

EFAMA's REPLY TO THE EUROPEAN COMMISSION'S PUBLIC CONSULTATION ON A RETAIL INVESTMENT STRATEGY FOR EUROPE

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EXECUTIVE SUMMARY

EFAMA wholeheartedly supports a retail investment strategy that gives EU citizens the necessary tools and the confidence to put their savings to work by investing in capital markets.

While the themes covered in the [European Commission consultation on a retail investment strategy for Europe](#) are all highly relevant¹, they focus primarily on technical amendments to already existing rules. At this stage, however, the consultation fails to outline a comprehensive strategy to increase retail investors' participation in capital markets.

The patchwork of rules currently governing retail investor participation is either misaligned or tends to focus too narrowly on investor protection and on the risks associated with investing. There is an urgent need to also concentrate on the benefits of investing. It is a well-documented fact that people lose money by leaving their savings in their bank accounts. EFAMA's latest [Market Insights](#) evidenced that, on average, UCITS equity funds delivered a total net return of 108% in real terms between 2010-2019, whereas bank deposits lost 10% in net value over the same period.

A successful retail investment strategy would also need to integrate the following recommendations:

- **Easy access to financial advice for retail investors** is essential to ensure that retail clients invest in financial instruments that are suited to their individual needs and preferences. The ban on inducements contemplated in the consultation document would make it harder for less affluent citizens to access much-needed financial advice, thereby contradicting the CMU objective of increasing retail participation in capital markets.
- **Early education of EU citizens to increase their financial literacy** and foster a better understanding of capital markets. Higher literacy will ensure that basic concepts are more easily understood by retail investors than is currently the case. EFAMA believes the European Commission should play a coordinating role and bring together existing best practices of Member States.
- **Aligning financial disclosures across various regimes**, providing meaningful – rather than conflicting – information. Digital disclosures can provide a more tailored experience and enable well-informed investment decisions while avoiding information overkill. Also, the current ESG-related disclosures must be enhanced to provide clarity and simplicity for retail investors.
- **A PRIIP KID that focuses on information relevant for each type of investment product**, as each type of investment product provides a different value proposition and thus requires different disclosures. Indeed, the PRIIP KID's fundamental problems stem from its conflicting objectives of providing at the same time clear, fair and not misleading information and comparability between widely different types of investment products. A loss in theoretical comparability will be more than offset by improved explanations of the fundamentals for each type of investment product and more meaningful information.

EFAMA also considers it vital for the Commission to invest more time and resources into proper consumer testing of policy options with retail investors before submitting legislative proposals to the EU co-legislators. This should ensure that the proposed changes create tangible incentives and clear benefits for retail investors, the financial industry and the EU as a whole.

¹ Such as promoting financial literacy, adequate investor protection, access to advice and understandable disclosures.

1. GENERAL QUESTIONS

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

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

Yes

No

Don't know / no opinion / not applicable

Please explain your answer to question 1.1 and provide examples

Generally speaking, the current EU framework(s) adequately protect retail investors. However, they do not sufficiently empower them. Despite their potential awareness that capital market investments are required for proper (long-term) savings and retirement provision, investing is still seen by many retail investors as a burden rather than an opportunity.

To alleviate this situation, the future retail investment strategy's core benchmark must be to increase financial market participation, both in terms of the number of EU citizens effectively investing as well as the average amount they do invest. Surveys consistently show too low levels of participation in capital markets, despite extensive and wide-reaching investor protection legislation.

While targeted changes to improve the current investor protection framework are supported by EFAMA, the overall objective must clearly be to create an environment fostering this much-needed investor empowerment. European companies and infrastructures would also strongly benefit from the investments that European citizens could provide. We would, therefore, rather encourage the European Commission to develop a holistic approach to how the retail investment framework could be improved, and in particular how retail investors can get easier access to and trust in financial markets, whilst at the same time ensuring investor protection.

