Brussels, 2 January 2022

EACB Answer to
ESMA's call for evidence on retail investor protection aspects

January 2022

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 4,050 locally operating banks and 58,000 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 210 million customers, mainly consumers, retailers and communities. The co-operative banks in Europe represent 79 million members and 749,000 employees and have a total average market share of about 20%.

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EACB AISBL – Secretariat • Rue de l'Industrie 26-38 • B-1040 Brussels
Tel: (+32 2) 230 11 24 • Fax (+32 2) 230 06 49 • Enterprise 0896.081.149 • lobbying register 4172526951-19
www.eacb.coop • e-mail : secretariat@eacb.coop

Section 2.2 – Disclosures

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

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. Therefore, retail investor protection is an important topic for the EACB to address by way of the rules behind the provision of investment advice, the assessment of client suitability, adequate transparency of ex-ante and ex-post investment information to clients (e.g. PRIIPs KID and MiFID cost disclosures), and the topic of bias-free advice which we understand are all concerns of the Retail Investment Strategy under the new CMU action plan of September 2020.

Due to the wide-reaching topics under the Retail Investment Strategy, the EACB would have expected a wider scope of questions under ESMA's call for evidence with more time for public reaction. This is because we believe that a holistic approach is required when assessing the retail investment regulatory landscape, rather than specific focus on 'disclosures', 'digital disclosures' and 'digital tools and channels'.

In this context, we have some main messages we wish to convey in our reply to this call for evidence:-

- **Information overload:** 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. Whilst the EACB supports the aim of high levels of retail investor protection, we would like to emphasize that the focus of current regulatory measures should not be to increase disclosures requirements (MiFID, PRIIPs) as this leads to a situation of information overload counterproductive to confident access to the EU's capital markets by retail investors. Such information overload has been documented in past EACB answers on related topics by way of existing research (e.g. German Ruhr-University/GBIC study on MiFID and PRIIPs, and the Finnish Hanken/FFI study on IDD and MiFID) and shows that investors are not enhanced in terms of protection when transparency is increased. In some cases, less protection is offered which is counterproductive to confident access to the EU's capital markets by retail investors. Information documents should contain helpful and concise information and be comparable across similar products, and harmonization of legislative dossiers should be pursued. The latter is particularly important in the context of the EU sustainable finance agenda currently underway which will make the information provided to retail clients more complex;

- **Timeline inconsistencies and sequencing issues:** We have noted various timeline inconsistencies and illogical sequencing in retail disclosures regulations (particularly sustainable disclosures) which are leading to disclosure gaps being presented to retail investors – a recipe for greenwashing contradictory to retail investor protection – as well as implementation issues for companies already in the process of integrating the amendments from the 2020 Capital Markets Recovery Package (COVID-19), the upcoming changes to the PRIIPs RTS, the sustainable finance requirements (Taxonomy, SFDR, MiFID II etc) and so on. In addition, banks find themselves amending documents and systems multiple times in a short period which is very expensive to implement and confusing to the client. We understand that the ESAs have often supported the industry to address these issues of timeline and sequencing to the European Commission, but we wished to highlight how detrimental to investor protection it could be;
- **Risk of abolishment of inducements or push towards robo-advice:** As evidenced in EACB's November 2019 White Paper titled 'EACB Proposal for a MiFID II Refit: "Towards a more effective framework respecting diversity and consumer choice"' and its annexes, MiFID II proved to be more expensive for banks to implement than the CRD. In order to avoid passing on such costs to retail clients, co-operative banks cross-subsidised costs by providing commission-based investment advice (advice without a fee) through their branch networks. The commissions (or inducements) received by the banks are regulated by the current inducements regime under MiFID II, and thus this model of advice is covered by regulatory measures to ensure investor protection. In fact, our members are required to disclose inducements when giving commission-based investment advice, as well as, to apply extensive conflict of interest measures designed to direct the flow of inducements into measures that enhance the quality of the service to the client. Recent pan-European studies by KPMG comparing the different distribution models show that in countries like the UK and Netherlands where a ban on inducements exists, clients experience less consumer choice of products, less access to investment advice and higher costs. The inducements regime has thus been especially beneficial to less affluent, remote region-based, and/or non-digital native clients in order for them to avoid the effects of an advice gap as experienced in fee-based investment advice regimes. Furthermore, an important outcome of the commission-based regime - especially for co-operative banks which tend to have branch networks in remote regions reaching more investors – is that of an increase in the number of branches and wider presence for retail clients. Of course it is also noted that a ban on inducements has led to huge innovations and the use of **robo-advice** in the UK and Netherlands**.** Therefore, the fee-based investment advice model should not be completely disregarded, but rather consumers should be given the right to have a choice about which model best suits them as long as all relevant disclosures are made transparent.
- **Technology neutrality of disclosures and use of digital tools and channels:** As highlighted above, there are advantages to the provision of investment services in-person, on paper, as well as by digital means. In October 2021, the EACB took part in a panel session during the ESAs' '8th Consumer Protection Day' on the theme **"***Disclosures to consumers buying financial services in the Digital Age –is there a need for a paradigm shift in the current approach?*". This topic is of high importance for co-operative banks and during

EACB AISBL – Secretariat • Rue de l'Industrie 26-38 • B-1040 Brussels
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the panel we reiterated our strong presence not only in the economic centres of Member States but also in the more remote areas of Europe. Whilst we clearly observe a changing in consumer behaviour as a result of what technology makes possible, we know that not all consumers move at the same speed. This is not necessarily due to age, but can even be to not having proper access to good internet. We therefore believe that whilst digital tools and channels such as robo-advice and digital disclosure platforms are beneficial, for co-operative banks all customers are equally important. Therefore, disclosure frameworks for retail investors should not distinguish between the brick-and-mortar world and the online world. Indeed, both worlds should be equally tailored to provide a more fluid, agile, intuitive and ergonomic customer experience. This can be achieved by offering information in a layered approach to cater for different kinds of customers and levels of literacy.

