



SMSG RESPONSE TO THE EUROPEAN COMMISSION

SMSG response to the European Commission's consultation on the EU Strategy for Retail Investors

1. GENERAL QUESTIONS

Current EU rules regarding retail investors (e.g. [UCITS \(undertakings for the collective investment in transferable securities\)](#), [PRIIPs \(packaged retail investment and insurance products\)](#), [MiFID II \(Markets in Financial Instruments Directive\)](#), [IDD \(Insurance Distribution Directive\)](#), [PEPP \(Pan European Pension Product\)](#) or [Solvency II \(Directive on the taking-up and pursuit of the business of insurance and reinsurance\)](#)) aim at empowering investors, in particular by creating transparency of the key features of investment and insurance products but also at protecting them, for example through safeguards against mis-selling.

Question 1.1 Does the EU retail investor protection framework sufficiently empower and protect retail investors when they invest in capital markets?

Yes

No

Don't know

Please explain your answer and provide examples

- The retail points of sale of investment services are the main source of investor information / education for EU adult citizens,
- Recent move to a largely not intelligible, not comparable, and sometimes even misleading, key information document, which does not include the most relevant information about performance and entails implicit transaction costs.
- Very difficult to seek and obtain redress; investors investing directly into capital markets are excluded from EU collective redress rules. The pension savers exposed to Wirecard will quite likely never get adequate redress. As mentioned in the SMSG Report on Wirecard, the SMSG is of the opinion that the European Commission should reflect on the eligibility for collective redress of shareholders from the companies in which they have invested (for instance in case of misleading information).
- Inadequate client categorization rules de facto prevent qualified non-professional savers to invest in capital markets
- No empowerment of citizens: individual investors are prevented from engaging in investee companies (the "G" part of "ESG" finance),
- Under-developed employee share ownership (one hundred times less than in the US for SMEs in for example), a powerful possible complementary place for adult investor education, among other major benefits.

While aimed at protecting retail investors, some rules may require specific procedures to be followed (e.g. the need to use investment advice and complete a suitability assessment) or may limit investment by retail investors (e.g. by warning against purchase of certain investment products or even completely prohibiting access).

Question 1.2 Are the existing limitations justified, or might they unduly hinder retail investor participation in capital markets?

- Yes, they are justified
- No, they unduly hinder retail investor participation
- Don't know

Question 1.3 Are there any retail investment products that retail investors are prevented from buying in the EU due to constraints linked to existing EU regulation?

- Yes
- No
- Don't know

Question 1.6 Among the areas of retail investment policy covered by this consultation, in which area (or areas) would the main scope for improvement lie in order to increase the protection of investors?

Select all applicable choices:

- financial literacy
- digital innovation,
- disclosure requirements,
- suitability and appropriateness assessment,
- reviewing the framework for investor categorisation
- inducements and quality of advice,
- addressing the complexity of products,
- redress,
- product intervention powers,
- sustainable investing,
- other, and if so what area?

Please explain your answer.

There is no silver bullet, and the review of retail investor protection rules must be holistic. Thus, we consider all the above categories important.

2. FINANCIAL LITERACY

For many individuals, financial products and services remain complex. To empower individuals to adequately manage their finances as well as invest, it is of crucial importance that they are able to understand the risks and rewards surrounding retail investing, as well as the different options available. However, as shown by the [OECD/INFE 2020 international survey of adult financial literacy](#), many adults have major gaps in understanding basic financial concepts.

While the main responsibility for financial education lies with the Member States, there is scope for Commission initiatives to support and complement their actions. In line with the [2020 Capital Markets Union Action Plan](#), DG FISMA published a [feasibility assessment report](#) and will, together with the OECD, develop a financial competence framework in the EU. In addition, the need for a legislative proposal to require Member States to promote learning measures that support the financial education of individuals, in particular in relation to investing will be assessed.

Question 2.1 Please indicate whether you agree with the following statement. Increased financial literacy will help retail investors to ...

The SMSG believes that building a sound financial education is complex, as it requires a life-long approach on three challenging dimensions: knowledge, attitude and behaviour. Financial education goes beyond just providing information, it is meant to change those three dimensions in order for people to achieve their financial well-being. In this respect, financially literate individuals:

- 1) are knowledgeable, educated and informed on the issues of managing money and assets, including banking, investments, credit, insurance and taxes;
- 2) understand the basic concepts of managing money and assets;
- 3) use that knowledge and understanding to plan and implement financial decisions

For young citizens, an entry point for financial education are schools, which are not an EU competency. Regrettably, an area as crucial as personal finance is critically missing from school curricula in many Member states. Educating adults is even more challenging: they tend to acquire just the knowledge and skills they need for a specific purpose and their behaviour tends to be well-rooted. Furthermore, adults are an extremely heterogeneous population. Therefore, retail points of sales (retail investment intermediaries) can play a central educational role. In this respect it is crucial to progress towards bias-free advice, and to ensure it is delivered by competent professionals. Additionally, Employee Share Ownership and other corporate savings plans, while rather underdeveloped in the EU, appear an effective form of adult investor education at the workplace.

The effectiveness of financial education is, however, highly debated with regards to increasing retail participation to capital markets. For example, according to several academics, "... interventions to improve financial literacy explain only 0.1% of the variance in financial behaviours studied, with weaker effects in low-income samples"¹. The reason is that financial education and literacy are primarily cognitive characteristics, while financial behaviour is affected by biases and emotions as well. The Commission may wish to assess the lasting impact of its own interventions and projects which it has financed over the last 10-15 years.

3. DIGITAL INNOVATION

Digitalisation and technological innovation and the increasing popularity of investment apps and web-based platforms are having profound impacts on the way people invest, creating new opportunities (e.g. in terms of easier access to investment products and capital markets, easier comparability, lower costs, etc.). However technological change can also carry risks for consumers (e.g. easier access to potentially riskier products). These changes may pose challenges to existing retail investors, while investor protection rules may no longer be fit for purpose.

Open finance, (i.e. giving greater access to customer data held by financial institutions to third party service providers to enable them to offer more personalised services) can, in the field of investment services, lead to better financial products, better targeted advice and improved access for consumers and greater efficiency in business-to-business transactions. In the [September 2020 digital finance strategy](#), the Commission announced its intention to propose legislation on a broader open finance framework.

Question 3.1 What might be the benefits or potential risks of an open finance approach (i.e. similar to that developed in the field of payment services which allowed greater access by third party

¹ Daniel Fernandes, Lynch, Jr., John G., Netemeyer, Richard G. (2013). "Financial Literacy, Financial Education and Downstream Financial Behaviors"

providers to customer payment account information) in the field of retail investments (e.g. enabling more competition, tailored advice, data privacy, etc.)?

Please explain your answer

We subscribe to the objective of further promoting digital innovation. However, we fear that the reference to the precedent of payment services may not fully reflect the stakes involved in the case of financial services. The latter involve far more granular information concerning both clients and products. They also generally imply the combination of a larger range of services involving a far greater diversity of players.

To begin with, the general principles of regulating digitalization and the use of AI in financial services must be observed, i.e. legal certainty, technology neutrality, and high standards of consumer and personal data protection.

As regards data protection, the risk of giving direct or indirect access to non-EU third-party providers (mainly US GAFAs or Chinese BATX) to abundant and sensitive personal data should be duly analysed, together with the risk of dissemination of this data and/or its use for unauthorized purposes.

For this reason, any reform in this area should be carefully assessed in order to avoid or minimise possible unintended consequences.

We also see the main risks of uncertainty in terms of provider liability, mis-selling due to faults by design and data protection concerns, including cyber-security risks. It must be made clear that the platform manager or owner is responsible for the information provided on the platform, including for the algorithms used to calculate and display results based on user input. Although automated investment platforms bring many advantages and cost efficiency gains, this should not be construed as a limitation of liability for investment advice provided via the platform.

At the same time, digitalization involves the mass processing of user data, which brings both advantages and risks. On- the one side, more data can improve the distribution and execution processes, but it must not, on the other side, be used against or without the consent of the consumer. It is important to note, in the context of the Open Finance recommendations of the Final Report of the High-Level Forum on the Future of the CMU, that the collection of user information must respect certain principles:

- first, it should be compliant with the EU GDPR and not extend further than financial data and,
- second, it must ensure that the consent of the data subject is not extorted.

In many instances, the provision of certain services is conditioned on the data subject expressing consent (which is a different legitimate basis for processing than what is necessary for the provision of a service or a contract); if the data subject disagrees with the processing of his or her data, in many instances the service will not be accessible, even if the data is not an essential or central element to the provision of the service. Therefore, digital finance regulation must ensure that a clear distinction is made between data processing that is essential to or part of the provision of the online financial service and what is needed to enhance outcomes or customer experience, which is based on the prior express consent of the data subject. In the latter cases, the provision of the service should not be dependent on the consent of the data subject. Lastly, there is the concern of cyber-attacks, in particular since more and more information is shared and stored in electronic mediums.

