Brussels, 29 July 2021

EACB Answer to

European Commission's public consultation on a Retail Investment Strategy for Europe

July 2021

The **European Association of Co-operative Banks** (EACB) is the voice of the co-operative banks in Europe. It represents, promotes and defends the common interests of its 28 member institutions and of co-operative banks in general. Co-operative banks form decentralised networks which are subject to banking as well as co-operative legislation. Democracy, transparency and proximity are the three key characteristics of the co-operative banks' business model. With 2,700 locally operating banks and 43,000 outlets co-operative banks are widely represented throughout the enlarged European Union, playing a major role in the financial and economic system. They have a long tradition in serving 214 million customers, mainly consumers, retailers and communities. The co-operative banks in Europe represent 85 million members and 705,000 employees and have a total average market share of about 22%.

For further details, please visit www.eacb.coop

Introduction

Europe's co-operative banks serve 214 million customers (around half the population of the EU), who are mainly consumers, retailers, SMEs and communities. This makes them drivers of local and social growth, and major contributors to financial and economic stability by merit of their anti-cyclical behaviour. The main service provided to the retail markets by co-operative banks is the provision of credit – the biggest market share being in consumer loans and mortgage loans – but they also act as manufacturers and distributors of retail investment products. In addition, co-operative banks provide investment services and investment advice to retail clients, most notably as defined under MiFID II and PRIIPs.

Indeed, the EACB has published papers on, for example, the unintended consequences of MiFID II affecting co-operative banks and their clients. Reference is made to EACB's November 2019 White Paper titled 'EACB Proposal for a MiFID II Refit: "Towards a more effective framework respecting diversity and consumer choice"'. In Appendix 3 of the White Paper, various EACB members also provided relevant data to illustrate trends under MiFID II based on data from 2018 – 2019.

The above-mentioned paper is one instance which notes that the regulatory requirements for providing investment services to retail clients have significantly increased over time and continue to be expanded by regulatory practice e.g. Earlier in 2021, the ESMA consultation on MiFID II appropriateness guidelines essentially proposes to extend the organisational requirements from the suitability test (save for the suitability assessment and statement) to the non-advisory business. While the MiFID II Quick Fix package published as part of the EU COVID Recovery package contained some simplifications for professional clients and eligible counterparties, the requirements applicable to investment services for retail clients remained almost the same.

Our members remain committed to the high level of retail investor protection, but we are aware that the complexity of regulatory obligations and the generally low margins in the retail business adversely impact the offering of retail investment services, in particular advisory services or the product universe offered to retail clients, on the market. In this context, the EACB welcomes the opportunity to participate in the European Commission's consultation on Retail Investment Strategy for Europe, but would like to emphasize that the focus of current regulatory measures should not be to increase disclosures and rules as this leads to a situation of information overload counterproductive to confident access to the EU's capital markets by retail investors.

Retail investors would thus benefit from a review of the regulatory burden of the current investment landscape as follows:-

- **Simplification and comparability**: Information documents that contain helpful and concise information and that are comparable across similar products (e.g. MiFID II and PRIIPs) but not necessarily for all products across the different industries. Unlike the Single Rulebook in banking legislation, securities regulation cannot be easily interpreted in a cohesive manner across the board;
- **Harmonisation of legislative dossiers:** Where comparability is possible, the EU co-legislators must ensure that harmonisation across the various legislative dossiers is achieved. This is especially important in the context of the EU sustainable finance agenda currently underway. The various timeline inconsistencies between the legislative dossiers leads to disclosure gaps in ESG information being presented to retail investors – not an ideal scenario for investor protection;

- **Legal certainty**: Such horizontal approach should not be looked at solely in terms of regulatory drafting at Level 1 and 2, but also when it comes to co-ordination with EU supervisors. One example is the recent ESMA consultation regarding revised guidelines for the appropriateness assessment mandated under MiFID II, which had investor protection as an objective. The proposals made by ESMA overstepped what is required at Level 1 and Level 2, and thus missed the mark when they suggested increasing investor protection. It is important that legal certainty is determined at Level 1 (with some further technical criteria under Level 2) and that the ESAs do not go beyond their mandate; and
- **Consumer choice and market diversity:** Co-operative banks help retail clients access capital markets by providing value-added services (investment advice and portfolio management) based on their values of proximity and personal touch. It is well-known that co-operative banks are able to provide access to financing to communities that are less able to access financing. Allowing various business models to function when it comes to investment advice (which is the main value-added investment service provided by co-operative banks on a face-to-face basis), benefits clients who are less affluent but wish to invest. For example, co-operative banks have implemented various quality enhancement criteria in order to be able to satisfy MiFID II requirements, and thus this has impacted costs. The current inducements regime under MiFID II benefits such smaller/less-affluent clients who benefit from the cross-subsidisation of costs implicit in the "colllective investment (funded by inducements) model". Therefore, a ban on inducements would be detrimental to such clients and should not be pursued.

Section 1. General questions

1.1 Does the EU retail investor protection framework sufficiently empower and protect retail investors when they invest in capital markets? Please explain your answer to question 1.1 and provide examples:

Yes	**X**
No	
Don't know/ no opinion/ not applicable	

The current retail investment regulatory landscape is heavily regulated, and thus, we believe it affords actual and comprehensive protection to retail investors. In particular, the MiFID II Directive has led to major advances in investor protection, especially thanks to the product governance rules (including the definition of target markets), the completion of the suitability assessment, the new disclosure rules towards clients and the higher requirements in staff training. Since the introduction of MiFID II, we also have seen a reduction in investor claims. For example, the BEUC has published a web-map recording 39 cases in 15 countries (3 cases in average per country) over a period of 20 years. Most reported cases happened in the 2000s before the implementation of MiFID II and PRIIPs Regulation, which were both precisely aimed at increasing transparency towards clients in the context of distribution of retail investment products.

That is not to say that there are not any concerns with respect to comparability and complexity, which can make it harder for retail clients to feel empowered to invest in EU capital markets. For example, the lack of homogeneity on costs between the PRIIPs Regulation and MiFID II framework is regrettable and confusing for retail clients

(although we acknowledge that the updated draft PRIIPs RTS which is yet to be adopted by the European Commission has taken some action to address alignment with MiFID of the cost and charges methodology). Some requirements of MiFID II are also too strict and create a source of complexity for clients. For instance, we are of the opinion that the product governance rules are not relevant for ordinary shares and plain vanilla bonds. The disclosure rules on cost and charges are also complex, and these should be exempted/made lighter at least for professional clients. Furthermore, the amount of information disclosed is such that retail investors are experiencing information overload when it comes to assessing the risk of their investment.

However, our data shows that the issues in such regulations as MiFID II and PRIIPs Regulation have had a greater impact on diminishing consumer choice, access to capital markets, and market diversity, rather than investor protection.

- **MiFID and PRIIPs**

Co-operative banks adapted their business model after MiFID II, and in several cases withdrew from providing investment services or investment advice altogether, which impacts market diversity. At the same time, post MiFID II many retail clients had withdrawn from capital markets altogether due to costs, information overload, lack of suitable product offering and various other reasons. If we take this together with the fact that the initial implementation costs and running costs combined are in some cases higher than for core banking regulation rules deriving from CRR/CRD, then the framework has not been very effective in terms of capital access particularly for credit institutions that also fall under the MiFID II regime.

Reference is made to Appendix III of our November 2019 White Paper titled 'EACB Proposal for a MiFID II Refit: "Towards a more effective framework respecting diversity and consumer choice"'. In this appendix, various members provided relevant data from 2018 – 2019 to illustrate trends under MiFID II:

Finland: A study conducted by OP Financial Group indicates that the client was impacted by an increased duration to complete investment advice. In a MiFID I environment, it took around 60 minutes to offer basic investment advice to one client starting to save in one investment fund. After 2018, the average duration of the same procedure has increased substantially to 90 minutes (more time consumed with more-or-less the same human resources, and less customers serviced in Finland).

Spain: UNACC has collected the data on on-going and variable costs of investment advice under MiFID II from a regional co-operative bank in Spain. The bank has estimated an additional average personnel hourly cost of €40 after implementation of MiFID II, which translates into €43 as "year 1 variable cost" and €30 as "recurring variable costs". However, as these costs depend on "personnel intensity" and this is not linked to the total amount invested, these costs (as well as those affecting the client) affect in a disproportionate manner those clients with smaller investments, as well as the banks serving these customers. The above additional variable costs do not even take into account variables, fixed and overhead costs.

Furthermore, the time consumed for the provision of investment advice was proving uneconomical particularly for smaller investors. The Spanish banking group recorded an average duration of 65 minutes to complete the subscription of an investment fund under investment advice (the pre-contractual and contractual), and an additional 45 minutes every year after that for post-contractual purposes (e.g. yearly optimal asset allocation, ex-post cost information etc.).

The above shows that the additional costs created by regulation such as MiFID II has made a high number of client relationships simply uneconomical, either because of income too low to justify the required investments (and involved risks) or just because there is a direct economic loss (in some cases even before taking into consideration fixed costs). Small investments generate the same costs (economical and 'frictional' such as time spent, burdensome documentation, etc.) while generating much less income for the service provider (and also less potential return for the investor). Cooperative banks such as the one in this Spanish study suffer more (due to its client base, proximity and easy access to customers), and in many cases are the only remaining 'face-to-face' financial services provider to clients in many local markets. The client is also impacted with cost burdens which impacts his/her behaviour. These are not necessarily direct economical costs to the client but rather additional transaction costs due to, for example, the time consuming, burdensome and confusing set of documents and procedures that are provided and need to be read and signed.

Therefore it is noted that in Spain the new costs - both economic and time wise - that MiFID II has brought to investment advice for retail clients are due to: · the need to increase ex-ante and ex-post information on costs and charges; · the need to record conversations (or alternatively, include them through written minutes in the investment proposal); and · the requirement to comply with the "Quality enhancement criteria" which entails the periodic revaluation of suitability, a new proposal for asset allocation, third-party investment products, etc. All this involves new documents, new information procedures (with traceability) and of course more time needed at branch level.

Germany: A German study by Ruhr University indicates that the impact of MiFID II/ MiFIR, as well as, PRIIPs Regulation had led to the following consequences, among others:

- Clients found the scale of mandatory information overwhelming and confusing indicating that they did not feel better informed with the additional disclosures (66%) and that the extensive mandatory information did not help them to better understand the content of the documents (77%). On the other hand, also the new information requirements led to higher regulatory costs which at the end would have to be paid by the clients. Owing to the increasing amount of time needed for transactions, clients were largely dissatisfied with the new rules. This goes especially for telephone orders, which had fallen sharply due to the new requirements. If banks still offer the way of ordering via telephone at all, i.e. that there is no "regulation-driven" abandonment of telephone advice and/or telephone orders, the time taken to place an order/execute a transaction by telephone has increased by 50% in Germany.
- The standardization required by the new rules made investment advice less flexible and tailored to the individual client. It did not help clients to make decisions;
- Due to the new requirements, retail investment advice had declined and advice-free business had become more important. Also, private banking/corporate clients had become more attractive than before; and
- Many clients were thus withdrawing from capital markets. The effects of MiFID II/MiFIR and the PRIIPs Regulation thus ran counter to one of the key objectives of capital markets union, namely to boost the supply of capital in the internal market.