- **Legal certainty:** The EACB is supportive of ESMA's supervisory powers as in many instances these ensure an EU single market approach. Such harmonised approach should however not be looked at solely in terms of regulatory drafting at Level 1 and 2, but also when it comes to co-ordination at the level of the 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 it was suggested to increase investor protection. It is important that legal certainty is already determined by the European Commisison at Level 1 (with some further technical criteria under Level 2) and that the ESAs do not go beyond their mandate.

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

The EACB identifies specifically that the overlaps between MiFID II and PRIIPs, as well as, the complexity of the MiFID II cost disclosure rules, contribute to difficulties in retail client decision-making and comparability between products:

MiFID vs PRIIPs alignment:

First and foremost we wish 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 comparison with MiFID II cost disclosures, although we already note that harmonisation of cost transparency between MiFID II and PRIIPs KID is required. We hope these harmonisation issues could be addressed once the transition of the UCITS KIID to the PRIIPs KID is finally completed following the new extension to the UCITS derogation until 1 January 2023. Meanwhile, we wish to highlight in particular the following inconsistencies:

i. 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.; and

ii. 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.

In addition, we advocate the following amendments to the cost disclosure regime:

- The requirement to also provide information on costs when selling or recommending selling has no added value for clients and should be dropped. The costs are mostly irrelevant when deciding to sell a security. However, the obligation to provide ex ante cost information leads to considerable time delays, which causes annoyance among quite a few clients.

- For products (e.g. bonds and shares) without product costs, ex-ante cost information requirements can be waived.

- The last point is that an investment firm is obliged to explicitly show a "zero" for the individual figure that is to be disclosed. As one of the purposes of the cost disclosure regime is comparability of products and services, it is the view of the legislator that it is important that clients receive explicit figures for every item to be disclosed, even if it is zero. The firm should therefore not leave out a cost component which value is zero as this might lead to misinterpretations. Although banks agree that misinterpretation obviously should be avoided, but showing a zero when a specific cost element is not applicable is not the right way. This also seems not in line with art. 54 (2) MIFD2 DR (EU) 2017/565, based on this article investment firms should provide clients with all costs and associated charges which are actually charged by the investment firm, or by other parties.

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

The EACB believes that the cost disclosure requirements are too complex, and thus ex-ante and ex-post disclosures should be simplified:-

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- the requirement to also provide information on costs when selling or recommending selling also has no added value for clients and should be dropped. The costs are mostly irrelevant when deciding to sell a security. However, the obligation to provide ex-ante cost information leads to considerable time delays, which causes annoyance among quite a few clients; andFor products (e.g. bonds and shares) without product costs, ex-ante cost information requirements can be waived.

In addition, the EACB is in favour of deleting the quarterly reporting according to Article 63 MiFID Delegated Regulation 2017/565 without replacement. This is because clients at any time have the possibility to check their securities account balance online or to ask their local bank for a corresponding statement. Furthermore, we support the abolition of RTS 27 and RTS 28 best execution reporting because they are confusing to retail investors and not useful to professional clients.

Please read our answer to question 2 for further details.

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

In October 2021, the EACB replied to ESMA's consultation on remuneration guidelines under MiFID II. In our position we did not agree with the use of clawbacks or malus regulations or the introduction of ex-post adjustment criteria for variable remuneration, especially when considering the existing contractual protection of the employee. Work and wages are reciprocal, and any clawbacks based on a "catalogue of criteria" do not fit in systematically. Against the background of the autonomy of collective agreements, there are considerable doubts as to whether the requirements proposed in this ESMA consultation would be enforceable at all.

Concerning the discrepancies between MiFID and PRIIPs, please see our answer to question 2.

Moreover, the provision of electronic information under the MiFID II quick fix and paper-based information under PRIIPs must be harmonised (see our answers to questions 7 and 15).

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

The EACB believes that all information is important to the client but only vital figures should be provided, with all other information being made available elsewhere to the client. We consider important as vital information the overall costs of the financial instruments and services (without complex ex-ante cost information), and the risk/return figures (especially a description of the nature and risks as prescribed in paragraphs 1-2 of article 48 MiFID Delegated Regulation 2017/565).

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We also consider the basic structure of the PRIIPs KID to be useful in order to provide the key features of the financial instrument, although bearing in mind certain discrepancies between PRIIPs KID, UCITS KIID and the MiFID disclosures.

The cost information is particularly dominant in the multitude of information provided to the client. As a result, the client loses focus for the essentials. Cost information should therefore be removed from the product information (e.g. PRIIPs KID) in order to avoid duplication of information.

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

Information overload

As per our answer to question 11 we have noted customer research which shows that at a certain point a customer just stops reading the long list of documents required for transparency requirements. Only a fraction of the provided information is read let alone understood. Of course, this is partly the responsibility of the customer, but the idea behind providing information is that the customer makes his decisions sufficiently informed which is not the case. The client could actually drop out of well-regulated investment offerings and move to unregulated speculative products such as cryto-assets, if the information is too long and complicated to understand for the regulated products.