As mentioned in the SMSG report on digital finance, another risk is the increased use of artificial intelligence (AI) in voting processes. AI is being used to provide data for voting at general meetings and it enables institutional investors to robo-vote according to pre-set instructions, or in accordance with a proxy advisor's voting policy, if the investor provides no other special instructions. Such a practice necessarily transfers fiduciary voting authority from investors to proxy advisors and consequently impacts governance and oversight of companies, as it allows investors to set their voting decisions on autopilot (set and forget). According to a study , 114 institutional investors voted in lockstep alignment with the two largest proxy advisors and robo-voting institutional investors in the US managed collectively more than \$5 trillion in assets in 2020. The SEC therefore has issued guidance to make clear to institutional investors that fiduciary duties cannot be outsourced. In the EU, there do not yet exist any rules governing the use of AI in the area of vote execution or fiduciary duties and the SMSG suggests the Commission to analyse this phenomenon further, especially in view of the Green Deal.

Question 3.2 What new tools or services might be enabled through open finance or other technological innovation (e.g. digital identity) in the financial sector?

Please explain your answer

Digital, user-friendly, and cross-border empowerment, engagement and sustainable corporate governance tools:

- could enable the exercise of investors' voting rights, including cross-border within the EU – currently very difficult for individual shareholders – on their smart phone (recommendation of the 2020 HLF CMU).
- could improve digital consulting / voting tools for investors into packaged products (investment funds, pension funds, personal pensions, etc.), e.g. for consulting them on fundamental issues, including sustainability, for example via independent board members

We could, in particular, see improvements for the onboarding processes for new clients, which currently take a long time and could be simplified by financial institutions having access to such information in the form of a digital investment ID. We welcome the Commission's recent initiative on a digital ID and we encourage its further adoption into other processes to reduce much of the laborious and time-consuming account-opening procedures which many investors experience and which constitute a barrier to empowering investors. This data could also support the lengthy and costly Know-Your-Customer and Anti-Money-Laundering processes that accompany this process. Access to specific client data, for example, by sharing the answers to specific questions, if clients agree (there are already certain FinTech firms offering this service, e.g. Harmony). Firms can then use this information to fit into their own questionnaires and only ask additional information which is not yet available or to verify information on which they have doubts.

By making the contents of publicly available documentation machine-readable, the data within them can be easily extracted and used for various purposes, such as aggregation, comparison, or analysis. In the field of retail investment, examples would include portfolio management apps, robo advisors, comparison websites, pension dashboards, etc. DG FISMA has already started work in this area in the context of the European Single Access Point. Machine-readability is also required by newly proposed legislation, such as the Markets in Crypto-Assets Regulation (MiCA), whilst legacy legal framework will need adaptation.

In the field of retail investment, applicable EU legislation does not currently require documents to be machine-readable. However, some private initiatives are already demonstrating that there is interest from market actors in more standardisation and machine-readability of the data provided within existing retail investment information documents, such as the PRIIPs KID or MiFID disclosures. Requiring machine readability of disclosure documents from scratch could help to open business opportunities for third parties, for example by catering to the needs of advisers and retail investors who prefer direct access to execution only venues.

Question 3.3 Should the information available in various pre-contractual disclosure documents be machine-readable?

Yes

No

Don't know

Please explain your answer

Yes, it is necessary in order to digitalise and allow optimal use of regulatory information, which is now cross-sectoral and covering most retail investment products (including personal and occupational pension savings). However, it is necessary to perform a fitness check of the relevant information that can be supported for machine readability.

In the field of retail investment, applicable EU legislation currently does not require pre-contractual documents (such as the PRIIPs KID) to be machine-readable. Moreover, while PRIIPs KIDs are publicly available documents, there is currently no obligation for such information to be provided to consumers in a centralised

place. The documents are generally also published in a PDF format, making it difficult for financial supervisors or other interested stakeholders to extract information from them and challenging to use in a supervisory context. The development of machine-readable Key Information Documents (KIDs) could support market monitoring from a conduct of business perspective. The European Securities and Markets Authority (ESMA) recently published a study² into the potential SupTech applications associated with analysing PRIIPs KID information. The study includes a recommendation that “when a law requires the widespread production of documents, it is essential that these be made available in a flexible format such as open document format, even if in addition to PDF.” Machine-readable KIDs could also make it easier for independent third parties to offer independent comparison tools to consumers.

Even more importantly, the features and format of mandatory key disclosure documents such as UCITS KIID or PRIIPS KID must be adapted to be easily read on digital devices.

However, if the requirement for the use of machine-readable format in pre-contractual disclosure documents were to be extended, it would be important to ensure an effective supervisory monitoring of the possible negative side-effects of this measure.

The first point of attention is the consistence of the onward communication of the future open-source product information by third parties collecting it, with the originally intended target markets.

Currently product governance requirements and the related agreements between manufacturers and distributors provide a framework for this communication that mitigates the risk that regulated distributors communicate on or distribute products outside of their prescribed target markets.

In an open finance environment, the modalities of use of the collected information would be central. Freer access to product information should not entail disorderly communication or soliciting.

Also, one should not ignore the risk that unregulated platforms with unscrupulous marketing practices reuse this information to present themselves falsely as legitimate financial providers in order to conduct large-scale scams with uninformed investors.

In their schemes, such platforms can blend legitimate product information - which they could have sometimes copied unlawfully from regulated entities' websites - with illicit or fraudulent offers. Unalerted investors could be easily lured by the appearance of lawfulness of these sites due to the presence of numerous known product references and may fall prey to these frauds.

While the existence of such online manipulative practices is not new, the increasing availability of easily importable machine-readable information tends to facilitate their implementation greatly.

Also, information that is of relevance to investors must also be readable and possible to understand for humans.

Rules on marketing and advertising of investment products remain predominantly a national competence, bound up in civil and national consumer protection law, although the [2019 legislative package on cross-border distribution of investment funds](#) does remove some cross-border national barriers.

Question 3.4 Given the increasing use of digital media, would you consider that having different rules on marketing and advertising of investment products constitutes an obstacle for retail investors to access investment products in other EU markets?

Yes

No

Don't know

Please explain your answer

² ESMA, 'ESMA Report on Trends, Risks and Vulnerabilities', https://www.esma.europa.eu/sites/default/files/library/esma50-165-1524_trv_1_2021.pdf, pages 93-105.

Yes, we need to harmonise key disclosure rules across the EU to allow full comparability between similar investment products manufactured in different Member States.

However, we note that certain aspects may limit the comparability of investment products across different Member States, inasmuch as each Member State retains local specificities (due to its history, tax system, etc.) and since certain products are primarily adapted and addressed to its local target market population.

We are also of the opinion that it would be necessary to impose a minimum set of rules on service providers offering non-regulated products in the EU so that, for instance, they no longer publish advertisements presenting the financial return outlook of products without presenting their associated risks.

Currently, service providers selling non-regulated products are exempt from any rules concerning the categorisation of clients, the appropriateness/suitability assessments, the information disclosure requirements and even advertising, which raises the question of the level playing field with regulated financial entities.

Under MiFID product governance rules, which also regulate marketing communication, firms are prevented from presenting products in ways which might mislead clients (e.g. the information should not disguise, diminish or obscure important items, the information should give a fair and prominent indication of any relevant risks when referencing any potential benefits of a financial instrument, all costs and charges should be disclosed, the nature of the product must be explained, etc.).

Question 3.5 Might there be a need for stricter enforcement of rules on online advertising to protect against possible mis-selling of retail investment products?

Yes

No

Don't know

Please explain your answer

Yes, recent events have shown how easy it can be sometimes to manipulate retail investors, and how prone they are to take their information and advice on the internet (websites etc). This is even more worrying where companies use these channels to call upon the 'eco-consciousness' of consumers (e.g. German Pellets, Prokon) to mislead them.

However, it is important to note that, for regulated investments, advertising rules are already similar regardless of the used medium (e.g. radio, printed press, online, TV...). In all of these media, the product or service advertising must be "fair, clear and not misleading".

We believe that these rules should be extended to all EU and non-EU providers of non-regulated products that distribute in the EU.

As regards unauthorized providers engaging in sometimes unlawful solicitation, national competent authorities should be endowed with broader powers to order if warranted the closure of their websites or to block access to them from their national territory.

Question 3.6 Would you see a need for further EU coordination/harmonisation of national rules on online advertising and marketing of investment products?

