information is high across all customer segments (62.7%).*
1. What would you change?

*We do not see any need for more detailed rules.*

**Question N/Answer N**

1. For ex-ante illustrations of the impact of costs on return, which methodology are you using to simulate returns?

*The impact of costs on return can be illustrated on the basis of existing regulation in different ways. Member banks have made use of different approaches. The most widely used methodology illustrates the percentage by which costs reduce future return, without indicating any future return figure. Neither MiFID II nor the MiFID II Delegated Regulation nor the ESMA Q&As call for calculation of the expected return on a financial instrument or investment service and deduction of costs from such return.*

*In addition, some banks indicate an expected return instead of a zero return. This does not, however, lead to enhanced comparability of costs, as every bank uses different – and in some cases even product-specific – methodologies.*

*In this context, we refer to the enormous problems that presenting return in the key information documents (KIDs) required under the PRIIPs Regulation causes.*

*There is, at any rate, still the problem that the methodologies for calculating return under MiFID II and the PRIIPs Regulation differ significantly.*

1. Or are you using assumptions (if so, how are you choosing the return figures displayed in the disclosures)?

*Different assumptions of return would make it more difficult to compare products and trigger the need for additional explanation. Furthermore, there is the still unsolved problem of developing a sensible solution for presenting return in PRIIPs’ KIDs. For the reasons mentioned above in answer 1), a zero return is assumed in the information on costs, so that costs and their impact are presented throughout on the basis of the original amount invested. This method of presentation is the same across all products and is clear and easy-to-understand for clients.*

1. Do you provide an illustration without any return figure?

*In Germany, different approaches are used. Many banks assume a return of zero.*

**Question O/Answer O**

1. 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)?
2. Do you use assumptions or do you provide an illustration without any return figure?

*The impact of costs on return can be illustrated on the basis of existing regulation in different ways. Member banks have made use of different approaches. The most widely used methodology illustrates the percentage by which costs have reduced the portfolio return, without indicating any specific return obtained. Neither MiFID II nor the MiFID II Delegated Regulation (Article 50) nor the ESMA Q&As call for calculation of the return on a financial instrument or investment service and deduction of costs from such return.*

*Where a return figure after costs is used at portfolio level, this does not enhance comparability of costs, however, as different mathematical models are used to calculate return.*

**Question P/Answer P**

1. 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?
2. What would you change?

*This question needs to be answered differently for each category of clients.*

*Information for retail clients*

*The existing requirements for handling ex-ante cost disclosures in telephone trading continue to pose problems in practice. It should be noted that in telephone trading clients expect their orders to be accepted and executed without delay. Because of postal delivery times, information on costs in durable media cannot be provided promptly. Clients then usually cannot or do not want to use the internet but the telephone instead (e.g. when travelling (particularly by car) or where there is a poor internet connection). At the same time, such clients are predominantly experienced in securities transactions which make a large number of (recurring) transactions. Similar problems arise if orders are received by letter, fax or a transmission medium where provision of ex-ante information on costs is not possible. A clear, practice-oriented arrangement is therefore called for. Particularly in such a situation, clients want to be able to opt out of receiving ex-ante information on costs. Yet banks should at least be allowed in distance marketing transactions to provide retail clients with ex-ante information on costs following a telephone conversation. ESMA, too, has acknowledged this problem and outlined a degree of flexibility in its Q&As on investor protection issues that helps to some extent at any rate. As yet, there is no legal provision corresponding to that, for example, with regard to KIDs under the PRIIPs Regulation or with regard to the suitability report. The existing gap in regulation continues to lead to practical problems and to annoyance on the part of clients. It should therefore be directly addressed in MiFID II.*

*In a recent position paper, the German Federal Finance Ministry also advocated retrospective provision of information on costs in line with the provisions on the suitability report.[[3]](#footnote-3)*

*Information for professional clients and eligible counterparties*

*For “professional clients” and “eligible counterparties”, the problems posed are even greater. Transactions with professional clients and eligible counterparties should therefore be generally exempted so that these categories of client would not have to be provided with any ex-ante information on costs in telephone trading (see specifically answers I and J).*

**Question Q/Answer Q**

1. 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?

*In our view, reference to return in the provisions on cost transparency should be deleted, as return is not directly related to costs. Details of return would be out of place in information on costs. They distract from the main content and may lead to distorted presentation (see, in particular, the repeatedly cited problems with the PRIIPs Regulation).*

1. 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)?