Equally, as EFAMA own report on Household Participation in Capital Markets shows, citizens are missing out on the higher, longer-term returns that long-term diversified investment in markets can provide. In our response, we highlight a number of areas for improvement. Again, our recommendations for adjustments to be made to the consumer protection regime are driven by this underlying conviction that we need to drive greater empowerment of European citizens.

All in all, further incentives and/or mandatory investment schemes are required to motivate retail investors to familiarise themselves with investment options and actively engage in investment products (e.g. re-investment of tax returns, government-supported default investment and employee share ownership plans). This being said, empowerment should not be used as a pretext for an increased regulation causing a heavier administrative burden on the shoulders of financial institutions, in particular smaller fund and asset management companies.

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

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

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

Please explain your answer to question 1.2

We understand the Commission's conviction that retail investors should always receive the highest level of investor protection and appropriate disclosures. However, regulatory efforts to date have, unfortunately, created a number of side effects that inhibit retail investors' participation in the capital markets. In essence, product regulation of retail products, in particular, UCITS, has been an undeniable success. That being said, it is important to look beyond product regulation and carefully assess the existing framework for incentives to investing and to remove unnecessary barriers or confusions that prevent investors from taking steps to plan for the future.

First, investor protection rules are often misaligned, in particular between financial products falling under MiFID and insurance-based investment products (IBIPs) covered under IDD.

Second, financial disclosures must be holistically reassessed. They diverge substantially between MiFID II, IDD and PRIIPs. In particular, misalignment between the MiFID II and PRIIPs rules requires different cost figures to be produced, unnecessarily confusing retail investors. Furthermore, we do find that certain limitations imposed by this framework may hinder retail investor participation in the capital markets, such as for example marketing rules and certain risk warnings. Though warnings about the risks related to investing are important, risk warnings may put off investors for investments products where this may be less necessary, such as index trackers or other non-complex investment funds, whilst similar risk warnings are not required for unregulated instruments, such as crypto-assets.

Third, the MiFID II definition of what constitutes a 'retail investor' has been unnecessarily restrictive. We agree with the Commission's proposal to empower more sophisticated retail investors to opt up and become professional investors to benefit from a more appropriate investor protection and disclosures regime. Especially these sophisticated retail investors suffer from a number of additional national requirements set by National Competent Authorities (NCAs) that must be met individually to ensure distribution in a specific EU Member State.

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

- Yes
- No
- Don't know / no opinion / not applicable

Please explain your answer to question 1.3

This is generally not relevant for most UCITS (i.e. “non-structured UCITS”), which are classified as non-complex financial instruments under MiFID II and can be sold without advice (i.e. execution-only) to (retail) investors.

However, in some Member States, we have encountered issues with national AIF regimes targeted at retail investors. These types of AIF regimes closely follow (but diverge in some technical aspects) UCITS regulation and are designed with retail investors in mind. Nevertheless, ESMA has explicitly stated that such funds must be considered as complex and requiring investment advice making them harder for retail investors to access than necessary (given their explicit investor protection features). For retail investors to have easier access to these types of AIFs, such funds should also be considered as non-complex financial instruments. The reason being that in some Member States, a significant number of retail investors invest on an execution-only (i.e. non-advised) basis. Most distributors operating in those Member States offer investment funds on an execution only basis without the necessity of having an appropriateness test in place. In such cases, AIF investment funds that are considered to be complex, but have the same characteristics as non-complex UCITS, are not sold via such distribution platform or channel, which therefore prevents easy access to such AIF funds. Please find further information in our response below.