Technical jargon

We consider that the language used in pre-contractual documentation made available to retail investors is not at an acceptable level of understandability, in particular in terms of the use of jargon and sector specific terminology. Although on the one hand we must provide, clear, fair, and no-misleading information, we are also forced (for example in the case of SFDR templates) to provide for lengthy disclosures. If retail investing has to be accessible to everyone (with sufficient resources), it should be much more connected to a European B1 language level. This is certainly not the case right now.

By way of example, we refer to the AFM's "Consumer testing pre-contractual and periodic[1] ESG financial product information". One of the results on page 2 (summary): *"When prompted at the end of the survey, many respondents suggested to shorten the document and make it less complex. Jargon, definitions and abbreviations were especially singled out. Many also doubted whether they as consumers were the target audience."* A similar study from Warsaw School of Economics was published[2]. These results do not appear to have been properly taken into account for the SFDR RTS.

Loss reporting

Loss reporting requirements are a good example of well-intended disclosures, but with detrimental effects. Loss reporting, as laid down in Article 62 of MiFID II Delegated Regulation, means that a >10% depreciation of the overall value of a client's portfolio

[1] https://www.esma.europa.eu/sites/default/files/sfdr_rts_consumer_testing_1_-_afm_0.pdf
[2] https://www.esma.europa.eu/sites/default/files/sfdr_rts_consumer_testing_2_-_sgh.pdf

or on a product level, in one business day, should be reported to the end client. First, this obligation might be confusing for clients who trade in derivatives or leveraged structured products. These clients generally have a relatively high level of knowledge and experience and know that in one business day, there could be high fluctuations in the value of these products. For example, they will be notified on a daily basis regarding the deprecation of multiple products, and also on their overall portfolio. Second, the notification might incentivise clients to conduct a trade, whilst it might not be wise to trade (i.e., this notification could be seen as a disguised investment advice to sell when markets depreciate). Third, even as depreciation notification on portfolio level makes more sense than on product level, it still is not useful for every client as every client has their own preferences and risk appetite (i.e., loss reporting is not very helpful for active traders, but neither for some rather passive buy-and-hold investors).

By way of example, we have noted that a broad consumer testing has been issued by Dutch supervisor AFM which has been conducted by Ipsos for the year 2019. Of the investors who have received the 10% notification, the study showed that more than half of the clients said they did not undertake any action after the notification. Nineteen percent of the investors who had received a report, reported to have made a sale after the notification, 17% made additional purchases and 30% contacted their investment service provider. It is hard to draw conclusions based on this assessment only.

In the same report it is outlined however, that the less assets a client has, in general, the less risky their asset allocation is. Further investigation learns that these more risk-averse clients, generally have undertaken additional actions after receiving the loss report (i.e., a sale, or a purchase). One could argue that when a portfolio or a single product has reported a loss of over 10%, it might not be wise to make a sell-trade. Less risk averse clients (i.e., with bigger portfolios) undertake less action, whilst more risk-averse clients (i.e. with smaller portfolios) might be more incentivised to make a sales trade. The report shows that cautious investors say they have undertaken action after the notification more often than risky investors. In this sense, investor protection for potentially vulnerable groups by means of the loss report, might have had an adverse effect.

We believe that further research should be done on the effectiveness of MiFID II loss reporting requirements. If these reports indeed have an adverse effect on investor protection, loss reporting requirements should be made obsolete.

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

The COVID-19 pandemic has shown that audio and audiovisual environments (whether by phone, smartphone, computer or other digital device) are being used more and more for financial services. The way MiFID II was drafted catered more for a physical branch office to meet clients and give documentation by paper for review and sign-off. There are many documents which are problematic to be given by durable medium or video negotiation according to Article 3, Commission delegated regulation (EU) 2017/565. For example, pdf files are not the best way in all instances to store and give information on a mobile phone. Furthermore, documents such as the report for investment advice under Article 54(12) of the above-mentioned regulation could be provided after a client meeting is held by phone or video. We note that the MiFID quick fix has improved this

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situation and thus propose that the amendments made with respect to the electronic provision of information under MiFID quick fix should be extended to the other information obligations under securities law (see our answer to question 15) and that more flexibility is allowed when the service provider is choosing the type of durable medium in a digital environment.

We also support that:-

- The requirement to also provide information on costs when selling or recommending selling also has no added value for clients and should also be dropped. The costs are mostly irrelevant when deciding to sell a security. However, the obligation to provide ex-ante cost information leads to considerable time delays, which causes annoyance among quite a few clients (see also Questions 2 and 3).
- For products (e.g. bonds and shares) without product costs, ex-ante cost information requirements can be waived (see also Questions 2 and 3).

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

Disclosures to retail clients should be clearly simplified. The disclosure documents, need to be given to retail investors in a durable medium/electronic format and before a transaction is made. The disclosures sually when a client contract is signed would include information about best execution, ex-ante cost information, information about investor compensation fund, information about distance marketing, etc. Sometimes clients are faced with long prospectuses. This information, based on MiFID II and other financial regulations, can now be given to clients otherwise e.g. by mobile or web only based on separate authorisation from a client. This is not usually possible in a straightforward manner. All this information should be reviewed carefully to what is most vital to retail investor as mentioned in our answer to question 5. Information that is not vital to retail investors should be dropped from the basic disclosure requirements. One possibility would be that this kind of additional or non-vital information would be available in website, mobile or web-bank solutions and the service provider advise to retail investors where they can find this information, if retail investors areinterested to have the information.

