BEUC The European Consumer Organisation

Q1: Please insert here any general observations or comments that you would like to make on this call for evidence, including any relevant information on you/your organisation and why the topics covered by this call for evidence are relevant for you/your organisation.

BEUC welcomes the opportunity to provide feedback to ESMA on the topic of retail investor protection. In addition to our consultation response, please find here our response to the EU's consultation on the EU Retail Investment Strategy and our joint NGO briefing on how to incorporate sustainability into the EU Retail Investment Strategy. BEUC is in favour of a full ban on the payment of inducements to financial advisers, as already implemented in the Netherlands and the UK (see our campaign website thepriceofbadadvice.eu).

Q2: Are there any specific aspects of the existing MiFID II disclosure requirements which might confuse or hamper clients' decision-making or comparability between products? Are there also aspects of the MiFID II requirements that could be amended to facilitate comparability across firms and products while being drafted in a technology neutral way? Please provide details.

Q3: Are there specific aspects of existing MiFID II disclosure requirements that may cause information overload for clients or the provision of overly complex information? Please provide details.

Q4: On the topic of disclosures, are there material differences, inconsistencies or overlaps between MIFID II and other consumer protection legislation that are detrimental to investors? Please provide details.

Under MiFID II, financial advisers are required to disclose to consumers any inducements that they receive. While BEUC favours a ban on the payment of inducements to improve the financial advice that is given to consumers, we believe that there are current inconsistencies between MiFID II and the Insurance Distribution Directive (IDD) when it comes to the disclosure of inducements. These rules should be aligned, and insurance intermediaries and undertakings should at a minimum be required to also disclose the nature and full amount of inducements that they receive when giving investment recommendations. Beyond disclosure, insurance intermediaries should also be required to provide a quality enhancing service to their clients.

Q5: What do you consider to be the vital information that a retail investor should receive before buying a financial instrument? Please provide details

It is vital for consumers to receive PRIIPs and UCITS KID documents prior to making investment decisions, and that this should be provided to consumers in good time (sufficiently in advance of making an investment decision, to give consumers time to reflect and compare different offers).

Beyond this, it is critical that financial intermediaries disclose any potential conflicts of interests to clients, and that investors should receive information in relation to the nature and total amount of inducements intermediaries receive from making certain investment recommendations.

Q6: Which are the practical lessons emerged from behavioural finance that should be taken into account by the Commission and/or ESMA when designing regulatory requirements on disclosures? Please provide details and practical examples.

There is mounting evidence, drawing from behavioural economic studies, that consumers struggle to understand the costs of investment products and the impact that these have on investment returns. For instance, the UK's Financial Conduct Authority's (FCA) market study into the asset management industry, found evidence that consumers "rarely engage with [the] charges associated with fund investment." The study also found that "investors' awareness and focus on charges is mixed and often poor," with nearly half of retail investors not even aware that they are paying fund charges for their asset management services. According to FCA analysis of browsing data from online investment platforms, very few investors seek out information related to costs. Of all the visits to the website to look at funds, fewer than 9% of visitors looked for charges' information, while under 3% look at documents (including the KID).

A lack of understanding about the fees and costs associated with investing harms retail investors in two ways: directly by causing savers to hold poorer value-for money products, and indirectly by reducing competition between asset managers to lower charges over time. Indeed, the FCA's study confirms that there is evidence of "weak price competition in a number of areas of the asset management industry" – firms "do not typically compete on price, particularly for retail active asset management services." The FCA's study meanwhile also found that there is "no clear relationship between price and performance – the most expensive funds do not appear to perform better than other funds before or after costs." In fact, "there is some evidence of a negative relationship between net returns and charges."

In 2018, the UK Financial Conduct Authority published a discussion paper on 'drawing attention to charges in the asset management industry'. The paper drew attention to the fact that simply providing consumers with information in disclosure documents about charges, does not guarantee that they will use it in their decision-making. The paper found however that clearly presenting engaging information in a prominent way can enhance the effectiveness of disclosures. For instance, the paper found that **using colour, graphics and plain language** as well as **warnings and impact charts** helped consumers in their decision-making when making investment decisions. According to the FCA discussion paper, warnings reminding participants to check how much they were paying and that charges can impact returns had a significant impact on consumer's decision making.

