

Europäische Kommission

Generaldirektion Finanzstabilität,
Finanzdienstleistungen und Kapitalmarktunion

SPA 2 – Pavillon Rue de Spa 2 / Spastraat 2

Belgien

Via E-Mail an:

fisma-retail-investment@ec.europa.eu

BEREICH Integrierte Aufsicht

GZ FMA-LE0001.230/0006-INT/2021

(bitte immer anführen!)

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WIEN, AM 21.07.2021

EK-Konsultation: EU-Strategie für Kleinanleger (retail investment strategy for Europe)

Sehr geehrte Damen und Herren,

bezugnehmend auf die öffentliche Konsultation der Europäischen Kommission für eine

„retail investment strategy for Europe“

erlauben wir uns Ihnen anbei die offizielle Stellungnahme der Österreichischen Finanzmarktaufsichtsbehörde (FMA) zukommen zu lassen.

Die Stellungnahme wurde zur leichten Auswertung auch in das ECAS-EU-Survey-Tool unter Verwendung des Links auf der Seite https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/12755-Retail-Investment-Strategy/public-consultation_en eingegeben.

Wir ersuchen höflich um Berücksichtigung unserer Anregungen und stehen für Rückfragen sehr gerne zur Verfügung.


Finanzmarktaufsichtsbehörde
Bereich Integrierte Aufsicht

Für den Vorstand

MMag.a Dr.in Julia Lemonia Raptis, LL.M LL.M

Dr. Christoph Seggermann

elektronisch gefertigt

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	Aussteller-Zertifikat	CN=a-sign-corporate-light-02,OU=a-sign-corporate-light-02,O=A-Trust Ges. f. Sicherheitssysteme im elektr. Datenverkehr GmbH,C=AT
	Serien-Nr.	532114608
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Prüfinformation	Informationen zur Prüfung des elektronischen Siegels bzw. der elektronischen Signatur finden Sie unter: http://www.signaturpruefung.gv.at	
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EUROPEAN COMMISSION

DIRECTORATE-GENERAL FOR FINANCIAL STABILITY, FINANCIAL SERVICES AND CAPITAL MARKETS UNION

Horizontal policies
Retail financial services

CONSULTATION DOCUMENT

A RETAIL INVESTMENT STRATEGY FOR EUROPE

Disclaimer

This document is a working document of the Commission services for consultation and does not prejudice the final decision that the Commission may take.

The views reflected on this consultation paper provide an indication on the approach the Commission services may take but do not constitute a final policy position or a formal proposal by the European Commission.

The responses to this consultation paper will provide important guidance to the Commission when preparing, if considered appropriate, a formal Commission proposal.

You are invited to reply **by 3 August 2021** at the latest to the **online questionnaire** available on the following webpage:

https://ec.europa.eu/info/publications/finance-consultations-2021-retail-investment-strategy_en

Please note that in order to ensure a fair and transparent consultation process only responses received through the online questionnaire will be taken into account and included in the report summarising the responses.

This consultation follows the normal rules of the European Commission for public consultations. Responses will be published in accordance with the privacy options respondents will have opted for in the online questionnaire.

Responses authorised for publication will be published on the following webpage:

https://ec.europa.eu/info/publications/finance-consultations-2021-retail-investment-strategy_en

Any question on this consultation or issue encountered with the online questionnaire can be raised via email at fisma-retail-investment@ec.europa.eu.

INTRODUCTION

Background for this consultation

The level of retail investor participation in EU capital markets remains very low compared to other economies, despite high individual savings rates in Europe. This means that consumers may currently not fully benefit from the investment opportunities offered by capital markets.

In its September 2020 [new capital markets union action plan](#), the European Commission announced its intention to publish a strategy for retail investments in Europe in the first half of 2022. Its aim will be to seek to ensure that retail investors can take full advantage of capital markets and that rules are coherent across legal instruments. An individual investor should benefit from: (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. EU legislation should be forward-looking and should reflect ongoing developments in digitalisation and sustainability, as well as the increasing need for retirement savings.

In 2020, the Commission also launched an [extensive study](#), focusing on the different disclosure regimes, the extent to which advice given to prospective investors is useful and impartial and the impact of inducements paid to intermediaries. It will involve extensive consumer testing, to ensure that any future changes to the rules will be conceived from the perspective of what is useful and necessary for consumers.

In line with the Commission's stated objective of "an economy that works for people", the Commission is seeking to ensure that a legal framework for retail investments is suitably adapted to the profile and needs of consumers, helps ensure improved market outcomes and enhances their participation in the capital markets.

The Commission is looking to understand how the current framework for retail investments can be improved and is seeking your views on different aspects, including:

- The limited comparability of similar investment products that are regulated by different legislation and are hence subject to different disclosure requirements, which prevents individual investors from making informed investment choices.
- How to ensure access to fair advice in light of current inducement practices.
- How to address the fact that many citizens lack sufficient financial literacy to make good decisions about personal finances.
- The impact of increased digitalisation of financial services.
- Sustainable investing

Responding to this consultation and follow up

In this context and in line with [better regulation principles](#), the Commission is launching this public consultation designed to gather stakeholders' views on possible improvements to the European framework for retail investments.