In addition, the European Long-Term Investment Fund (ELTIF) Regulation has introduced conditions that currently hinder retail investor participation, such as strict redemption rules, limits to the maturity of the fund, prohibitive entry barriers and a rigid structure in terms of eligible investments. To overcome these limitations and to set the conditions for improving access of retail investors to ELTIFs, we suggest allowing this product to be offered also in an open-ended, “evergreen” structure by removing the current maturity limitations and allowing investors to redeem at regular intervals. In parallel, to improve diversification and attract a larger retail investor base in the future, we propose an increase of the current 30% UCITS-eligible asset ratio in terms of portfolio composition, recognising that, compared to professional investors, retail investors may have different needs in terms of liquidity and diversification. EFAMA also recommends that the Commission considers substantially lowering the current minimum investment amount from €10.000 to €1.000, to incentivise and facilitate the offer of ELTIFs to retail investors also via insurance/pension wrappers. In terms of consumer protection, we believe that the necessary suitability test – to be amended and aligned with that under Article 25 of MiFID II - is sufficient for the purpose of investor protection, accompanied by all relevant disclosure documents highlighting risks (including sustainability ones where applicable), along with recommended investment holding periods, etc. At the same time, as an additional safeguard for investors, we are of the view that advisors should be well prepared in providing consumers with reliable and detailed information about the product.

Such modifications and flexibility will allow the future ELTIF regime to reach a new investment audience in a larger retail market.²

² For more detailed views, please consult the [EFAMA response to the European Commission consultation on ELTIFs](#).

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

	1 (Strongly disagree)	2 (Rather Disagree)	3 (Neutral)	4 (Rather Agree)	5 (Strongly Agree)	Don't know No opinion Not applicable
Lack of understanding by retail investors of products?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Lack of understanding of products by advisers?	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Lack of trust in products?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
High entry or management costs?	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Lack of access to reliable, independent advice?	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Lack of access to redress?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Concerns about the risks of investing?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Uncertainties about expected returns?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Lack of available information about products in other EU Member States?	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Other	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

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

ESMA's communication around the publication of its Annual Statistical Report on the 'Performance and Cost of EU Retail Investment Products' (which has been published since 2019) is an example of a practice that may inadvertently discourage retail investors from investing.

The report is of excellent quality and offers thorough and excellent statistical analysis and insights, providing a truthful picture of both the cost and performance of UCITS. However, the accompanying communication of the report was one-sided, insisting that retail investors should not invest in (active) UCITS because their costs are too high. This message failed to highlight the benefits of investing, i.e. the substantial net returns that investors can get by investing in UCITS. In our latest EFAMA Market Insights ([link](#)), as a response to ESMA's communication, we build on ESMA's same data and illustrate that the financial loss European households have incurred by holding too much of their savings in bank deposits during the last decade. In

other words, equity UCITS delivered a total net return of 108% in real terms in 2010-2019, whereas bank deposits lost 10% in net value.

While we understand that ESMA must regulate and challenge the financial industry, one of its goals should also be to encourage people to invest in capital markets. Thus, its report should have clearly highlighted the fact that one of the most tangible benefits of UCITS is that they offer higher returns than risk-free assets over the long term. In our own analysis, we concluded that there is indeed a huge opportunity cost of not investing, which can have a significant impact on people's standard of living in retirement. Despite this clearly apparent opportunity cost, risk aversion by individuals prevents them from taking decisions that would be in their best long-term interests. Policymakers should, thus, emphasise the benefits of investing instead of focusing primarily on the cost of doing so, to avoid putting people off from investing altogether, which goes against one of the main CMU objectives.

Last but not least, another important factor is that retail investors are currently confronted with a large amount of technical, lengthy, and sometimes contradicting disclosures that are required by the current EU frameworks. We see this as a point of confusion and a major obstacle to investing, especially for retail investors.