Warnings that draw investors' attention to the impact that costs and charges can have on the return of investment products should be promoted in regulatory disclosures made to consumers. Beyond warnings, the FCA discussion paper also recommends using 'impact charts' in disclosures to consumers, demonstrating to consumers how ongoing charges might reduce returns over time. Images and graphics can be used to simplify complex concepts more than text, and could be promoted in regulatory disclosures to consumers.

Furthermore, EU public authorities should support the development of online tools that could help consumers to easily compare between investment funds, such as Finansportalen run by our member the Norwegian Consumer Council. In the United States, FINRA already operates a 'Fund Analyzer' tool that allows consumers to compare investment funds. Similar comparison tools could allow European consumers to compare the core features of investment products offered to them by advisers. In addition, public authorities should support tools similar to the Fair Finance Guide, which allow consumers to easily compare the sustainability of their investment products.

Q7: Are there any challenges not adequately addressed by MIFID II on the topic of disclosures that impede clients from receiving adequate information on investment products and services before investing? Please provide details.

BEUC supports ESMA's Technical Advice on inducements that further measures are needed to improve client's understanding of inducements, including by:

- Introducing an obligation to provide in all inducement disclosures an explanation, in layman's terms, what inducements are. Such an explanation should be sufficiently clear and rely on simple language to ensure that all retail clients understand the nature and impact of inducements.
- Clarifying that ex-ante and ex-post inducement disclosures should always be done on an ISIN-by-ISIN basis. This would allow clients to more easily see where the firm might be more incentivised to recommend and sell a certain product (i.e. showing more clearly to consumers on which products the firms make the most money).
- Lastly, under MiFID II, there is a requirement for financial advisers to provide a quality-enhancing service to clients when retaining inducements. BEUC supports ESMA's recommendation in its Technical Advice on inducements to require intermediaries to provide a list of the quality enhancing services that they provide to clients on their website (that is regularly updated).
- For further recommendations on how to enhance cost disclosures for consumers under MiFID II, please also read our member vzbv's position paper on MiFID II.

Lastly, as demonstrated by the European Commission's Retail Distribution Study, retail investors struggle to collect comprehensive information on the fees of investment products, impeding their ability to compare between different products and distributors. Often, consumers need to talk directly with an adviser in order receive necessary information to understand the cost of investment products. It can also often be difficult to find the relevant disclosure documents on the website of providers (such as the PRIIPs or UCITS KID documents), these documents are often not easily accessible (e.g. consumers need to spend significant time searching websites to find the relevant documents) and/or consumers may need to be a client to be able to access these documents:

> *"[For] funds, the Key Investor Information Document (KIID) contains the essential information of the product, including costs and charges. However, in some cases, e.g. when buying a third party fund, a retail investor would need to combine fee information from the KIID with the custody charges of the tariff sheet. KIIDs are also not systematically available on the distributors' websites, and investors would need to retrieve them using other sources. Quite frequently, distributors do not display any or only partial information on applicable costs and charges (at least the information could not be found on a best efforts basis on the webpage). These elements make it very difficult for a retail investors to independently gather information and be able to choose the suitable product or channel. Note that there is no legal obligation for distributors to display fees to non-clients."* **European Commission, Retail Distribution Study**

Furthermore, it can be difficult for retail investors to find relevant information about the level of inducements that investment firms receive (as inducements do not need to be disclosed in the UCITS KID and/or PRIIPS KID documents), and very often this information might be provided at a very late stage in the investment process (i.e. in the ex-ante MiFID II cost disclosure statement provided to retail investors). This in turn increases efforts for retail investors to compare between products and distributors. As a result, the Retail Distribution Study concludes that retail investors might simply refrain from investing or simply choose among the products provided by the bank or insurance company where they are already a client, preventing them from shopping around. All UCITS KID documents should be made available to all consumers in a dedicated public sections on manufacturers and distributors website (i.e. available to non-clients) in a prominent manner, to help improve access to these documents for consumers.