Views are welcome from all stakeholders, in particular from persons/entities representing

- Citizens and households (in their quality as retail investors)
- Organisations representing consumer/retail investor interests
- Complaint-handling bodies e.g. Alternative Dispute Resolution bodies and European Consumer Centres
- Credit institutions
- Investment firms
- Insurance companies
- Financial intermediaries (investment/insurance brokers, online brokers, etc.)
- National and supranational authorities (e.g. national governments and EU public authorities, mandated authorities and bodies in charge of legislation in the field of retail investments)
- Academics and policy think-tanks
- Entities seeking financing on capital markets

CONSULTATION QUESTIONS

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

When applied correctly by financial institutions, the rules regarding product governance, suitability, conflict of interests, information to clients etc. are sufficient to protect retail investors. However, given the different nature of products and entities active on the capital market, one major topic is rooted in the challenges of comparison of financial products suitable to retail investors. Retail investors face a fractured framework within the Union that makes it all the harder to find and select the products most suitable and appropriate. In order to ensure a common approach for the benefit of investor protection, considerations should be made with regards to applying similar rules for similar products and the respective intrinsic risk.

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

Please explain your answer

The existing rules are in principle justified. However, the application of the rules is often challenging due to vague and ambiguous legal texts that sometimes lack legal clarity and certainty. This leads to divergent interpretation and inconsistent application of the law across the EU-Member states.

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

Please explain your answer

With reference to the lack of a level-playing field for retail investment products marketed in the EU, one major source of issues stems from the entry of retail products via national private placement regimes. For some other products that would have required a PRIIP KID, firms have decided not to offer them to retail clients in order to avoid the burden of preparing a PRIIP KID.

Question 1.4 What do you consider to be factors which might discourage or prevent retail investors from investing?

	Strongly disagree	Disagree	Neutral	Agree	Strongly Agree
Lack of understanding by retail investors of products?				X	
Lack of understanding of products by advisers?			X		
Lack of trust in products?				X	
High entry or management costs?			X		
Lack of access to reliable, independent advice?			X		
Lack of access to redress?			X		
Concerns about the risks of investing?				X	
Uncertainties about expected returns?				X	

Lack of available information about products in other EU Member States?			X		
Other					

Question 1.5 Do you consider that products available to retail investors in the EU are:

	Strongly disagree	Disagree	Neutral	Agree	Strongly Agree
Sufficiently accessible			X		
Understandable for retail investors		X			
Easy for retail investors to compare with other products		X			
Offered at competitively priced conditions			X		
Offered alongside a sufficient range of competitive products			X		
Adapted to modern (e.g. digital) channels			X		
Adapted to Environmental, Social and Governance (ESG) criteria			X		

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.

A number of studies conducted among Austrian consumers show a lack of **financial literacy**.

Digital innovation poses further challenges to consumer protection: Products are offered via increasingly complex and gamified platforms. These platforms combine different types of regulated products from various sectors as well as in some cases mostly unregulated instruments such as crypto-assets. In the latter case, different regulatory regimes collide with unregulated offerings making supervision complex and blurring the line between regulated and unregulated parts of such platforms. This may mislead retail clients to assume unregulated products offer the same safeties and protections as the regulated products on the platform. It further leads to significant confusion as well as potentially adverse outcomes for investors. Specific regulation is required to deal with such cross-sectoral platforms that offer both regulated and unregulated products and services.

Disclosure requirements are very complex and fragmented (see e.g. UCITS vs. PRIIPs vs. PEPP vs. Crowdfunding Information Documents). While on a material level the distinctions made may be justified, retail clients are faced with a complex web of disclosures when comparing products across sectors. These mandatory disclosures follow different principles and place emphasis on different aspects of products. As such they are not comparable and may lead to significant confusion for retail clients. The creation of these documents is very expensive for firms. As things stand – due to the aforementioned fragmentation – the documents do not sufficiently provide for the intended benefits, i.e. improving retail clients' understanding of the market and better informing their choices. To the contrary, are in practice often overlooked by retail clients and not emphasized by sales personnel or even lead to information-overload.

Offering less **complex products** to vulnerable consumers would enhance consumer protection.

With reference to the work relating to cost and performance of retail products as well as closet-indexing, one of the biggest issues lies in the **unmitigated conflicts of interest** to the detriment of retail investors.

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 ...

	Strongly disagree	Disagree	Neutral	Agree	Strongly agree
Improve their understanding of the nature and main features of financial products					X
Create realistic expectations about the risk and performance of financial products					X
Increase their participation in financial markets				X	
Find objective investment information				X	
Better understand disclosure documents				X	
Better understand professional				X	

advice					
Make investment decisions that are in line with their investment needs and objectives					X
Follow a long-term investment strategy				X	

Question 2.2 Which further measures aimed at increasing financial literacy (e.g. in order to promote the OECD/Commission financial literacy competence framework) might be pursued at EU level?

Please explain your answer (taking into account that the main responsibility for financial education lies with Member States).

Establish a framework at EU level to provide a more hands-on guidance for Member States:

- best practices
- practical guidance
- target-group-focused modules on relevant topics on financial products etc.
- checklists

Such a framework could help Member States/NCA to implement relevant instruments according to their needs.

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 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

Benefits and risks entailed by an open finance approach depend on the specific form of its implementation: Open finance is connected to the “platformisation” of financial services. It is possible that several parts of the value chain of a financial service involve non-supervised entities. It could mean that traditional financial service providers decentralise parts of their services and act more as data platforms; it could also mean White Labeling business models; and last but not least, it could mean that BigTechs become a greater part in the game as they are the vibrant and powerful “data factories”.