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

	1 (Strongly disagree)	2 (Rather Disagree)	3 (Neutral)	4 (Rather Agree)	5 (Strongly Agree)	Don't know No opinion Not applicable
Sufficiently accessible	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Understandable for retail investors	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Easy for retail investors to compare with other products	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Offered at competitively priced conditions	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Offered alongside a sufficient range of competitive products	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Adapted to modern (e.g. digital) channels	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Adapted to Environmental, Social and Governance (ESG) criteria	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

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

Please select as many answers as you like

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

Please specify to what other area(s) you refer in your answer to question 1.6

We are somewhat puzzled by the Commission's approach towards a renewed EU retail investment strategy. We agree that all the themes covered in this consultation are of importance in providing investors with adequate investor protection, access to advice and understandable disclosures. However, it seems like the Commission only intends to make a number of technical changes (alignment of rules, disclosures, etc.) to existing regulations without proceeding first to a much-needed reassessment of retail investors' comprehension, role and their participation in EU financial markets and how best to empower them. Please also see our answer to Question 1.1.

For example, rather than asking about the detailed mechanics of the existing distribution and advice business, there need to be higher-level considerations of what role financial advice should play for EU citizens in the future. In the context of this consultation, financial advice is still framed within the constraints of product advice rather than financial guidance (and subsequent financial advice) to retail investors at different stages of their life. We would remind the Commission of the recent report of the High-Level Forum on Capital Markets Union, which points out that many of these themes should be holistically incorporated into the EU's retail investment strategy.

The Commission's recent joint presentation with the OECD on financial capability, where the topic of financial health was raised on a number of occasions, also comes to mind. Unfortunately, it does not seem to be reflected at all in this consultation. This is why we recommend that the Commission develops an overarching strategy, in collaboration with Member States, focusing on best practices to drive financial health. This would complement actions on financial education by setting out a framework

for guidance on core issues of financial health by making it easy for people to set up a financial plan which they are actively encouraged to review and update at key life stages (leaving school, starting work, changes in family circumstances, property acquisition, pre and at retirement). The important driver would be a set of simple steps to nudge people into action and effectively counteract risk aversion.

Please explain your answer to question 1.6

Please see our previous response.

On the subject of financial education, it is important to stress that the existing regulatory frameworks (i.e. for investment funds) are in general fit-for-purpose to protect retail investors. However, to increase understanding by retail investors of existing disclosures and the nature of the different investment products available, it is of utmost importance to increase education and know-how of the capital markets of retail investors. The focus of any retail investment strategy should, therefore, be on increasing financial literacy and familiarising / engaging EU citizens with capital markets at an early stage. This should encompass learning at school, as well as making use of digital means and engagement platforms.

On the subject of Environmental, Social and Governance (ESG) criteria, we certainly agree and support the Commission's efforts to promote ESG products. However, many essential elements of the sustainable finance framework are either still under discussion or have not yet become applicable. It is therefore too early to provide an assessment of these types of products. Also, the increased amount of ESG information is not yet matched by an adequate understanding of key concepts and general financial literacy among retail investors. This may lead to confusion rather than clarity and increased awareness. The future EU strategy relating to ESG, should, thus, also consider striking a balance between transparency and complexity in order to effectively empower investors.

2. FINANCIAL LITERACY

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

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

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

	1 (Strongly disagree)	2 (Rather Disagree)	3 (Neutral)	4 (Rather Agree)	5 (Strongly Agree)	Don't know No opinion Not applicable
Improve their understanding of the nature and main features of financial products	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Create realistic expectations about the risk and performance of financial products	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Increase their participation in financial markets	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Find objective investment information	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Better understand disclosure documents	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Better understand professional advice	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Make investment decisions that are in line with their investment needs and objectives	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Follow a long-term investment strategy Assogestioni: 3	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

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

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

An understanding and know-how of capital markets, as well as financial products, cannot be achieved by increased product transparency and financial advice alone. Instead, early education – be it at schools and/or via common electronic platforms – is required to lay the foundation. Established and trending communication means and language should be used to reach teenagers as well as young adults. This would have an immediate and positive effect on direct investments (such as employees share ownership plans) and increased awareness of the need to save for retirement.

In supporting the current efforts of the financial sector to promote financial education, an important role can be performed by European institutions and national authorities, including NCAs. Financial education should be designed to educate consumers about the possibilities, but also the risks related to investing. It should also be designed to better distinguish the concept of investing in a prudent manner from pure speculation or gambling. We believe that the European Commission should play a coordinating role and should bring best practices together.