The MiFID inducements regime has actually helped retail clients of co-operative banks counter some of the above issues, because the rebates are used for quality enhancement. The inducements model is useful for such clients who might not be very wealthy, because it gives retail clients, regardless of the investment amount, access to

free advice (commissions are only due in the case of an investment). Advice is an important tool to guide retail investor in their investment decisions and financially less literate and less wealthy investors strongly rely on advice. The availability of investment advice is crucial because investment in securities is not already considered in the other components of old-age pension schemes (at least not in all Member States). Indeed the mutualisation of costs provided by the inducements model helps to promote the green transition (by providing the opportunity for investment advice to reach more retail clients) and takes into account the different levels of digitisation in Europe (there is the idea that robo-advice could reduce costs, but robo-advice might not necessarily replace a human advisor who could understand the needs of the client (local, proximity) and not all clients could receive advice through such digital technology. Also when markets are going down the clients would prefer to use human advice and not follow herd behaviour).

On the PRIIPs Regulation, one specific technical issue encountered in its implementation that has led to a decline in products on offer mainly in retail markets of small Member States that do not use a lingua franca, is the requirement to provide retail clients with a key investor document (KID) in the official language of the Member State where the product is distributed e.g.by 90% in Finland where English or German are not official languages.

Due to the issues with the content of the PRIIPS KID which make transparency to investors complex and non-comparable, it has been noted that in some countries the manufacture and distribution of packaged retail products has been drastically reduced in the last few years impacting issuer and client product choice and diversity. This is worrying in the context of co-operative banks who are key players in the real economy as their client portfolios mainly cover households and SMEs. In fact, many co-operative banking groups still provide investors with the UCITS KIID because they have not been able to transition to the PRIIPs KID under the current regulatory issues.

We are pleased to note that quick fixes to the Level 1 of the UCITS Directive and PRIIPs Regulation are envisaged in 2021, in order to avoid a situation where a UCITS KIID and a PRIIPS KID are provided both to retail clients at the same time. If the product is also qualified under MiFID II, it might be easier to allow for MiFID II cost disclosures to supersede the UCITS and PRIIPs investor documents. Meanwhile, members encourage adoption by the European Commission of the PRIIPs Level 2 RTS as soon as possible, in order to begin implementation in an effective manner.

- **<u>Sustainable Finance</u>**

Further to the above, our members are also analysing the amendments adopted by the European Commission on 21 April 2021 to the MiFID II Delegated Directive 2017/593 and Delegated Regulation 2017/565 with respect to sustainability risks and factors. Due to some legal uncertainties in the texts (also amended for UCITS Directive, AIFMD, IDD and Solvency II), members are concerned that the ESG product offering to retail clients will be very limited. Furthermore, these changes would effectively become applicable October 2022 but are not clear and thus lead to legal uncertainty issues. Even if market standardisation is used to resolve such issues, there could be not enough time to implement all the changes in time due to the complexity of the issues, and the moving targets in relation to the content and deadlines for related texts such as EU Taxonomy and the SFDR. Furthermore, the concept of 'sustainability preferences' determined by the client (does not make the process of green transition simple for clients – how can they understand?) and the unclear product categorisation that could be offered to clients under this regime, limits the sustainable product offering to clients. In addition, if the current regulation is prohibiting provision of investment advice, it will be hard to advice on the ESG product offering for clients that are less wealthy.

As final remarks, we wish to highlight that:

- The outcome of the Retail Investment Strategy is eagerly awaited by the EACB but raises concerns if this will propose changes that are not properly aligned time-wise, or that further add to the complexity of disclosures. Retail investor protection could also be impacted if the following aspects are not considered: (i) simplicity and comparability of transparency requirements (also considering sustainable finance disclosures), and (ii) timing of regulatory implementation.
- Our opinion is that the EU co-legislators should focus on Level 1 & 2 changes primarily and ensuring as much legal clarity is already established in the Level 1 text. That said, it is also important that any clarification provided by the ESAs at Level 3 is clear and concise but does not go beyond the ESAs legal mandate. The timing of publication of all the levels of text should also be aligned so as not to put further strain on investors (who struggle to keep up with the volume and complexity of the information disclosed to them), and also the financial markets (who must update their systems);
- Furthermore, timing alignment and a horizontal approach should not be looked at solely in terms of rules drafting between the different teams at the European Commission, but also when it comes to co-ordination with supervisors. One example is the recent ESMA consultation regarding revised guidelines for the appropriateness assessment, which totally missed the mark in terms of rationale for investor protection. Another example is the detailed SFDR RTS proposed by the ESAs which require a lot of information gathering. The SFDR RTS will require many implementation costs, but are not backed up by a sufficient consumer centric justification; and
- We also support the list of indicators published by the European Commission on 9 June, to monitor progress and track developments in the EU's Capital Markets Union. The main section of the document linked to retail investment is Section 3.2 which includes 8 indicators (#20 - #27) measuring:-
    - Level of participation of retail investors (by type of investments: bonds, pension funds, securities, life insurance etc)
    - Costs of retail investment (only UCITS funds considered)
    - Impact of new investment choices (i.e. green bonds and crowdfunding).

  We also note the 19 indicators in the section on "access to finance". This section provides the data that bank lending is more accessible to SMEs than capital markets, normally for public policy and economical reasons of the investor. Both sections do not provide any evidence that certain rules need to be changed (e.g. MiFID, PRIIPs etc) with respect to improving investor protection. We would agree that many of the indicators in this publication paint the right picture regarding the hindrances faced in the retail markets, which are not directly linked to investor protection.

1.2 Are the existing limitations justified, or might they unduly hinder retail investor participation in capital markets? Please explain your answer:

Yes, they are justified	
No, they unduly hinder retail investor participation	**X**
Don't know/ no opinion/ not applicable	

Our answer to question 1.1 already illustrates in quite some detail how certain limitations in the current legislation can create barriers for financial service providers to efficiently

provide financial services and for retail investors to invest in various product choices and in some cases to access capital markets at all.

However, we wished to also focus on specific limitations that we think need to be addressed:

- For instance, the legal criteria for non-professional clients to access the category of professional clients are too strict and should therefore be lightened. Indeed, certain clients with a high level of knowledge and experience are currently not allowed to buy certain complex financial instruments because they do not meet a criterion set out in Annex II, Section II of MiFID II.
- The scope of the product governance rules under MiFID II is too broad and should consequently be modified in order to exempt ordinary shares and plain vanilla bonds from these requirements;
- The suitability test is also too long and complex: clients (including retail clients) are often reluctant to answer all the questions, which are considered intrusive and sometimes meaningless. This is particularly true when the amounts to be invested are small. Investment services providers have reported that some of their retail clients had given up buying financial instruments because they were tired of answering suitability questionnaires;
- In addition, the current costs and charges disclosure requirements are applicable to all types of clients, regardless of their classification. Broader application of the principle of proportionality in implementing ex-ante and ex-post disclosure on costs and charges would be appropriate;
- For informed clients, the current profusion of information provided at every single transaction is not necessary and may deter them from purchasing financial instruments. Thus, simplifications would be welcomed, in particular for professional clients and eligible counterparts;
- Best execution reports are also deemed confusing for retail clients, and useless for professional ones. They should therefore be deleted; and
- Lastly, entities offering non-regulated products are not bound by the product governance, appropriateness/suitability-assessment rules, costs and charges requirements, etc., creating an asymmetry which is not acceptable. Therefore, instead of strengthening the rules applicable to investment products that are already highly regulated (by MiFID 2, IDD, PRIIPs, etc.), we urge the European Commission to implement a solid regulatory framework for non-regulated products such as investment products on wine, diamonds and so on.

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? Please explain your answer:

Yes	**X**
No	
Don't know/ no opinion/ not applicable	

There currently exist a limitation of some financial products to only professional clients and eligible counterparties. For example, only some derivatives are available to retail clients and the structured product scope to retail clients was narrowed after MiFID II. Some bond emissions also have to carved out from the retail investor scope (this was meant to be amended by way of the MiFID II Quick Fix due to the COVID-19 recovery package, but was

only partly adjusted for make-whole clause bonds). There are also many (wealthy) non-professional clients with a level of experience equivalent to that of a professional client who have no access to certain financial instruments, such as private equity funds whose subscription is limited to professional clients. It would thus make sense to allow for modification of the professional client categorisation criteria to allow for certain sophisticated non-professional clients to invest in all financial instruments that meet their needs. Furthermore, the MiFID II regulatory framework requires verification of the clients' knowledge and experience for each type of financial instrument. If a client has no experience of a financial instrument, this can restrict his ability to invest in it even though this instrument might meet his needs.

We have also encountered a specific issue in the PRIIPs Regulation that has led to a decline in products on offer mainly in retail markets of small Member States that do not use a lingua franca. Indeed, many of the global product manufacturers provide a PRIIPs KID or may provide a KID only in English or German. The local distributors in many EU countries do not have the possibilities to have these KIDs in their local language so therefore these packaged products, such as many global investment funds, are outside of the retail customer scope in some countries e.g.by 90% in Finland where English or German are not official languages.

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

	1 (strongly disagree)	2 (rather disagree)	3 (neutral)	4 (rather agree)	5 (strongly agree)	Don't know - No opinion - Not applicable
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					x	

Please specify what other factor(s) might discourage or prevent retail investors from investing:

As explained in our answers to questions 1.1 and 1.2, sometimes the barrier to investing for a retail client is the burdensome regulatory requirements that are expected during the client journey.

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

	1 (strongly disagree)	2 (rather disagree)	3 (neutral)	4 (rather agree)	5 (strongly agree)	Don't know - No opinion - Not applicable
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	○	○	○

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? Please explain your answer

Financial literacy	**X**
Digital innovation	
Disclosure requirements	
Suitability and appropriateness assessment	
Reviewing the framework for investor categorisation	**X**
Inducements and quality of advice	
Addressing the complexity of products	
Redress	
Product intervention powers	**X**
Sustainable investing	
Other	

The financial literacy of some clients should be intensified because of their very limited knowledge of financial instruments and of their risks.