If we follow a broad understanding, as Bank for International Settlements does, emphasising the data sharing aspect between customer, institution and third party for the purpose of greater access to finance via interfaces, the risks will mostly be about the disposal of data: The risk is that customers – as we experience frequently with current web-based services – are in an asymmetric position vis-à-vis service providers. Competition between providers may rise, but what we see in other areas (e.g. communication and social media) is that very few providers win through and become quasi monopolies that customers cannot avoid. Convenience and trust with regard to financial services currently sticks to the bigger and popular ones.

At the moment, this is not an alarming scenario in the provision of third-party payment services under PSD II. But it could develop differently in case of other financial products. This is due to the fact that such products rely stronger on personal data for the purpose of customizing and that some of those products tend to be riskier (e.g. trading apps, loans). Payment services are comparably easy to understand for the user, and third-party payment providers as regulated in PSD II carry a rather low risk (they receive data, but no funds). This could be different for other financial services.

Apart from this, we would like to mention the following aspects:

Benefits:

- convenience
- financial inclusion

- fostering decent FinTech developments due to valuable competition
- incumbent providers could reach new customer segments

Risks:

- lack of control and weaknesses of technical interfaces increase the risk of cyber attacks and loss of data
- intransparent contractual relations
- unclear liabilities and less possibilities to enforce customer rights, especially in case of services rendered cross-border
- hampered supervision: Even if the responsibility stays with one central institution, the more decentralized value chains and services become, the harder it will get to supervise them properly. Again, cross-border issues should not be neglected.

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

- new value storage and transfer mechanisms (similar to the payments sector – the actual debit transfer is secondary, already the data transaction of the payment sets in motion the exchange of goods and services)
- standardised identity protocols for KYC/AML
- aggregation tools and services for financial data
- new ecosystems avoiding traditional intermediaries (Decentralized Finance, DeFi)
- internet of things
- more individualized and extended data analysis with regard to loan applications
- ad-hoc insurances
- comparison, customization and change tools (e.g. an app comparing different providers with your current insurance situation and providing adjustments in your financial product portfolio via ongoing changes – we already see similar apps in the energy market)

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

Machine-readable documents favour SupTech solutions and would e.g. make the screening and comparing of PRIIPs KIDs easier. Making pre-contractual disclosure documents machine-readable could improve overall quality of **such** documents due to standardised formats.

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

From the supervisor's point of view we have no perceptions of obstacles that market participants face.

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

Not in general – the current rules on marketing communications are technology neutral and can as well be applied to online advertising.

However, we observed rather questionable advertising of foreign firms in their cross-border-business. This regards primarily investment firms running CFD- and Forex-Trading-Platforms, which target retail investors with derivative trading. Besides of discussing those products as issues of product intervention, as it has been in the past, one could consider to tighten advertisement rules for speculative (derivative) trading, e. g. banning advertisement of such products to retail customers completely. Otherwise one could at least consider to set a sharper focus in the enforcement of the existing rules.

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

The existing rules are sufficient and we are not aware of a lack of convergence regarding their application.

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

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

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>
		X		

[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

In principle, social media users should only be restricted in expressing their opinion, when it is utterly necessary. Nevertheless, there is a risk of abuse of social media platforms for “hidden” advertising or investment recommendations. In practice, however, this would be difficult to supervise, e. g. due to the anonymity of many disseminators of information via social media platforms.

Regardless of anonymity in particular cases, social media becomes a minefield of intransparency and information asymmetry, if customers are incentivized to recruit customers with kick-backs or benefits regarding fees. Such incentives can currently be observed as a trend at many brokers. This, however, may be better addressed through a diligent and proper remuneration policy of investment firms, than by keeping them “away” from social media.

With regards to investment recommendations there is a need of fine tuning in an upcoming MAR review. The definition of “investment recommendation” as well as the need of disclaimers and the disclosure of conflicts of interests are essential elements.

To achieve maximum harmonization, MAR may be reviewed in that respect. There is also a level II regulation dealing with investment recommendations. That regulation needs a review as well if MAR is changed.

We want to emphasize that publishing of investment recommendations is increasing – especially on social media. These are often wrong/misleading recommendations or recommendations, which serve the interest of their author. The average investor is often not able to identify these “false” recommendations and therefore has to be protected by the law.

Another problem are disclosed conflicts of interests in disclaimers. In our opinion, information on conflicts of interest should be regulated in more detail. Disclosed conflicts of interest often imply acts of deception that the investor does not recognize as such.

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 on-line, 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

The current MiFID II investor protection rules are technology neutral and can as well be applied in relation to on-line provision of investment services. Sometimes there is a practical issue of inadequate usability. At present, we have no perceptions of an increase in complaints relating to online services. This could be owed to the fact that in Austria advice-based investment services are very common and

highly available and thus online channels are predominately used by more experienced investors.

Question 3.11 When products are offered online (e.g. on comparison websites, apps, online brokers, etc.) how important is it that lower risk or not overly complex products appear first on listings?

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

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:

	Strongly disagree	Disagree	Neutral	Agree	Strongly Agree
<i>The nature and functioning of the product</i>			X		
<i>The costs associated with the product</i>				X	
<i>The expected returns under different market conditions</i>			X		
<i>The risks associated with the product</i>				X	

Question 4.2

- a) Is the pre-contractual information provided to retail investors sufficiently understandable so as to help them take retail investment decisions?
- b) Is the pre-contractual information provided to retail investors sufficiently reliable so as to help them take retail investment decisions?
- c) Is the amount of information provided for each of the elements below insufficient, adequate, or excessive?