Yes

No

Don't know

Please explain your answer, including which rules would require particular attention

Yes, differences in online advertising at national level can create detrimental effects for retail investors and uneven competitive environments. Harmonization would be beneficial for retail investors if the highest standard were harmonised, especially in case of maximum harmonisation. But we believe it is mainly an issue of enforcement of existing rules and of better supervisory convergence.

In February 2021, in the context of speculative trading of GameStop shares, [ESMA issued a statement](#)

urging retail investors to be careful when taking investment decisions based exclusively on information from social media and other unregulated online platforms, if they cannot verify the reliability and quality of that information.

Question 3.7 How important is the role played by social media platforms in influencing retail investment behaviour (e.g. in facilitating communication between retail investors, but also increasing herding behaviour among investors or for large financial players to collect data on interest in certain stocks or financial products)?

<i>Not at all important</i>	<i>Rather not important</i>	<i>Neutral</i>	<i>Somewhat important</i>	<i>Very important</i>
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>

Please explain your answer:

Social media play a more and more important role, which creates a difficult situation to control and supervise. Just as citizens should not rely primarily on medical advice by non-professionals online, investors should not rely primarily on non-professional financial advice online either. However, social media do not only have a negative role, they also stimulate the interest of younger investors in capital markets.

Question 3.8 Social media platforms may be used as a vehicle by some users to help disseminate investment related information and may also pose risks for retail investment, e.g. if retail investors rely on unverified information or on information not appropriate to their individual situation. How high do you consider this risk?

<i>Not at all significant</i>	<i>Not so significant</i>	<i>Neutral</i>	<i>Somewhat significant</i>	<i>Very significant</i>
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

[MiFID II](#) regulates the provision of investment advice and marketing communication suggesting, explicitly or implicitly, an investment strategy. Information about investment opportunities are increasingly circulating via social media, which can prompt people to decide to invest on the basis of information that is unverified, may be incorrect or unsuited to the individual customer situation. This information may be circulated by individuals without proper qualification or authorisation to do so. The [Market Abuse Regulation \(MAR\)](#) also contains provisions which forbid the dissemination of false information and forbid collaboration between persons (e.g. brokers recommending a trading strategy) to commit market abuse.

Question 3.9 Do the rules need to be reinforced at EU level with respect to dissemination of investment related information via social media platforms?

Yes

No

Don't know

Please explain your answer

Same answer as for Q3.5 and Q3.7 above

In particular, investment advice is currently almost only regulated by MIFID. EU regulation on investment advice must cover all investment products and all media providing such advice.

In addition, we also observe that certain non-regulated players or certain providers which offer non-regulated products may publish misleading or false information on social networks.

For those entities/products that are currently unregulated, the challenge would be to extend to them the rules applicable to regulated investment firms/products in order to protect investors and avoid the multiplication of internet scams that have been observed in recent years.

On-line investment brokers, platforms or apps, which offer execution only services to retail investors, are subject to the relevant investor protection rules for such services under the MiFID framework. While such on-line investment platforms may offer advantages for retail investors, including a low level of fees and the ease of access to a large variety of investment products, such platforms may also present risks, e.g. in case of inadequacy of appropriateness checks, lack of understanding of individual investors' lack or inadequate disclosure of costs.

Question 3.10 Do you consider that retail investors are adequately protected when purchasing retail investments online, or do the current EU rules need to be updated?

- Yes, consumers are adequately protected
- No, the rules need to be updated
- Don't know

Please explain your answer

See reply to Q 3.9 above. Protection rules must be consistent for all retail investment products and whatever the conduit to sell them. We note that many firms and products (e.g. virtual currencies) remain unregulated. We therefore urge the European Commission to ensure that the latter are promptly submitted to a regulatory framework similar to the MIFID2/ UCITS regimes, in order to improve investor protection.

For complex products (outside of MiFID), prospects and clients should be able to talk to professionals if they have questions, even in an online selling process.

In addition, we encourage more supervisory convergence in order to ensure a consistent level of implementation and consumer protection.

4. DISCLOSURE REQUIREMENTS

Rules on pre-contractual and on-going disclosure requirements are set out for different products in [MiFID II](#), the [Insurance Distribution Directive](#), [AIFMD \(Alternative Investment Fund Managers Directive\)](#), [UCITS](#), [PEPP](#) and the [Solvency II](#) framework, as well as in horizontal EU legislation (e.g. [PRIIPs](#) or the [Distance Marketing Directive](#)) and national legislation. The rules can differ from one instrument to another, which may render comparison of different products more difficult.

Question 4.1 Do you consider that pre-contractual disclosure documentation for retail investments, in cases where no Key Information Document is provided, enables adequate understanding of:

Please explain your answers:

Unfortunately, the new PRIIPS KID is mostly not intelligible, mostly not comparable, partially misleading, mostly not comparable key information document. And it partially also does not include the most relevant information about performance and costs.

For example, it is not possible for the saver to know if the investment product has ever made any profits or not, nor if the product manager has ever met its investment objectives.

The risk indicator is not a risk-and-reward indicator (as it is the case for the UCITS KIID for funds).

Question 4.2 Please assess the different elements for each of the following pieces of legislation:

	Understandability (please assess on a scale of 1-5)	Reliability (please assess on a scale of 1-5)	Amount of the information (please assess as insufficient, adequate, or excessive)
<i>PRIIPs Key Information Document (as a whole)</i>	2	2	Excessive

<i>Information about the type, objectives and functioning of the product</i>	2	2	Adequate
<i>Information on the risk-profile of the product, and the summary risk Indicator</i>	4	3	Adequate
<i>Information about product performance</i>	1	1	Excessive
<i>Information on cost and charges</i>	1	1	Excessive
<i>Information on sustainability-aspects of the product</i>	3	3	Excessive
Insurance Product Information Document (as a whole)	NA	NA	NA
<i>Information about the insurance distributor and its services</i>	NA	NA	NA
<i>Information on the insurance product (conditions, coverage etc.)</i>	NA	NA	NA
<i>Information on cost and charges</i>	NA	NA	NA
PEPP Key Information Document (as a whole)	4	4	Adequate
<i>Information about the PEPP provider and its services</i>	4	4	Adequate
<i>Information about the safeguarding of investments</i>	4	4	Adequate
<i>Information on cost and charges</i>	4	4	Adequate
<i>Information on the pay-out phase</i>	4	4	Adequate

Question 4.2.1 (PRIIPs): Please explain your answers

- Mostly unintelligible
- Often misleading information
- Mostly not comparable
- the most relevant information about performance and costs is missing:
 - o actual price (real full annual cost – last year’s to allow comparability with similar products;
 - o long term (10 year minimum) historical performance relative to the investment manager’s objectives (UCITS KIID rule)

Question 4.2.2 (IDD document): Please explain your answers

The IPID document (only for non-life and not for “IBIPs” – insurance-based investment products) should not be in scope as it does not apply at all to any retail investment products.

Question 4.2.3 (PEPP KID): Please explain your answers

The PEPP KID is more fit for purpose than the general KID, but not comparable to the KID for other personal pension products within the EU.

There is currently no KID for occupational pension savings products.

Question 4.3 Do you consider that the language used in pre-contractual documentation made available to retail investors is at an acceptable level of understandability, in particular in terms of avoiding the use of jargon and sector specific terminology?

- Yes
- No
- Don't know
- **Please explain your answer**

EU law, including the pre-contractual documentation, still uses jargon or concepts that are difficult to understand and not explained

Example: "reduction in yield" instead of "total expenses", or total ongoing charges (UCITS KIID).

However, with the current low levels of financial literacy, we most of all stress the importance of progressing towards bias-free financial advice. Sector-specific terminology (and basic expressions like equities, bonds etc.) cannot be avoided and may still be difficult for retail investors to understand.

MiFID requires that investor information must be clear for the persons to whom it is addressed: one of the least enforced requirements of EU financial regulation. We also note that some other regulations mandate the key terms or wording to be used, therefore limiting the ability of regulated firms to simplify their documentation or avoid jargon. The MSG advises the Commission to make an overview of such problematic requirements (with the help of stakeholders).

Question 4.4 At what stage of the retail investor decision making process should the Key Information Document (PRIIPs KID, PEPP KID, Insurance Product Information Document) be provided to the retail investor?

Please explain your answer

At the earliest possible stage. For example, providers and distributors should make them accessible online to all prospects so they can immediately start comparing the products proposed by different providers / distributors.

Question 4.5 Does pre-contractual documentation for retail investments enable a clear comparison between different investment products?

- Yes
- No
- Don't know

Question 4.6 Should pre-contractual documentation for retail investments enable as far as possible a clear comparison between different investment products, including those offered by different financial entities (for example, with one product originating from the insurance sector and another from the investment funds sectors)?