Concerning the suitability and appropriateness assessments, the corresponding tests are too long, complex and lack proportionality, as the questions asked are identical regardless of the amount of investment envisaged or the classification of the client. In addition, it has frequently been reported to our members that many clients feel that these tests are too intrusive and that the frequency at which they are carried out is too redundant. Consequently, many clients refuse to answer and prefer to make their investments without checking their knowledge and experience or even give up some of the investments envisaged in favour of other products for which the regulations are not as strict.

To protect those clients, we believe it is crucial that rules governing the distribution of non-regulated products should be defined to monitor their distribution and limit the excessive risks they may represent for potential investors. Products intervention powers that national competent authorities are entitled to exercise against investment services providers distributing

financial instruments should be extended against providers of non-regulated products to ensure a level playing field.

Lastly, illegal providers should be tackled more effectively. Our French members advise, for example, that in France the national competent authority can ask the judge to order internet service providers to block access to fraudulent websites. National competent authorities should be entitled to directly order such blocking under expanded products intervention powers.

Section 2. Financial literacy

2.1 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? Please explain your answer

	1 (strongly disagree)	2 (rather disagree)	3 (neutral)	4 (rather agree)	5 (strongly agree)	Don't know - No opinion - Not applicable
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 advice	○	○	○	X	○	○
Make investment decisions that are in line with their investment needs and objectives	○	○	○	○	X	○
Follow a long-term investment strategy	○	○	○	X	○	○

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:

Various measures could be undertaken such as the Commission encouraging the Member States to include financial literacy in school curricula, and/or to create and implement a national strategy for financial education based on the OECD INFE recommendations. Co-operative banks stand ready to support such initiatives, as long as there is no expectation on banks to finance or organise any strategies related to financial literacy as this should be within the remit of the Member State. For example, even in the case of integrating financial education in school curricula, this should be under the exclusive competence of Member States and we do not see the necessity for measures to be taken at the European level. It is also important to note that financial education might improve the client's understanding of the nature and main features of financial products, as well as, help

create realistic expectations of the risks and performance of the products, but it might not solve all the barriers to retail market participation.

Section 3. Digital innovation

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:

We believe there would be more risks than benefits for the consumer if an open finance approach similar to that developed by PSD2 Directive were adopted.

Third party providers from non-EU countries (mainly GAFAs or BATHX) would have access to very numerous and sensitive personal data, with a risk of dissemination of these data and use for unauthorized purposes.

We would like to emphasize the fact that applications for deposit accounts aggregation allow customers to visualise their assets in each of the banks where they have an account, which is undeniably convenient for them. However, this type of application is of no help to the banks in question, which do not have this comprehensive vision and therefore are not able to improve the services offered to the relevant clients. Hence, beyond the customer himself, the non-official purpose of these applications is mainly to offer their providers access to extremely sensitive personal data and allow them to make almost unlimited use of it. Extended to securities accounts, such a system might give those app providers a totally unjustified competitive advantage in particular if they developed robo-advice services.

Another risk of such an open finance system would be the fragmentation of the financial advice provided to the clients by several entities, which could lead to possible contradictory advice and ultimately to clients misunderstanding and even financial losses.

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:

We are confident that the market will make full use of the technological possibilities that are or will be available and would like to stress that the regulator should refrain from intervening so as not to stifle innovation. On the specific point of open finance, we would like to point out that the market is still learning its lessons from PSD2 and that initiatives are underway in the context of the Euro Retail Payments Board to go beyond PSD2, which should be fostered.

Regarding the digital identity example raised by the Commission, it is worth nothing that the EACB together with the other ECSAs are still studying the new Digital Identity package recently launched. The new package aims to provide an ecosystem of

credentials, including but not limited to individuals core identity, leveraging a new wallet architecture. We believe that the wallet architecture with its underlying principles has the potential to further increase innovation within the financial industry, benefitting all European businesses and citizens. However, aspects such interoperability, standardization, governance, security, liability, data management need to be further investigated and clarified.
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.

Some private initiatives are also 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.

3.3 Should the information available in various pre-contractual disclosure documents be machine-readable? Please explain your answer:

Yes	
No	**X**
Don't know/ no opinion/ not applicable	

Whereas providing pre-contractual information in an electronic format could be seen as helpful in terms of efficiency, we think that industry solutions are better suited over regulation in this regard.

To illustrate, we take the example of the exchange of information between product manufacturers and distributors when it comes to a functioning distribution process. Since the content of current pre-contractual information disclosed to clients is not always suitable for IT-based extraction (e.g. ex-ante, PRIIPS KIDs), other formats have been developed on the market for how manufacturers provide information to distributors. For example, on a European level there are market standardization discussions in relation to data exchange in frameworks such as FinDatEx. In some countries, (e.g. Germany), central databases have been developed for this data exchange. It is thus unnecessary to adapt the current information sheets so that their content can be extracted. Adaptations in this respect would entail unnecessary and enormously expensive implementation efforts when there is no demand from the distributors.

In this context, it should also be considered that individual product information and individual cost data must be provided for billions of instruments across the EU. There are therefore huge amounts of data that would have to be extracted from existing information documents. In addition, much of the data can change on a daily basis (costs in the MiFID cost statements, SRI and performance in the PRIIPs KIDs), so that the data extracted would have to be checked on a daily basis if they were to claim to be up to date. Therefore, we think pursuing machine readability within regulation governing pre-contractual regulation should not be pursued.

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? Please explain your answer:

Yes	
No	**X**
Don't know/ no opinion/ not applicable	

The obstacles for cross-border products are not the different rules on marketing and advertising of investment products. Indeed, the investment firms make their business decision to enter the foreign market or not, based on other issues:-

- the differences in cultures and languages;
- the differences in currencies and taxes;
- the lack of demand since the consumers can find all they need in the domestic market, and the tailored product itself for the national market might constitute barriers for cross-border investments;

As the EU's Consumer Financial Services Action Plan itself recognises, "many consumers are satisfied with their domestic services providers". Indeed, financial services require trust. Trust starts with understanding and understanding starts with language.

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? Please explain your answer:

Yes	
No	**X**
Don't know/ no opinion/ not applicable	

A set of requirements according to Article 24 MiFID II and Article 44 et. seqq. MiFID-Delegated Regulation (EU) 2017/565 already provide for a sufficient legal framework including special requirements for marketing communication (e. g. Article 46(5) and (6) MiFID Delegated Regulation (EU) 2017/565). According to Article 24(3) MiFID II all information, including marketing communications, addressed by the investment firm to clients or potential clients shall be fair, clear and not misleading. Marketing communications shall be clearly identifiable as such. There are cases of mis-selling due to providers which are not licensed or supervised by the NCA, and thus practice criminal activity in the investment market. However, stricter enforcement of rules does not affect these cases.

3.6 Would you see a need for further EU coordination/harmonisation of national rules on online advertising and marketing of investment products? Please explain your answer:

Yes	

No	**X**
Don't know/ no opinion/ not applicable	

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)? Please explain your answer:

Not at all important	
Rather not important	**X**
Neutral	
Somewhat important	
Very important	
Don't know/ no opinion/ not applicable	

As in other fields of daily life information provided by and disseminated through social media plays an important role as source of information. Nevertheless we judge the influence on retail investors as rather not important since banks offer a qualified investment advice and provide – on a legal basis – comprehensive information on costs, charges and products. Additional information on a voluntary basis is often available to clients. With this advice and the information provided clients can value the information they receive via social media.

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?

Not at all significant	
Not so significant	
Neutral	
Somewhat significant	**X**
Very significant	
Don't know/ no opinion/ not applicable	

3.9 Do the rules need to be reinforced at EU level with respect to dissemination of investment related information via social media platforms? Please explain your answer:

Yes	
No	**X**
Don't know/ no opinion/ not applicable	

Current legislation (MiFID, MAR) seems to be appropriate and the national competent authorities have powers to supervise these activities also on social media platforms. Instead of introducing the new rules, we ask for better enforcement of existing rules and a level playing field for all the parties involved.

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	**X**
No, the rules need to be updated	
Don't know/ no opinion/ not applicable	

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? Please explain your answer:

Not at all important	
Rather not important	
Neutral	**X**
Somewhat important	
Very important	
Don't know/ no opinion/ not applicable	

Section 4. Disclosure requirements

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:

	1 (strongly disagree)	2 (rather disagree)	3 (neutral)	4 (rather agree)	5 (strongly agree)	Don't know - No opinion - Not applicable
The nature and functioning of the product	○	○	○	○	x	○

The costs associated with the product	○	○	○	○	x	○
The expected returns under different market conditions	○	○	○	○	x	○
The risks associated with the product	○	○	○	○	x	○

Please explain your answer:

Retail investment products for which no key information document has to be provided are primarily equities and plain vanilla bonds (fixed-income, step-up bonds, floaters). These financial instruments are that easy to understand and function in the same way that product-specific information - as the legislator has rightly recognized - is not required.

Moreover, it should be considered that certain general information requirements such as in Article 48 MiFID II Delegated Regulation (EU) 2017/565, or the cost information requirements, are to be applied to these products.

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

4.2.1 PRIIPs Key Information Document

4.2.1 (a) PRIIPs: Is the pre-contractual information provided to retail investors for each of the elements below sufficiently understandable and reliable so as to help them take retail investment decisions? Please assess the level of understandability:

	1 (very low)	2 (rather low)	3 (neutral)	4 (rather high)	5 (very high)	Don't know - No opinion - Not applicable
PRIIPs Key Information Document (as a whole)	○	○	x	○	○	○
Information about the type, objectives and functioning of the product	○	○	○	x	○	○
Information on the risk-profile of the product, and the summary risk indicator	○	○	○	x	○	○
Information about product performance	x	○	○	○	○	○
Information on cost and charges	○	x	○	○	○	○
Information on sustainability-aspects of the product	○	○	x	○	○	○

4.2.1 (b) PRIIPs: Is the pre-contractual information provided to retail investors for each of the elements below sufficiently reliable so as to help them take retail investment decisions? Please assess the level of reliability:

	1 (very low)	2 (rather low)	3 (neutral)	4 (rather high)	5 (very high)	Don't know - No opinion - Not applicable
PRIIPs Key Information Document (as a whole)	○	○	x	○	○	○
Information about the type, objectives and functioning of the product	○	○	○	x	○	○
Information on the risk-profile of the product, and the summary risk indicator	○	○	○	x	○	○
Information about product performance	x	○	○	○	○	○

Information on cost and charges	○	x	○	○	○	○
Information on sustainability- aspects of the product	○	○	x	○	○	○

4.2.1 PRIIPs: Is the amount of information provided for each of the elements below (c) insufficient, adequate or excessive?