This would get rid of tens of pages of information to sift through,for a new retail investor who is interested to participate in EU capital markets for the first time. We also note that the MiFID Quick Fix (Art. 24 5a MiFID) has also helped by extending provision of information electronically. We support that this requirement on the electronic provision of information under the MiFID quick fix is also quickly extended to the other information obligations under securities law.

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

The EACB would as a first step like to highlight that SFDR alone will bring along with it quite a complex set of information about sustainable finance products that must be

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reported to investors, especially after the application of the SFDR RTS. This Level 2 application will increase the information overload retail clients are now already facing under MiFID II, not just because of the quantity of the information but also the understandability. Distributors will have to increase the questions to clients in their suitability questionnaires and manufacturers will require more data points in their target market systems. This situation is particularly challenging for new retail investors and elderly retail investors, who might not be able to grasp the ESG information. Co-operative banks which traditionally have a high exposure to these demographics, are aware that this will be a huge undertaking for their updating of documents and systems, as well as, training of advisors and the risk of greenwashing due to missing data and/r use of proxies. We explain further these overlaps below, also indicating what we think should be done in these scenarios to ensure adequate retail investor protection:-

- **Sequencing issues: the need to align SFDR, Taxonomy and MiFID II**

The amendments to the MiFID II Delegated Regulation will take effect on 2 August 2022 and will rely on the sustainability information reported under the SFDR and Taxonomy Regulation to assess end-investors' suitability. The suitability preferences of the clients will be used in this regard to determine which financial instruments under MiFID II can be added to the client portfolio from one or more of the following (as per Article 1 (7a – 7c) of the MiFID ESG delegated act:-

a) 'a financial instrument for which the client or potential client determines that a minimum proportion shall be invested in environmentally sustainable investments as defined in Article 2, point (1), of Regulation (EU) 2020/852 of the European Parliament and of the Council (Taxonomy).
b) a financial instrument for which the client or potential client determines that a minimum proportion shall be invested in sustainable investments as defined in Article 2, point (17), of Regulation (EU) 2019/2088 of the European Parliament and of the Council (SFDR).
c) a financial instrument that considers principal adverse impacts on sustainability factors where qualitative or quantitative elements demonstrating that consideration is determined by the client or potential client'.

MiFID II ESG requirements rely on SFDR Level 1, which has become applicable since 10 March 2021. Furthermore, the Taxonomy Level 1 requirements to determine an environmentally sustainable investment will begin to apply (at least partially for climate objectives) as from 1 January 2022. Although these Level 1 dates in terms of sequencing run ahead of the 2 August 2022 application date of the MiFID ESG delegated act, the Level 2 regulations (SFDR RTS, and the Taxonomy delegated regulations) do not.

The SFDR RTS comes into application as from 1 January 2023 (after the MiFID delegated act becomes applicable) and not all Taxonomy delegated acts required to determine the criteria of an environmentally sustainable investment will be complete in time. This can lead to legal uncertainties and greenwashing concerns, because there exist many interconnections between the SFDR RTS, Taxonomy delegated acts and the MiFID ESG delegated act. Furthermore, we understand that the Level 3 measures in this regard are still pending publication by Q3 2022 or even later, i.e. ESMA Q&As on suitability assessment and EIOPA Q&A on client questionnaire. **We thus call for the application of the MiFID ESG delegated act (as well as for IDD) to ideally be deferred to 1**

April 2023, or as a minimum to be aligned with the application date of the SFDR RTS, i.e. 1 January 2023, in order to address the following sequencing issues:-

- *Pre-contractual and periodic disclosures in relation to the percentage of sustainable investments as defined under SFDR for Article 8 and 9 SFDR products* – These obligations are outlined in the SFDR RTS, which will only take effect on 1 January 2023. Under the level 1 SFDR, there are no existing obligations that could allow product manufacturers and distributors to make this information available by 2 August 2022. Furthermore, to be able to establish if an investment qualifies as a sustainable investment as per Article 2(17) SFDR, banks should be able to assess if the economic activities "Do Not Significantly Harm" other objectives as per Article 2a SFDR. As determined under the SFDR RTS, the DNSH is linked to the principal adverse impact (PAI) indicators at entity level (although under MiFID II we are looking at product/instrument level) and the minimum safeguards under Taxonomy.

- *Pre-contractual and periodic disclosures under the Taxonomy Regulation and/or Taxonomy alignment for Article 8 and 9 SFDR products (as per Article 6 and 5 Taxonomy respectively) in regard to the percentage of environmentally sustainable investments* – Article 5 and 6 Taxonomy-alignment disclosures under SFDR are being phased-in from 1 January 2022 in respect to the first two climate objectives (mainly on a qualitative basis) and from 1 January 2023 in respect of the remaining four environmental objectives. Furthermore, disclosures made under Article 8 Taxonomy delegated act, will not be available before January 2023 for non-financial undertakings and January 2024 for financial undertakings, respectively, referencing reporting periods 2022 and 2023. In the interim period, our understanding is proxies and disclaimers cannot be used to account for the missing data (although some NCAs are agreeing with the use of these at national level, thereby creating issues with comparibility and in consequence the risk of green washing). As a result, distributors will not be able to carry out a suitability assessment based on a 'minimum proportion' of sustainable investments aligned with SFDR, or environmentally sustainable investments under the Taxonomy before 1 January 2024.

- *Pre-contractual and periodic disclosures in relation to PAI consideration at the product, as required under Article 7(1) SFDR* – These obligations will only take effect on 30 December 2022 (i.e. before investee companies start reporting on Taxonomy alignment in January). Prior to that date, the standardised annexes to pre-contractual disclosures for Article 8 and Article 9 SFDR products will only include a brief indication of whether PAIs are taken into account as part of the investment strategy.