At the moment, inducements can often also be disclosed at a very late stage during the sales/advice process, and it is necessary for consumers to have up-front access to information in an easily and accessible manner, on a prominent place on the websites of investment firms/intermediaries. Drawing on rules recently implemented by the Central Bank of Ireland, MiFID II should be amended in order to require intermediaries/investment firms to publish on their websites a comprehensive summary (e.g. a table) of the details of the inducement arrangements they have with any product producers with which they have an appointment or from which they receive inducements for arranging products. This document should be easily available to consumers on the public-facing part of the website of investment firms (i.e. available to non-clients). At a minimum, this summary table could (for instance) include:

- the basis on which an inducement is payable;
- an indication of the amount of percentage of inducement paid;
- any additional benefits to be paid or provided to the intermediary;
- details of any fees, administrative costs or non-monetary benefits, which could be paid to the intermediary
- further relevant summary information (e.g. ISIN, risk and reward profile, costs information, etc.), including the links to relevant UCITS KID documents

Q8: In case of positive answer to one or more of the above questions, are there specific changes that should be made to the MiFID II disclosure rules to remedy the identified shortcomings? Please provide details.

See our response to Q7 for our recommendations.

Q9: On the topic of disclosures on sustainability risks and factors, do you see any critical issue emerging from the overlap of MiFID II with the Sustainable Finance Disclosure Regulation (SFDR) and other legislation covering ESG matters?

Q10: Are there any other aspects of the MiFID II disclosure requirements and their interactions with other investor protection legislations that you think could be improved or where any specific action from the Commission and/or ESMA is needed?

Q11: Do you have any empirical data or insights based on actual consumers usage and engagement with existing MiFID II disclosure that you would like to share? This can be based on e.g., consumer research, randomized controlled trials and/or website analytics.

<u>Digital disclosures</u>

Q12: Do you observe a particular group or groups of consumers to be more willing and able to access financial products and services through digital means, and are therefore disproportionately likely to rely on digital disclosures? Please share any evidence that you may have, also in form of data.

Q13: Which technical solutions for digital disclosures (e.g., solutions outlined in paragraph 27 or additional techniques) can work best for consumers in a digital - and in particular smartphone -

age? Please provide details on solutions adopted and explain how these have proven an effective way to provide information that is clear and not misleading.

Q14: Would it be useful to integrate any of the approaches set out in paragraph 27 above in the MIFID II framework? If so, please explain which ones and why.

Q15: Should the relevant MIFID II requirements on information to clients be adapted in light of the increased use of digital disclosures? If so, please explain how and why.

If digital disclosures are adopted for consumers, it is critical that this information is provided to consumers in a durable medium. This is important for consumer protection purposes, to ensure that information is under the consumer's control and to prevent service providers from unilaterally modifying the information they have given to consumers at a later date. Documents need to be provided in a durable manner so consumers can store the information in a way that is accessible for future reference.

Q16: Do you see the general need for additional tools for regulators in order to supervise digital disclosures and advertising behind 'pay-walls', semi-closed forums, social media groups, information provided by third parties (i.e., FINfluencers), etc? Please explain and outline the adaptions that you would propose.

Digital tools and channels

Robo-advisers

Q17: To financial firms: Do you observe increased interest from retail investors to receive investment advice through semi-automated means, e.g., robo-advice? If yes, what automated advice tools are most popular? Please share any available statistics, data, or other evidence on the size of the market for automated advice.

Q18: Do you consider there are barriers preventing firms from offering/developing automated financial advice tools in the securities sectors? If so, which barriers?

Q19: Do you consider there are barriers for (potential) clients to start investing via semiautomated means like robo-advice caused by the current legal framework? If so, please explain and outline what you consider to be a good solution to overcome these barriers.

Q20: In case of the existence of the above-mentioned barriers, do you have evidence of the impact that they have on potential clients who are interested in semi-automated means? For instance, do they invest via more traditional concepts or do they not invest at all?

