

# EFAMA's FEEDBACK ON THE EUROPEAN COMMISSION'S CONSULTATION ON THE CAPITAL MARKETS UNION HIGH LEVEL FORUM FINAL REPORT

30 June 2020

## RECOMMENDATION 1: AN EU SINGLE ACCESS POINT

- Propose legislation for ESMA to establish an EU-wide digital access point (ESAP) that would serve as a database centralising at EU level companies' public financial and non-financial information, as well as other financial product or activity-relevant public information. Access to the ESAP shall be freely accessible to the public.
- Ensure that companies (listed and non-listed) are required to submit all the public information only once through a single reporting channel, which may necessitate streamlining existing multiple reporting channels.
- Conduct work on harmonising the content and, if appropriate, the format of companies' public information to foster better comparability and usability of data. The use of technology as well as templates and standards should not impose additional language requirements causing significant burden.
- ESMA should be entrusted with the task of setting up the IT structure, equipped with adequate funds and resources.

### *Do you agree that recommendation 1 is important?*

- 1 - Not important at all
- 2 - Rather not important
- 3 - Neutral
- 4 - Rather important
- 5 - Very important
- Don't know / no opinion / not relevant

## RECOMMENDATION 2: EUROPEAN LONG-TERM INVESTMENT FUNDS (ELTIFs)

The Commission is invited to review the ELTIF Regulation by end 2020, with a view to:

### **Reducing barriers to investments by investors (focus on retail, but including institutional):**

- Align national retail passporting practices for ELTIFs, which currently rely on the AIFMD passporting rules (extended to retail) and are therefore subject to Member State discretion.
- Clarify the ELTIF requirements for the assessment of retail investor's knowledge and experience and align with the requirements in MiFID II.
- Introduce more flexibility for investors to redeem their investment "at a mid-point", while reinforcing, where appropriate, liquidity requirements to address a higher risk of "client runs". However, the aim is not to render ELTIFs open-ended funds.
- Look at structural features that may encourage participation from a wider range of investors, such

as lowering the minimum entry ticket or finding ways to encourage the development of listed ELTIFs. On the insurance side, consider ways to encourage the use of the ELTIF in unit-linked insurance products as a way to widen the retail investor base further.

- To promote institutional investor take up, consider explicit recognition of the ELTIF in relevant capital frameworks (e.g. Solvency II for insurers), and provide appropriate flexibility for investment strategies attractive to institutional investors to be housed within the ELTIF framework.

### **Broadening the scope of eligible assets and investments**

- Allow investments in “financial undertakings” where those financial undertakings are in line with the ELTIF’s investment strategy (e.g. FinTech firms in early stage equity investment strategies) and within the limits already set in the ELTIFs regulation
- Allow investment in funds other than ELTIFs, EuVECAs or EuSEFs, as long as their investment strategy binds them to invest in the same underlying asset classes as ELTIFs, EuVECAs or EuSEFs. This would not change the percentage of an ELTIF’s holdings that can be invested in other funds. Any investment in other funds should provide appropriate fee transparency to end investors.
- Clarify some aspects of assets eligibility, in particular, the meaning of “real assets” to make it explicit that investments in small and medium-sized enterprises are eligible.
- Bring the borrowing limits in line with UCITS rules with a specific option for certain ELTIFs available only to institutional investors to exceed this subject to conditions being met around investment strategy, governance, investor base and oversight.

### ***Do you agree that recommendation 2 is important?***

- 1 - Not important at all
- 2 - Rather not important
- 3 - Neutral
- 4 - Rather important
- 5 - Very important
- Don’t know / no opinion / not relevant

### ***If you disagree with all or part of recommendation 2, how would you amend it?***

EFAMA welcomes the targeted review of the ELTIF Regulation in the course of 2020 and fundamentally shares the Commission’s underlying rationale, i.e. introducing a series of relevant improvements to the framework in view of encouraging a greater take-up of the structure by retail investors, thereby improving their access to less-liquid asset classes and thus lengthening their investment horizons.

Pros: EFAMA fully supports the contents of the HLF's recommendation, addressing the well-identified demand-side and supply-side constraints, and has already submitted an informal position paper to the services of the European Commission to begin informing the review on a preliminary basis. EFAMA also remains fully supportive of all tax-related suggestions, including those around withholding tax and preferential tax treatment.

Cons: Our only concern lies in the fact that the revised ELTIF structure will need to be "ever-green", i.e. no longer have a limited life/maturity. The fund should not be closed-end, if greater retail participation is sought.

## **RECOMMENDATION 3: ENCOURAGING INSURERS TO PROVIDE MORE FINANCING FOR CAPITAL MARKETS**

### **Recommendation 3a**

In the Solvency II review, while maintaining its risk-based approach:

- Better considering the long-term nature of the insurance business and assessing if the risk of forced selling of assets at adverse market prices is being estimated realistically when reviewing the treatment of equity and debt capital charges;
- Changing the criteria for the current long-term equity capital calibration to address the problem that almost no equity investment would currently qualify;
- Assessing whether the risk margin is too high and volatile for its policy purpose, reducing capacity for investment risk in capital markets;
- Ensuring that insurers' own funds are appropriately valued and are not too volatile, in particular looking at what improvements can be made to the Volatility Adjustment to avoid exaggerating either way the valuation of projected long-term liabilities and reduce artificial volatility;
- Improving the mitigation of pro-cyclical effects that requirements may have on insurers' investment behaviour, and proposing the necessary level 1 legislative changes and making the necessary level 2 legislative changes to give effect to the required policy changes.

