

European Investors/VEB response on ESMA’s consultation paper on the draft technical standards on the provisions of investments services and activities in the European Union by third-country firms

European Investors/VEB are grateful for the opportunity to respond to the ESMA consultation paper on draft technical standards on the provisions of investments services and activities in the European Union by third-country firms (hereafter ‘draft technical standards’)

When revising the draft technical standards, European Investors/VEB believe ESMA is not addressing one critical observation we already shared multiple times in several working groups and at the ESMA SMGS-level. The issue we point to is the impoverishment of retail investment products because of the languages used in the investment services and KID which are not accepted by relevant competent authorities. We will elaborate on this further below.

Issue

As a consequence of the introduction of PRIIPs, advising or selling a product can only take place if a KID is provided. Although on the basis of Level 1 a KID can be published in a language other than the applicable official national language, many NCAs have implemented the possible condition that the KID must always be published in the official national language, pointing to interference of PRIIPs with art. 46 of MiFID. As the requirements set out in article 46 of MiFID are also subject of these draft technical standards, European Investors/VEB is strongly suggesting to act on this issue. We list the arguments to act adequately below.

Many non-EU investment firms or manufacturers did not translate and adjust their investor information to the PRIIPs requirements and into all 27 official national languages. As a consequence it is not possible to buy many non-EU products and ETF’s anymore, mostly US products which provide efficient alternatives for European funds with lower costs. This have led to an impoverishment of investment products within the European capital markets as well as higher costs for investors in case there is a European alternative.

European Investors/VEB received various complaints from its members regarding this issue. This is a problem for investors because they cannot purchase extra units of a product in case they already held some of these products. They can only hold their current position or sell it. As a consequence the investment portfolios become more illiquid. In combination with the current Corona-crisis, the present low interest rate environment and the stringent oversight of the regulators this have led to a greater risk of creating and selling of inferior investment alternatives, detrimentally covered by a KID in the national languages.

Amendment proposal

The proposed amendment of the draft regulation article 1 paragraph 1 under i), Article 1, paragraph 3 under a), b) and c) and article 2 paragraph 2 under a), b) and d) might not be sufficient enough to address this critical issue.

To address the above mentioned issue of the impoverishment of retail investment products because of the languages used in the investment services and KID, European Investors/VEB propose to amend the technical standards.

The information provided to retail investors should be available in multiple languages. Most important, the information should be available in English as this is the commonly used language in the financial industry and financial markets. Secondly, the information should be available in the official national language where the product is offered or service is available.

The new definition of *'relevant languages acceptable (for ESMA and the relevant competent authorities)*' should be: "Each official language of one the EU member states under the condition that all information is also provided in English'.

The listed articles below should be amended as follows (European Investor/VEB amendments in *italic*):

- ❖ To article 1 paragraph 1 under i) should be add '*...third-country firm, taking into account the use of relevant languages acceptable for ESMA and the relevant competent authorities*'.
- ❖ To article 1 paragraph 3 under a) should be add '*...the planned use of by ESMA and relevant competent authorities as acceptable defined languages by third-country...*'
- ❖ To article 1 paragraph 3 under b) should be add '*....requirements under Article 46 of Regulation EU 600/2014, including the use of by ESMA and relevant competent authorities as acceptable defined languages.*
- ❖ To article 1 paragraph 3 under b) should be add '*....to its clients are suitable and presented in the relevant languages of the Union.*'
- ❖ To article 2 paragraph 2 under a) in the enumeration of examples "(such as any agents, roadshows, telephone calls, websites...)", should be add '*use of relevant languages*'.
- ❖ To article 2 paragraph 2 under b) should be add '*....the categories of clients and the Union languages used when interacting with these clients, in relation to which the third-country firm will use them;*'
- ❖ To article 2 paragraph 2 under d) should be add '*the in all Union languages available website(s) that will be used by the third-country firm...*'