*Complying with the currently very comprehensively regulated ex-ante and ex-post cost information requirements is already highly burdensome today. It produces a large amount of information that many clients see as superfluous. ESMA was therefore right to deliberately leave open the specific format/presentation in the Q&As on investor protection (9. Information on costs and charges, Q2) and to point out that distributors can decide this. This discretion for banks makes sense and should be retained. As far as we know, tables that investors are familiar with from other mandatory information such as PRIIPs KIDs are used in the German marketplace.*

**Question R/Answer 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.

1. *Possibility for retail clients to opt out of receiving ex-ante information on costs.*

*The current provisions of MiFID II do not allow any room for a differentiated approach to handling ex-ante information on costs where retail clients are involved. This fails to take account of reality, as the “retail client” category is highly heterogeneous. Numerous complaints from clients show that there are clients who regard ex-ante information on costs as a nuisance – for example, because they are well aware of the costs associated with an order.*

*MiFID II should therefore allow clients to decide for themselves whether or not they want to receive ex-ante information on costs.*

*That this would be welcomed by many clients is backed up by various studies:*

* *According to a study conducted by Ruhr University, there is a marked preference for an opt-out option across all categories of clients (62.7%) and only 42.7% of clients see any benefit in the ex-ante information on costs. In addition, 54.2% of clients regard the additional information as actually (very) bothersome (Source: ZBB/JBB 2019, p. 126 ff [p. 136, 133])*
* *A consumer survey commissioned by the German Federal Financial Supervisory Authority (BaFin) also reveals a rather muted interest on the part of clients in the content of the information. In this survey, more than half of respondents (53%) who made an investment transaction after 3 January 2018 said they had not read the ex-ante information on costs. A further 5% of respondents said they did not know if they had looked at the information (Source: publication on BaFin website [www.bafin.de] of 7 June 2019).*

*Such an opt-out option should not of course lead to the obligation to provide ex-ante information on costs being undermined in any way. There are, after all, clients for whom such information is important when it comes to making an investment decision. We therefore believe that not all retail clients should be allowed an opt-out option. Such an option should be tied to objective and transparent conditions, e.g. a client’s experience or the provision of qualified information.*

*In a recent position paper, the German Federal Finance Ministry also advocated giving certain retail clients an opt-out option under certain conditions.[[4]](#footnote-4)*

1. *No obligation to obtain the client’s explicit consent to the use of other durable media*

*The formal requirement under Article 3(1) of the MiFID II Delegated Regulation to obtain the client’s explicit consent to the provision of regulatory documents in a durable medium other than paper is no longer in keeping with the times and needs to be amended. All durable media should be put on an equal legal footing and allowed to be used by banks as a possible means of transmission to clients.*

*The formal requirement under Article 3(1) of the MiFID II Delegated Regulation to obtain the client’s explicit consent to the provision of regulatory documents in a durable medium other than paper should be dropped. Banks should be free to decide in which durable medium they transmit information to clients provided it may, in their view, be assumed that the information will reach them. It should thus, for example, be made clear that, where clients indicate their email address for communication purposes, sending the information by email as a PDF document or, where clients use online banking, providing a download as a PDF document are automatically sufficient. Such an adjustment of the Level II requirements would take account of two main objectives: digitalisation and sustainability.*

*Sustainability aspects, in particular, should be taken into account in this context. Clients often criticise the flood of information, providing which uses up an enormous amount of resources (energy and, in many cases, even paper). This additional information on costs is perceived by many clients as “disinformation” and by no means delivers the intended benefit for clients in every case. The amount of information provided should therefore be reviewed and the requirement to provide the information in paper format reduced at any rate.*

1. *Definition of costs in the case of investment funds*

*Interpreting the term “costs” in connection with investment funds is still causing problems in practice: for example, when calculating property fund transaction costs, it is unclear whether items such as property transfer tax, management costs or maintenance costs (e.g. repairs, property supervision and other non-recoverable operating costs) and financing costs have to be included in cost transparency.*

*This approach would, however, be at odds with the general understanding of costs. It also makes a cost comparison with other investment products difficult, as these costs have nothing to do with financial instruments as such. They are, in fact, internal costs generated by the property invested in. When applied to shares as a financial instrument, this would mean that, for example, a company’s operating costs would also have to be included in the definition of costs under MiFID II. It becomes clear here that this does not make sense. The MiFID II definition of costs should therefore be confined clearly to the costs directly associated with a financial instrument.*