#### ***Do you agree that recommendation 3a is important?***

- 1 - Not important at all
- 2 - Rather not important
- 3 - Neutral
- 4 - Rather important
- 5 - Very important
- Don't know / no opinion / not relevant

## RECOMMENDATION 4: MARKET-MAKING AND RE-EQUITISATION OF THE MARKET

### Recommendation 4a: Market-making

When implementing Basel III, the Commission is invited to pay due attention to provisions affecting market making by banks and non-banks:

- When considering the Credit Valuation Adjustments (CVA) exemptions, the Commission is called to take into consideration the impact of a potential removal of the exemptions on the capacity of corporates to hedge their risks at a reasonable price.
- Regarding the implementation of the Fundamental Review of the Trading Book (FRTB), the Commission is invited to monitor upcoming developments in the US to avoid a negative impact on the international level playing field as a result of the Basel III implementation.
- When implementing the standardised approach for counterparty credit risk (SA-CCR), the Commission is called to consider the impact of the US deviation from the Basel standard on the international level playing field.
- The Commission is invited to ensure a pragmatic interpretation of the legislation that would allow reasonable netting of repos and reverse repos, thereby avoiding an excessive impact on the leverage ratio.
- As regards market making by non-banks/investment firms, when developing secondary legislation for the Investment Firm Regulation/ Directive, the Commission, acting on a proposal from the European Banking Authority, should take due account of the role of non-bank proprietary trading firms in the provision of critical liquidity in the market, ensure the level playing field between the same type of investment firms and avoid - as much as possible under level 1 - undue capital requirements for firms without systemic risk to the EU capital markets.

*Do you agree that recommendation 4a is important?*

- 1 - Not important at all
- 2 - Rather not important
- 3 - Neutral
- 4 - Rather important
- 5 - Very important
- Don't know / no opinion / not relevant

## RECOMMENDATION 6: IMPROVING THE PUBLIC MARKETS ECOSYSTEM

### Recommendation 6c: Dual-class shares

Companies should have a choice to opt for dual-class shares with variable voting rights when going public, with a sunset clause determined at the company's discretion, to the extent it does not disincentivise investors from investing in companies.

#### *Do you agree that recommendation 6c is important?*

- 1 - Not important at all
- 2 - Rather not important
- 3 - Neutral
- 4 - Rather important
- 5 - Very important
- Don't know / no opinion / not relevant

### Recommendation 6d: Minimum free float for SMEs

The Listing Directive, and notably Article 48 hereof, should be amended to alleviate the requirement for the national competent authorities to ensure that a sufficient number of shares of SMEs are distributed to the public through the stock exchange (at least 25% or in some cases - a lower percentage).

#### *Do you agree that recommendation 6d is important?*

- 1 - Not important at all
- 2 - Rather not important
- 3 - Neutral
- 4 - Rather important
- 5 - Very important
- Don't know / no opinion / not relevant

### Recommendation 6g: Alleviations to the Market Abuse Regulation

- Notion of inside information: The key goal of MAR is to ensure equal access to relevant information across market participants to ensure these are not put at a disadvantage to company insiders. The Commission is invited to review the Market Abuse Regulation in order to (i) introduce a safe harbour in the case of distribution of preliminary inside information, (ii) give ESMA a clear mandate to define preliminary information, as well as (iii) refine the definition of inside information with a significant price effect.

- Interaction between MAR and Transparency Directive: Companies should be given more flexibility to avoid making premature disclosures of inside information.
- Insider lists: The management of the insider list is very burdensome due to all the information the issuer must gather to fill in the list. Article 18 paragraph 9 should be amended to ensure that only the most essential information for the identification purposes is included.
- Manager Transactions: The threshold should therefore be raised from the current €5 000-€20 000 to €50 000.
- Sanctions: Member States shall amend their respective national sanctions regimes to ensure that the amount of administrative sanctions reflects the specifics of the supervised market and is proportionate to the nature of abuse.

***Do you agree that recommendation 6g is important?***

- 1 - Not important at all
- 2 - Rather not important
- 3 - Neutral
- 4 - Rather important
- 5 - Very important
- Don't know / no opinion / not relevant

**Recommendation 6j: Exempt research in SMEs from unbundling rule in MiFID II**

In order to support brokers' produced research on SMEs, brokers should be allowed to bundle execution commissions and research fees when it concerns SME stock listed on any trading venue.

***Do you agree that recommendation 6j is important?***

- 1 - Not important at all
- 2 - Rather not important
- 3 - Neutral
- 4 - Rather important
- 5 - Very important
- Don't know / no opinion / not relevant

**Recommendation 6k: Tick size regime**

Remove the tick size limitation for SME stocks in order for the tick sizes not to be a hindering factor for liquidity in SME shares, the local market operators should be able to decide on a minimum tick size with respect to trading in SME shares.

***Do you agree that recommendation 6k is important?***

- 1 - Not important at all
- 2 - Rather not important
- 3 - Neutral
- 4 - Rather important
- 5 - Very important
- Don't know / no opinion / not relevant

***If you disagree with all or part of recommendation 6, how would you amend it?***

Dual shares (recommendation 6c)

Dual listing should be avoided, to centralise liquidity and avoid register's duplication.

Exemption from unbundling for research in SME (recommendation 6j)

We recognise a need to consider what can be done to increase its production, facilitate its dissemination and improve its quality.

However, we should not introduce bundling for SME exclusively, as it would be impossible for asset managers to manage in parallel a bundled regime for SMEs and an unbundled regime for the rest of their assets in portfolio.

We do not believe that such proposal would have a meaningful impact on the provision of SME research. Authorising bundling of SME research alone is no longer practical in the current market for research, as clients will not accept a "re-bundling" of research payments to their commission rates.