Q21: Do you consider the potential risks and opportunities to investors set out above to be accurate? If not, please explain why and set out any additional risk and opportunities for investors.

Q22: Do you consider that the existing MiFID regulatory framework continues to be appropriate with regard to robo-advisers or do you believe that changes should be added to the framework? If so, please explain which ones and why.

Online brokers

Q23: Do you think that any changes should be made to MiFID II (e.g., suitability or appropriateness requirements) to adequately protect inexperienced investors accessing financial markets through execution only and brokerage services via online platforms? If so, please explain which ones and why.

BEUC has several concerns with the way appropriateness tests are often carried out under MiFID II:

- The questionnaires designed to assess consumers knowledge about complex financial products are often inadequately designed. Many investment firms often used standardized questionnaires to gather information on client's knowledge and experience. However, according to the Central Bank of Ireland the questionnaires often fail to take into account the characteristics, risk or complexity of the proposed investment products, meaning that consumers are not adequately tested about their knowledge of the investment products in question.
- Risk warnings provided to consumers should be improved. According to research by national competent authorities, including the UK's Financial Conduct Authority and the Central Bank of Ireland, the risk warnings that are provided to retail investors who fail appropriateness assessments are often inadequate. For instance, the UK's FCA found that prospective clients who failed the appropriateness assessment for entering into complex CFD products often easily over-rode risk warnings and proceeded to open accounts and enter into CFD transactions, despite the products being inappropriate for them.
- Risk warnings should be designed in a way to interrupt the trading process, and they should use clear language to communicate that a specific product or service is not appropriate for the consumer. Suggestions by the UK FCA include, for instance, introducing a mandatory cooling off period before a client can proceed with the transaction. The warnings used by firms should clearly advise the client that this product is too complex, and that the consumer may wish to seek financial advice before proceeding with their transaction.

In addition, the Financial Conduct Authority has published a discussion paper looking at strengthening the UK's financial promotion rules for high-risk investments. The FCA is consulting on several potential policy remedies, which may be relevant for upgrading the appropriateness rules under MiFID II, including introducing:

- More effective risk warnings for potential high-risk investments.
- Requiring consumers to watch 'just in time' education videos on the risks associated with certain types of high-risk investments.
- Requiring consumers to demonstrate sufficient knowledge about financial products, for example by passing an online test.

Q24: Do you observe business models at online brokers which pose an inherent conflict of interest with retail investors (e.g., do online brokers make profits from the losses of their clients)? If so, please elaborate.

Q25: Some online brokers offer a wide and, at times, highly complex range of products. Do you consider that these online brokers offer these products in the best interest of clients? Please elaborate and please share data if possible

Q26: One of the elements that increased the impact on retail investors in the GameStop case was the widespread use of margin trading. Do you consider that the current regular framework sufficiently protects retail investors against the risks of margin trading, especially the ones that cannot bear the risks? Please elaborate.

Q27: Online brokers, as well as other online investment services, are thinking of new innovative ways to interact and engage with retail investors. For instance, with "social trading" or concepts that contain elements of execution only, advice, and individual portfolio management. Do you consider the current regulatory framework (and the types of investment services) to be sufficient for current and future innovative concepts? Please elaborate.

Q28: Are you familiar with the practices of payment for order flow (PFOF)? If yes, please share any information that you consider might be of relevance in the context of this call for evidence

Q29: Have you observed the practice of payment for order flow (PFOF) in your market, either from local and/or from cross border market participants? How widespread is this practice? Please provide more details on the PFOF structures observed.

Q30: Do you consider that there are further aspects, in addition to the investor protection concerns outlined in the ESMA statement with regards to PFOF, that the Commission and/or ESMA should consider and address? If so, please explain which ones and if you think that these concerns can be adequately addressed within the current regulatory framework or do you see a need for legislative changes (or other measures) to address them.