In addition, so-called 'investee companies' (companies that, for example, issue shares and in which FMPs invest) will only start to provide (reliable) data via both the adjusted NFRD and CSRD from 2024 on the basis of which FMPs can determine whether a company qualifies as a sustainable investment. We understand that NFRD, CSRD and Taxonomy were not part of this question but one must bear in mind that all these sustainable finance legislation will provide the technical foundations to be able to integrate ESG factors and preferences in MiFID suitability, risk management, product governance and organizational requirements. Therefore, proper sequencing is key.

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Last but not least, the necessary consequences for the portfolio management and advisory process because of the actual Commission proposal to consider investments in nuclear energy and gas (under specific conditions) as sustainable investments need to be reflected (especially how to solve the problem that clients don't wish to invest in nuclear energy and gas and/or don't imagine that nuclear energy and gas could be sustainable; possible impacts to be considered because these investments are not durable sustainable investments?). But it won't be possible to adapt the processes or systems accordingly in the remaining time of the date of application of the MiFID II Delegated Regulation.

With respect of the planned revised guidelines on product governance and suitability see also our answer to Q22.
We include below a table summarising the different conflicts between the implementation deadlines:

Date	Regulatory changes	Updates needed from the industry
1 January 2022	Article 8 Taxonomy Regulation Delegated Act applies.	The Delegated Act does not apply in full, and both financial and non-financial undertakings will primarily report qualitative information. The only quantitative information reported will regard the proportion of taxonomy eligible assets, which is not relevant to the % of taxonomy aligned assets utilised in the MiFID II DA ESG preferences.
2 August 2022	Application of the Delegated Regulation (EU) 2021/1253	The new provisions will require asset managers to send distributors the following products' ESG information: • Percentage of sustainable investments under SFDR • Percentage of Taxonomy alignment • PAIs taken into consideration
22 November 2022	Application of Delegated Directive (EU) 2021/1269	The new provisions will require data exchange between the manufacturers and distributors in order to determine if the ESG product fits the target market and if the distribution strategy is appropriate. This would require similar information as for the above-mentioned Delegated Regulation.
30 December 2022	Application of SFDR Article 7 (Transparency of adverse sustainability impacts at financial product level)	Updates needed to reflect the following: 1. Clear and reasonable explanation of whether, and, if so, how a financial product considers principal adverse impacts

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		2. Statement that information on principal adverse impact is available in periodic reports
1 January 2023	Application of the SFDR RTS	Pre-contractual templates need to be added to existing pre-contractual documents. This will include the percentage of sustainable investments under SFDR and the disclosure of the percentage of the products´ Taxonomy alignment for Article 8 products with sustainable investments and all Article 9 SFDR products.
1 January 2023	Full application of the the Article 8 Taxonomy Regulation Delegated Act to non-financial undertakings	First quantitative taxonomy reporting for non-financial undertakings for the 2022 reporting period. Before this date, no taxonomy data will be available on investee companies.
1 January 2024	Full application of the Article 8 Taxonomy Regulation Delegated Act to financial undertakings.	Financial undertakings falling under NFRD/CSRD start quantitatively reporting their entity taxonomy alignment levels.

- **SFDR periodic reporting frequency of MiFID Portfolio Management services**

Whilst sequencing remains the biggest overlap concern for our members, our members are also concerned with inconsistencies between SFDR periodic reporting and MiFID 'individual portfolio management' services. In the case of banks and investment firms offering portfolio management these are covered under Article 11(2)(h) SFDR which requires periodic reporting in accordance with Article 25(6) MiFID II. While Article 11(1) SFDR disclosures are generally understood to be disclosures required to be made annually, the reports referred to in Article 25(6) MiFID II would normally be on a quarterly basis (although the periodicity is not highlighted in this article). Furthermore, the definition of 'reference period' under Article 1(1) SFDR RTS dated 22 October 2021 is referring to periodic reporting under the sectoral legislation as already indicated under Article 11 SFDR, whilst recital 21 SFDR indicates an annual periodic reporting frequency.

If the MiFID frequency were to be followed then, in our opinion, there would be inexplicable and undesirable differences between different financial products. The monthly or quarterly reporting frequency, for example, compares poorly with the frequency of reports on other financial products that fall within the scope of SFDR, for example those products on which banks depend on their individual portfolio management services (in comparison, the annual reporting frequency for UCITS and AIFs which compares poorly with reporting on a monthly or quarterly basis for individual portfolio management services). UCITS and AIFs will also have to serve as input for asset management portfolios consisting wholly or partly of investment funds. Furthermore, the investee companies will only update their non-financial reports annually.

In this context, we consider that there is a lack of legal clarity when it comes to periodic reporting of portfolio managers. We thus assume that periodic reporting under Article 11 SFDR for portfolio managers should also logically be issued on an annual basis like all other financial market participants. We propose ESMA to advise the European Commission to explicitly state (as per Article 60 Delegated Regulation 2017/565) that SFDR periodic reporting requirements are distributed annually. This is in line with other financial products in scope of SFDR e.g. UCITS. This will ensure a level playing field for all and avoid confusion to retail investors.

Alternatively, portfolio managers will be required to use data on an annual basis, instead of quarterly.

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

MiFID vs IDD

There are some differences in MIFID II and IDD rules. For example, appropriateness test requirements are different in based on these rules. It may be sometimes problematic to explain these differences to clients.