While there may be scope for regulatory interventions, there should also be an acknowledgement that part of the onus lies with SMEs themselves to raise their profile with prospective investors.

The transparency in the market between buy-side and sell-side would be more beneficial in providing a platform to promote better SME research provision.

Tick size regime (recommendation 6k)

We are supportive of a tick-size harmonisation below LIS, subject to retaining the ability of venues (exchanges, MTFs and SIs) to execute at the midpoint.

## **RECOMMENDATION 8: CENTRAL SECURITIES DEPOSITORIES**

The European Commission is invited to conduct a targeted review of CSDR to strengthen the CSD passport and facilitate the servicing of domestic issuance in non-national currencies. This should be accompanied by measures to strengthen the supervisory convergence among National Competent Authorities. These measures, taken jointly, should enhance the cross-border provision of settlement services in the EU.

***Do you agree that recommendation 8 is important?***

- 1 - Not important at all
- 2 - Rather not important
- 3 - Neutral
- 4 - Rather important
- 5 - Very important
- Don't know / no opinion / not relevant

***If you disagree with all or part of recommendation 8, how would you amend it?***

We agree with the HLF recommendations.

We also consider that a larger review of CSDR should be initiated in topics such as:

- The settlement discipline regime, especially on mandatory buy-ins as the number of settlement fails as reduced drastically without the implementation of this regime and the urgent extension of the implementation period, and
- The creation of a suspension of the settlement obligations in case of crisis, as we noticed that the Coronavirus pandemic extended the time to settle transactions.

## **RECOMMENDATION 9: SHAREHOLDER IDENTIFICATION, EXERCISE OF VOTING RIGHTS AND CORPORATE ACTIONS**

### **Recommendation 9a**

The Commission is invited to put forward a proposal for a Shareholder Rights Regulation to provide a harmonised definition of a 'shareholder' at EU level in order to improve the conditions for shareholder engagement.

***Do you agree that recommendation 9a is important?***

- 1 - Not important at all
- 2 - Rather not important
- 3 - Neutral
- 4 - Rather important
- 5 - Very important
- Don't know / no opinion / not relevant

## Recommendation 9b

The Commission is invited to amend the Shareholders Rights Directive 2 (SRD 2) and its Implementing Regulation to clarify and further harmonise the interaction between investors, intermediaries including CSDs and issuers/issuer agents with respect to the exercise of voting rights and corporate action processing.

*Do you agree that recommendation 9b is important?*

- 1 - Not important at all
- 2 - Rather not important
- 3 - Neutral
- 4 - Rather important
- 5 - Very important
- Don't know / no opinion / not relevant

## Recommendation 9c

The Commission is invited, in close collaboration with national authorities, to facilitate the use of new digital technologies to (i) enable wider investor engagement by supporting the exercise of shareholder rights and more specifically voting rights, in particular in a cross-border context, and (ii) make corporate action and general meetings processes more efficient. That would notably include (i) facilitating shareholders' voting using digital means, (ii) streamlining processes and systems for identifying shareholders, and (iii) providing financial market participants with more legal certainty as regards the holding and circulation of security tokens (such as tokens representing voting rights) using new technologies.

*Do you agree that recommendation 9c is important?*

- 1 - Not important at all
- 2 - Rather not important
- 3 - Neutral
- 4 - Rather important
- 5 - Very important
- Don't know / no opinion / not relevant

*If you disagree with all or part of recommendation 9, how would you amend it?*

While we see the need to facilitate the interactions between investors, intermediaries & issuers with respect to the exercise of voting rights & corporate action processing, we believe that at
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this stage revising SRD II is premature. This recently revised directive has not even been implemented in all Member States yet.

Moreover, the provisions on the shareholder identification, transmission of information and facilitation of exercise of shareholder rights are not effective yet. Therefore, we suggest to wait at least three to four years for the new rules to be implemented and bed-in, to assess to what extent the currently experienced issues will be solved with a proper implementation of the directive.

However, we do agree that it would be useful to closely monitor effective transposition of the directive and encourage the use of new digital technologies (i.e. DLT) to facilitate wider engagement, cross-border voting and shareholder identification. However, the latter largely remains in the hands of the financial intermediaries.

## RECOMMENDATION 11: PENSIONS

### Recommendation 11a: Pension dashboards for Member States

The Commission should develop a dashboard with indicators to monitor the state of play in Member States and, where applicable, the progress achieved by Member States with regard to pension sustainability and pension adequacy. Each indicator should take into account the three pillars and be composed of aggregated, anonymised data. Indicators should be accompanied by a pension adequacy target.

- The Commission should consider a reporting system whereby providers of Pillar II and Pillar III pensions annually report relevant anonymised aggregate information on their clients and on assets under management to National Competent Authorities.
- Member States should be obliged to submit the collected, aggregated data to a centralised point.
- Indicators should be calculated and published on an annual basis, reflecting the sustainability and adequacy of pension systems across the three pillars in the Member States. Where appropriate, these indicators should feature prominently in the European Semester and the country-specific recommendations. The methodology could be jointly agreed by the Commission and the Economic Policy Committee (EPC).