1. *No application of the cost transparency rules to sales*

*The provisions of MiFID II are designed to ensure that clients can make an investment decision on an informed basis (Article 24 (5), sentence 1, of MiFID II). This shows clearly that lawmakers only intended to cover the purchase of financial instruments, as it is only then that investors make an investment decision. When a financial instrument is sold, the focus is often on aspects other than the investor’s costs (e.g. expectation of price losses, liquidity needs, etc.). This is why various provisions of the MiFID II Delegated Regulation fit purchases but not sales, particularly*

* *illustration of the cumulative effect of costs on return (Article 50(10), sentence 1, of the MiFID II Delegated Regulation);*
* *illustration of anticipated spikes or fluctuations in costs (Article 50(10), sentence 2, (b) of the MiFID II Delegated Regulation.*

*It should therefore be made clear in MiFID II that the rules on cost transparency apply only to purchases and not to sales.*

1. *Standardised information on costs (cost grids)*

*We also believe it is appropriate that ex-ante information on costs should only have to be provided once to clients where a category of products with a virtually identical cost structure is involved. Clients would accordingly only receive ex-ante information on costs when placing an initial order in this product category. When placing subsequent orders relating to a product in the same category, they would not receive ex-ante information on costs again, as they are already sufficiently familiar with the relevant information on costs for any new transaction.*

*This applies mainly to products that do not contain any different product costs. Classic cases are, in particular, shares, simple bonds, or exchange (e.g. EUREX)-traded derivatives where there are usually neither product costs nor inducements.*

*In our view, it is not clear from the present wording of MiFID II and the MiFID II Delegated Regulation that ex-ante disclosure of costs always has to relate to an individual transaction and to a specific individual financial instrument.*

*As opinions on this issue have differed in the past, making clarification by way of interpretation through the ESMA Q&A No. 23 (section 9, Investor Protection) necessary, we suggest including appropriate clarification in MiFID II.*

1. *Statements of client financial instruments or client funds in accordance with Article 63 of the MiFID II Delegated Regulation*

*Besides the information requirements with regard to costs and inducements that are dealt with in the consultation paper, there are other information and reporting requirements under MiFID II. Particularly costly for investment firms in practice is compliance with the requirement under Article 63(1) of the MiFID II Delegated Regulation to send their clients at least on a quarterly basis a statement in a durable medium of the financial instruments or funds they hold for them.*

*Given that clients are widely able to view their portfolio online (or contact their investment advisor where necessary), providing them with such statements is superfluous. Compliance with this new requirement introduced under MiFID II imposes a considerable cost burden on banks. This is mainly because the statement cannot be sent to many clients electronically, as they do not have an electronic mailbox. In the case of savings banks, for example, only just under half of clients have one. The statement has to be sent to all other clients by post, which is expensive (paper, postage, etc.).*

*The above quarterly reporting requirements, compliance with which entails enormous costs every year, should be dropped in the course of the MiFID II review.*

1. https://www.bundesfinanzministerium.de/Content/DE/Gesetzestexte/Gesetze\_Gesetzesvorhaben/Abteilungen/Abteilung\_VII/19\_Legislaturperiode/Position-paper-MiFID-and-PRIIPS.pdf;jsessionid=73C971CE5F372155ECCD5870FE39F4FA?\_\_blob=publicationFile&v=9 [↑](#footnote-ref-1)
2. On the latter, see ESMA: Q&A on MiFID II and MiFIR investor protection and intermediaries topics (ESMA35-43-349), section 9: Information on costs and charges, answer to question 7. [↑](#footnote-ref-2)
3. https://www.bundesfinanzministerium.de/Content/DE/Gesetzestexte/Gesetze\_Gesetzesvorhaben/Abteilungen/Abteilung\_VII/19\_Legislaturperiode/Position-paper-MiFID-and-PRIIPS.pdf;jsessionid=73C971CE5F372155ECCD5870FE39F4FA?\_\_blob=publicationFile&v=9 [↑](#footnote-ref-3)
4. https://www.bundesfinanzministerium.de/Content/DE/Gesetzestexte/Gesetze\_Gesetzesvorhaben/Abteilungen/Abteilung\_VII/19\_Legislaturperiode/Position-paper-MiFID-and-PRIIPS.pdf;jsessionid=73C971CE5F372155ECCD5870FE39F4FA?\_\_blob=publicationFile&v=9 [↑](#footnote-ref-4)