	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)	Please explain your answer
<i>PRIIPs Key Information Document (as a whole)</i>	3	3	adequate	The structure of the PRIIPs KID provides in principle for a compact and understandable information. In practice, we have observed some problems with the application of the rules.
<i>Information about the type, objectives and functioning of the product</i>	3	3	adequate	Product descriptions are less standardised than the rest of the KID. Most manufacturers provide meaningful information in this part of the KID
<i>Information on the risk-profile of the product, and the summary risk indicator</i>	2	3	adequate	Some risks are not reflected in the SRI (e.g. exchange-rate-risks). The SRI also does not take into consideration underlying / linked products such as loans that are hedged using the product (e.g. derivative) even where a product is only offered in conjunction with another product.
<i>Information about product performance</i>	2	1	insufficient	Studies by ESMA have shown that performance

				information is not understood by retail clients. In combination with the known issues regarding calculation methods and certain product types (e.g. OTC-Derivatives) performance information in the KID can be misleading
<i>Information on cost and charges</i>	3	2	adequate	Aside from minor problems being addressed in the review FMA has no issues with this information
<i>Information on sustainability-aspects of the product</i>	1	1	insufficient	The product description should make reference to ESG-aspects. However, this information is not standardised and therefore not easily comparable to other product information. There is no link to information requirements laid down in the new ESG-package. The 3-page restriction also does not lend itself well to convey such information.
<i>Insurance Product Information Document (as a whole)</i>	1			We have only limited experience with practical application of IPID and our experience relates only to few product categories

				respectively. Therefore we have no perceptions on the remaining points.
<i>Information about the insurance distributor and its services</i>				Information is not required acc. to Del. Reg. 2017/1469.
<i>Information on the insurance product (conditions, coverage etc.)</i>	1			We have only limited experience with practical application of IPID and our experience relates only to few product categories respectively. Therefore we have no perceptions on the remaining points.
<i>Information on cost and charges</i>				Information is not required acc. to Del. Reg. 2017/1469
PEPP Key Information Document (as a whole)				We have no experiences regarding the PEPP-KID, which is not yet applicable.
<i>Information about the PEPP provider and its services</i>				
<i>Information about the safeguarding of investments</i>				
<i>Information on cost and charges</i>				
<i>Information on the pay-out phase</i>				

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

The language in pre-contractual information provided to investors is often difficult to understand and includes technical terms unfamiliar to the average investor.

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

Depending on the channels used, the aim should always be to provide the retail investor with the PRIIP-KID in due time before they make their investment decision, as otherwise the PRIIP-KID cannot function as pre-contractual information.

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

Yes/no/don't know

Please explain your answer

Information such as fact sheets, PRIIPs KIDs and UCITS KIDs etc. enable, in principle, a comparison between different investment products.

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

Please explain your answer

Not sure if this is possible. There is a risk that the result of such an initiative does not justify the effort.

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.

The cost information rules regarding the insurance-based investment products are similar, but not as complex as the MiFID rules.

b) Risk information is calculated and presented?

Yes/no/don't know

Please explain and indicate which information documents are concerned.

We are not aware of any overlaps, inconsistencies, redundancies, or gaps in the EU disclosure rules with respect to the way risk information is calculated and presented.

c) Performance information is calculated and presented?

Yes/no/don't know

Please explain and indicate which information documents are concerned.

Performance under PRIIPs is calculated mostly based on past performance and the concept of flexible Recommended Holding Periods (RHPs) / Intermediate Holding Periods (IHPs) is used. As such it may differ from traditional ways of presenting product forecasts and may cause issues in the investment advice process (e.g. PRIIPs differing from in-house calculations --> advisor has to somehow explain such differences to clients).

There are no performance information rules with respect to IDD.

d) Other

Not applicable.

Question 4.8 How important are the following types of product information when considering retail investment products?

Information about:	Not relevant	Relevant, but not crucial	Essential
Product objectives/main product features			X
Costs			X
Past performance		X	
Guaranteed returns			X
Capital protection			X
Forward-looking performance expectation		X	
Risk			X
Ease with which the product can be converted into cash			X
Other (please specify)			

Please explain your answer.

All of the information regarding the facts around the product is essential. Information relating to performance is also useful but not always reliable as to the actual future performance.

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

The MiFID II regime regarding cost transparency is sufficient. An ex post cost disclosure could be useful across all sectors.

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

Considering the ongoing changes to the regulatory framework, it seems paramount to first assess the current state of play in order to identify shortcomings and fixes. In particular, the area of disclosure to investors is being amended constantly, barring retail investors to build up expertise in order to understand the disclosures.

There is already a 3-page limit in place, which should be kept for the time being. For example, different languages require different amounts of words to bring across the same information.

Question 4.11 How should disclosure requirements for products with more complex structures, such as derivatives and structured products, differ compared to simpler products, for example in terms of additional information to be provided, additional explanations, additional narratives, etc.?

Please explain your answer

In general the disclosure requirements regarding more complex products are sufficient if applied correctly in practice.

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

As electronic communication is increasingly becoming common standard, this should be the default option. Nevertheless, clients should be actively asked whether they request paper in order not to exclude certain groups of clients. Paper versions should remain free of cost in order not to discriminate against less digital-savvy customers.