3. DIGITAL INNOVATION

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

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

Question 3.1 What might be the benefits or potential risks of an open finance approach (i.e. similar to that developed in the field of payment services which allowed greater access by third party providers to customer payment account information) in the field of retail investments (e.g. enabling more competition, tailored advice, data privacy, etc.)?

Please explain your answer

We are, generally speaking, in favour of 'open finance' initiatives in the field of (retail) investments. We see benefits, in particular, around the (currently long) onboarding processes for new clients that could be simplified by having access to such information in the form of a digital investment ID.

We welcome the Commission's recent initiative on digital ID and we encourage its further adoption into other processes to reduce much of the laborious and time-consuming account opening procedures many investors experience and which constitute a barrier to empowering investors. These data could also support the lengthy and costly Know-Your-Customer and Anti-Money-Laundering processes that accompany this process. Access to such specific client data (such as previous suitability and appropriateness tests, as well as information on their financial situation and financial holdings) may allow financial firms to provide retail investors with potential investment solutions much more quickly than currently is the case. A suitability and/or appropriateness assessment must be undertaken by each investment firm. Making such an assessment portable would allow retail investors to 'shop around' and easily comparing offers from different distributors.

However, as the Commission points out, we do note the important issues around data privacy and data protection that are paramount and must be considered as well. In essence, any open finance approaches must be based on the client's explicit approval to access and use their data.

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

Please explain your answer

Please consider our response above. As stated, technological innovation, such as a digital identity, could help in increasing retail participation. We note that several EU Member States (such as Denmark, Latvia and Sweden) already have some form of digital ID that can simplify the investment process.

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

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

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

- Yes
- No
- Don't know / no opinion / not applicable

Please explain your answer to question 3.3

The term "machine-readable" is not sufficiently clear to us. Assuming it refers to machines being able to read already existing data points (such as the ones contained in the PRIIP KID), EFAMA is in favour of machine-readable pre-contractual disclosure information.

Should the Commission wish to progress in this area, there must, however, be clear and tangible benefits for both retail investors and financial market intermediaries. From our viewpoint, machine-readability should allow for more straight-through processing and decrease front, mid and back-office workloads. This being said, we are strongly against the imposition of data standards and believe that the financial industry should be allowed to define its data standards based on the EU regulatory requirements. This has already proven successful – please find more information below.

More generally, information should also be digitally accessible and allow for interactivity to empower and engage consumers. Current disclosure documents are currently paper-based and can be made

available only in a non-interactive pdf format. There is a number of ways of presenting costs and performance information that would be more engaging and informative. Investors have different cognitive preferences to consuming data and disclosure standards. Moving away from a one-size-fits-all approach would allow consumers to choose the presentation that is most intuitive to them, based on a common set of data.

In light of the above, we have also been supportive of the recent MiFID 'quick fixes', which implemented a 'digital first' disclosure policy.

Machine-readable information is already being exchanged between market participants, where required by the current financial regulations, but is only indirectly beneficial to retail clients.

For example, as insurance companies need to produce their own PRIIP KIDs, fund managers whose funds are underlying investment options in so-called Multi-Option Products (or MOPs) must already provide the insurance companies with digital PRIIP KID data.

To ensure consistent data delivery both fund managers and insurers have developed an industry-led data standard called the European PRIIPs Template (EPT), under the umbrella of FinDatEx (Financial Data Exchange Templates).

For your information, FinDatEx is a joint structure established by representatives of the European Financial Services sector industry with the view to coordinate, organise and carry out standardisation work to facilitate the exchange of data between stakeholders in the application of European Financial markets legislation. As of April 2021, FinDatEx's members are the European Fund and Asset Management Association (EFAMA), the European Banking Federation (EBF), Insurance Europe ([link](#)), the European Savings and Retail Banking Group (ESBG), the European Association of Cooperative Banks (EACB), the European Structured Investment Products Association (EUSIPA), the European Association of Public Banks (EAPB) and Pensions Europe.