#### *Do you agree that recommendation 11a is important?*

- 1 - Not important at all
- 2 - Rather not important
- 3 - Neutral
- 4 - Rather important
- 5 - Very important

Don't know / no opinion / not relevant

### Recommendation 11b

- The Commission should put in place a requirement for Pillar II and Pillar III providers to report on an annual basis their respective data of individuals' savings, to complement information (submitted by Member States) on individuals' accrued rights under Pillar 1. The process by which this is achieved should be developed in consultation with the European Data Protection Board. National tracking systems should feed into an EU portal, such as the European Tracking System, which would allow EU citizens with mobile careers to check their pension status irrespective of the Member States of their accrued rights.
- For this purpose, the submitted information needs to be standardised and requires the possibility to extend the reported information. Upon successful implementation of pension tracking systems, the Commission is to work towards extending reporting requirements to additional suitable products and initiatives, e.g. long- term investments comparable to pension products and retirement saving initiatives (e.g. sidecar savings accounts).
- The HLF calls on the industry to support and contribute to financing the full roll-out of the European Tracking System, considering that public-private partnerships would be a good solution for funding such a system, which should be supervised by public authorities to ensure trust.

#### *Do you agree that recommendation 11b is important?*

1 - Not important at all

2 - Rather not important

3 - Neutral

4 - Rather important

5 - Very important

Don't know / no opinion / not relevant

### Recommendation 11c

In line with the [report of the High Level Group of Experts on Pensions](#), to stimulate adequate pension coverage across all Member States the Commission should consider ways to support the introduction of auto-enrolment, in particular where there is no mandatory occupational scheme in place. Increasing levels of pension coverage and savings will reduce the risk of future old-age poverty and contribute to deeper, more integrated and more liquid European capital markets. To this end:

- The Commission should identify best practices in automatically enrolling workers into occupational pensions with a view to developing a blueprint to provide principles and proposals on good occupational schemes and how engagement and guidance can be harnessed to secure adequate retirement incomes for EU citizens in the future, which Member States can tailor to their particular pension landscape.
- The Commission should stimulate pension accrual and pension adequacy in alignment with the Pension Dashboard approach referenced above, by providing best practices for applicable

occupational pension systems at Member State level.

- The Commission should table a legislative proposal to require auto-enrolment into default occupational pension schemes at Member State level with the intent of delivering adequate pension savings over a working life. That proposal must be subject to a full impact assessment specifying the objectives, making the case for auto-enrolment and identifying the main elements and minimum requirements that should form part of the legislative proposal.

***Do you agree that recommendation 11c is important?***

- 1 - Not important at all
- 2 - Rather not important
- 3 - Neutral
- 4 - Rather important
- 5 - Very important
- Don't know / no opinion / not relevant

***If you disagree with all or part of recommendation 11, how would you amend it?***

We fully support the HLF recommendation to encourage the development of pension tracking systems for individuals. It is also well established that auto-enrolment with opt-out option is a powerful tool to overcome inertia in retirement saving.

We hope that Member States will not only commit themselves to implementing the HLF recommendations in the area of pensions, but will also go beyond by providing the right level of tax incentives to promote pension savings.

We also fully agree that making a success of the Pan-European Personal Pension Product (PEPP) across the EU is important in this context. This is an area where the European Commission can still act.

We are indeed very concerned that the inclusion of the initial cost of advice under the 1% fee cap on the Basic PEPP will prevent potential providers from developing an economically viable business model for the PEPP. Consequently, consumers would not have access to the competitive, value-for-money personal pension market.

In our view, the most efficient approach to avoid this happening would be to exclude the cost of initial advice at least until the first review of the fee cap. Alongside this, we advocate that the advice costs be fully disclosed to consumers.

The European Commission has included the PEPP as one of the pillars of its initial CMU initiative, rightly so, because the PEPP is one aspect of the CMU that could be easily described as a project to serve EU citizens. If the PEPP remains a fine idea without a future, the real losers will be the citizens of Europe, in particular those with inadequate future retirement

incomes, who will not benefit from the expected benefits of the PEPP in terms of product choice, quality of advice and value for money.

Now, above all, is a time for pragmatism and an opportunity to build a product that can both help savers and provide much-needed capital to a European economy that will need significant support in the coming years.

## **RECOMMENDATION 12: FINANCIAL LITERACY/EDUCATION AND INVESTMENT CULTURE**

### **Recommendation 12a: Recognition of financial knowledge and skills as a priority**

The Commission should propose to review the Council Recommendation “Key Competences on Lifelong learning” to introduce financial competence as a stand-alone key competence. The Commission should also identify financial skills as a priority in an update of its Communication on “A new Skills agenda for Europe”.

#### ***Do you agree that recommendation 12a is important?***

- 1 - Not important at all
- 2 - Rather not important
- 3 - Neutral
- 4 - Rather important
- 5 - Very important
- Don't know / no opinion / not relevant

### **Recommendation 12b**

#### ***Recommendation 12b(i): EU competence framework on financial competence***

The Commission should set up an EU competence framework on financial competence. The framework on financial competence should outline key areas of financial competence (for instance, plan a budget, invest, borrow). The framework should provide the theoretical basis to support the development of competences through various applications and in various settings. The framework should be made available to public authorities and private bodies to promote a shared understanding of financial competences and provide the basis for the development of policies and applications. In particular, its uptake would be facilitated through working groups with Member States, organised and moderated by the Commission.

In the long run, the competence framework on financial competence could provide the basis for a range of applications developed by public authorities and/or public bodies. These applications can cover not only school and university formal education, but also adult formal, non-formal and informal learning, including consumer engagement aspects. For instance, the framework could be used as a basis by financial guidance bodies (see recommendation 12e) to develop and structure their offer. The

framework could be used to develop digital tools for consumers to assess their risk profile, or to show retail investors how their current consumption/savings choices may impact their future return. The framework could also provide a basis for setting up centres of financial education to provide pupils, students and adults with basic financial education. Such centres could be run in the form of public-private partnerships.