- Yes
- No
- Don't know

Question 4.7 Are you aware of any overlaps, inconsistencies, redundancies, or gaps in the EU disclosure rules (e.g. PRIIPs, MiFID, IDD, PEPP, etc.) with respect to the way:

a) Product cost information is calculated and presented?

- Yes
- No

Don't know

Please explain and indicate which information documents are concerned.

Those retail investors carefully studying all pre-contractual disclosure documents (e.g. MiFID and PRIIP KID) will be confused as to why product costs are not aligned. This regulatory misalignment must be tackled by future EU actions, as it creates mistrust in the financial products itself, adding to the common sentiment that people are 'ripped off' by the financial industry. (MiFID uses a zero-return assumption while the PRIIP KID uses the cost disclosures tied to complex future performance scenarios resulting in diverging cost figures.)

In essence, future cost disclosure must be aligned to disclosing the same cost information (i.e. MiFID and PRIIPs) to retail investors. In a sense, overarching frameworks like MiFID and IDD should provide the overall cost disclosure points and methodologies, which can be simply inserted into Key Information Documents. In any case, the current situation where the PRIIP KID uses its own cost calculation methodologies (which are different to MiFID/IDD) must be avoided at 'all costs'.

While acknowledging the importance of the relevance and clarity of disclosures on costs, one should be clear that choosing an investment should not solely be based on cost considerations. The risk reward profile and its compatibility to the investor's objectives and needs (investment horizon, amounts available for investment...) and performance are equally important.

Same answers for the following questions as well

b) Risk information is calculated and presented?

Yes

No

Don't know

c) Performance information is calculated and presented?

Yes

No

Don't know

d) Other

Yes

No

Don't know

Please explain your answer:

No EU KID for occupational pension savings products and for many personal pension ones.

MiFID II has established a comprehensive cost disclosure regime that includes requiring that appropriate information on costs in relation to financial products as well as investment and ancillary services is provided in good time to the clients (i.e. before any transaction is concluded and on an annual basis, in certain cases).

Question 4.9 Do you consider that the current regime is sufficiently strong to ensure costs and cost impact transparency for retail investors? In particular, would an annual ex post information on costs be useful for retail investors in all cases?

Yes

No

Don't know

Please explain your answer

Yes. However the other EU cost disclosure rules should be consistent with MiFID.

Studies show that due to the complexity of products and the amount of the aggregate pre-contractual information provided to retail investors, there is a risk that investors are not able to absorb all the necessary information due to information overload. This can lead to suboptimal investment decisions.

Question 4.10 What should be the maximum length of the PRIIPs Key Information Document, or a similar pre-contractual disclosure document, in terms of number of words?

Please explain your answer.

Two pages like the UCITS KIID, except for structured and other more complex products (as in the UCITS KIID). Up to one more page for non-financial (ESG) key disclosures in intelligible and comparable format and content. We consider it important that ESG disclosures are combined with the other pre-contractual information, preferably integrated in the KID to ensure that investors are able to see the holistic picture of a product, which includes ESG information.

One member wonders - as we move towards a digitalized world, if this question is really relevant? While “2 pages” may in this context be translated into “x number of characters” it is in a digital world more important that investors get the information they need (no more, no less) regardless of whether this information if/when printed covers 1, 2 or 3 pages.

Question 4.12 Should distributors of retail financial products be required to make pre-contractual disclosure documents available:

- On paper by default?
- In electronic format by default, but on paper upon request?
- In electronic format only?
- Don't know

Please explain your answer

On paper upon request to remain technology neutral, but for free and very easily accessible.

It is important to clarify how we transition from paper-based to digital disclosures, as customers as well as firms need time for an orderly transition.

Question 4.13 How important is it that information documents be translated into the official language of the place of distribution?

<i>Not at all important</i>	<i>Rather not important</i>	<i>Neutral</i>	<i>Somewhat important</i>	<i>Very important</i>
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

Very important only for the key disclosure documents (KIID, PRIIPs KID, PEPP KID, etc.)

Question 4.14 How can access, readability and intelligibility of pre-contractual retail disclosure documents be improved in order to better help retail investors make investment decisions?

Please explain your answer

See previous replies. Disclosure paradigm and information overload – too much, unintelligible and lengthy information documents will disincentivise, even discourage, retail investors from reading them, and would also prevent them from understanding disclosures.

Question 4.15 When information is disclosed via digital means, how important is it that:

	<i>Not at all important</i>	<i>Rather not important</i>	<i>Neutral</i>	<i>Somewhat important</i>	<i>Very important</i>

<i>There are clear rules to prescribe presentation formats (e.g. readable font size, use of designs/colours, etc.)?</i>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
<i>Certain key information (e.g. fees, charges, payment of inducements, information relative to performance, etc.) is displayed in ways which highlight the prominence?</i>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
<i>Format of the information is adapted to use on different kinds of device (for example through use of layering)?</i>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
<i>Appropriately labelled and relevant hyperlinks are used to provide access to supplementary information?</i>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
<i>Use of hyperlinks is limited (e.g. one click only – no cascade of links)?</i>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
<i>Contracts cannot be concluded until the consumer has scrolled to the end of the document?</i>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
<i>Other (please explain)?</i>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

5. THE PRIIPS REGULATION

In accordance with the PRIIPs Regulation, and as part of the retail investment strategy, the Commission is seeking views on the PRIIPs Regulation. In February 2021, [the ESAs agreed on a draft amending Regulatory Technical Standard](#) aimed at improving the delegated regulation. The Commission is now assessing the PRIIPS Regulation level 1 rules, in line with the review clause contained in the Regulation.

Core objectives of the PRIIPs Regulation

Question 5.1 Has the PRIIPs Regulation met the following core objectives:

5.1.a) Improving the level of understanding that retail investors have of retail investment products

- Yes
- No
- Don't know

See replies to questions of section 4 above for all questions 5.1.a, b and d

5.1.b) Improving the ability of retail investors to compare different retail investment products, both within and among different product types

- Yes

No

Don't know

5.1.c) Reducing the frequency of mis-selling of retail investment products and the number of complaints

Yes

No

Don't know

Please explain your answer

We don't know yet, especially since UCITS fund holders (plus retail AIFs in Member States like France which are required to use the KIID as well) still enjoy the much better KIID. These citizens and the media will realise the extent of the damage only next year when UCITS KIID will be replaced by the PRIIPs KID.

We strongly recommend that the exemption of UCITS funds from using the PRIIPs KID be extended until the full review of the PRIIPS Regulation is completed, as this was precisely the purpose of this exemption, and was always intended as such by EU policy makers.

We are surprised that European "retail" investors are not consulted on this critical disclosure and investor protection issue in the framework of the Strategy for retail investors.

5.1.d) Enabling retail investors to correctly identify and choose the investment products that are suitable for them, based on their individual sustainability preferences, financial situation, investment objectives and needs and risk tolerance

Yes

No

Don't know

Question 5.2.1 What could be done to improve the access to PRIIPs KIDs and PEPP KIDs?

	Yes	No	Don't know / no opinion
Requiring PRIIPs KIDs and PEPP KIDs to be uploaded onto a searchable EU-wide database	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Requiring PRIIPs KIDs and PEPP KIDs to be uploaded onto a searchable national database	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Requiring PRIIPs KIDs and PEPP KIDs to be made available in a dedicated section on manufacturer and distributor websites	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>

Please explain your answer.

First and third answer are complementary. EU law should specify that the KID of a product offered to retail investors in any way, should be available on the same webpage where the product (or other products) is available. Requiring a dedicated section will only create a difficult path for retail investors to follow to obtain the KIDs.

But these actions will not make the PRIIPs KID more attractive, unless it is thoroughly improved as explained in Section 4. In particular, databases will not by themselves enable the comparison of the PRIIPs key features *such as investment objective, performances, risks and costs*, as the content itself is not currently comparable, contrary to that of the UCITS KIID.

The PRIIPs KID

Question 5.3 Should the PRIIPs KID be simplified, and if so, how (while still fulfilling purpose of providing uniform rules on the content of a KID which shall be accurate, fair, clear, and not misleading)?

Yes

No

Don't know

Please explain your answer

- Eliminate all information that requires explanations by default just to be understood.
- Linear products like investment funds should be allowed to provide past performance information (with a disclaimer on its use as a predictor of future performance) instead of future performance scenarios. Past performance information is much more meaningful for such products as they are based on real historical data.

Implementation and supervision of the PRIIPs Regulation

Question 5.4 Can you point to any inconsistencies or discrepancies in the actual implementation of the PRIIPs Regulation across PRIIPs manufacturers, distributors, and across Member States?