MiFID guidelines in relation to simple execution only investment propositions

According to Article 25 (4)(a) of MiFID II, a UCITS would not qualify as a complex product (from a legal perspective), implying that non-UCITS would be a complex product. In Article 57 of the delegated regulation, a summary is given of criteria that a product must meet if it is not specifically mentioned in Article 25 (4)(a)(vi) MiFID II, UCITS are mentioned under (iv) and are therefore (again, from a legal perspective) seen as non-complex, non-UCITS can then be classified as complex. An AIF should be categorized as a complex product from a legal perspective, but – in relative terms – could very well be of a less complex nature given its underlying investments than certain UCITS, even when this UCITS qualifies from a legal perspective as a non-complex product. We would like to see that certain AIFs can be categorized as a non-complex product as well. Our members advise that it is not the regulatory structure of the product but the characteristics of its underlying investments that determine whether a product is complex or not.

Execution only services and the appropriateness test

For banks with a simple execution only proposition with only “plain vanilla” investment funds, the appropriateness test is an obligation when AIFs are offered to the retail

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clients. For banks with UCITS and AIFs in one investment proposition the effect is that clients need to complete the appropriateness test when they would like to open an investment account because AIFs are part of the proposition as well. Taking the appropriateness test not at the opening of the account but every time before investing in a complex product is not in the client's benefit. Another option is to allow proportionality with the appropriateness test, the more complex the products the client would like to invest in, the more thorough the test.

MiFID Best Execution

Investment firms are required to annually publish, per class of financial instrument and per type of client, the top 5 trading venues where they execute client orders and/or to which they transmit orders. In addition, based on their monitoring activities, they must make and publish an analysis for each class of financial instrument on the quality of implementation.

These reports are not read by clients nor do they have an influence on if and/or how a client might decide to choose to invest. Furthermore, these reports should be seen in the whole context of what the client discloses about their investments. The argument of information overload applies here as well.

Therefore, we propose these actions:-

- We would like to see that certain AIF can be categorized as a non-complex product as well, by way of the characteristics of the AIF's underlying investments and not the regulatory structure of the product.
- The special status for UCITS (no appropriate testing needed) should be stretched towards AIFs with the same features in terms of risk, structure, liquidity and accessibility as UCITS.
- We propose to allow for optionality for the provision of best execution reports. These should not be mandatory for investment firms.

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

Most recently, we refer to Hanken University of Helsinki and Finance Finland research: "MiFID II and IDD and their effect on customer experience" published in July 2021. New retail investors particularly find the information overload challenging and this has been more challenging after MiFID II entered into force.

The main findings of the research are below: [Final report.pdf (finanssiala.fi)]

- Investment service clients value personal investment advice and personal client service;
- The <u>time used per client has increased substantially after MiFID II and IDD</u>: especially after client meetings;
- Servicing clients by online and video meetings (covid) has actually been efficient and helped personnel: time is not used for e.g. coffee drinking and paper

printing and physical signing. Many clients still want personal physical meetings in branches;

- Clients see that client MiFID / IDD questionnaires (suitability) take lots of time: this makes difficult to compare different service providers. Structure of meetings are dictated by regulation: this may frustrate some;
- Especially inexperienced clients experience information and documentation overload: more experienced clients are used to it and probably do not read it that much. Only few clients looked back at their documentation after meeting and signing;
- All clients did not trust figures/estimates/numbers given in KID documentation.

A German study by Ruhr University published in 2019 also 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 advicefree 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.

Section 2.3 – Digital Disclosures

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

Our members note that there has been an increase in the more elderly customer groups in some Member States (e.g. Finland) switching to using digital channels more actively, especially as a result of the COVID-19 pandemic. Reference is made to the Hanken

University Study in this regard. However, younger generations remain the keenest to access digital channels as a preferred access method.

13 Which technical solutions for digital disclosures (e.g., solutions outlined in paragraph 27 or additional techniques) can work best for consumers in a digital and in particular smartphone age? Please provide details on solutions adopted and explain how these have proven an effective way to provide information that is clear and not misleading.

We would highly recommend that regulation would be technology neutral and would not dictate which technical formats to use, so that retail clients can freely choose their preferred method and channel of receiving information. E.g. requirements to use solely pdf formats (as it is in some cases relating to loans) is not well suitedin the context of mobile devices. Our view is that ESMA and the Commission should regulate only the information that needs to be given to clients, while service providers would see what is the best solution to present it in different technical environments (e.g. web or mobile) in response to the client demand. These technologies and formats are also developing all the time, so the legislation would, by definition, be lagging behind.

From paragraph 27, we would like to highlight "Easy navigability of information" as well as "Presentation and format" as the most crucial factors in this context.

We also see that the upcoming Directive (EU) 2019/882 of the European Parliament and of the Council of 17 April 2019 on the accessibility requirements for products and services as well as the Directive (EU) 2016/2102 of the European Parliament And Of The Council of 26 October 2016 on the accessibility of the websites and mobile applications of public sector bodies already in force give such requirements to the solution and information accessibility also to the financial sector and investment service providers that we see no need to give further regulation on the matter separately in MiFID-context.

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

Please see our response to the Q13.

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

We already provide some comments on digital disclosures in our answer to question 13. However, we also very much welcome the requirements under the MiFID quick fix (Article 24(5)(a) MiFID II) for all all information to be provided in electronic format by default and for information to be provided on paper only if explicitly requested by the retail client. Retail clients are to be switched over to this format, meaning that they will receive future communications electronically, unless they provide notification that they wish to receive paper-based communications within eight weeks.