***Do you agree that recommendation 12b(i) is important?***

- 1 - Not important at all
- 2 - Rather not important
- 3 - Neutral
- 4 - Rather important
- 5 - Very important
- Don't know / no opinion / not relevant

***Recommendation 12b(ii): Working groups with Member States***

The Commission should set up and moderate working groups with Member States to facilitate the uptake of the above-mentioned competence framework and to exchange best practices, including on: curricula reforms (school, university, vocational and adult education), financial guidance measures and promotion of employee share ownership.

***Do you agree that recommendation 12b(ii) is important?***

- 1 - Not important at all
- 2 - Rather not important
- 3 - Neutral
- 4 - Rather important
- 5 - Very important
- Don't know / no opinion / not relevant

***Recommendation 12b(iii): Indicator on financial education***

The Commission should create a new indicator on financial education in Member States. The indicator should be monitored in the framework of the European Semester and/or in thematic country reports of Commission Services. A minimum threshold should be defined, below which a country-specific recommendation should be triggered for the given country.

***Do you agree that recommendation 12b(iii) is important?***

- 1 - Not important at all

- 2 - Rather not important
- 3 - Neutral
- 4 - Rather important
- 5 - Very important
- Don't know / no opinion / not relevant

***Recommendation 12b(iv): EU-coordinated approach for Member States to set up tests***

The Commission should encourage monitoring of the level of financial competence of EU citizens at country level. The Commission could develop an EU-coordinated approach for Member States to set up tests on financial competence (building upon the competence framework). Alternatively, possibilities could be explored to extend the scope or uptake of existing tests such as the OECD "PISA financial literacy assessment of students" or the OECD "PIAAC survey of adult skills".

***Do you agree that recommendation 12b(iv) is important?***

- 1 - Not important at all
- 2 - Rather not important
- 3 - Neutral
- 4 - Rather important
- 5 - Very important
- Don't know / no opinion / not relevant

***Recommendation 12c: Erasmus+ or other EU funding programmes***

The Commission should give more prominence to financial literacy projects under Erasmus+ or other EU funding programmes, by adding financial literacy/competence as a new horizontal priority. By doing so, Erasmus+ budget could be re-allocated into financial literacy/competence projects in various fields (not only school education and higher education, but also vocational education and adult formal, non-formal and informal learning) and of various nature (learner's mobility or cooperation between organisations such as educational institutions, NGOs and companies).

***Do you agree that recommendation 12c is important?***

- 1 - Not important at all
- 2 - Rather not important
- 3 - Neutral
- 4 - Rather important
- 5 - Very important

Don't know / no opinion / not relevant

### **Recommendation 12d**

The Commission should extend the principle enshrined in Article 6 of the Mortgage Credit Directive to other sectorial legislation, with a view to:

- requiring Member States to promote formal, non-formal and informal learning measures that support the financial education of consumers in relation to responsible investing;
- requesting the Commission to assess the financial education available to consumers in Member States and to identify best practices (similarly, the Commission could build upon EBA's work, in particular its repository of existing financial education initiatives in Member States).

The Commission should assess to which sectorial legislations it would be the most appropriate to extend the principle set out in Article 6 of MCD (e.g., MiFID, IDD, PEPP, UCITS, PRIIPs, etc.).

#### ***Do you agree that recommendation 12d is important?***

1 - Not important at all

2 - Rather not important

3 - Neutral

4 - Rather important

5 - Very important

Don't know / no opinion / not relevant

### **Recommendation 12e: Financial guidance**

Member States should promote measures that support financial guidance to consumers in relation to investing and pension saving, including through digital means. In particular, Member States should set up national financial guidance bodies for consumers and/or fund existing organisations representing financial end-users capable of providing financial guidance and financial planning services to consumers.

The EU should encourage Member States to set up such national financial guidance bodies by adding the exchange of best practices on such national bodies in the scope of the Member States working groups set up in recommendation 2. The scope of the working groups should cover best practices of national financial guidance bodies coordinating their activities with other public sector initiatives providing financial guidance to citizens, at a member state and EU level, including pension tracking systems.

#### ***Do you agree that recommendation 12e is important?***

1 - Not important at all

2 - Rather not important

- 3 - Neutral
- 4 - Rather important
- 5 - Very important
- Don't know / no opinion / not relevant

### **Recommendation 12g: Employee share ownership (ESO)**

- The Commission is invited to promote together with Member States the use of ESO across the EU. To this end, the Commission should explore which EU funds could be used to support this objective. EU funding should, in particular, be devoted to setting up and promoting a multi-lingual information portal/virtual centre giving easy access to key information on ESO and Employee Financial Participation (EFP) in general.
- In addition, Member States should promote ESO and EFP by providing adequate tax incentives.
- Moreover, the Commission should discuss in relevant expert groups to which extent Member States promote ESO and adequate ways to increase the uptake of ESO.

#### *Do you agree that recommendation 12g is important?*

- 1 - Not important at all
- 2 - Rather not important
- 3 - Neutral
- 4 - Rather important
- 5 - Very important
- Don't know / no opinion / not relevant

## **RECOMMENDATION 13: DISTRIBUTION, ADVICE AND DISCLOSURE**

### **Recommendation 13a: Inducements**

- In line with the requirement in Article 41(2), IDD, the Commission is invited to examine how the inducement rules under IDD can ensure a sufficient level of consumer protection consistent with the investor protection standards applicable under MiFID II for insurance-based investment products (IBIPs), and to put forward the appropriate legislative proposals, including introducing the concepts of "independent advice" and "portfolio management" under the IDD and a prohibition to accept and retain inducement paid for the distribution of IBIPs where distributors provide independent advice or portfolio management services to clients. The Commission should replicate the MiFID II quality enhancement test in IDD and ensure the burden of proof lies with the intermediaries.
- The Commission should introduce an obligation in relevant sectoral legislation (IDD, MiFID) for distributors to inform clients of the existence of third-party products, including for closed architecture

distribution networks.