Yes

No

Don't know

Please explain your answer

- PRIIPs KID is not yet mandatory for UCITS investment funds, the only current Pan-European retail investment product.
- For example, life insurance products are still Member State specific in most cases and therefore life insurance products are very rarely compared between Member States.

Question 5.5 In your experience, is the supervision of PRIIPs KIDs consistent across Member States?

Yes

No

Don't know

Please explain your answer

See previous reply

Multiple Option Products

For PRIIPs offering the retail investor a range of options for investments (Multiple Option Products) the PRIIPs Regulation currently provides the manufacturer with two different approaches for how to structure the KID:

- *A separate KID can be prepared for each investment option (Article 10(a))*
- *A generic KID covering in general terms the types of investment options offered and separate information on each underlying investment option (Article 10(b))*

According to feedback, both of these options present drawbacks, including challenges for retail investors to compare multiple option products with each other, in particular regarding costs.

An alternative approach would therefore be to require the provision of only one information document for the whole Multiple-Option Product, depending on the underlying investment options that the retail investors would prefer.

Question 5.9 Should distributors and/or manufacturers of Multiple Option Products be required to provide retail investors with a single, tailor-made, KID, reflecting the preferred underlying portfolio of each investor? What should happen in the case of ex-post switching of the underlying investment options?

- Yes
- No
- Don't know

Please explain your answer

This is very difficult for MOPs offering hundreds of underlying "units" (usually investment funds).

A draw-down menu should allow savers to know the full annual ongoing cost and actual past performance net of such cost for each "unit". Currently the PRIIPS KID does not provide this critical information when choosing / selecting the "units".

According to one member, the requirement proposed in Q 5.9 could also hamper the development of "open architecture" product design, i.e. where contracts allow for retail investors to invest in a wide range of investment options (units) that are manufactured by different entities (e.g. life insurance contracts allowing investment in UCITS from distinct asset managers or structured products issued by a large spectrum of banks).

As the flexibility of choice is one of the key investor benefits of the MOPs, it would be inappropriate to introduce a rule that could indirectly curtail the investment universe of those MOPs.

Scope

The scope of the PRIIPs Regulation currently excludes certain pension products, despite qualifying under the definition of packaged retail investment products. These include pension products which, under national law, are recognised as having the primary purpose of providing the investor with an income in retirement and which entitle the investor to certain benefits. These also include individual pension products for which a financial contribution from the employer is required by national law and where the employer or the employee has no choice as to the pension product or provider.

Question 5.10 Should the scope of the PRIIPs Regulation include the following products? If so, why?

Pension products which, under national law, are recognised as having the primary purpose of providing the investor with an income in retirement and which entitle the investor to certain benefits;

- Yes
- No
- Don't know

Please explain your answer

Those products – in particular personal pension products – are largely "substitutable" to other investment products that are already subject to the PRIIPS rules and are used either mostly or entirely for retirement purposes such as:

- "life cycle" investment funds
- Life insurance (the number one objective of life insurance policy holders is saving for retirement)

Individual pension products for which a financial contribution from the employer is required by national law and where the employer or the employee has no choice as to the pension product or provider.

- Yes

No

Don't know

Please explain your answer

Again, these are usually “substitutable” pension products: the pension saver can in most cases decide how much (or nothing) she or he allocates to such individual product: a part or nothing of her / his pension savings. In those cases, they should be in scope.

Other

Yes

No

Don't know

Please explain your answer

All other “instividual” (a US expression for DC pension products) pension savings products such as the defined contribution occupational pension products should also be in the PRIIPs scope for the same reason. In fact, in the US the main DC plans (401k) are composed of the same mutual funds that one can subscribe to directly on the market as an individual saver.

In France, any individual pension saver can switch from/to his occupational DC “PER” (Plan d’Epargne Retraite) to/from his individual/personal PER. In turn, the latter can either be in the form of an insurance contract (“PER-IN” assurance) or of a securities account at a bank (PER-IN compte titres).

The ability to access past versions of PRIIPS KIDs from a manufacturer is useful in showing how its product portfolio has evolved (e.g. evolution of risk indicators, costs, investment strategies, performance scenarios, etc.) that cannot be understood from simply looking at the latest versions of PRIIPS disclosure documents of currently marketed products.

Question 5.12 The PRIIPs KIDs should be reviewed at least every 12 months and if the review concludes that there is a significant change, also updated. Should the review and update occur more regularly? Should this depend on the characteristics of the PRIIPs? What should trigger the update of PRIIP KIDs?

Yes

No

Don't know

Please explain your answer

Annually is sufficient, but it should be done within the same timeframe for all products (i.e. 35 business days after 31 December – like for UCITS KIID) as a general rule

6. SUITABILITY AND APPROPRIATENESS ASSESSMENT

Under current EU rules, an investment firm providing advice or portfolio management to a retail investor must collect information about the client and make an assessment that a given investment product is suitable for them before it can recommend a product to a client or invest in it on the client's behalf. Similar rules exist for the sale of insurance-based investment products and of Pan-European Pension Products. The objective of these rules is to protect retail investors and ensure that they are not advised to buy products that may not be suitable for them. The suitability assessment process may however sometimes be perceived as lengthy and ineffective.

Question 6.3 Are the rules on suitability assessments sufficiently adapted to the increasing use of online platforms or brokers when they are providing advice?

Yes

No

Don't know

Please explain your answer

Yes, they are technology neutral, but the EU needs more supervision of the suitability assessment.

Where investment firms do not provide advice or portfolio management, they are still required to request information on the knowledge and experience of clients to assess whether the investment service or product is appropriate, and to issue a warning in case it is deemed inappropriate. Similar rules apply to sales of insurance-based investment products where in specific cases the customer has made use of a right provided under national law to opt out of a full suitability assessment.

In case of the execution of orders or transmission and reception of orders of certain non-complex products, at the initiative of the client, no appropriateness test is required. The investment firm must only inform the client that the appropriateness of the service or product has not been assessed and that he/she does not benefit from the protection of the relevant rules on conduct of business.

Question 6.8 Do you agree that no appropriateness test should be required in such situations?

Yes

No

Don't know

Please explain your answer

MiFID already provides a 'white' list of certain non-complex products. For proper retail participation, these products must be easily accessible for retail investors. Thus, we believe it is not necessary to extend the appropriateness test to all products as it would make it harder for retail clients to invest in the EU capital markets with financial products already deemed as non-complex.

In case of "execution only" subscriptions, there is no advice, and again the current design of the appropriateness test requires a lot of paperwork and disclosures from the prospect/client.

However, one member points out that there are banks that pursue an appropriateness test for all products purchased by non-advised retail clients. He also states that this is not perceived as an obstacle and ensures a certain level of investor protection. Relevant examples would be a "Penny Stock", recently a "Wirecard share" or a "high yield bond" that can have huge risks and that certainly should not be bought "easily" (i. e. without any knowledge or experience check by the bank that may trigger a warning) by every investor.

MiFID II requires that when investment firms manufacture financial instruments for sale to clients, they must make sure that:

- *those instruments are designed to meet the needs of an identified target market of endclients*
- *the strategy for distribution of the financial instruments is compatible with the identified target market*
- *and they must take reasonable steps to ensure that the financial instrument is distributed to the identified target market*

The investment firms that offer or recommend such financial instruments (the distributors) must be able to understand them, assess their compatibility with the needs of their clients and take into account the identified target market of end clients.

7. REVIEWING THE FRAMEWORK FOR INVESTOR CATEGORISATION

As announced under Action 8 of the [capital markets union action plan](#), the Commission intends to assess the appropriateness of the existing investor categorisation framework and, if appropriate, adopt a legislative proposal aimed at reducing the administrative burden and information requirements for a subset of retail investors. This will involve the review of the existing investor categorisation (namely the criteria required

to qualify as a professional investor) or the introduction of a new category of qualified investor in [MiFID II](#).

Currently, under MiFID II, retail investors are defined as those that do not qualify to be professional investors. Where investors choose to opt into the professional category, the intermediary must warn the investor of the level of protection they will cease to have and the investor must comply with at least two of the three following criteria:

- the client has carried out transactions, in significant size, on the relevant market for the financial instrument or for similar instruments with an average frequency of at least 10 transactions per quarter over the previous four quarters
- the size of the client’s financial instrument portfolio composed of cash deposits and financial instruments must be larger than €500,000
- the client currently holds or has held for at least one year a professional position in the financial sector which requires knowledge of the envisaged financial transactions or services

Retail investors are currently subject to a number of additional investment protection measures, such as prohibition to acquire certain products as well as additional disclosure information. Some stakeholders have argued that for certain investors that currently fall under the retail investor category, these protections are not necessary. The creation of a new client category or the modification of the existing requirements for professional clients on request could thus give a subset of investors a broader and more comprehensive access to the capital markets and would bring additional sources of funding to the EU economy.