Besides the EPT, FinDatEx has also developed: (1) a MiFID template (called the European MiFID Template, EMT) which standardises target market and cost disclosure information between product manufacturers and distributors, (2) a MiFID feedback template (EFT) and (3) a Solvency II template; and is currently working on (4) an ESG template (EET) to exchange SFDR and taxonomy-related information.

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

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

Yes

No

Don't know / no opinion / not applicable

Please explain your answer to question 3.4

We agree that different rules on marketing and advertising of investment products constitute an obstacle for retail investors to access investment products. In essence, the same level of investor protection should apply for 'digital' sales, but the rules must be adapted to fit the existing format constraints (e.g. size issues in social media channels or problems integrating long-winded disclaimers into videos and banners posted on social media or websites). Also, we agree that there is a number of existing differences in terms of marketing and distributing financial instruments throughout the EU.

Additionally, it is interesting to note that more recent issues around marketing and advertising of investment products not suitable for retail investors (for example, CFDs) stemmed more from the fact that these actors were not properly supervised and/or in scope of the current framework (unlike UCITS and retail AIFs which are subject to prior authorisation before launch). It is, thus, rather an issue of proper supervision of all actors in the financial space rather than a lack of investor protection.

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

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

- Yes
- No
- Don't know / no opinion / not applicable

Please explain your answer to question 3.5

We believe that the current rules of protection are sufficient for funds. In particular, since ESMA recently published its extensive Guidelines on fund marketing communication. Of importance to the Commission's question, ESMA reaffirmed the general principle according to which all marketing communications (both off- and online) promoting open-ended funds to retail investors should refrain from using overly technical formulations, provide an explanation of the terminology used, be easy to read and, where appropriate, provide an adequate explanation of the complexity of the fund and the risks related to the investment to help investors in understanding the characteristics of the promoted fund.

We, therefore, consider that recent problems have arisen not from financial products or financial intermediaries not properly regulated and licensed under the existing EU frameworks. Consequently, it should be the Commission's focus that all financial actors are properly regulated and licenced rather than increasing existing distribution rules (in an online context).

One should also consider that general risk warnings may have a deterrent effect on potential investors and hence may form an unnecessary obstacle for retail investors to access investment products, in particular if no distinction is being made between e.g. index investment funds and non-complex

investment funds and leveraged complex derivatives or CFDs.

Given the necessity for retail investors to save for their own retirement, there is a strong need to rethink the current warning system more globally.

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

- Yes
- No
- Don't know / no opinion / not applicable

Please explain your answer to question 3.6, including which rules would require particular attention:

We would welcome EU coordination/harmonisation of national rules on online advertising and marketing of investment products. This being said, more attention must be paid in the future to ensure consistency regarding the rules on marketing communications between the different regulatory frameworks (MiFID, SFDR, etc.).

As noted previously, ESMA has recently published its Guidelines on fund marketing communication, which already harmonise many aspects for online advertising and marketing of retail funds throughout the EU.

In February 2021, in the context of speculative trading of GameStop shares, [ESMA issued a statement](#) urging retail investors to be careful when taking investment decisions based exclusively on information from social media and other unregulated online platforms, if they cannot verify the reliability and quality of that information.

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

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

Please explain your answer to question 3.7:

While the US market is very different to the EU and direct comparisons cannot be made easily (e.g. payment for order flow not being compatible with existing MiFID rules), it represents an additional reason to expand the prevalence of investment advice for retail investors.

In essence, we believe that retail investors' trust in investment advisors or portfolio managers and the availability of advice is key. However, at the same time, consumers, particularly, young retail investors, tend to follow (investment) advice from influencers and other well-known people. As the information on social media platforms is more easily accessible compared to receiving regulated financial advice, we recognise the increasing role played by these platforms in influencing retail investment behaviour.