- The Commission is invited to further examine the role of inducements for the adequacy of advice, including how the payment/receipt of inducements impacts the fairness and adequacy of advice and sales processes more generally. The examination should include the role and impact of inducements on execution-only services.
- The Commission is invited to examine how transparency of inducements can be further improved for clients (e.g. requirements for more standardized presentation, requiring that ex post disclosures should be made ISIN-by-ISIN, including in all inducement disclosures a clear explanation of what inducements are, etc.).
- The Commission is invited to put in place requirements for distributors of retail products to report annually to National Competent Authorities (NCAs) on the split of financial products distributed (on an advised or non-advised basis) that are issued or manufactured by the firm itself or by entities having close links with the firm and of other third party providers.
- NCAs should be required to transmit this information to ESMA in the case of financial instruments distributed under MiFID II and to EIOPA in the case of insurance-based investment products distributed under the IDD.

***Do you agree that recommendation 13a is important?***

- 1 - Not important at all
- 2 - Rather not important
- 3 - Neutral
- 4 - Rather important
- 5 - Very important
- Don't know / no opinion / not relevant

**Recommendation 13b: Qualification of advisors**

- The Commission is invited to:
  - propose a review of IDD and MiFID, pursuant to which Member States shall require that the successful completion of the training and development requirements aiming at maintaining an adequate level of performance of advisors is proven by obtaining an appropriate certificate.
  - introduce an analogous provision in IDD and MiFID to cover appropriate knowledge and ability to access the profession.
  - consider the appropriateness of the introduction of a transitional period to allow advisors already operating in the market to comply with the new requirement for a certificate, while in any event limiting it to a maximum of two years.
- The Commission is invited to table a proposal for establishing a pan-European quality mark (label)

for European financial advisors. The pan-European quality mark (label) would be used on a voluntary basis by financial advisors and/or by Member States as a way to comply with the requirements in point 1. The label could be established through a cooperation with an accredited certifying body or bodies.

***Do you agree that recommendation 13b is important?***

- 1 - Not important at all
- 2 - Rather not important
- 3 - Neutral
- 4 - Rather important
- 5 - Very important
- Don't know / no opinion / not relevant

**Recommendation 13c: Non-professional qualified investor category**

The Commission is invited to:

- amend MiFID II to introduce a new category of non-professional Qualified Investors (QI) with the following characteristics:
  - Investment firms and credit institutions would have the option, but not an obligation to apply the additional categorisation to their clients. Investment firms and credit institutions should inform a retail client of this possibility where the client complies with the eligibility criteria.
  - Upon his/her explicit request and subject to meeting the eligibility criteria, a retail client may voluntarily opt in to become a QI.
  - The eligibility criteria should be cumulative and should include a proven track-record of trading different types of financial instruments over at least 3 years and financial assets of at least EUR 50,000 at the investor's personal disposal.
  - Investment firms and credit institutions should not be under obligation to ensure continuous compliance of QI with the eligibility criteria.
  - A QI may revoke his/her QI-status at any point in time and upon his/her explicit request.
- alternatively, if balanced against broader investor protection considerations, the category of professional investors could be extended to include retail investors that comply with the eligibility criteria for Qualified Investors, as set out above. This should be subject to the request and explicit agreement of the retail investor and remain optional for the investment firm.
- amend MiFID II to alleviate requirements for QI:
  - Information requirements to QI should be considerably reduced as compared to the requirements applicable to retail investors. A QI should have access to a wider range of investment products.

- Ensure that existing MiFID II rules cannot be interpreted to hinder investors from directly accessing non-complex investment products, such as shares and bonds.

***Do you agree that recommendation 13c is important?***

- 1 - Not important at all
- 2 - Rather not important
- 3 - Neutral
- 4 - Rather important
- 5 - Very important
- Don't know / no opinion / not relevant

**Recommendation 13d: Disclosure**

- The Commission is invited to review as soon as possible, and in sufficient time to avoid a conflict with the expiry of the exemption for UCITS, the PRIIPs Regulation to address the issues raised by most stakeholders regarding intelligibility and comparability of information and the coherence with MIFID information rules, in particular for performance and cost disclosures.
- The Commission is also invited to carry out an in-depth analysis and assessment of all relevant rules in place and their implementation, with a view to:
  - Identify weaknesses of the current framework, giving particular attention to consumer research, with input from relevant stakeholders, to gain insights into exactly how consumers interact with disclosures, including in an online environment.
  - Promote digital delivery and interaction with key information that allows comparisons, interaction and customisation.
  - Identify gaps, redundancies, overlaps and inconsistencies between the different sectoral frameworks and make proposals as to how these could be eliminated.
  - Promote the use of consumer-friendly language across Member States, including clear explanations on volatility, product specific risks and potential pension gaps.
- In its assessment the Commission should consider the possibility of separating the objectives of market/supervisory transparency and consumer information e.g. exposing details of full cost structures, remuneration structures, risk profiles and performance scenarios for market and supervisory transparency, independently from disclosures aimed at addressing the needs of the consumer that could be radically simplified, however, including a layered approach that would include the provision of a fuller set of information where required.
- On the basis of the result of this analysis, and taking account of the implementation of requirements relating to ESG disclosure, the Commission is invited to table the necessary amendments to existing regulation, putting consumer testing and consumer capabilities at the forefront of any regulatory changes.