According to our members (e.g. Test Achats, Stiftung Warentest), zero-commission trading models are becoming increasingly more popular in the European Union, allowing consumers to trade at increasingly lower costs. However, consumers should be aware that there is no such thing as a 'free lunch', and that many of the zero-commission brokers offering services to retail clients often receive payments from third parties in order to execute orders (i.e. 'payment for order flow') which leads to conflicts of interest. Payment for order flow models can incentivise brokers to route clients orders to counterparties who are willing to pay higher inducements (e.g. see vzbv), to the potential disadvantage of the consumers. Since brokerage platforms benefit from payments from third parties that execute their trades, brokers may also have very little incentive to respect their 'best execution' obligations under MiFID II. Lastly, payment for order flow models can also potentially decrease cost transparency for consumers when comparing between brokers. BEUC supports the European Commission's legislative proposal to ban payment for order flows under MiFID II.

Q31: Have you observed the existence of "zero-commission brokers" in your market? Please also provide, if available, some basic data (e.g., number of firms observed, size of such firms and the growth of their activities).

Q32: Do you have any information on "zero-commission brokers" business models, e.g., their main sources of revenue and the incidence of PFOF on their revenue? If so, please provide a description.

Q33: Do you see any specific concern connected to "zero commission brokers", in addition to the investor protection concerns set out in the ESMA statement that the Commission and/or ESMA should consider and address? Please explain and please also share any information that you consider might be of relevance in the context of this call for evidence. Please also explain if you consider that the existing regulatory framework is sufficient to address the concerns listed in the ESMA statement regarding zero-commission brokers or do you believe changes should be introduced in the relevant MiFID II requirements.

Q34: Online brokers seem to increasingly use gamification techniques when interacting with clients. This phenomenon creates both risks and potential benefits for clients. Have you observed good or bad practices with regards to the use of gamification? Please explain for which of those a

change in the regulatory framework can be necessary. Do you think that the Commission and/or ESMA should take any specific action to address this phenomenon?

The employment of gamification techniques can potentially make investment platforms more accessible to average retail investors, and help to de-mystify the investment process for consumers. However, employed in the wrong way, certain gamification techniques could increase the risks for consumers when taking investment decisions. There is evidence that some of the behavioural prompts/nudges applied through gamification techniques could encourage harmful behaviours by retail investors, including for instance excessive trading by retail investors.

The employment of gamification techniques may also desensitise consumers about the inherent risk associated with investing. For instance, prize offers when executing trades may encourage retail investors to focus primarily on the reward, rather than the risks associated with a trade, and potentially encourage investing behaviours that the retail investor may not normally have undertaken. Some gamification techniques employed by investment platforms could encourage retail investors to engage in trading behaviour that may also not be consistent with their investment goals and/or risk tolerance.

Gamification techniques should be designed in a way to ensure that they are in the interest of consumers, and regulatory intervention may be needed limit the types of techniques that can be employed by investment platforms and/or to ensure that any techniques employed are in the best interest of the client.

Q35: The increased digitalisation of investment services, also brings the possibility to provide investment services across other Member States with little extra effort. This is evidenced by the rapid expansion of online brokers across Europe. Do you observe issues connected to this increased cross-border provision of services? Please elaborate.

Q36: Do you observe an increasing reliance of retail clients on information shared on social media (including any information shared by influencers) to base their investment decisions? Please explain and, if possible, provide details and examples. Do those improve or hamper the decision-making process for clients?

Retail investment products are increasingly marketed towards investors through online platforms towards ordinary investors, including potential high-risk investments that are not the most appropriate for many consumers. For instance, in 2021, the UK Financial Conduct Authority published research findings showing how high-risk investment products, such as crypto-currencies, speculative mini-bonds or other high-risk products are often targeted towards consumers through online adverts and social media. There is evidence, that younger consumers are more likely to consider taking out such high-risk investments, prompted in part by the accessibility of new investment apps. However, many of the products promoted to consumers through online platforms may not always be the most suitable for consumers. According to the FCA's research findings, "those with less than three years' experience are more than twice as likely [compared to more experienced investors] to rely on YouTube or social media for research or finding investment opportunities."

Q37: What are, in your opinion, the risks and benefits connected to the use of social media as part of the investment process and are there specific changes that should be introduced in the regulatory framework to address this new trend?