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>
			X	

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

To better help retail investors make investment decisions, use of simple, understandable language should be fostered.

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>				X	
<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>					X

<i>Format of the information is adapted to use on different kinds of device (for example through use of layering)?</i>				X	
<i>Appropriately labeled and relevant hyperlinks are used to provide access to supplementary information?</i>				X	
<i>Use of hyperlinks is limited (e.g. one click only — no cascade of links)?</i>					X
<i>Contracts cannot be concluded until the consumer has scrolled to the end of the document?</i>				X	
<i>Other (please explain)?</i>					

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:

	Yes/no - Please explain your answer
<i>Improving the level of understanding that retail investors have of retail investment products</i>	Partially; the main problem is that the horizontal PRIIPS Regulation aims on promoting the comparability of products, which are substantially different.
<i>Improving the ability of retail investors to compare different retail investment products, both within and among different product types</i>	Partially; the main problem is that the horizontal PRIIPS Regulation aims on promoting the comparability of products, which are substantially different.
<i>Reducing the frequency of mis-selling of retail investment products and the number of complaints</i>	No; according to our supervisory experience this core objective was missed.
<i>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</i>	Partially; the main problem is that a lot of products (UCITS, AIF, Pension products) are still not in scope.

Question 5.2 Are retail investors easily able to find and access PRIIPS KIDs and PEPP KIDs?

Yes/no/don't know

Please explain your answer

In general yes; we are in favour of requiring PRIIPS KIDs and PEPP KIDs to be made available in a dedicated section on manufacturer and distributor websites.

What could be done to improve the access to PRIIPS KIDs and PEPP KIDs?

	Yes/no
<i>Requiring PRIIPS KIDs and PEPP KIDs to be uploaded onto a searchable EU-wide database</i>	no

<i>Requiring PRIIPs KIDs and PEPP KIDs to be uploaded onto a searchable national database</i>	no
<i>Requiring PRIIPs KIDs and PEPP KIDs to be made available in a dedicated section on manufacturer and distributor websites</i>	yes
<i>Other</i>	

Please explain your answer

See our answer above.

The PRIIPs KID

Question 5.3 Should the PRIIPs KID be simplified, and if so, how (while still fulfilling its 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

The PRIIPs-KID should be simplified (less calculations, less numbers for the consumers, skip performance scenarios at all).

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

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

Question 5.6 What is in your experience as a product manufacturer, the cost of manufacturing:

	<i>Cost in € per individual product</i>
<i>A single PRIIPs KID</i>	
<i>A single PEPP KID</i>	
<i>A single Insurance Product Information Document</i>	

Please explain your answer

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Question 5.7 What is in your experience as a product manufacturer the cost of updating:

	<i>Cost in € per individual product</i>
<i>A single PRIIPs KID</i>	
<i>A single PEPP KID</i>	
<i>A single Insurance Product Information Document</i>	

Question 5.8 Which factors of preparing, maintaining, and distributing the KID are the most costly?

- **Collecting product data/inputs**
- **Performing the necessary calculations**
- **Updating IT systems**
- **Quality and content check**
- **Outsourcing costs**
- **Other**

Please explain your answer

The technically complex calculations are definitely costly. Outsourcing costs are costly, too, due to the remaining responsibility.

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

No, such a solution is too expensive for manufacturers.

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?

<i>Product</i>	<i>Should be in PRIIPs Regulation scope [include/exclude]</i>
<i>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;</i>	include
<i>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.</i>	include
<i>Other</i>	

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.

Please explain your answer

All of these products should be included because this is the only way to create a level playing field.

Question 5.11 Should retail investors be granted access to past versions of PRIIPs KIDs?

Yes/No/don't know

Please explain your answer

We see no benefit from granting access to past versions of PRIIPs KIDs to retail investors.

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

The rules on updating should remain as they are. The proposed changes would be expensive and bring little advantage.

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 6.1 To what extent do you agree that the suitability assessment conducted by an investment firm or by a seller of insurance-based investment products serves retail investor needs and is effective in ensuring that they are not offered unsuitable products?

Strongly disagree	Disagree	Neutral	Agree	Strongly agree
			X	

Please explain your answer

When applied correctly, the suitability requirements in MiFID II ensure that investment advice is suitable for the client.

Question 6.2 Can you identify any problems with the suitability assessment and if so, how might they be addressed?

Please explain your answer

No

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, the rules are technology neutral and apply as well when providing advice via online platforms or brokers.

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.

Question 6.4 To what extent do you agree that the appropriateness test serves retail investor needs and is effective in ensuring that they do not purchase products they are not able to understand or

that are too risky for their client profile?

Strongly disagree	Disagree	Neutral	Agree	Strongly agree
			X	

Please explain your answer

The MiFID II appropriateness test makes clients aware if a product does not fit their knowledge and experience. Generally, this is sufficient protection in advice-free sales where a certain level of sophistication can be expected from investors.

Question 6.5 Can you identify any problems with the test and if so, how might they be addressed (e.g. is the appropriateness test adequate in view of the risk of investors purchasing products that may not be appropriate for them)?

Yes/no/don't know

Please explain your answer

The appropriateness test ensures that investors only purchase products that fit their knowledge and experience.

Question 6.6 Are the rules on appropriateness tests sufficiently adapted to the increasing use of online platforms or brokers?Yes/no/don't know

Please explain your answer

The rules are technology neutral and equally apply to online platforms or brokers.