- In doing so, the Commission should be guided by the principle that disclosure rules should ensure that the fundamental consumer perspective is incorporated, allowing for maximum comparability and retail client engagement and avoiding information overload and complexity. Confusing overlaps and inconsistencies between different disclosure requirements must be avoided. Product-specific disclosure should include, where available, data on long-term past performance relative to the benchmark(s) chosen by the manufacturer.

***Do you agree that recommendation 13d is important?***

- 1 - Not important at all
- 2 - Rather not important
- 3 - Neutral
- 4 - Rather important
- 5 - Very important
- Don't know / no opinion / not relevant

**Recommendation 13e: Investment product databases and comparison tools**

The Commission should consider ways to promote the development of independent web-based comparison tools for investment products that are able to feed upon reliable investment product databases. Streamlining rules on disclosure, as recommended above (in recommendation 4), could facilitate the creation of such effective investment product databases and comparison tools on the basis of product information disclosed in Key Information Documents (KIDs). To this end, as a first step the Commission should ensure that disclosure under the PRIIPS KID is adequate and meaningful to allow for reasonable comparisons of key product features, including long term past performance of the investment products and of their benchmark, if any, and actual costs in euro terms and as a percentage of net assets held by savers; data availability in digital format and digital access to or transmission of the information to one or more data-hubs, as required, needs to be ensured.

***Do you agree that recommendation 13e is important?***

- 1 - Not important at all
- 2 - Rather not important
- 3 - Neutral
- 4 - Rather important
- 5 - Very important
- Don't know / no opinion / not relevant

*If you disagree with all or part of recommendation 13, how would you amend it?*

We agree with the HLF's recommendations that further, in-depth, analysis on the role of distribution, advice and inducements is necessary before implementing any policy actions. This is crucial, as the new inducement MiFID II framework has only been in existence since 2018 and an advice gap must be avoided at all costs. We have always been in favour of being transparent on how advice is financed. However, the suggestion to break down each inducement on an ISIN-by-ISIN level may be considered as information overkill — especially for retail investors. We agree that the same type of distribution and disclosures rules should apply for all types of PRIIPs, including insurance-based investment products (IBIPs).

We agree with the notion of a new category of non-professional Qualified Investors (QI) similar to the Commission's originally suggested 'semi-professional'. However, the same objective can be achieved by inserting further flexibility into the already existing client categories (by allowing certain retail investors to opt- up to becoming professional clients and allowing the latter more flexibility in terms of which disclosures they want to receive).

We strongly support the HLF's request to conduct a full Level 1 review of the PRIIPs Regulation. It is essential to have a well-functioning PRIIP KID before the UCITS exemption expires at the end of 2021. On a more technical level, we agree that an alignment between PRIIPs and MiFID is essential in terms of cost disclosures so that retail investors are presented with non-contradicting information.

We understand the promotion of the development of independent web-based comparison tools for investment products. However, we are concerned that the existing MiFID, PRIIPs, UCITS and IDD frameworks need to be further aligned first to allow any meaningful comparison to taking place. The current PRIIP KID is a salient example that meaningful comparison between different types of PRIIPs is not straightforward.

## **RECOMMENDATION 14: OPEN FINANCE**

### **Recommendation 14a**

- The Commission is invited to introduce a harmonised and balanced open finance regulatory framework, covering financial and only non-financial information relevant to facilitating financial planning or encouraging investment. It should apply to providers of financial services and cover savings accounts, investment accounts, pension savings, mortgages, consumer credit and insurance products. The Commission should also consider other areas if and where it identifies a strong use-case. When determining the scope of the data to be shared and the exact requirements, a level playing field between operators should be ensured.
- This regulatory framework should have the following elements:
  - Personal data should remain under the full data subject's control in compliance with the GDPR and be secure;

- Requirements on the access, use and storage of data should be specified, including the liability of different actors;
- Standards for the data format should be developed to facilitate sharing;
- A single EU-wide Application Programming Interface would be desirable to eliminate avoidable costs and facilitate scaling, so as to enable a secure and smooth access to consistent data sets.

***Do you agree that recommendation 14a is important?***

- 1 - Not important at all
- 2 - Rather not important
- 3 - Neutral
- 4 - Rather important
- 5 - Very important
- Don't know / no opinion / not relevant

**Recommendation 14b**

In parallel, the Commission is invited to undertake an in-depth analysis of the possibility to extend the scope to other non-financial information (e.g. the users' metadata gathered by social media platforms). The analysis should take into account the risks related to the exposure of personal data, the costs for market operators as well as possible impact on the market.

***Do you agree that recommendation 14b is important?***

- 1 - Not important at all
- 2 - Rather not important
- 3 - Neutral
- 4 - Rather important
- 5 - Very important
- Don't know / no opinion / not relevant

**If you disagree with all or part of recommendation 14, how would you amend it?**

We value the potential benefits of open finance, in particular, for allowing easier portability of customers' data between financial companies. In this regard, the creation of electronic KYC information could be considered which would allow, e.g. information on a client's suitability and appropriateness tests to be transferable.

## RECOMMENDATION 15: WITHHOLDING TAX

- The Commission is invited to set out in EU law common definitions, common processes, and a single form, relating to withholding tax relief at source procedures and their streamlining. In order to achieve significant alleviations for stakeholders, the Commission should make a proposal to introduce a standardised system for relief at source of withholding tax based on authorised information agents and withholding agents (e.g. the TRACE1 project by the OECD).
- The objective is that a standardised relief at source system becomes the principal mechanism for withholding tax relief procedures and their streamlining. Reclaim procedures should remain as a back-up (to cover cases in which an investor has been unable to benefit from relief at source). Reclaim procedures should be based on the common definitions and processes throughout the EU, should use a single form, and should be effected speedily and efficiently.
- The Commission is invited to support the development of new digital solutions to facilitate the creation of a standardised relief at source system that is both efficient, and resistant to fraud.