	1 (insufficient)	2 (adequate)	3 (excessive)	Don't know - No opinion - Not applicable
PRIIPs Key Information Document (as a whole)	○	○	x	○
Information about the type, objectives and functioning of the product	○	x	○	○
Information on the risk-profile of the product, and the summary risk indicator	○	x	○	○
Information about product performance	○	○	x	○
Information on cost and charges	○	○	x	○
Information on sustainability-aspects of the product	○	x	○	○

Please explain your answer to question 4.2.1:

Level of understandability:
While the regulation has been implemented since 2016, clients have mostly been exposed to UCITS KIIDs due to the ongoing exemption. It is therefore difficult to draw definitive conclusions on the understandability of the KID. In addition, a new RTS, expected to apply in July 2022, will probably fix some issues identified by the industry in the KID. Asset managers will also be included into the scope of the regulation in less than a year. Reviewing the regulation in this context would therefore not be appropriate.

That being said, the pre-contractual information looks very complicated for any client and especially for retail clients. Investors experience a real information overload, which prevents them from easily finding the most relevant part of the information. The client needs relevant, quick and easy information relating to the investment product, expected returns from it and relevant risks of the product or financial instrument they plan to invest in. They need to know the basic and overall costs of what they are paying for their financial services. Based on various research (e.g. German Ruhr-University/GBIC study on MiFID and PRIIPs, and the Finnish Hanken/FFI study on IDD and MiFID) and based on data received from web-services, clients do not even want such specific and detailed information about service providers, complicated ex-post and ex-ante cost calculations, hundreds of pages of product documentation and risk related material in e.g. long prospectuses, information about inducements paid (how these overall costs are divided e.g. between manufacturer and distributor) or quality enhancement.

Level of reliability: We see that the information given is reliable and financial service providers have dedicated lots of resources to make sure it is reliable. But clients are not willing to read such exhaustive information based on the current legal framework.

Amount of information: As explained above, retail clients do find the information provided to be excessive. MiFID II, PRIIPs and IDD added much more information requirements to be given and asked for from retail investors. Even if the information is reliable, the customer might not be able to navigate it all in order to properly assess the risk and return of their investment. This will get even more complicated with the barrage of sustainability disclosure requirements now entering into place. Furthermore, the amount of time used to process one simple retail client by an investment advisor with all the required information has prolonged by around average of 50% in many Member States, from MiFID I to MiFID II. This limits the possibility for financial service providers to give financial services to the same retail clients and or large masses of retail investors.

4.5 Does pre-contractual documentation for retail investments enable a clear comparison between different investment products? Please explain your answer:

Yes	**X**
No	
Don’t know/ no opinion/ not applicable	

The PRIIPs Regulation has increased the comparability of the products in the situation where products could in practice be compared with each other. However, this is not the case with all the products, because the comparability varies between different product categories and different financial entities.

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)? Please explain your answer:

Yes	
No	**X**
Don't know/ no opinion/ not applicable	

Comparison between different investment product types is not always possible because of fundamental differences in products. To increase the comparability, the focus should be in the common headlines, but the actual content may differ from product to product.

4.7 (a) 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 product cost information is calculated and presented? Please explain your answer, and indicate which information documents are concerned:

Yes	**X**
No	
Don't know/ no opinion/ not applicable	

Whilst understandability and reliability can be linked with information overload which has been attested by various studies and data, we would like to highlight that assessing the impact of the technicality of the content of a regulation should be based on a sufficiently long period in order to draw conclusions on the efficiency of its provisions. Despite the applicability of PRIIPs since 31 December 2016, clients have mostly been exposed to KIIDs due to the ongoing UCITS exemption. In addition, many stakeholders, such as assets managers, have not yet implemented the regulation. It is therefore very complicated to assess the PRIIPs KID in the context of question 4.7(a).

That said, we cannot deny that there are inconsistencies, gaps, redundancies and overlaps to be addressed which are mainly that:-

- Harmonisation of cost transparency between MiFID II and PRIIPs KID is required; and
- The transition of the UCITS KIID to the PRIIPs KID standards must be completed as soon as possible.

Product costs are being calculated differently under MiFID II and the PRIIPs regime which causes major practical problems. Among other things, this is the case with respect to inducements. While product costs under the PRIIPs Regulation would have to include inducements, they would have to be part of the service costs under MiFID, so MiFID II product costs have to be disclosed without inducements. This means clients are being given different information about the product costs of one and the same product (if it is both a PRIIP and a financial instrument within the meaning of MiFID II) even if both information sheets base their calculations on the same investment amount of €10,000. In an example provided by a large German co-operative bank, the same product was shown to have product costs of €246.28 or 1.38% p.a. based on an investment of €10,000 when calculated under the PRIIPs Regulation and product costs of

€111.27 or 0.56% p.a. based on the same investment amount but calculated in accordance with MiFID II.

This discrepancy which has to be explained to investors and which they find difficult to understand results from a lack of consistency in the rules governing the calculation of costs.

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

4.7 (b) 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 risk information is calculated and presented? Please explain your answer, and indicate which information documents are concerned:

Yes	**X**
No	
Don't know/ no opinion/ not applicable	

The biggest redundancy in this respect is the information overload issue. Clients normally begin the investment process via provided answers to the Know Your Customer questionnaire. Then if they want to invest and need investment advice they are provided with an agreement, pre-contractual information (e.g. MiFID and IDD) on cost and charges, inducements, risks to investing, etc, and also really detailed information about the service provider, issuer and so on. They are subsequently profiled in a suitability assessment, following which the detailed investment advice and clarifications why this advice is such is provided to the client. If the investment advice is about a regular bond the client receives hundreds of pages of prospectus information. If the investment advice is about an insurance product they receive lots of documents according to IDD and the PRIIPs KID. If it is about a basic retail investment fund, then there is the UCITS KIID/PRIIPs KID and other fund documents. If it is about a structured product then they are provided for example the PRIIPs KID, prospectus etc. And if it is a combination of different kinds of these products, the client could face thousands of pages of information which risks that the information is provided in many layers, e.g. MiFID, IDD, PRIIPS etc.

4.7 (c) 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 performance information is calculated and presented? Please explain your answer, and indicate which information documents are concerned:

Yes	**X**
No	
Don't know/ no opinion/ not applicable	

Even if these are not inconsistencies in the actual sense, it should be mentioned at this point that the legal requirements for calculating the performance scenarios are flawed in many places and can lead to misleading content in the PRIIPs KIDs. Regardless of this, no private investor can comprehend the calculation of the

scenarios. It is imperative that the specifications in this regard be fundamentally revised in a timely manner.

4.8 How important are the following types of product information when considering retail investment products? Please explain your answer:

	1 (not relevant)	2 (relevant, but not crucial)	3 (essential)	Don't know - No opinion Not applicable
Product objectives/ main product features			x	
Costs			x	
Past performance		x		
Guaranteedreturns	x			
Capital protection	x			
Forward- looking performance expectation		x		
Risk			x	
Ease with which the product canbe converted into cash		x		
Other				

Past performance information is the essential in those products, where it can be calculated.

Investors with different kinds of risk profiles appreciate the different kinds of information e.g. guaranteed returns and capital protection might be relevant for some of the retail investors while the others find it not relevant at all.

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? Please explain your answer:

Yes	
No	
Don't know/ no opinion/ not applicable	**X**

The current regime ensures cost transparency for retail investors. Investment firms provide annual ex post cost information documents to clients based on the requirements of MiFID. However, there are conflicting disclosures between MiFID and PRIIPS, which creates unnecessary confusion. See our answers to question 4.7.

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:

The number of words seems to be an inappropriate measure, because it is dependent on the language used and the structure of the languages differs from each other. On the other hand, number of pages does not work either especially in the digital environment. Instead, it is more useful to define the main headings and the content of the different sections without limiting the words or pages.

Another difficulty is, that even if the length (like PRIIPS) has been properly calibrated when introduced there can be requirements for additional information which may prove difficult to incorporate in the structure.

For insurance products the focus should rather be on:

- Quantity of information in terms of cumulative impact (Solvency II, PRIIPs Regulation, IDD, etc).
- Duplications: Solvency II and the PRIIPs Regulation require the cumulative disclosure of fully or partially equivalent information to consumers, as per Article 3 of the PRIIPs Regulation.

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:

Products with more complex structures might need additional information regarding the nature and the functioning of the product.

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?	**X**
In electronic format only?	
Don't know/ no opinion/ not applicable	

4.12 Please explain your answer to question 4.12:

Digitalisation means that customer behaviour is gradually changing in favour of digital channels and online services, also in the field of banking and investment. The general progress by which the use of electronic information is continuously increasing should not be any different in the society at large than in the financial sector. A vast number of customers do not even want paper documents, considering electronic documents easier to archive. Due to the change in customer behaviour, but just as much for environmental reasons, investment firms should provide information electronically by default, unless the customer has requested to receive the information on paper. This generates also cost savings for investment service providers.

In addition, the requirement in Article 24 (5a) MiFID II (according to which investment firms shall provide information in electronic format, except where the client is a retail client who has requested receiving the information on paper) should be also introduced in other legal frameworks that deal with information requirements (such as PRIIPS Regulation), so that all client information can be provided in the same manner.

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

Not at all important	
Rather not important	**X**
Neutral	
Somewhat important	
Very important	
Don't know/ no opinion/ not applicable	

Please explain your answer to question 4.13:

It should be possible to distribute packaged products with KID / KIID only translated in English, if the client understands this. In some smaller Member States, the obligation to provide the KID / KIID in the national language is limiting the possibility to sell a big number of regular foreign packaged products to retail clients. Many foreign service providers translate these only to English, German and French. This limits the possibility to have a good variety of international products to clients in these smaller Member

States. Other complementary documentation can still be provided in the national language.

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:

Given that the amount of information is vast, the pre-contractual information should focus only to the most important information of the product. The amount of the information should be reduced e.g by cross-checking the different requirements mandated by the different relevant legislation that apply to the investment products.

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

	1 (not at all important)	2 (rather not important)	3 (neutral)	4 (somewhat important)	5 (very important)	Don't know - No opinion - Not applicable
There are clear rules to prescribe presentation formats (e.g. readable font size, use of designs /colours, etc.)?	○	x	○	○	○	○
Certain key information (e. g. fees, charges, payment of inducements, information relative to performance, etc.) is displayed in ways which highlight the prominence?	○	○	○	○	○	x

Format of the information is adapted to use on different kinds of device (for example through use of layering)?	○	○	○	○	○	x
Appropriately labeled and relevant hyperlinks are used to provide access to supplementary information?	○	○	○	○	○	x
Use of hyperlinks is limited (e.g. one click only – no cascade of links)?	○	○	○	○	○	x
Contracts cannot be concluded until the consumer has	○	○	○	○	○	x

scrolled to the end of the document?						
Other?	○	○	○	○	X	○

4.15 Please explain your answer to question 4.15:

Information documents (whether physical or digital) should never be too long, and the cumulative amount of documents arising from different legal frameworks should be considered in order to address the problem of information overload. Clients have flagged such information overload issues in data provided in research such as the German Ruhr-University/GBIC study on MiFID and PRIIPs, and the Finnish Hanken/FFI study on IDD and MiFID. We would like to emphasise that any EU proposal has to be backed up by strong consumer research and customer-centric justification. In addition, we advocate that the presentation of information by digital means to retail clients should not require a situation of too lengthy or complex interfaces (the same as the situation with physical documentation). Last but not least, we would not push for harmonised EU digital interface requirements in this area.