Question 6.7 Do you consider that providing a warning about the fact that a product is inappropriate is sufficient protection for retail investors?

Yes/no/don't know

Please explain your answer

The MiFID II appropriateness test makes clients aware, if a product does not fit their knowledge and experience. Generally, this is sufficient protection in non-advised sales where a certain level of sophistication can be expected from investors.

In case of the execution of orders or transmission and reception of orders of certain noncomplex 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

Since execution only sales are very rare in Austria, our experience is limited.

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 end clients
- 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.

Question 6.9 Does the target market determination process (at the level of both manufacturers and distributors) need to be improved or clarified?

Yes/no/don't know

Please explain your answer

The obligations of the distributor in relation to non-advised and execution only sales should be clarified.

Demands and needs test (Specific to the Insurance Distribution Directive (IDD))

Before selling an insurance product or insurance-based investment product, insurance distributors are obliged to have a dialogue with their customers to determine their demands and needs so that they are able to propose products offering adequate characteristics and coverage for the specific situation of the customer. Any products proposed must be consistent with the customer's demands and needs. In the case of insurance-based investment products, this requirement comes in addition to the suitability assessment.

Question 6.10 To what extent do you agree that, in its current form, the demands and needs test is effective in avoiding mis-selling of insurance products and in ensuring that products distributed correspond to the individual situation of the customer?

Strongly disagree	Disagree	Neutral	Agree	Strongly agree
		X		

Please explain your answer

According to our understanding the demands and needs test is a sort of minimum standardised exercise to ensure that customers have the demands and needs of the group of customers (target market) to which

they belong. In this respect the demands and needs test ensures that the products correspond to the standardised situation of the members of this group and avoids mis-selling in this sense. The “full individual” situation of a customer is to be taken into account during the process of advice.

Question 6.11 Can you identify any problems with the demands and needs test, in particular its application in combination with the suitability assessment in the case of insurance-based investment products? If so, how might they be addressed?

Yes/no/don't know

Please explain your answer

It is not easy to draw a clear borderline between the demands and needs test and the suitability test. The clear scope of the demands and needs test is crucial for non-advised and execution only sales, as the demands and needs test defines the minimum level of customer protection in case advice is not mandatory.

The IDD does not contain detailed rules on the demands and needs test and leaves it to Member States to decide on the details of how the test is applied in practice. This results in differences between Member States.

Question 6.12 Are more detailed rules needed in EU law regarding the demands and needs test to make sure that it is applied in the same manner throughout the internal market?

Yes/no/don't know

Please explain your answer

As it is difficult to achieve supervisory convergence without a clear harmonised guidance, more detailed rules are needed in EU law regarding the demands and needs test. As mentioned above the demands and needs test defines the European minimum level of customer protection in case advice is not mandatory.

Question 6.13 Is the demands and needs test sufficiently adapted to the online distribution of insurance products? Are procedural improvements or additional rules or guidance needed to ensure the correct and efficient application of the test in cases of online distribution?

Yes/no/don't know

Please explain your answer

In our view the demands and needs test is not sufficiently adapted to the online distribution of insurance products. Procedural improvements in combination with a clear guidance which aspects to consider depending on the different lines of business would be very much welcomed on common and especially with regard to online distribution channels.

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
Introduction of an additional client category (semi-professional) of investors.	
Adjusting the definition of professional investors on request	
No changes to client categorisation (other measures, i.e. increase product access and lower information requirements for all retail investors)	X

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

<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	X
30 transactions on financial instruments over the last 12 months, on the relevant market	
10 transactions on financial instruments over the last 12 months, on the relevant market	
Other criteria to measure a client's experience: please specify	
<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	X
Exceeds Euro 250,000	
Exceeds Euro 100,000	
Exceeds Euro 100,000 and a minimum annual income of EUR 100,000	
Other criteria to measure a client's capacity to bear loss: please specify	
<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	X
Extend definition to include relevant experience beyond the financial sector (e.g. in a finance department of a company).	
Adjust the reference to the term ‘transactions’ in the criteria to instead refer to ‘financial instruments’	
Other criteria to measure a client's financial knowledge: please specify	
<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	X
Relevant certified education or training that allows to understand financial instruments, markets and their related risks.	
An academic degree in the area of finance/business/economics.	
Experience as an executive or board member of a company of a significant size.	
Experience as a business angel (i.e. evidenced by membership of a business angel association).	
Other criteria to assess a client's ability to make informed investment decisions: please specify.	

Companies below the thresholds currently set out in MiFID II (2 of 3: turnover of €40 mln, balance sheet

of €20 mln and own funds of €2 mln) would also qualify as retail investors.

Question 7.3 Would you see merit in reducing these thresholds in order to make it easier for companies to carry out transactions as professional clients?

- **No change.**
- **Reduce thresholds by half.**
- **Other criteria to allow companies to qualify as professional clients: please specify.**

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?

	<i>Not at all effective</i>	<i>Rather not effective</i>	<i>Neutral</i>	<i>Somewhat effective</i>	<i>Very effective</i>
<i>Ensuring transparency of inducements for clients</i>				X	
<i>An obligation to disclose the amount of inducement paid</i>				X	
<i>Allowing inducements only under certain conditions, e.g. if they serve the improvement of quality</i>				X	
<i>Obliging distributors to assess the investment products they recommend against similar products available on the market in terms of overall cost and expected performance</i>		X			

<i>Introducing specific recordkeeping and reporting requirements for distributors of retail investment products to provide a breakdown of products distributed, thus allowing for supervisory scrutiny and better enforcement of the existing rules on inducements</i>			X		
<i>Introducing a ban on all forms of inducements for every retail investment product across the Union</i>		X			

Please explain your answers

Inducements should be transparent for the clients. The MiFID II conditions for inducements according to which inducements must be designed to enhance the quality of the service have been implemented in practice. A ban of inducements would be likely to foster circumvention of the rules.