### *Do you agree that recommendation 15 is important?*

- 1 - Not important at all
- 2 - Rather not important
- 3 - Neutral
- 4 - Rather important
- 5 - Very important
- Don't know / no opinion / not relevant

## RECOMMENDATION 17: SUPERVISION

### Recommendation 17a: ESMA

The HLF recommends that the Commission strengthens ESMA's mandate to enhance European supervisory convergence, including by reforming its governance and strengthening its powers and toolkits as well as by entrusting it with wider powers in crisis management and ensuring that it is granted adequate resources. To that effect, the Commission should review the relevant sector-specific legislation as well as the founding Regulations of ESMA.

### *Do you agree that recommendation 17a is important?*

- 1 - Not important at all
- 2 - Rather not important
- 3 - Neutral
- 4 - Rather important

5 - Very important

Don't know / no opinion / not relevant

*If you disagree with all or part of recommendation 17, how would you amend it?*

At present and for the foreseeable future, EFAMA does not believe the current supervisory architecture needs to be substantially enhanced, unlike some differing opinions represented in the HLF. Rather, we believe that the recent ESFS Review amendments to the ESAs' founding regulations deserve to be firstly implemented and tested, before further reforms are tabled by the Commission.

Pros: EFAMA will be examining in greater detail the proposed amendments recommended to the Commission and to be put forward at the latest by mid-2021, including the reviews of national authorities, the harmonisation of administrative practices, the centralisation of data, the enhanced product intervention powers, the governance arrangements, et al. Of these, we continue to support the need for the ESAs to be given forbearance tools — so-called “no-action letters” — to be time-limited and exercised only in exceptional cases identified ex ante.

Cons: Our concerns relate in particular to the proposal aimed at granting ESMA with enhanced and direct supervisory powers over a host of new financial market players, among which, large asset managers. We believe such powers would be excessive and disproportionate for the need to improve supervisory convergence in view of bringing about consistent - but not identical - regulatory outcomes across the EU. Moreover, they would disregard the importance of proximity for financial market players and consumers alike to their local supervisor, thus undermining the subsidiarity principle as also recalled in the HLF's recommendation.

## 18. EUROPEAN CONSOLIDATED TAPE (ECT)

The HLF decided not to table a recommendation on a European Consolidated Tape.

*Do you consider that the creation of a European Consolidated Tape is important to the Capital Markets Union?*

1 - Not important at all

2 - Rather not important

3 - Neutral

4 - Rather important

5 - Very important

Don't know / no opinion / not relevant

### *Could you please explain your response on the importance of the ECT?*

We consider that the enforcement of a consolidated tape for all financial instruments is a key component to bring transparency in markets, as post-trade data is the first level of pre-trade and price determination information and a CT constitutes a “unique centralised data source”. We consider that the Commission should start with post-trade data, within CT offered at a proportionate cost and without mandatory consumption.

We are regretting that the question of data cost could not lead to a conclusive decision despite the fact that data cost are surging, except if the European Commission is already committed to propose a robust CT structure including a fees’ structure. MiFID II still miss to deliver a consolidated tape and the notion of “Reasonable Commercial Basis” in data cost has been largely overlooked.

## **OTHER RECOMMENDATIONS**

### *Are there any other recommendations that are not included in the HLF report that you think are crucial for the completion of the Capital Markets Union?*

We are disappointed to see that the report does not refer, even incidentally, to the increasingly important issue of data costs. Asset managers are among the most important users of data (market data, index data, ESG data...) and have been witnessing a steady increase over recent years in the cost of use of such data, which does not appear to be commensurate with the cost of production and dissemination by data providers and distributors. This constitutes a clear impediment to the effective functioning of CMU that needs to be addressed head-on through decisive actions from policymakers and supervisors.

In this respect, please refer to the [Global Memo on Market Data Costs](#) that EFAMA recently issued in cooperation with other trade associations.

### **Useful links**

[Feedback document \(https://ec.europa.eu/info/files/200610-cmu-high-level-forum-feedback-document\\_en\)](https://ec.europa.eu/info/files/200610-cmu-high-level-forum-feedback-document_en) [More on the CMU HLF \(https://ec.europa.eu/info/publications/cmu-high-level-forum\\_en\)](https://ec.europa.eu/info/publications/cmu-high-level-forum_en) [More on the CMU HLF final report \(https://ec.europa.eu/info/publications/cmu-high-level-forum\\_en#200610\)](https://ec.europa.eu/info/publications/cmu-high-level-forum_en#200610)

[More on capital markets union \(https://ec.europa.eu/info/business-economy-euro/growth-and-investment/capital-markets-union\\_en\)](https://ec.europa.eu/info/business-economy-euro/growth-and-investment/capital-markets-union_en)

[Specific privacy statement \(https://ec.europa.eu/info/files/200610-cmu-high-level-forum-feedback-privacy-statement\\_en\)](https://ec.europa.eu/info/files/200610-cmu-high-level-forum-feedback-privacy-statement_en)

[More on the Transparency register \(http://ec.europa.eu/transparencyregister/public/homePage.do?locale=en\)](http://ec.europa.eu/transparencyregister/public/homePage.do?locale=en)

### **Contact**