Section 5. The PRIIPs Regulation

Core objectives of the PRIIPs Regulation

5.1 Has the PRIIPs Regulation met the following objectives:

(a) Improving the level of understanding that retail investors have of retail investment products:

Yes	
No	
Don't know/ no opinion/ not applicable	**X**

Assessing the impact of a regulation should be based on a sufficiently long period in order to draw conclusions on the efficiency of its provisions. Despite the applicability of PRIIPs since 31 December 2016, clients have mostly been exposed to KIIDs due to the ongoing UCITS exemption. In addition, many stakeholders, such as assets managers, have not yet implemented the regulation. It is therefore very complicated to assess whether the PRIIPs KID has been conducive to better understandability.

However, as explained in our answers to questions 4.2.1 and 4.7, there are some barriers to understandability being experienced.

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

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Yes	
No	
Don't know/ no opinion/ not applicable	**X**

Assessing the impact of a regulation should be based on a sufficiently long period in order to draw conclusions on the efficiency of its provisions. Despite the applicability of PRIIPs since 31 December 2016, clients have mostly been exposed to KIIDs due to the ongoing UCITS exemption. In addition, many stakeholders, such as assets managers, have not yet implemented the regulation. It is therefore very complicated to assess whether the PRIIPs KID has been conducive to better comparability of products.

However, please refer to our answers to questions 4.2.1, 4.4, 4.6 and 4.7 for further rationale.

(c) Reducing the frequency of mis-selling of retail investment products and the number of complaints:

Yes	
No	
Don't know/ no opinion/ not applicable	**X**

Assessing the impact of a regulation should be based on a sufficiently long period in order to draw conclusions on the efficiency of its provisions. Despite the applicability of PRIIPs since 31 December 2016, clients have mostly been exposed to KIIDs due to the ongoing UCITS exemption. In addition, many stakeholders, such as assets managers, have not yet implemented the regulation. It is therefore very complicated to assess whether the PRIIPs KID has been conducive to reducing the frequency of mis-selling.

(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/ no opinion/ not applicable	**X**

Assessing the impact of a regulation should be based on a sufficiently long period in order to draw conclusions on the efficiency of its provisions. Despite the applicability of PRIIPs since 31 December 2016, clients have mostly been exposed to KIIDs due to the ongoing UCITS exemption. In addition, many stakeholders, such as assets managers, have not yet implemented the regulation. It is therefore very complicated to assess whether the PRIIPs KID has helped in terms of suitability.

5.2 Are retail investors easily able to find and access PRIIPs KIDs and PEPP KIDs? Please explain your answer:

Yes	**X**
No	
Don't know/ no opinion/ not applicable	

PRIIPs KIDs are systematically delivered to clients as pre-contractual documents. KIDs are also easily accessible via internet.

5.2.1 What could be done to improve the access to PRIIPs KIDs and PEPP KIDs? Please explain your answer:

	Yes	No	Don't know - No opinion - Not applicable
Requiring PRIIPs KIDs and PEPP KIDs to be uploaded onto a searchable EU-wide database	○	**X**	○
Requiring PRIIPs KIDs and PEPP KIDs to be uploaded onto a searchable national database	○	**X**	○
Requiring PRIIPs KIDs and PEPP KIDs to be made available in a dedicated section on manufacturer and distributor websites	○	**X**	○
Other	○	**X**	○

As already stated in Q5.2, KIDs are already easily accessible for clients. Therefore, introducing a new database would not be useful.

The PRIIPs KID

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)? Please explain your answer:

Yes	

No	
Don't know/ no opinion/ not applicable	**X**

EACB members have been in favour of simplifying the key information document which, at several degrees, could be improved for greater understandability and comparability.

However, the recent review of the RTS, expected to be applicable on 1 July 2022, does not go in that direction. Today, the industry and clients need more than ever regulatory stability and sufficient time to assess the impact of PRIIPs provisions. Therefore, we currently favour a context where many stakeholders can prepare in time to implement the regulation. Eventually we would then expect a review to be carried out in a timely manner once implementation is up and running.

Implementation and supervision of the PRIIPs Regulation

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

Yes	
No	
Don't know/ no opinion/ not applicable	**X**

Scope

5.10 Should the scope of the PRIIPs Regulation include the following products?

(a) 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	**X**
Don't know/ no opinion/ not applicable	

Enlarging the scope of the regulation should be assessed on the basis of a longer period of time. Despite the application of the regulation since 31 December 2016, clients have been mostly exposed to KIIDs due to the ongoing UCITS exemption. It is therefore difficult to draw conclusions on the suitability of the PRIIPs KID, especially when it comes to pensions products that are currently out of the PRIIPs scope. Therefore, we suggest to preserve the current regulatory scope.

(b) 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	**X**
Don't know/ no opinion/ not applicable	

Enlarging the scope of the regulation should be assessed on the basis of a longer period of time. Despite the application of the regulation since 31 December 2016, clients have been mostly exposed to KIIDs due to the ongoing UCITS exemption. It is therefore difficult to draw conclusions on the suitability of the PRIIPs KID, especially when it comes to pensions products that are currently out of the PRIIPs scope. Therefore, we suggest to preserve the current regulatory scope.

5.11 Should retail investors be granted access to past versions of PRIIPs KIDs? Please explain your answer:

Yes	
No	**X**
Don't know/ no opinion/ not applicable	

Access to past versions of the PRIIPs KIDs would not be useful and could introduce additional complexity to information provided to clients. First, no element indicates that clients are asking for accessing those documents. Second, this could introduce more confusion than clarity over investment products. While clients are in demand of comprehensive information regarding products they expect to buy, they also ask for clear and efficient documents that give them a good overview of the main products characteristics. This observation is especially true for retail clients who do not all have the specific knowledge for understanding the whole KID's content.

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.

5.12.1 Should the review and update occur more regularly?

Yes	
No	**X**
Don't know/ no opinion/ not applicable	

5.12.2 Should this depend on the characteristics of the PRIIPs?

Yes	
No	**X**

Don't know/ no opinion/ not applicable	

Section 6. Suitability and appropriateness assessment

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? Please explain your answer:

Strongly disagree	
Disagree	
Neutral	
Agree	**X**
Strongly agree	
Don't know/ no opinion/ not applicable	

We think that the suitability assessment is adequate to conclude which product is suitable to offer to the client. That said, the corresponding text of the suitability assessments is considered too long, complex and lack proportionality, as the questions asked are identical regardless of the amount of investment envisaged or the classification of the client. Refer further to our answers to question 6.3.

6.2 Can you identify any problems with the suitability assessment? Please explain how these problems might be addressed:

Yes	**X**
No	
Don't know/ no opinion/ not applicable	

The corresponding texts of the suitability assessments are considered too long, complex and lack proportionality, as the questions asked are identical regardless of the amount of investment envisaged or the classification of the client. Refer further to our answers to question 6.3.

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	**X**
Don't know/ no opinion/ not applicable	

The suitability assessment rules are complicated both when providing human advice and on the various online platforms, in terms of the many complex and detailed questions. This scenario will become even more complicated with future ESG rules, e.g. MiFID II, IDD, AIFMD, UCITS and Solvency II delegated acts have been adopted by the Commission on 21 April 2021 as part of the EC Sustainable finance package, introducing sustainability risks and factors in organizational requirements, product governance rules and the suitability assessment. Therefore, we would propose simplification of these rules for both human advice and online platforms.

This is because both types of business models suit different consumer needs depending on the consumer's financial situation, experience, tech-savviness etc, There is also a specific need for certain value added services to be provided by human advice, meaning that human advice will always be required no matter the advancement in technology. Legislation should make it possible that both business models work, and it should be up to the consumer to decide when to switch between each type of advice. A level playing field is important in this context.

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? Please explain your answer:

Strongly disagree	
Disagree	
Neutral	
Agree	
Strongly agree	**X**
Don't know/ no opinion/ not applicable	

The appropriateness test is generally better in practice towards clients than the suitability test. If client's knowledge is only checked, clients are then able to evaluate the investment by themselves.

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)? Please explain your answer:

Yes	
No	**X**
Don't know/ no opinion/ not applicable	

There are no specific problems relating to appropriateness tests from client's perspective.

6.6 Are the rules on appropriateness tests sufficiently adapted to the increasing use of online platforms or brokers? Please explain your answer:

Yes	**X**
No	
Don't know/ no opinion/ not applicable	

The appropriateness test is functioning better in an online environment (web or mobile) than the suitability test.

6.7 Do you consider that providing a warning about the fact that a product is inappropriate is sufficient protection for retail investors? Please explain your answer:

Yes	**X**
No	
Don't know/ no opinion/ not applicable	

The client must have a possibility to make their own choices on the investment products and a warning required for inappropriate products in the regulation should be enough in this regard.

Besides the sufficient warning, added investor protection is also possible in certain cases when the service provider chooses not to distribute that inappropriate product to the client without using the warnings procedures to clients.

6.8 Do you agree that no appropriateness test should be required in such situations? Please explain your answer:

Yes	**X**
No	
Don't know/ no opinion/ not applicable	

The appropriateness test should not be required for non-complex products and for execution only purposes. If there would be such test for simple/ non-complex products, this would limit the possibilities for online-trading and the goals of the EU Capital Markets Union in the future.

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

Yes	
No	**X**
Don't know/ no opinion/ not applicable	

Overall, even though target market rules have been complex for the financial industry to implement, the product governance and target market rules are functioning adequately in the investment advisory context. That said, the target market and product governance requirements are indeed complex and the suitability assessments are partly therefore quite extensive. We believe that the variation of target market evaluations between different products should be easier to do. Some products are less complex/less risky than other, and thus we ask for more product types to be excluded from the product governance and target market requirements than was done via the MiFID Quick Fix. Based on the target market and product governance rules, the client categorization has taken also too wide a role when deciding which product is suitable for retail clients. When most private investors are retail clients, it is difficult to consider that in the target market many products are nowadays defined to be only for professional clients.