This effective and sensible provision, which takes into account the growing digital transformation as well as the EU's sustainability efforts, should also be introduced in the

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other client information regulations (such as the PRIIPs Regulation and the IDD). This would also bring an end to the situation which is barely comprehensible to clients, whereby they receive certain information that falls under MiFID II (e.g. ex ante disclosures or the suitability statement) in electronic form, while other information (e.g. the PRIIPs- KIDs) is provided on paper (with all three of these documents provided simultaneously during the advice process or order placement).

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

We do not foresee any need for additional regulation in this regard.

Section 2.4 – Digital tools and channels

2.4.1 Robo-advisers

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

Except for the noted increase in robo-advice in the UK and Netherlands, our members have not noticed any demand or widespread interest in robo-advice from retail clients. One member noted that the main contributor to this is that the development of semi-automated tools in the current regulatory environment is very cumbersome, resource/administrative intensive and complicated that the end result does not serve retail investors well. Loss of customer loyalty has also been noted by some members in co-operative banking who have a customer relationship with their branch. Furthermore, it is also a question of pricing and market presence. In some markets, demand is steadily increasing though and so it is important to have both options: personal advice and robo advice with the latter acting more as a supplement. Our members have noted many hybrid services being offered to cater for these issues i.e. a situation where the digital and robo-based services merge and co-exist with the more 'traditional' advisor-based model.

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

Besides the answer to question 17, we note that the wide suitability assessment and suitability report does not work well when it comes to digital channels because it is very

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lengthy. Even though the proportionality principle applies under MiFID, it is still hard to apply the suitability assessment digitally and therefore we do not support its cross-over to digital means. However, we note that the appropriateness assessment is better suited for digital channels.

That said, a level playing field between the providers is important. Therefore, all providers of financial services have to comply with all regulatory requirements applicable to the service provided, irrespective of the means of communication.

The issue is that in reality the provisions and interpretations are disproportionate for both human and robo-advice. Therefore, competition between different business models is almost impossible now and clients cannot 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, although the vast majority wish for personal investment advice.

Hence, it would be in the interest of clients and intermediaries for provisions and interpretations to become less complex and detailed on the whole (see also our answer to Q22).

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

Please see our responses to question 18 and 22.

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

The longer the advisory process takes, the more likely it is that clients will be less interested in taking investment advice. The increasingly complex and detailed requirements and interpretations therefore also entail the risk that clients will not use investment advice or will use it less. Hence, it would be in the interest of clients for provisions and interpretations concerning investment advice to become less complex and detailed on the whole.

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

For reasons why it would be in the client's interest if the regulations and interpretations on investment advice were less complex and detailed, we refer to our response to Q18 and Q20. First of all, particular care should be taken not to further increase the complexity and level of detail through new requirements and interpretations.

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An initial touchstone in this respect would be, for example, the planned interpretations of the new sustainability requirements (MiFID II Delegated Regulation and Delegated Directive). Unnecessary interpretations that are not in line with practical requirements should be avoided in order to enable clients to receive advice based on their sustainability preferences that is easy for them to understand and does not take up too much time.

Before new regulations or interpretations are introduced, they should be tested for their practicability for retail clients by a neutral body. The product governance requirements should also be interpreted in a practical manner, i.e. unnecessary hurdles for manufacturers and distributors and in relation to each other should be avoided.

Because of the actual shortcomings (see our answer to Q9) it should be considered to postpone the planned interpretations of the new sustainability requirements (ESMA guidelines on suitability and on product governance). Furthermore, after the application of the new requirements, in our view first of all a review will be necessary, which relevant data are in which quality and to which extent available for the product manufacturer and distributors.

2.4.2 Online brokers (lessons from GameStop case)

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

We believe that avoiding mis-selling and fraudulent investment proposals is an important objective and that the most detrimental behaviour does not come from licensed and regulated firms, but from neo-banks, neo-brokers and other Fintechs. 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.

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

At the moment our members we do not observe this kind of phenomenon because generally a retail investor who is taking losses usually stops trading quickly. We therefore consider the risk quite low in this regard.

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

The EACB strongly feels a level playing field must be guaranteed and that the rules should be the same for all investment service providers. From the client's perspective, it should be clear as to which party and in what capacity the investment recommendations are given (i.e. is it a certified financial advisor or a peer with no professional background in investing) if for example social platforms (that may or may not be moderated by investment service providers) are used.

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

In general, EACB members note that sometimes it is hard to determine cross-border issues because market conduct rules under MiFID almost always vary from Member State to another (including marketing, consumer protection and language requirements). Therefore, it can be very challenging and resource consuming to enter a new market in a compliant manner when targeting non-professional investors despite operating under the same "MiFID-umbrella" and providing only execution or custody services. Then when it comes to increased use of digitilisation many older clients do not experience issues, but older clients that are digitally-savvy or the younger generation may experience cross-border issues from online brokers.

One example provided by our Dutch member, also impacts the level playing field which the EACB is asking for between commission-based and fee-based investment services. This issue is with respect to the Payment for Order Flow (PFOF). The EACB supports a European level-playing field when it comes to the use of PFOF.

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

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EACB members have noted that information on social media groups or plattforms could on one hand increase clients' awareness on investing in a positive manner as clients feel safer to ask certain questions to a peer than a bank representative sometimes. However, it is noted that not all information circulating on social media is reliable and it can therefore lead to misleading investment decisions. In particular, information from social media influencers can be particularly unreliable because instead of customers doing their own research online, the offers and information are provided via direct hyperlinks.