Question 8.2 If all forms of inducement were banned for every retail investment product across the Union, what impacts would this have on:

- **The availability of advice for retail investors?**
- **The quality of advice for retail investors?**
- **The way in which retail investors would invest in financial instruments?**
- **How much retail investors would invest in financial instruments?**

Please explain your answers

Due to the divergent structure of national markets and diverging distribution models, the impact of an EU-wide inducement ban would vary largely across Member States. Especially in Member States with bank-centric distribution models, banks would react by increasing closed-architecture models because of the loss of incentives to sell third party products. Furthermore, inducement bans could be “circumvented” by firms through “vertical integration practices” between banks and asset managers and only group products might be offered to end-clients. In this case, the bank would provide a service (the distribution of its products) to the management company which, instead of paying the bank through a fee rebate, would pay the bank by way of a dividend or a capital reserve at the level of the management company. In addition, a ban of inducements would probably impair certain retail clients’ access to investment advice due to less sources of funding of their investment advice and less incentives for investment firms to provide such advice to retail clients.

Question 8.3 Do the current rules on advice and inducements ensure sufficient protection for retail investors from receiving poor advice due to potential conflicts of interest:

	<i>Yes</i>	<i>No</i>
<i>In the case of investment products distributed under the MiFID II framework?</i>	X	

<i>In the case of insurance-based investment products distributed under the IDD framework?</i>	X	
<i>In the case of inducements paid to providers of online platforms/comparison websites?</i>	X	

Please explain your answer

The conflicts of interest that can arise in relation to investment advice are adequately addressed by the current rules in MiFID II and IDD. There are some market practices posing challenges such as zero commission trading and payment for order flow (PFOF). This is however not relating to investment advice but rather to a lack of cost transparency and not acting in the best interest of the client when executing orders. Also in relation to the aforementioned practices, the rules are sufficient; problems arise when brokers do not adhere to the rules.

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

Cross-sectoral harmonisation would facilitate the application of the rules.

Question 8.5 How should inducements be regulated?

	<i>Yes/no</i>
<i>Ensuring transparency of inducements for clients</i>	yes
<i>Ensuring transparency of inducements for clients, including an obligation to disclose the amount of inducement paid</i>	yes
<i>Allowing inducements only under certain conditions, e.g. if they serve the improvement of quality</i>	yes
<i>Obliging distributors to assess the investment products they recommend against similar products available on the market</i>	no
<i>Introducing specific record-keeping and reporting requirements for distributors of retail investment products to provide a breakdown of products distributed, thus allowing for supervisory scrutiny and better enforcement of the existing rules on inducements</i>	yes
<i>Introducing a ban on all forms of inducements for every retail investment product across the Union</i>	no

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 online 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?

At the moment we do not see an explicit need for legislative changes regarding the above-mentioned areas. Regarding the practice of PFOF, ESMA has issued a statement reminding firms that PFOF is in most cases not compliant with MiFID II and that the MiFID II rules regarding conflict of interest, best execution, inducements and cost transparency must be strictly followed in any case (cf. ESMA's public statement on risks arising from payment for order flow and from certain practices by zero-commission brokers, ESMA35-43-2749, available under <https://www.esma.europa.eu/file/120201/>).

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

The current rules in MiFID II are sufficient.

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.

Most firms in the Austrian market (especially credit institutions) have implemented high quality in-house education and training that provide for a high standard of staff knowledge and competence.

If yes, what would you consider the essential characteristics of such a label and how should it be similar to or different from those that already exist in the market?

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 8.9 Are robo-advisors (or hybrid advisors) regulated in a manner sufficient to protect retail investors?

Yes/no/don't know

Please explain your answer

The MiFID II rules (e.g. regarding product governance, suitability and appropriateness) are technology neutral and can equally be applied to robo- or hybrid advisors.
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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

In Austria human advice is widely available and is traditionally the most trusted form of 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

Please explain your answer

No observations regarding barriers.

9. ADDRESSING THE COMPLEXITY OF PRODUCTS

Financial products, including those targeted at retail investors, are often highly complex and often not properly understood by retail investors. Consumer representatives have therefore been regularly calling for simple, transparent and cost-efficient products. Less complex products suitable for retail investors exist in different areas, such as UCITS and certain Exchange Traded Funds (ETFs), and have been set as the default option of PEPP.

Question 9.1 Do you consider that further measures should be taken at EU level to facilitate access of retail investors to simpler investment products?

Yes/no/don't know

Please explain your answer

No observation regarding demand for simpler investment products.
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Question 9.2 If further measures were to be taken by the EU to address the complexity of products, should they aim to:

	<i>Yes/no/don't know (please explain)</i>
<i>Reinforce or adapt execution of orders rules to better suit digital and online purchases of complex products by retail investors</i>	No. Execution of orders rules are technology neutral, no need for adaption.
<i>Make more explicit the rules which prohibit excess complexity of products that are sold to retail investors</i>	No. Rules are sufficiently explicit.
<i>Develop a new label for simple products</i>	Don't know. Question is not specific enough.
<i>Define and regulate simple, products (e.g. similar to PEPP)</i>	Don't know. Question is not specific enough.
<i>Tighten the rules restricting the sale of very complex products to certain categories of investors</i>	No. Rules are sufficiently explicit.
<i>Other (please explain)</i>	

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?