In addition, increasingly frauds and online investments scams are marketed through online platforms to consumers. For instance, our UK member Which? has found evidence that search engines such as

Google and Bing routinely advertise investment scams through their platforms, and that online platforms fail to properly verify or vet the promoters of financial products and services. Investors must be better protected online, and online platforms should have a legal obligation for preventing fake and fraudulent content from being marketed on their platforms. BEUC supports new requirements under the Digital Services Act (DSA) for online platforms to "know your business customer" and have greater traceability of the products and services offered on platforms, introducing for instance a requirement for platforms to regularly and randomly check and stop fraudulent companies from using their services to sell and promote illegal and unsafe products to consumers. This requirement should also apply to financial services products that are marketed through online media platforms to consumers.

Q38: Are you aware of the practices by which investment firms outsource marketing campaigns to online platform providers/agencies that execute social media marketing for them, and do you know how the quality of such campaign is being safeguarded?

Q39: Have you observed different characteristics of retail clients, such as risk profiles or trading behaviour, depending on whether the respective client group bases their investment decision on information shared on social media versus a client group that does not base their investment decision on social media information? Please elaborate.

Q40: Do you have any evidence that the use of social media (including copy/mirror trading) has facilitated the spreading of misleading information about financial products and/or investment strategies? Please elaborate and share data if possible.

Q41: Have you observed increased retail trading of 'meme stocks', i.e. equities that experience spikes in mentions on social media? Please share any evidence of such trading and, if possible, statistics on outcomes for retail investors trading such instruments.

Risk warnings

Q42: Do you consider that the current regulatory framework concerning warnings provides adequate protection for retail investors? If not, please explain and please describe which changes to the current regulatory framework you would deem necessary and why.

Open Finance

Q43: Do you believe that consumers would benefit from the development of an 'open finance' approach similarly to what is happening for open banking and the provision of consumer credit, mortgages, etc? Please explain by providing concrete examples and outline especially what you believe are the benefits for retail investors.

The Payment Services Directive (PSD2) first introduced a legal environment enabling consumers to consent to third parties accessing their payment account information or making payments on their behalf, and established clear technical rules for accessing this consumer data. The scope of PSD2 is currently limited to payment accounts, and currently does not cover savings accounts, investment accounts, pensions savings, mortgages and consumer credit, or insurance products. Sharing non-payment account information and broadening the scope of account data could have benefits for consumers. In the area of retail investment, Open Finance could potentially allow the development of new tools for consumers, including:

- **Account information services** that provide an aggregated overview of the financial situation of consumers, enabling third parties to have a holistic view of a consumer's financial situation

and in turn facilitate the emergence of new advice and financial support services, or make it easier for consumers to share comprehensive information with their financial adviser.
- **Personal financial management dashboards that** enable the consumer to easily understand their overall financial position (their savings, investments, pensions, spending, etc.) and assist consumers in their decision-making when choosing between different financial services providers (e.g. whether to put an additional €100 into a savings account, a pension account or an investments product).

The EU institutions should extend the scope of PSD2 to other types of financial information (including investment accounts). Open Finance could stimulate the provision of financial products by non-bank third parties (such as FinTech firms or other product providers) and other banks acting as 'third parties' in turn stimulating competition in the retail investment market. Information should always be shared with the explicit consent of the consumer (see our position paper on Open Banking), in a controlled way (through the use of APIs, see more below).

Q44: What are, in your opinion, the main risks that might originate from the development of open finance? What do you see as the main risks for retail investors? Please explain and please describe how these risks could be mitigated as part of the development of an open finance framework.

Opening access to consumer data could lead to an increased risk of fraud, necessitating the creation of adequate security standards when third parties access consumer data. Account access to consumer information should be done through dedicated Application Programming Interface (API) standards to ensure that consumers' data is shared in a controlled way.