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

Please refer to our answer to question 36.

Moreover, if the social media channels are run by banks then these are already subject to the Market Abuse Directive and Regulation, and also the Delegated Regulation EU 596/2014 on the presentation of investment recommendations. However, the issue is if the social media channel is run by a non-regulated entity, unless it is a third party outsourced function which is still subject to the bank's compliance. There should be a level playing field in this regard.

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

We observe that the same regulation applies to the marketing of financial services and instruments, regardless of whether it is being done by the firm itself or an outsourced service provider/influencer.

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

Whilst we do not have the data to give a solid perspective on this phenomenon, it does appear that retail clients are more prone to react on information received from social media when compared to more experienced or institutional clients.

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

We do not think this to be the case as reputable banks do not follow such practices.

Of course, not every customer recognizes the difference between reputable and dubious providers, hence it remains a potential danger.

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2.4.3 Open Finance

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

There may be some limited benefits from "open finance" to retail investors. If these retail investors are using many banks and/or service providers and have their investments in many places, they could get a picture of their whole investment portfolio from many service providers through one service provider. However, most of the retail investors are most likely using only one investment service provider and they would not benefit from this opportunity at all.

The information useful from the retail investor's perspective is only limited to what financial assets/investments they are holding each moment in different service providers.

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

The main risk is that there will be huge implementation costs to build open finance interfaces to many European service providers. Financial markets and retail investors would not receive adequate benefits from these efforts. One risk relating to this is that the scope of open finance relating to investment services is too broad. Also, there is a risk that the costs relating to these changes are divided unevenly between different service providers.

If, relating to retail investments, it would be possible also by third parties, to trade financial instruments from securities accounts of retail clients through open finance -interfaces, markets and also retail clients could face new challenges. It would be problematic to manage retail clients' settlement failures and sanctions if trading from one securities account is done through many service providers. This scenario would jeopardize the goals of CSDR settlement discipline regime relating to settlement failures taking place in EU by February 2022.

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

There is only one data that could be relevant to retail investors and open finance. This is the information on the financial assets/investments the client is holding each moment in different service providers' securities accounts. Through open finance the client could get a picture of their whole investment portfolio from many service providers through one service provider. However, most of the retail investors are most likely using only

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one service provider and they would not benefit from this opportunity. This information could be standardised and common ISIN code based.

This retail clients' ownership data is located in different places in different European markets. For example in Finland, the Finnish book entry financial instruments are held in separate beneficial owner account in Central Securities Depository (CSD) level and that is marked by social security number of each retail investor in CSD. Therefore, the open finance interface in Finland could also be built to the systems of Finnish CSD and not the systems of each CSD member or service provider. This could streamline the efficiency of this data project needed in Finland and third parties could contact only CSD relating to these financial instruments. In many other European markets clients' financial instruments are held in omnibus accounts in CSD level and only the service provider of each client can tell how many financial instruments each client is owning. This data, however, is not standardised in the systems of different service providers.

Any other information is not useful to be transferred to other service providers and should not be included in the scope of open finance. This information includes:

- Clients's investment history and transactions data
- Clients's appripriateness/suitability profile
- Further product information
- Possibility to do trades from retail clients' securities account.

The investor data that is listed as data that should not be included in the scope of open finance above is different from each service provider. Clients' suitability and appropriateness profile questions, for example, are different from one service provider to another. This will vary even more after MiFID II Level 2 sustainable finance disclosure questions are reviewed after change of August 2022. Further, each service provider is using their own systems and ways to save this data. This data is not homogenous or standardized in any way and therefore it is not usable from one service provider to another. It would also be problematic to use client suitability or appropriateness profiles from another service provider without any own input to suitability appropriateness review.

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

The risk of high implementation costs is much higher in investment services than it was in PSD2 and clients' cash accounts. Financial instruments are traded and held in custody differently in many European and global financial markets. The systems and data stored in each service provider is different and not standardised.
Securities are held in different CSDs and the data that is saved in different service providers is not standardised in any way. This creates huge and complex operational challenges and costs to many service providers to make open finance in investments to work at European level.

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

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The question comprises two concepts that are not necessary on the same level. The portability concept is broader than the topic of the current Digital Identity (DI) Wallet proposed by the Commission's recent DI framework. Obviously, the DI Wallet would facilitate portability of the data contained in the Wallet. This would in any case require huge standardisation efforts. Interoperability would be key and to achieve this, there is a need for set standards and security measures at EU level that can interact with Member States and markets updating their measures and procedures. The Commission's current proposal mainly delegates Members States to developing a Toolbox (see Commission Recommendation (EU) 2021/946 of 3 June 2021), which among other things, should lead to a set of common standards and technical references. The private sector will be consulted, as appropriate, the Recommendation says. We, together with the European Credit Sector Associations (ECSAs), believe that the involvement of the financial sector in the standardisation process is of paramount importance so that its specificities are taken into account and that a certain flexibility towards new challenges and technologies is taken into consideration.

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

As mentioned in our answer to question 45, there is only one data that could be relevant to retail investors and open finance. This is the information on which financial assets/investments retail investors are holding each moment in different service providers securities accounts. But even that is true only for a very limited number of retail clients. Any other information is not needed.

Contact:

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

For further information or questions on this paper, please contact:

- Ms Marieke van Berkel, Head of Department (Marieke.vanBerkel@eacb.coop)
- Ms Tamara Chetcuti, Senior Adviser, Financial markets (Tamara.Chetcuti@eacb.coop)