Some derivatives are not available to retail clients and the structured product scope for retail client has been narrowed since MiFID II. Private equity and private debt products are in fact out of the retail scope. Retail clients also currently need to be carved out of some bond emissions (the MiFID Quick Fix partly resolved this only for make-whole clause bonds). We think that regular and simple bonds (other than make-whole) should be more easily sold to all kinds of clients. There are more experienced and wealthy retail clients who would benefit from these products, but they are carved out based on the current target market and product governance rules.

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

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**
Don't know/ no opinion/ not applicable	

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? Please explain your answer:

Yes	**X**
No	
Don't know/ no opinion/ not applicable	

The demands and needs test can be problematic to the service provider and clients. When clients have invested under IDD in insurance investment products they are usually met by the investment service provider. The insurance agreement is then established relating to the product and the underlying investments at the same time. Afterwards, the clients may want to change their insurance-based investment portfolio and invest into another underlying investment product(s). This can be done through the service provider on a face-to-face basis, through phone or through web-based online-portals. Then, once again, there is a need to do an evaluation and possibly issue some warnings to clients. If the client would like to buy the same new underlying fund outside of the insurance agreement, it would be possible to do it on an execution only basis in a banking web-solution without any warnings, questions and procedures. This may be problematic for the client to understand.

The obligation to do a demands and needs test as a separate procedure relating to insurance-based investments is therefore unnecessary. Demands and needs test is more suitable in non-life insurances than in insurance-based investments.

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	**X**
Don't know/ no opinion/ not applicable	

6.13.1 Is the demands and needs test sufficiently adapted to the online distribution of insurance products?

Yes	**X**
No	
Don't know/ no opinion/ not applicable	

6.13.2 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	**X**
Don't know/ no opinion/ not applicable	

The EACB considers that the demands and needs test is sufficiently adapted to the online distribution of insurance products. Besides, we believe that these rules must be the same whoever the professional is and whatever the distribution channel used. Ensuring a level playing field between professionals is a priority as well as respecting the statement "same products, same service, same rules".

Section 7. Reviewing the framework for investor categorisation

7.1 What would you consider the most appropriate approach for ensuring more appropriate client categorisation? Please explain your answer:

	Yes	No	Don't know - No opinion - Not applicable
Introduction of an additional client category (semi-professional) of investors	○	x	○
Adjusting the definition of professional investors on request	x	○	○

No changes to client categorisation (other measures, i.e. increase product access and lower information requirements for all retail investors)	○	X	○

Investor protection rules are key but should be proportionate to the client profile in particular for sophisticated retail clients who have already good knowledge about their investment products and their risk appetite. Categories, as defined by MiFID II, are even preventing sophisticated clients to access certain products such as private equity funds. The current shape of investor protection rules is not incentivising retail involvement in financial markets despite the aim of capital market union's initiatives launched by the European Commission.

Therefore, it is necessary to ease the transition of retail clients from one category to another. To do so, one solution would be to alleviate criteria for the accession to the professional category as follows. We would consider that at least 1 out of the 4 criteria below would categorise a client as professional:-

- Reduce the threshold related to the client's investment portfolio from €500,000 to €100,000;
- The minimum amount of transactions would be lowered from 40 to 7 transactions during the past 12 months on any market (as opposed to the "relevant market");
- The criterion related to the client's experience in the financial sector is maintained, but also complemented with other qualifiers for client experience; and
- A new criterion related to a cumulative amount of transactions of at least 100,000€ over a rolling year would be introduced.

Creating a new category of semi-professionals would not be adequate for several reasons:

- New high implementation costs for manufacturers and distributors (e.g. IT systems update, repapering, review of target markets, teams training);
- Difficulties in defining the scope of this new category;
- Difficulties in informing and explaining to clients differences among categories; and
- The complex interaction with sectorial regulations.

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

(a) 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.

No change	
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 client's experience	**X**
Don't know/ no opinion/ not applicable	

First of all, we think that the reference to "relevant market" should be changed to "any market". The original condition has caused many problems in practice because for some instruments, e.g. funds or structured products or even bonds, it is not a common practice to trade in them so frequently. Even the most sophisticated clients do not trade in real estate funds often in "that relevant market".

Furthermore, a criteria of 10 – 30 transactions over the last months is not a reliable attribute which can practicably be used for categorizing a client as a professional. In illiquid markets and in markets where securities are not traded frequently, this categorization attribute would hinder a categorization as a professional client. Even in equity markets, which usually are more liquid, professional deciders do not necessarily meet any of the suggested minimum transactions on a yearly basis. In case professional deciders use mutual funds to cover an asset class, there might be no transaction at all, although the setup of the client is a keen investment professional.

Therefore, we propose to allow 7 transactions on financial instruments over the last 12 months, on any market. This means one transaction every two months, plus an additional one.

(b) The size of the client's financial instrument portfolio, defined as including cash deposits and financial instruments exceeds EUR 500,000

No change	
Exceeds EUR 250,000	
Exceeds EUR 100,000	**X**
Exceeds EUR 100,000 and a minimum annual income of EUR 100,000	
Other criteria to measure a client's capacity to bear loss	
Don't know/ no opinion/ not applicable	

The client's instrument portfolio limit of €500,000 should be lowered to €100,000. Clients may have other assets also to consider here and the limit is too high.

(c) 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.

No change	
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	**X**
Don't know/ no opinion/ not applicable	

The EACB believes that knowledge on transactions and services in the financial sector from a prior or current profession, is a limited view to measure a client's knowledge. There are many experienced clients who have never worked in the financial industry and some people who have worked in the financial industry that do not have experience in some products. One should include persons who have professionally/occupationally acquired financial market knowledge or who have regular dealings with the relevant financial instruments (e.g. an investment advisor has adequate knowledge of the products s/he sells).

Therefore, we would propose that the wording of this criterion be changed to "the client has knowledge of the instruments and markets for at least one year as attested by:-

- their current or prior profession;
- great experience in dealings with the relevant financial instruments as a client; or
- an academic degree in the area of finance/business/economics.

Furthermore, the definition of "other institutional investor" stated in Annex II point I. (4) of MiFID II (EU 65/2014) should be changed from "Other institutional investors whose main activity is to invest in financial instruments, including entities dedicated to the securitisation of assets or other financing transactions" to "Other institutional investors whose main activity is to invest in - or main source of income comes from financial instruments, including entities dedicated to the securitisation of assets or other financing transactions".

(d) 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?

No change	
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 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	**X**
Don't know/ no opinion/ not applicable	

The EACB would propose as an additional criterion that a client qualifies a cumulative amount of transactions of at least EUR 100,000 over a rolling year. Ideally, we would call that any 1 out of the 4 criterion would need to be satisfied for the client to be able to be categorized as professional.

Section 8. Inducements and quality of advice

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 answer:

	1 (not at all effective)	2 (rather not effective)	3 (neutral)	4 (somewhat effective)	5 (very effective)	Don't know - No opinion - Not applicable
Ensuring transparency of inducements for clients	○	○	○	○	x	○

An obligation to disclose the amount of inducement paid	○	○	○	○	X	○
Allowing inducements only under certain conditions, e. g. if they serve the improvement of quality	○	○	○	○	X	○
Obliging distributors to assess the investment products they recommend against similar products available on the market in terms of overall cost and expected performance	X	○	○	○	○	○
Introducing specific record-keeping and reporting requirements for distributors of retail investment products to	X					

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provide a breakdown of products distributed, thus allowingfor supervisory scrutiny and better enforcementof the existing ruleson inducements		○	○	○	○	○
Introducing a ban on all forms of inducements for every retail investment product across the Union	X	○	○	○	○	○

The current legal framework on inducements is fully appropriate in order to protect clients against potential conflicts of interest.

First, disclosure rules are very sophisticated and ensure that clients understand the concept on inducements. Thus, investments firms have to accurately disclose to the client the exact and specified amount of inducements received prior to executing an order. The disclosure of inducements has to be combined with the ex-ante cost disclosure (Article 50 para. 2 (3) Delegated Regulation (EU) 2017/565). Thus, every retail client is aware of all costs relating to his/her investment and of all benefits (= inducements) his advisor or distributor receives. The ex-ante cost disclosure (including the disclosure of inducements) reveals in an easily understandable and comprehensive manner for the retail client all costs and inducements. Hence, every retail client is able to assess the impact of the inducement on the investment advice and to take his/her investment decision on an informed basis.

Further, when receiving the annually ex-post cost reporting, it is recalled for the retail client that his/her products include costs and (if applicable) render inducements to the financial institution. Thus, the retail client has a reason to review if for example the performance of the product justifies the costs and inducements. Furthermore, the retail client can ask his advisor to provide him with a detailed explanation of all costs/inducements (e.g. when he has not fully understood the concept of inducements so far).

Second, MiFID II makes sure that investment firms can keep the inducements received only if they use them to enhance the quality of the services provided to their clients. Articles 11-13 of the MiFID Delegated Directive (EU) 2017/593 provide detailed case groups in which the inducement is regarded as quality-enhancing. Furthermore, in Germany the national competent authority (BaFin) examines compliance with the legal requirements on inducements by checking the investment firm's lists of inducements and their use for quality enhancement.

Thus, there is no scope for investment firms to interpret this condition too widely or to bypass the condition of quality enhancement.

A potential ban on inducements would run counter to the Commission's explicit aim to raise the level of participation by retail investors in financial markets. In this context, we do not share the Commission's view that *"… due to payments of inducements, advice provided by intermediaries may sometimes be biased towards products with higher rewards for intermediaries".* The idea that commission-based advice per se encourages conflicts of interest is unfounded. Fee-based advice is by no means exempt from conflicts of interest and is certainly susceptible to problematic incentives.

More importantly, commission-based advice has a very strong social component. The over-whelming majority of investors (of co-operative banks in particular) simply cannot afford fee-based advice with hourly rates ranging from 100 to 400 EUR. Recent Surveys on the German market, for example, show that 74% of respondents are not willing to pay for investment advice. The (very few) investors who would be willing to do so are, however, not ready to pay more than EUR 50 (11%) to EUR 100 (3%) per hour. However, even that lies clearly under the average hourly rates for fee-based investment advice.

The commission-based model gives retail clients, regardless of the investment amount, access to advice, because commissions are only due in the case of an investment, whereas fee-based advice always incurs costs (hourly rates), and also to an added value service due to the quality enhancement requirements.

8.2 If all forms of inducement were banned for every retail investment product across the Union:

(a) what impacts would this have on the availability of advice for retail investors? Please explain your answer:

Banning inducements would have far-reaching effects in terms of overall access to products and advice for all European citizens. It is essential to recall that the continental – or 'integrated model' – is the prevalent form of distribution throughout Europe. In this respect, inducements play a key role in remunerating the cost of advice. This model allows for a pooling of the costs of advice between wealthier and less wealthy clients, the latter benefiting from financial advice that would otherwise not be accessible (too expensive).