A well-developed set-up could allow the preservation of the necessary investor protection while improving the engagement in the capital markets.

The 2020 [consultation](#) on MiFID already addressed the Question of a possible new category of semi-professional investor, and the following questions follow-up on the main findings.

Question 7.1 What would you consider the most appropriate approach for ensuring more appropriate client categorisation?

	Yes	No	Don't know / no opinion
Introduction of an additional client category (semi-professional) of investors.	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Adjusting the definition of professional investors on request	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
No changes to client categorisation (other measures, i.e. increase product access and lower information requirements for all retail investors)	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>

Please explain your answer

The SMSG advises not to add another category of investors: the “professional investors category” should be expanded, renamed “qualified investors”, and its criteria revised.

In line with the 2020 HLF CMU discussions, we propose that the “professional investors category” is:

- extended to a larger group of individual non-professional qualified investors.
- The requirements of minimum holdings in financial instruments should therefore be significantly lowered from the existing €500K and extended to other retail investment products than the ones covered by MiFID (which make up for less than 30% of overall EU households financial savings), in particular IBIPs (Insurance-based Investment Products).

- For non-professional qualified status a criterion should be added based on knowledge and experience, e. g. via a test or an “investor license”.
- The category should therefore be renamed “qualified investors”.

Question 7.2 How might the following criteria be amended for professional investors upon request?

a) <i>the client has carried out transactions, in significant size, on the relevant market at an average frequency of 10 per quarter over the previous four quarters</i>	
No change	<input type="checkbox"/>
30 transactions on financial instruments over the last 12 months, on the relevant market	<input type="checkbox"/>
10 transactions on financial instruments over the last 12 months, on the relevant market	<input type="checkbox"/>
Other criteria to measure a client's experience: please specify	<input checked="" type="checkbox"/>
b) <i>the size of the client's financial instrument portfolio, defined as including cash deposits and financial instruments exceeds EUR 500,000</i>	
No change	<input type="checkbox"/>
	<input type="checkbox"/>
Exceeds Euro 100,000	<input type="checkbox"/>
Exceeds Euro 100,000 and a minimum annual income of EUR 100,000	<input type="checkbox"/>
Other criteria to measure a client's capacity to bear loss: please specify	<input checked="" type="checkbox"/>
c) <i>the client works or has worked in the financial sector for at least one year in a professional position, which requires knowledge of the transactions or services envisaged</i>	
No change	<input type="checkbox"/>
Extend definition to include relevant experience beyond the financial sector (e.g. in a finance department of a company).	<input checked="" type="checkbox"/>
Adjust the reference to the term 'transactions' in the criteria to instead refer to 'financial instruments'	<input type="checkbox"/>
Other criteria to measure a client's financial knowledge: please specify	<input checked="" type="checkbox"/>
d) <i>Clients need to qualify for 2 out of the existing 3 criteria to qualify as professional investors. Should there be an additional fourth criterion, and if so, which one?</i>	
No change	<input type="checkbox"/>
Relevant certified education or training that allows to understand financial instruments, markets and their related risks.	<input checked="" type="checkbox"/>
An academic degree in the area of finance/business/economics.	<input checked="" type="checkbox"/>

Experience as an executive or board member of a company of a significant size.	<input checked="" type="checkbox"/>
Experience as a business angel (i.e. evidenced by membership of a business angel association).	<input checked="" type="checkbox"/>
Other criteria to assess a client's ability to make informed investment decisions: please specify.	<input checked="" type="checkbox"/>

Please explain your answers (a)

Please refer to reply to Q 7.1 for a) to d) and to the 2020 HLF CMU report.

A “buy and hold” investor is likely not to meet this criterion. That does not mean he is not a qualified investor.

Please explain your answers (b)

The threshold for retail investors to invest in ELTIFs (which include a lot of non-listed, illiquid assets) is Euro 100,000. Even this lower threshold is not relevant for e.g. students in advanced capital market studies. The size of an investor's portfolio does not give proof about his or her financial knowledge and/or qualification but does give an indication. The MSG proposes a set of different criteria including those based on qualifications.

We propose to expand the current definition of a “clients' investment portfolio” to also include all types of investments, e.g. life-insurance products.

Please explain your answers (c)

Additionally, we suggest making reference to a professional experience in the treasury or a treasury department over three years.

Please explain your answers (d)

A qualification / knowledge test or “investor license” must be required if criterion (c) (professional experience) is not met.

8. INDUCEMENTS AND QUALITY OF ADVICE

EU legislation sets out requirements on the provision of investment advice and around the payment of commissions and other forms of inducements to sellers of financial products. In the case of investment services and activities, investment firms must, for example, inform the prospective client whether any advice provided is on an independent basis, about the range of products being offered and any conflicts of interest that may impair independence. Use of inducements is restricted (i.e. any payment must be designed to enhance the quality of the relevant service to the client and it must not impair compliance with the investment firm's duty to act honestly, fairly and professionally in accordance with the best interest of its clients). Any payments to investment firms for the distribution of investment products must also be clearly disclosed. The rules slightly differ for the sale of insurance-based investment products: inducements may only be received if they do not have a detrimental impact on the quality of the service to the customer. However, there is no general prohibition on the payment of inducements if the seller declares that advice is given independently. Under UCITS and AIFMD, asset managers are also subject to rules on conflict of interests and inducements.

However despite these rules, concerns have been expressed that the payment of inducements may lead to conflicts of interest and biased advice, since salespersons may be tempted to recommend products that pay the highest inducements, irrespective of whether or not it is the best product for the client. For this reason, the Netherlands has banned the payment of inducements. On the other hand, other stakeholders have argued that the consequence of banning inducements might be that certain retail investors would be unable or unwilling to obtain advice, for which they would need to pay. Questions on inducements have also been asked in the [MiFID/R consultation](#) which was conducted at the beginning of 2020.

Question 8.1 How effective do you consider the following measures to/would be in protecting retail investors against receiving biased advice due to potential conflicts of interest?

Please explain your answers

Providing good financial advice to consumers is critical to ensure their increased participation in capital markets. In this regard, some members have concerns that the payment of inducements may lead to conflicts of interests that negatively affect the quality and objectivity of advice given to consumers and believe that the payment of inducements to financial advisers should be banned. Other members oppose the introduction of a ban, as fee-based advice may include conflicts of interests, too. They are having concerns about the effectiveness of such a reform, including potential unintended consequences, such as the emergence of an ‘advice gap’.

The SMSG supports the 2020 HLF CMU recommendations on inducements (as mentioned on [page 98 of the HLF CMU report](#)). The High Level Forum on the Capital Markets Union was set up by the European Commission and was composed of 30 persons, mostly from the financial industry and two consumer and individual investor persons.

Lastly, the SMSG believes that more supervisory convergence in the way that the quality enhancement rules are applied across EU Member States would be desirable. Under MiFID II, investment firms are required to provide a quality enhancing service to their client, and inducements are only permitted to be paid to the adviser where these improve the relevant service for the client. Unfortunately, studies by several national competent authorities show that these requirements have been implemented and supervised in divergent ways in EU Member States. ESMA’s [Technical Advice](#) on inducements also notes that many respondents to its consultation on this topic reported that “competent authorities have differing interpretations of the quality enhancement criteria for acceptable inducements.”

For instance:

- A recent [Thematic Review](#) by the Danish Financial Supervisory Authority found that the quality enhancement rules were in many cases not appropriately applied by investment firms.
- In Norway, the Norwegian financial supervisor carried out a [survey](#) of how investment firms were complying with the detailed requirements of the quality enhancement rules, and [found](#) that many were not properly applying the rules, launching an investigation. In October 2020, the Norwegian financial supervisor [published](#) a final outcome of its investigation, finding improved compliance with the MiFID II quality enhancement rules.

In some Member States, e.g. in Germany and Austria, the national regulations implementing the EU quality enhancement rules, have extended the Commission Delegated Directive 2017/593 (Article 11 (2)) insofar that they consider having a “widespread network of branch offices” (including in rural areas) as an additional criterion to meet the requirements of the quality enhancement test.

To enhance supervisory convergence in this area, ESMA should be required to carry out a mandatory peer review into how the quality enhancement criteria are applied by investment firms.

Question 8.4 Should the rules on the payment of inducements paid to distributors of products sold to retail investors be aligned across MiFID and IDD?

Yes

No

Don't know

Please explain your answer

Level playing field between MiFID financial instruments and Insurance-based investment products.