Under PSD2, banks have set up common and secure open standards of communication (referred to as API standards) between them and third parties wishing to access the consumer data. However, where third parties are unable to access consumer data through an API (for instance, for accessing information on savings accounts), they employ so-called 'screen scraping' techniques to access consumer data. Screen scraping techniques allow Third Party Providers (TPPs) to access consumers financial transaction data by logging into digital portals on behalf of the consumers using their login and password details. Screen-scraping raises serious security and consumer protection risks that should be addressed in any eventual EU Open Finance framework. Such techniques are unsecure for the consumer, since it requires the sharing of a consumer's personal security credentials (such as their PIN information or their password) with third parties. Furthermore, screen-scraping gives third parties full access to the customer's account, including for example, the ability to access sensitive data that has not been fully authorised by the consumer.

Third parties should also only be allowed to access consumer data through the so-called re-direction authentication method, to ensure that consumer's personalised security credentials (such as their PIN information or login information) are not shared with any third parties. Stricter authorisation methods through an API provide more control over the type and extent of data that is shared with third parties and offers a more secure way to interact with third parties. Technical solutions exist in order to avoid the communication of sensitive consumer information with third parties, and must be adopted to ensure secure communication between consumers, firms and third parties.

In addition, since the entry into force of PSD2, a large variety of different API standards exist across Europe, meaning that third party firms may need to use different API standards to communicate with different banks when accessing the data of consumers. This leads to challenges, such as inefficiencies for third parties wishing to access banking data and the fragmentation of the digital financial ecosystem. A lack of standardised APIs means that TPPs must integrate themselves with multiple provider APIs, and that data is not shared in a consistent manner. Under any future Open Finance framework, API standards should be developed in a way that promotes interoperability, efficiency and usability for all users, as well as granular data filtering principles in order to be able to adhere to data minimisation principles. The European institutions should support the development of a single EU-wide Application Programming Interface (API) for the purposes of PSD2 and for any future initiatives in Open Finance. Standardisation of APIs reduces barriers to entry and supports innovation, as third parties relying on standardised APIs do not have to integrate with a different technology for each firm that they connect to. Building on the experience with PSD2, APIs should ideally be specified by regulators and not be left to solely the industry to develop.

Q45: Which client investor data could be shared in the context of the development of an open finance framework for investments (e.g., product information; client's balance information; client's investment history/transaction data; client's appropriateness/suitability profile)?

Under any future Open Finance initiatives, information that should be shared to third parties (with the explicit consent of the consumer) should be limited to information to (a) financial data and (b) non-financial data that is strictly necessary to facilitate the provision of the investment service. The principles enshrined in the GDPR on data minimisation should be fully applied. Any eventual Open Finance initiative should prioritise facilitating the sharing of data related to (i) product information (policy features, fees or charges, etc.) and (ii) other basic consumer data (such as their name, address, and other personal information necessary for carrying out transactions). BEUC agrees with ESMA that client's balance information, their investment history/transactions and a consumer's suitability profile would be relevant to share with third parties (with the explicit consent of the consumer).

Q46: What are the main barriers and operational challenges for the development of open finance (e.g., unwillingness of firms to share data for commercial reasons; legal barriers; technical/IT complexity; high costs for intermediaries; other)? Please explain.

Q47: Do you see the need to foster data portability and the development of a portable digital identity? Please outline the main elements that a digital identity framework should be focusing on.

Q48: Do you consider that regulatory intervention is necessary and useful to help the development of open finance? Please outline any specific amendments to MiFID II or any other relevant legislation.

Regulatory intervention is necessary to facilitate the development of Open Finance initiatives. Any eventual Open Insurance framework should be based on compulsory data sharing (based on the explicit informed consent of the consumer) to firms inside the regulated insurance industry and with other authorised third parties, based on a bespoke licensing approach. All firms wishing to access data through Open Finance initiatives should be strictly accredited and supervised by their national competent authorities, including in close cooperation with national data protection authorities. This should ensure that only reputable firms can offer Open Finance related services to clients. It will be also necessary to establish a public register of all accredited data intermediaries, thus easily allowing the consumer to check if the entity is authorised or not.

Q49: What do you consider as the key conditions that would allow open finance to develop in a way that delivers the best outcomes for both financial market participants and customers? Please explain.