In addition, the inducements help finance distribution networks, promote a wider range of products, and improve access to investment advice. Today, inducements also cover the infrastructure around investments, e.g. fixed costs, IT costs and administration. For example, in some Member States such as France, retrocessions have the positive effect

of encouraging open architecture as they contribute to the financing of the monitoring and selection of third party products. The integrated model of distribution does not create any conflict of interests. First, clients are perfectly aware that going to a specific bank can be conducive to in-house products offers. Second, advisers are neither remunerated nor rewarded on the basis of the sale of dedicated products. Finally, advice is always driven by client's needs. This has been complemented by disclosure requirements vis-à-vis clients over costs and retrocessions (PRIIPs, MiFID II), in addition to the provisions aiming at preventing mis-selling incidents through the suitability and appropriateness principles (MiFID).

Conversely, in countries where a ban on inducements was introduced, it is almost no longer possible to find any advice for funds. This situation has particularly been stressed in the Netherlands, where retail investors have to look after themselves when they want to invest in financial instruments. As provided in a study dedicated to the Dutch market, "some groups of consumers are struggling to pay directly for financial advice. If these groups don't get financial advice because they won't pay advice directly to the advisor, this could cause severe financial problems. In the Netherlands, estimates are that in 2015, 15% of households were facing problematic debts (SCP, 2016)" And "44% of customers say that the price of financial advice is too high (Nibud, 2017), which prevents them to ask for advice".

The consequences of a ban are also illustrated by figures from the UK market.

The British experience illustrates that focusing on fee-based advice by no means has a positive impact. The United Kingdom prohibited commission on investment advice back in 2013. The negative effects soon emerged and have persisted until today. In 2016, the UK Treasury and the Financial Conduct Authority were already reporting that middle-income and low-income consumers in particular could no longer afford advice and were confronting a gap in provision. The proportion of firms' advisers asking for a minimum portfolio of GBP 100,000 (approx. EUR 113,000) to provide advice rocketed within one year from 13 to 32 percent. The study also revealed that 45 percent of firms advisers rarely advised customers on retirement income options if those customers had funds of less than GBP 30,000 to invest.

According to a 2018 report commissioned published by the Financial Conduct Authority in 2018, the propensity to have advice increases significantly with wealth: Only 5% of adults with less than GBP 10,000 in investible assets had advice in the relevant period, whereas almost half (45%) of all adults who had advice have investible assets of more than GBP 50,000 only.

Moreover, studies show that 69% of investment advisors in the UK indicated that they have refused clients in the past; the most important reason (43%) for this situation is that advisory services do "not pay" for these clients (cf.: HM Treasury, Financial Conduct Authority, London: Financial Advice Market Review. Final Report, 2016, p. 6).

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The result of a commission ban is, as the data from UK make abundantly clear, that only 'higher earners' will receive advice. Since the introduction of the inducements ban in UK and the Netherlands, the decline in the offering of investment advice is real for the retail clients and several studies and reports highlight this result. In addition, the inducements ban has led to an advice gap.

(b) what impacts would this have on the quality of advice for retail investors? Please explain your answer:

A ban on inducements would not necessarily reduce the quality of advice to retail investors, but would certainly not improve the quality of advice for those (few) retail investors who could manage to afford fee-based advice. In fact, as explained in our answer to 8.2(a), qualitative advice would only be provided to wealthy clients at the expense of less affluent ones.

Ultimately, mistaken advice can never be completely ruled out. This holds true of every advice format in such a highly complex field as investment advice. The blanket accusation that commission-based advice per se encourages conflicts of interest is unfounded. Fee-based advice is by no means exempt from conflicts of interest either and is certainly susceptible to problematic incentives. A fee-charging adviser can – for example, by setting up a particularly complex and hence advice-intensive custodial structure – influence the calculation basis for the fee to be charged. In addition, many retail clients cannot afford hourly rates of €100 to €400.

(c) what impacts would this have on the way in which retail investors would invest in financial instruments? Please explain your answer:

An advice gap for retail clients would lead to a situation where risk-adverse retail clients either completely withdraw from capital markets (and no longer participate in the chances of capital markets). Furthermore, it could lead to situations where the retail client makes investment decisions of their own (which increases the risk of making "false" investment decisions that are detrimental to the client). And it could also incentivise other clients to invest in vanilla products at the expense of more sophisticated products.

In some countries the structure of distribution channels consists of – or are owned by – banks and insurance companies that also have in-house manufacturing, as well as distributors without in-house manufacturing. Without distribution fees there is a lot less incentive for these distributors to include products from external product manufacturers in their product offering. Naturally, this would lead to diminishing product diversity, fewer products for the clients to choose from, and barriers for smaller manufacturers to gain a foothold in the market.

(d) what impacts would this have on how much retail investors would invest in financial instruments? Please explain your answer:

It is difficult to assess what impacts a ban on inducements would have on the amounts that retail investors invest. As illustrated above, retail clients would either completely

withdraw from or invest less in capital markets due to their unwillingess to pay more for advice and due to fewer products being available.

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:

	Yes	No	Don't know - No opinion - Not applicable
In the case of investment products distributed under the MiFID II framework?	X	○	○
In the case of insurance-based investment products distributed under the IDD framework?	X	○	○
In the case of inducements paid to providers of online platforms/comparison websites?	X	○	○

Please explain your answer to question 8.3:

MiFID II significantly enhanced the requirements for payment and disclosure of inducements (e.g. inducement register, inclusion of inducements in cost disclosure) and reinforced the principal that inducements are permissible only in case a quality enhancing effect is ensured and no conflict of interest arises. In particular, retail clients receive transparent information from their banks or investment firms on inducements received and are, therefore, in the position to assess the quality of the firm's services also in the light of such inducements.

Therefore, the EACB is of the opinion that further measures in relation to the inducements regime are not required to safeguard the retail clients' interest. For further rationale, please note our answers to questions 8.1 and 8.2.

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	**X**
Don't know/ no opinion/ not applicable	

IDD applies to all insurance products (including non-life insurance and investment-based insurance products) and MiFID applies only to investments. The distribution channels vary a lot between the two different kinds of products, and the products are extremely different. Therefore, the rules framing payment of inducements should not be aligned, as the way how insurance products are sold is so different from investment products.

8.5 How should inducements be regulated?

Ensuring transparency of inducements for clients	**X**
Ensuring transparency of inducements for clients, including an obligation to disclose the amount of inducement paid	**X**
Allowing inducements only under certain conditions e.g. if they serve the improvement of quality	**X**
Obliging distributors to assess the investment products they recommend against similar products available on the market	
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	
Introducing a ban on all forms of inducements for every retail investment product across the Union	

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? Please explain your answer:

Yes	
No	**X**
Don't know/ no opinion/ not applicable	

In our view, there is no need for legal changes to prevent conflicts of interest. In our understanding, payments for order flow models do not conflict with best execution requirements. In addition to the principles of best execution, the conflict of interest policies in particular also take sufficient account of the investor protection.

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? Please explain your answer:

Yes	
No	**X**

Don't know/ no opinion/ not applicable	

While information given to clients is key to improve their understanding of investment products and to ease their choices depending on their preferences, some documents to provide on a mandatory basis have proved to be not very useful at all, and in some cases misleading for clients. This has particularly been the case for best execution reports that are deemed too complex for non-professional customers. Current reports contain too much information, presented in a complicated structure, and too difficult to interpret. On the contrary, professional clients rely on their tool of transaction cost analysis (TCA) to make their own assessments, which does not make the best execution report useful.

The compilation and validation of such reports require significant efforts and costs by investment firms, which are disproportionate to the benefits. This situation is problematic given that end investors are those who ultimately bear the cost of these reports.

We support a deletion of these best execution requirements (2020 MiFID Quick Fix) for the following reasons:

- As mentioned above, experience has shown that these reports provide very limited to no valuable information to investors. Reports have therefore proven to be useless; and
- Any change in the legislation would entail major adjustments costs in terms of technology and system update. Those costs would be added to initial investments made in order to respect MiFID II provisions.

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

Yes	
No	**X**
Don't know/ no opinion/ not applicable	

The question of a voluntary pan-EU label or certification concerns the evidence of the necessary knowledge and competence, not the knowledge and competence itself. Beside a label or certification, however, other suitable forms of evidence could be considered, particularly such as education and university/college qualifications. In the case of further training, not only external but also in-house courses come into question. This shows that a label or certification is only one of several suitable forms of evidence.

Which type of evidence is suitable, has to be seen on a case-by-case basis. Deciding factors here are pre-qualifications of an employee and in the case of further training, particularly the extent of the necessary further training. In comparison, a general certification obligation would be disproportionate. Here, one should consider also that a label or certification typically involves additional costs.

As the European Commission has highlighted in its Public consultation on the review of the MiFID II/MiFIR regulatory framework of 17 February 2020, the national education and professional systems differ across the Member States (see introduction before question 51 in the consultation paper).

Hence, we see no need and no connecting factor for a Europe-wide regulation on the question of a voluntary pan-EU label or certification.

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

Yes	**X**
No	
Don't know/ no opinion/ not applicable	

Each provider of investment advice has to comply with the same requirements, irrespective of the means of communication. Therefore, EACB believes, that robo-advisers are sufficiently regulated in this sense.

However, actually the provisions and interpretations are disproportionate for both – human and robo-advice. Therefore, competition between different business models is hardly possible anymore and clients can't really choose between different providers because the approaches become more and more similar. Furthermore, it becomes more and more difficult to offer investment advice to all clients. Hence, it would be in the interest of the clients and intermediaries, that provisions and interpretations become less complex and detailed on the whole.

8.10 The use of robo-advisers, 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-advisers	
Greater trust in human advice	**X**
Other	
Don't know/ no opinion/ not applicable	

Reference is made to our answers to questions 6.3 and 8.9.

8.11 Are there any unnecessary barriers hindering the take-up of robo-advice?

Yes	**X**
No	
Don't know/ no opinion/ not applicable	

Reference is made to our answers to questions 6.3 and 8.9.

Section 9. Addressing the complexity of products

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	**X**
Don't know/ no opinion/ not applicable	

The simple, transparent and cost-efficient products already exist in the market (e.g. UCITS, ETFs, PEPP). The development of these products should in principle be market-driven.

9.2 If further measures were to be taken by the EU to address the complexity of products:

(a) Should they aim to reinforce or adapt execution of orders rules to better suit digital and online purchases of complex products by retail investors?