The use of payments for order flow (PFOF), where a broker (or an investment firm) directs the orders of its clients to a single third party for execution against remuneration, appears to be increasingly popular as a business model, in particular in the context of on-line brokerage. This practice is raising concerns in terms of potential conflicts of interest due to payment of inducements and possible breach of the obligations surrounding best execution of the client's orders (i.e. an obligation to execute orders on terms that are most favourable to the client).

Question 8.6 Do you see a need for legislative changes (or other measures) to address conflicts of interest, receipt of inducements and/or best execution issues surrounding the compensation of brokers (or firms) based on payment for order flow from third parties?

Yes

No

Don't know

If yes, please detail the changes you would consider relevant?

There is divergence in whether PFOF and other inducements are allowed or not among member States. There should be full transparency on PFOF practices, the firms involved, and flows, like in the US (SEC rule 606).

Question 8.7 Do you see a need to improve the best execution regime in order to ensure that retail investors always get the best possible terms for the execution of their orders?

Yes

No

Don't know

Please explain your answer

Yes, first conflicts of interests should be eliminated.

Second, the existing best execution rules are too vague, too complex and allow for different interpretations on PFOF. They should be simplified and made easier to comply with and to enforce.

One SMSG member however does support targeted updates, noting for example the recent ESMA approach on PFOF and zero-commission brokers, but would caution that deeper, structural changes to the best execution regime would be likely to have important consequences, including on market structure, which would have impacts well beyond the execution of retail orders.

Financial advisors play a critical role in the distribution of retail investment products, however standards (levels of qualifications, knowledge, skills, etc.) differ across Member States. In order to reduce the risk of mis-selling, increase individual investors' confidence in advice and create a level playing field for market operators offering advice in different Member States, the 2020 CMU action plan proposed that certain professional standards for advisors should be set or further improved.

Question 8.8 Would you see merit in developing a voluntary pan-EU label for financial advisors to promote high-level common standards across the EU?

Yes

No

Don't know

Please explain your answer and indicate what would be the main advantages and disadvantages.

The SMSG would prefer to progress to move towards a Pan-European investment advisor certification.

Robo-advisors, i.e. online platforms providing automated investment advice (and in many cases also portfolio management) are in principle subject to the same investor protection rules as traditional "human" advisors under the MiFID and IDD frameworks. While robo-advisors may offer advantages for retail investors, in particular lower fees, accessible investment thresholds and in principle often impartial advice (unbiased by payment of inducements), robo-advisors may also present risks resulting from, e.g. simplistic non-dynamic algorithms which may not create efficient investment portfolios.

Question 8.10 The use of robo-advisors, while increasing, has not taken off as might have been expected and remains limited in the EU. What do you consider to be the main reason for this?

- Lack of awareness about the existence of robo-advisors
- Greater trust in human advice
- Other

Please explain your answer

Robo-advisors were expected to grow quickly to significant scales (in terms of users and assets under management), but data show this has not been the case.³ In fact clients’ acquisition costs that independent robo-advisors are facing are still very high (Morningstar estimates a 10 year break-even time). Additionally the fast evolution of the robo-advice market has been hampered by limited awareness of this business model and a low level of financial literacy of retail clients and their preference to rely on human financial advisers in the investment decision process, at least on top of digital information (hybrid investment decision process). The value proposition of robo advisors is too complex for the average saver, who is confused by the terms “no commissions”, “fee-based”, “ETF”, etc. Robo-advice is more successful with qualified non-professional investors who are also comfortable with a virtual only (or almost only) client relationship.

A hybrid model where independent holistic financial planning is provided by a human and the implementation of the investment part is delegated to a robo might be more promising. The concept of “robo4” is indeed valuable, as it helps to increase the transparency of the decision process regarding the asset allocation choices. Additionally, the co-operation between established financial institutions and fintech firms, together with an improved user-experience and an upgraded use of AI (as in the case of “conversational” robo-advisors), might boost demand for automated advice.

Question 8.11 Are there any unnecessary barriers hindering the take-up of robo- advice? If so, which measures could be taken to address them?

- Yes
- No
- Don’t know

10. REDRESS

There will be occasions when things go wrong with an investment, e.g. if products have been mis-sold to the retail investor. Retail investors have the possibility to address their complaint directly to the firm: MiFID, for example, requires investment firms to establish, implement and maintain effective and transparent complaints management policies and procedures for the prompt handling of clients’ complaints and similar provisions are contained in the recent [Crowdfunding Regulation](#). Redress can also be sought through non-judicial dispute resolution procedures or can be obtained in national courts. In certain cases, where large numbers of consumers have suffered harm, collective redress can also be obtained.

Question 10.1 How important is it for retail investors when taking an investment decision (in particular when investing in another Member State), that they will have access to rapid and effective redress should something go wrong?

Not at all important	Rather not important	Neutral	Somewhat important	Very important
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

Please explain your answer

This is a major issue for savers given the high complexity and/or technicality of investment products, the low financial literacy level of the average saver and often of courts, the asymmetry of information between

³ <https://betterfinance.eu/wp-content/uploads/Robo-Advice-Report-2020-25012021.pdf>

providers and “retail” clients, the lack of effective collective redress processes in many Member States, and at EU level for individual investors investing directly in capital markets (for example Wirecard shareholders).

This access to information on the means savers can have to obtain redress for a possible harm or abuse must be provided before their investment decision, especially if this decision is executed electronically, without any contact with the distributor.

This is very important as it reinforces the confidence of retail investors in the process of investment as they know they would have a chance of repair if something does not satisfy them by using a specific process in case of complaint. It also helps strengthening the discipline of distributors and manufacturers to act in line with existing legal frameworks.

The possibility to obtain redress is very important as it is the sine qua non condition of the responsibility principle. The investor accepts to take risks, but not the one of bearing the consequences of fault. The good functioning of a market economy implies that faults - either regarding market information or profit sharing or value – must be sanctioned and the prejudice redressed by the culprits.

Question 10.3 As a retail investor, would you know where to turn in case you needed to obtain redress through an out of court (alternative dispute resolution) procedure?

Yes

No

Don't know

Please explain your answer

In several instances, it is de facto not possible to obtain redress through an out of court procedure.

Several categories of prejudice must be distinguished:

- The prejudice born by clients due to a fault of the intermediary who sold the investment products: in this case is the investor suffers an individual prejudice, specific to the case. They can be dealt with through meditation, provided that the company publishes and regularly updates its complaint resolution procedure.

Too often, savers have to make lengthy inquiries to identify precisely the entity to go to.

In compliance with the EU Directive on consumer rights, France has instituted a free recourse to a mediator in case the request addressed to the provider has not been answered or the investor is not satisfied with the answer. The name and postal and email address of this mediator must be disclosed in the documents communicated to the consumer.

At EU level, non-professional investors should have the same information and have a free recourse to a mediator.

It would also be appropriate that an investor who believes he is a victim of an abuse be informed that he can complain in particular to the NCA. In France, the AMF does not have the power to require redress, but it has several powers to push for redress: control of the provider, letter asking to fix the issues identified, notification of issues that could lead to an administrative procedure requiring redress, administrative sanction procedure that can also lead to redress. In Germany, complaints to the NCA, BaFin, are possible, but any action taken by BaFin as a result of the complaint are not reported back to the individual investor. Same in France for AMF.

- The prejudice born by clients due to a faulty product: it is then common to all buyers of the same product. The stakes are therefore important for the provider or issuer, and it will probably be difficult to obtain redress without going to court. Due to the cost of such court procedures, it is unlikely that they can be started without collective mobilization, which is, however, very difficult to generate and manage when there is no effective collective redress procedure in place for investors.

- The prejudice born by shareholders due to a fault from the issuer: to any corporation (not true for cooperatives) having to comply with the principle of equality of treatment of its shareholders, the mediation procedure does not seem to be applicable. Only a court decision can require that certain shareholders are indemnified (the ones who asked for redress) at the exclusion of the others.

Question 10.4 How effective are existing out of court/alternative dispute resolution procedures at addressing consumer complaints related to retail investments/insurance-based investments?

Comments on this question:

Except for individual prejudice which can find solutions via mediation, the redress of harm to retail investors is exceptional: court actions are costly, much too long and with very uncertain results. The result is that victims turn to criminal indemnification procedures.

Some mediators do not always answer complaints, and some national mediation procedures may tend to decide in favour of the professional.

Mediation can however in several cases be very effective: for example, with the French AMF mediator who is completely independent from the financial industry.

National ombudsmen / mediators must indeed be independent (including economically) from the financial industry (example, in France, the national insurance mediator is paid by the insurance lobby organization and is a former senior executive of that organization).

The mediator answers by applying the law but also referring to equity. Parties are not obliged to comply with mediator's advice.

Question 10.5 Are further efforts needed to improve redress in the context of retail investment products:

Domestically?