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

Please explain your answer

Access to effective redress is important in order to establish a fully integrated single market for retail investors. Only if they have full access to effective redress they will invest in other Member States.

Question 10.2 According to MIFID II, investment firms must publish the details of the process to be followed when handling a complaint. Such information must be provided to the client on request or when acknowledging a complaint and the firm must enable the client to submit their complaint free of charge. Is the MiFID II requirement sufficient to ensure an efficient and timely treatment of the clients' complaints?

Yes / No / don't know

Please explain your answer

Yes, the requirements are sufficient to ensure an efficient and timely treatment of the clients' complaints. It could be considered to harmonize the timeframes within which the firms should reply to a complaint (as it is already prescribed in the PSD II), but it is not absolutely necessary, as especially credit institutions already have short timeframes for replying to complaints (regarding all their financial services).

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

The question does not seem to be directly addressed to supervisory authorities. However, we deduce problems in obtaining redress from the consumer requests that we receive.

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?

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

Please explain your answer

Alternative dispute resolution might not be effective in all cases as some alternative dispute resolution bodies only accept specific matters or require companies to willingly enter into procedures.

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

We see options to improve redress in the context of retail investment products both on a domestic and on a cross-border basis: Domestically, obligating companies to engage in alternative dispute resolution procedures (such as arbitral procedures) should be considered. In a cross-border context, options would be (1) to establish more cross-border consumer bodies specifically for financial/ investment matters for consumers disputes and (2) to provide more information (e.g. fact sheets) for consumers redress options within their Member States and the EU.

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>
			X	

Please explain your answer

Consumer redress is accessible for elderly and over-indebted; people who cannot use the internet are not excluded; there are specific organisations for over-indebted.

11. PRODUCT INTERVENTION POWERS

ESMA has been given the power to temporarily prohibit or restrict the marketing, distribution or sale of financial instruments with certain specified features or a type of financial activity or practice (these are known as “product intervention powers”). EIOPA has similar powers with regard to insurance-based investment products. These powers have been used by ESMA in the past for certain types of high risk product e.g. binary options and contracts for differences (CFDs).

Question 11.1 Are the European Supervisory Authorities and/or national supervisory authorities making sufficiently effective use of their existing product intervention powers?

Yes/no/don't know

Please explain your answer

ESMA's product intervention regarding CFDs and BO was an important measure that was subsequently applied nationally by all NCAs. Also several NCAs have since then taken national product intervention measures. The exchange on ESMA level works well.

Question 11.2 Does the application of product intervention powers available to national supervisory authorities need to be further converged?

Yes/no/don't know

Please explain your answer

Currently there are still deviations of product intervention powers on national levels. This can create an arbitrage and different level playing fields.

Question 11.3 Do the product intervention powers of the European Supervisory Authorities need to be reinforced?

Yes/no/don't know

Please explain your answer

This is not a priority at the moment.

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?

	<i>Please rank your answers (1, 2, or 3)</i>
An investment that contributes positively to the environment and society	
An investment that reduces the harm on the environment and society (e.g. environmental pollution, child labour etc.)	
Financial returns	

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

	<i>Please indicate on a scale of 1-5</i>
Measurements demonstrating positive sustainability impacts of investments	
Measurements demonstrating negative or low sustainability impacts of investments	
Information on financial returns of sustainable investments compared to those of mainstream investments	
Information on the share of financial institutions' activities that are sustainable	
Require all financial products and instruments to inform about their sustainability ambition	
Obligation for financial advisers to offer at least one financial product with minimum sustainability ambition	
All financial products offered should have a minimum of sustainability ambition	

Question 12.3 What are the main factors preventing more sustainable investment?

	<i>Please indicate on a scale of 1-5 (1= least important, 5 = most important)</i>
Poor financial advice on sustainable investment opportunities	4
Lack of sustainability-related information in pre-contractual disclosure	3
Lack of EU label on sustainability related information	4
Lack of financial products that would meet sustainability preferences	1
Financial products, although containing some sustainability ambition, focus primarily on financial performance	3
Fear of greenwashing (i.e. where the deceptive appearance is given that investment products are environmentally, socially or from a governance point of view, friendly)	2
Other, please explain: We would like to mention that we are currently experiencing a boom of Austrian ESG investment funds in Austria. In particular, there has been a strong increase of Austrian investment funds following the Austrian Eco-label for Sustainable Investment Products, as of March 31, 2021, with asset values (NAV) of EUR 16.9 billion (9.9% of the Austrian fund market). All but one of Austrian UCITS management companies (which are also AIFMs) manage Austrian Eco-label funds.	

Question 12.4 Do you consider that detailed guidance for financial advisers would be useful to ensure simple, adequate and sufficiently granular implementation of sustainable investment measures?

Yes/no/don't know

Please explain your answer

More detailed guidance for financial advisors would be useful, in particular, strengthening the aspect of education for financial advisors on sustainable finance measures.

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

Criteria as to how ESG factors are considered in investment research could improve the value of information in research materials.
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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

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