Yes	**X**
No	
Don't know/ no opinion/ not applicable	

The current rules treat all non-UCITS funds as complex. While some of the are complex, this is not the case with all non-UCITS. More flexibility should be introduced.

(b) Should they aim to make more explicit the rules which prohibit excess complexity of products that are sold to retail investors?

Yes	
No	**X**
Don't know/ no opinion/ not applicable	

(c) Should they aim to develop a new label for simple products?

Yes	
No	**X**
Don't know/ no opinion/ not applicable	

No, the fact that product is simple is not a guarantee that it serves the client´s needs. Such a label would guide the information away from more important factors like risk, return and costs.

(d) Should they aim to define and regulate simple, products (e.g. similar to PEPP)?

Yes	
No	**X**
Don't know/ no opinion/ not applicable	

(e) Should they aim to tighten the rules restricting the sale of very complex products to certain categories of investors?

Yes	
No	**X**
Don't know/ no opinion/ not applicable	

Section 10. Redress

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	**X**
Don't know/ no opinion/ not applicable	

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

Not at all effective	
Rather not effective	
Neutral	
Somewhat effective	
Very effective	**X**

Don't know/ no opinion/ not applicable	

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)?

Not accessible at all	
Rather not accessible	
Neutral	
Somewhat accessible	
Very accessible	**X**
Don't know/ no opinion/ not applicable	

The Stakeholder Dialogue Outcome during COVID-19 led to the publication on 14 July of the 'Best practices in relation to relief measures offered to consumers and businesses in the context of the COVID-19 crisis'. The Best Practices state on page 7 (point 7 on credit payment moratoria) that *"For particularly vulnerable borrowers, banks and non-bank lenders, subject to their capacity, are encouraged to show the greatest possible flexibility in order to enable a long-term continuation of the contractual relationship together with the borrowers and to avoid payment defaults. They are also encouraged to refer such borrowers to debt counselling agencies with view to preventing payment defaults. The concept and definition of a particularly vulnerable borrower should be based on the domestic legislation in which a bank or non-bank operates. In the absence of a legal definition, a vulnerable borrower refers to a borrower who has lost a substantial part of their income compared to other affected borrowers as a direct consequence of COVID19 and has thereby significant financial constraints to pay back their loans – given particularly low income"*. The EACB along with several other trade associations, has committed to these best practices. We believe that they give enough guidance on the topic. European and even national regulatory definitions are not needed. It would be very difficult and might be dangerous as the notion of "vulnerable consumers" covers very different situations and has drastically evolved. Initially it targeted financially fragile clients. Now it seems to cover everything from financial fragility, to mental or other (such as pregnant women). We would rather prefer the use of the concept of customers in fragile financial situations.

In the case that "vulnerable consumers" would have to resort to consumer redress, there already exist some regulatory provisions. For example, under the Basic Payment Account Directive member states have to ensure that "unbanked vulnerable consumers" are sufficiently informed of availability and characteristics of basic accounts. Member states can also require credit institutions to provide more advantageous terms to them. Banks are also bound to providing accessibility of banking services (including payments) and financial products (e.g. websites, mobile device-based banking) to 'persons with functional limitations' (e.g. disabled, elderly) by way of the European Accessibility Act (Directive 2018/882).

In addition, EACB members have developed internal dispute resolution schemes, in order to ease the settlement of disputes, and this in the spirit of the co-operative banking governance structure, which seeks to build longstanding and trustworthy relations with its customers and members. These internal mechanisms provide a rapid and free of charge resolution of complaints for customers. It is to the advantage of vulnerable customers and also the co-operative banks to attempt in the first-instance to resolve disputes directly before seeking recourse to a third-party. This obviously stands in stark contrast with the mishaps of lengthy and costly procedures that occur too often in judicial actions.

Section 11. Product intervention powers

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

Yes	**X**
No	
Don't know/ no opinion/ not applicable	

Powers have been used by ESMA in the past for certain types of high-risk products e.g. binary options and contracts for differences (CFDs), which shows that the current powers work well in practice and can be used when necessary.

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

Yes	
No	**X**
Don't know/ no opinion/ not applicable	

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

Yes	
No	**X**
Don't know/ no opinion/ not applicable	

Powers have been used by ESMA in the past for certain types of high-risk products e.g. binary options and contracts for differences (CFDs), which shows that the current powers work well in practice and can be used when necessary.However, the use of power should always be "last resort".

Section 12. Sustainable investing

12.3 What are the main factors preventing more sustainable investment?

	1 (not at all important)	2 (rather not important)	3 (neutral)	4 (somewhat important)	5 (very important)	Don't know - No opinion - Not applicable
Poor financial advice on sustainable investment opportunities	○	x	○	○	○	○
Lack of sustainability-related information in pre-contractual disclosure	x	○	○	○	○	○
Lack of EU label on sustainability related information	○	○	x	○	○	○
Lack of financial products that would meet sustainability preferences	○	○	○	x	○	○
Financial products, although containing some sustainability	x	○	○	○	○	○

ambition, focus primarily on financial performance						
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)	X	○	○	○	○	○
Other	○	○	X	○	○	○

First of all regarding the point on "lack of sustianbility related information", this will improve once all the relevant regulation becomes applicable (EU Taxonomy, SFDR, MiFID II delegated acts, etc). However, there is still a huge data gap issue which shall take some time to be resolved through the CSDR. Once this is resolved, we will have more transparency on which investee companies are really sustainable.

Second, we note the point on "focus primarily on performance" to be a bit odd as we do not think that pursuing sustianbiulity objectives should run counter to good financial performance.

Finally, a big issue we see is that the different EU legislation regarding sustainable finance should be harmonized to ensure that all financial instruments addressing sustainability considerations based on appropriate standards can be marketed as ESG products:

- The cross-references between Taxonomy Regulation, SFDR and MiFID II in the product classification or demarcation of products are not comprehensible or understandable;
- The definitions in the different legal acts should be harmonized or the terms clarified; and
- The ESG aspects and the related need to classify financial products on their ESG quality is to be seen as contributing to the complexity of a financial product and might be difficult to understand for retail investors.

For more detail on the above harmonisation issues and other aspects, please refer to our answer to question 1.1.

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	**X**
Don't know/ no opinion/ not applicable	

The investment research is supplied according to demand of the market and ESG criteria is considered in some of the research already now. ESG research can also be produced and purchased separately. There is a need for more ESG integrated research from buy-side now and in the future. However mandatory reinforcement of ESG criteria to all investment research would not suit to research market. We propose generally other ways to encourage ESG research but the suitable way forward is not to have mandatory legislator changes to the current research regime.

Section 13. Other issues

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:

Review of regulatory burden applicable to retail business: The regulatory requirements for providing investment services to retail clients have significantly increased over time and continue to be expanded by regulatory practice e.g. Earlier in 2021, the ESMA consultation on MiFID II appropriateness guidelines essentially proposes to extend the organisational requirements from the suitability test (save for the suitability assessment and statement) to the non-advisory business. While the MiFID II Quick Fix package published as part of the EU COVID Recovery package contained some simplifications for professional clients and eligible counterparties, the requirements applicable to investment services for retail clients remained almost the same.

Our members remain committed to the high level of retail investor protection, but we are aware that the complexity of regulatory obligations and the generally low margins in the retail business adversely impact the offering of retail investment services, in particular advisory services or the product universe offered to retail clients, on the

market. In this context, the EACB welcomes the opportunity to participate in the European Commission's consultation on Retail Investment Strategy for Europe but would like to emphasize that the focus of current regulatory measures should not be to increase disclosures and rules as this leads to a situation of information overload counterproductive to confident access to the EU's capital markets by retail investors.

Retail investors would thus benefit from a review of the regulatory burden of the current investment landscape as follows:-

- **Simplification and comparability**: Information documents that contain helpful and concise information and that are comparable across similar products (e.g. MiFID II and PRIIPs) but not necessarily for all products across the different industries. Unlike the Single Rulebook in banking legislation, securities regulation cannot be easily interpreted in a cohesive manner across the board;
- **Harmonisation of legislative dossiers:** Where comparability is possible, the EU co-legislators must ensure that harmonisation across the various legislative dossiers is achieved. This is especially important in the context of the EU sustainable finance agenda currently underway. The various timeline inconsistencies between the legislative dossiers leads to disclosure gaps in ESG information being presented to retail investors – not an ideal scenario for investor protection;
- **Legal certainty**: Such horizontal approach should not be looked at solely in terms of regulatory drafting at Level 1 and 2, but also when it comes to co-ordination with EU supervisors. One example is the recent ESMA consultation regarding revised guidelines for the appropriateness assessment mandated under MiFID II, which had investor protection as an objective. The proposals made by ESMA overstepped what is required at Level 1 and Level 2, and thus missed the mark when they suggested increasing investor protection. It is important that legal certainty is determined at Level 1 (with some further technical criteria under Level 2) and that the ESAs do not go beyond their mandate; and
- **Consumer choice and market diversity:** Co-operative banks help retail clients access capital markets by providing value-added services (investment advice and portfolio management) based on their values of proximity and personal touch. It is well-known that co-operative banks are able to provide access to financing to communities that are less able to access financing. Allowing various business models to function when it comes to investment advice (which is the main value-added investment service provided by co-operative banks on a face-to-face basis), benefits clients who are less affluent but wish to invest. For example, co-operative banks have implemented various quality enhancement criteria in order to be able to satisfy MiFID II requirements, and thus this has impacted costs. The current inducements regime under MiFID II benefits such smaller/less-affluent clients who benefit from the cross-subsidisation of costs implicit in the "colllective investment (funded by inducements) model". Therefore, a ban on inducements would be detrimental to such clients and should not be pursued.

Level playing field across market participants: Further to the above, we believe that avoiding mis-selling and fraudulent investment proposals is an important objective. However, we believe that the most detrimental behavior does not come from licensed and regulated firms. Neo-banks, neo-brokers and other Fintechs have entered the

market, and these entities regularly employ practices which should be monitored more closely by ESMA and the NCAs:

- "Gamification" of trading which undermines the risk awareness of retail clients;
- Aggressive marketing of "no trading fees" while significant spreads on the current market price are charged essentially undermining cost transparency;
- Order execution by market makers only instead of routing orders to the best available trading venue jeopardizing best execution;
- Payment for order flow models by market makers used by such Fintechs raising conflicts of interest;
- Shifting retail trading in other instruments types such as OTC derivative contracts with equity to benefit from regulatory arbitrage;
- Transfer restrictions, in particular clients have to liquidate their portfolio and are not allowed to transfer their financial instruments when moving the custody account to another intermediary;

In essence, the same level of scrutiny should be placed on all market participants to ensure investor protection.

Contact:

The EACB trusts that its comments will be taken into account.

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