In a cross-border context?

Please explain your answer

Many countries require reforms for adequate redress tools and the EU needs to improve and stimulate cross-border redress as well.

The guarantees of impartiality when the complaint is managed by the professional himself are missing.

If complaints are not always answered by the financial institution to the full or partly satisfaction of the customer or if the customer had no answer regarding his claim, s/he should have the possibility to go to a Mediator. Moreover, a clear understanding of the complaint process is key to improve redress in the context of retail investment products, as it would help to resolve more situation of conflicts and avoid mediation too much time after the conflict has begun. Further efforts would be needed then to highlight and/ or regularly refresh information dedicated to the complaint and mediation process in order to improve redress in the context of retail investment products.

National ombudsmen / mediators must be independent (including economically) from the financial industry. (For example, in France, there is no cooling-off period for a mediator coming from the industry side).

Out of court processes like mediation do not deal with collective abuses. There is a lack of effective collective redress processes:

- in many Member States for all savers,
- and at EU level for individual investors investing directly in capital markets (for example Wirecard shareholders, see SMSG Wirecard position paper).

Certain groups of consumers (e.g. the elderly, over-indebted or those with disabilities) can be particularly vulnerable and may need specific safeguards. If the process of obtaining redress is too complex and burdensome for such consumers and lacks a specially adapted process (e.g. assistance on the phone), redress

may not be an effective option for them.

Question 10.6 To what extent do you think that consumer redress in retail investment products is accessible to vulnerable consumers (e.g. over-indebted, elderly, those with disabilities)?

<i>Not accessible at all</i>	<i>Rather not accessible</i>	<i>Neutral</i>	<i>Somewhat accessible</i>	<i>Very accessible</i>
<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Please explain your answer

To our knowledge, there is nothing specific for vulnerable consumers.

Redress procedures are often not accessible to vulnerable consumers for the reasons mentioned above, and also because the culprits (in particular when they are natural persons) are not solvent (example: the GESPA case in France) or die before the end of the legal proceedings.

Some members point to the fact that in certain member states action can be brought by an approved consumer protection association, savers' association (provided such organizations exist and are active) or any third party to which they refer, which may help in improving access of vulnerable consumers to redress.

12. SUSTAINABLE INVESTING

Citizens are today increasingly aware of the serious economic, environmental and social risks arising from climate change. As retail investors, they are also becoming conscious of the potential contribution they might make towards mitigating those risks by making more sustainable choices when investing and managing their savings. The 2018 European Commission's Action Plan on Financing Sustainable Growth set the basis for increasing the level of transparency on sustainability investments, through disclosure rules (e.g. Sustainable Finance Disclosure Regulation) and labels (e.g. EU Ecolabel), thereby substantially reducing the risk of greenwashing. In addition, the integration of retail investors' sustainability preferences as a top-up to the suitability assessment and financial advice in IDD and MIFID II delegated acts will ensure that clients are offered financial products and instruments that meet their sustainability preferences.

Question 12.1 What is most important to you when investing your savings?

	1 (least imp)	2	3 (most imp)
An investment that contributes positively to the environment and society	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
An investment that reduces the harm on the environment and society (e.g. environmental pollution, child labour etc.)	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Financial returns	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

Question 12.2 What would help you most to take an informed decision as regards a sustainable investment?

	1	2	3	4	5	Don't know
	<i>Not at all helpful</i>				<i>Very helpful</i>	

	/					
Measurements demonstrating positive sustainability impacts of investments	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Measurements demonstrating negative or low sustainability impacts of investments	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Information on financial returns of sustainable investments compared to those of mainstream investments	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Information on the share of financial institutions' activities that are sustainable	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Require all financial products and instruments to inform about their sustainability ambition	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Obligation for financial advisers to offer at least one financial product with minimum sustainability ambition	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
All financial products offered should have a minimum of sustainability ambition	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

MiFID II regulates the way investment firms produce or arrange for the production of investment research to be disseminated to their clients or to the public. This concerns investment research i.e. research or other information recommending or suggesting an investment strategy, explicitly or implicitly, concerning one or several financial instruments or the issuer of financial instruments. In the context of the COVID-19 pandemic, the research regime has been reviewed in order to facilitate the production of research on the small and medium enterprises and encourage more funding from the capital markets. In order to also encourage more sustainable investments, it is fundamental that investment research consider the E (environmental,) S (social) and G (corporate governance) factors of the Issuers and financial instruments covered by that research.

Question 12.5 Would you see any need to reinforce the current research regime in order to ensure that ESG criteria are always considered?

Yes

No

Don't know

Please explain your answer

We believe that ESG criteria should always be considered as long as the actual framework on sustainability is reinforced and based on strong and clear standards. As the EU taxonomy only comprises environmental and climate criteria, much work is still needed to reach a complete framework. In order to achieve this framework, it is necessary to improve the following dimensions:

- 1) Impact dimension: to develop an impact measurement framework for ESG investments that allows to gather evidence on the concrete impact of these type of investments in the real economy.
- 2) "S" dimension: to develop a social taxonomy in order to set indicators on the social contribution of ESG investments.
- 3) "G" dimension: to provide a framework that improves and enables individual shareholder engagement, also on a cross-border level. It is necessary to adequately enforce the engagement of asset managers in relation to sustainable financial products and the respective marketing claims in terms of engagement policies.

13. OTHER ISSUES

Question 13 Are there any other issues that have not been raised in this questionnaire that you think would be relevant to the future retail investments strategy?

Please explain your answer

The consultation tackles many important issues, but we believe there are other issues:

1. First, the SMSG regrets that the consultation is **not sufficiently designed in a way that allows full expression of the different views of all stakeholders**. This is unfortunate as the consultation is far-reaching and deserves the full range of opinions being reflected. In several instances, the SMSG felt that especially the box-ticking approach enables the EC to pre-select allowed options to answer and to steer answers in a certain direction. This is not the purpose of a public consultation, which should form a comprehensive base for decision, based on the views of all affected stakeholders.

The European Company law experts' group has raised similar issues/flaws with the EC box-ticking type questionnaires (the paper flags the "Have you stopped beating your dog?" phenomenon): <https://europeancompanylawexperts.wordpress.com/publications/comment-by-the-european-company-law-experts-group-on-the-europeancommissions-consultation-document-proposal-for-an-initiative-on-sustainable-corporate-governance/>

2. Second, it is difficult to see - reading this questionnaire – what **the exact retail investment strategy options proposed or envisioned by the European Commission** are. The following objectives are clear (as defined in the EC CMU Action Plan, page 5) and we support them:

- “(i) adequate protection,
- (ii) bias-free advice and fair treatment,
- (iii) open markets with a variety of competitive and cost-efficient financial services and products, and
- (iv) transparent, comparable and understandable product information.”

The consultation webpage also mentions:

- “ensure that a legal framework for retail investments is suitably adapted to the profile and needs of consumers,
- helps ensure improved market outcomes,
- empowers retail investors
- and enhances their participation in the capital markets.”

However, there do not seem to be any questions on the envisioned vision and possible strategy to reach these objectives.

3. Third, the European Commission and the ESAs lack knowledge of the most critical information about the retail investments they regulate and/or supervise, for instance the actual performances and charges of these products. In particular, the ESAs do not have any product databases. As part of CMU 1.0, the EC asked the ESAs in 2017 to report on cost and performance of the principal categories of long-term retail investment and pension products. The ESAs started to gather this information in 2019 but are struggling to achieve this. ESMA needs to use commercial third-party databases. The abolition of the UCITS KIID will reduce further standardized and comparable relevant price and performance information available to the ESAs, the ones disclosed in the new PRIIPS KID being unusable for this purpose.

We ask, therefore, that the ESAs build up independent retail investment products databases, with at least a focus on PRIIPs. These data bases should also be accessible to EU citizens, as is the case in the US (FINRA fund database) and could form a reliable basis for web comparing tools, like Norway has done.

4. Fourth, the EC did not ask any question regarding a very powerful means to reach the above-mentioned objectives of the strategy: the development of employee share ownership, as recommended by the HLF CMU and by the European Parliament's ECON Committee last year.
5. As already specified in the answer to some questions, the SMSG notes that retail investors protection must be reinforced in the cross-border provision of investment services. This would include the following:
 - Cross-border provision of services within the EU. The cover by compensation schemes should be clearly regulated and established in these cases.
 - Redress instruments should be clear for retail investors in cross border cases.

This advice will be published on the Securities and Markets Stakeholder Group section of ESMA's website.

Adopted on 29 July 2021

[signed]

Veerle Colaert

Chair

Securities and Markets Stakeholder Group

[signed]

Guillaume Prache

Rapporteur