This development highlights flaws in the current system vis-à-vis regulated financial advice that should be addressed by the Commission's strategy.

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

- Not at all significant
- Rather not significant
- Neutral
- Somewhat significant
- Very significant
- Don't know / no opinion / not applicable

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

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

- Yes
- No
- Don't know / no opinion / not applicable

Please explain your answer to question 3.9:

In light of our previous comments, we do not think that reinforced rules are necessary for investment funds.

We rather consider that recent problems have arisen not from financial products or financial intermediaries not properly regulated and licensed under the existing EU frameworks. This relates, in particular, to investment-related information easily available to retail investors via social media platforms without any investor protection safeguards.

In our view, unregulated “entities” such as influencers should therefore be included within the scope of the current legislation, rather than creating additional rules for regulated entities. It should also be made clear that regulated entities can include social media as a communication channel (with the proper rules and safeguards in mind).

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

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

- Yes, the consumers are adequately protected
- No, the rules need to be updated
- Don't know / no opinion / not applicable

Please explain your answer to question 3.10:

Concerning units or shares in EU investment funds (UCITS and AIFs), we understand the MiFID distribution/advice rules to be applicable no matter whether a fund is sold online or not. In any case, the same level of investor protection must apply regardless of the distribution channel. That being said, it needs to be ensured that retail investors have access to and benefit from high-quality investment advice.

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

- Not at all important
- Rather not important
- Neutral

- Somewhat important
- Very important
- Don't know / no opinion / not applicable

Please explain your answer to question 3.11:

In line with our response to Q 9.2, we disagree with the Commission's suggestion that lower-risk products are more suitable for retail investors and should, thus, be promoted above other products. The question also misses the essential link to whether these products offered online are distributed with or without investment advice.

In essence, simply because an investment product is less risky does not mean it is more suitable (especially for first-time investors). Investment products such as diversified funds may allow investors to invest in the capital markets while enjoying the necessary diversification of their underlying investments, for example. It is, therefore, essential that those investors receive advice to ensure suitability (and to offset gaps in their financial education) rather than ban retail investors' access to certain types of products.

We remember this issue being extensively discussed at ESMA while it developed detailed rules on MiFID II product governance and suitability. Initial proposals that investors with a lower risk tolerance (especially those with a medium to longer-term time horizon) should effectively not be able to hold equity products because of their greater initial volatility. This strategy was eventually not pursued by ESMA.

Also, when looking at this from a wider economic perspective, we consider it precarious to steer retail investors systematically into low-risk products, as they are likely to miss out on better (but higher risk) returns when they are willing to hold their investments for a suitably long period.

We would, therefore, strongly suggest not to pursue this thinking but rather consider how to complement a retail investor's missing knowledge and experience with investor education, financial advice and appropriate disclosures.

4. DISCLOSURE REQUIREMENTS

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

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

	1 (Strongly disagree)	2 (Disagree)	3 (Neutral)	4 (Agree)	5 (Strongly Agree)	Don't know No opinion Not applicable
The nature and functioning of the product	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
The costs associated with the product	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
The expected returns under different market conditions	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
The risks associated with the product	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

Please explain your answer to question 4.1:

All funds distributed to retail investors, whether UCITS or AIFs, require a UCITS KIID or a PRIIP KID. However, a number of financial instruments do not fall within the scope of the PRIIPs Regulation and no key information is provided on an ex-ante basis. It may, therefore, be beneficial for retail investors to receive high-level information along the lines suggested above for investment products, not in scope of PRIIPs.

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

Question 4.2.1 PRIIPs Key Information Document

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

	1 (very low)	2 (rather low)	3 (Neutral)	4 (rather high)	5 (very high)	Don't know No opinion Not applicable
PRIIPs Key Information Document (as a whole)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Information about the type, objectives and functioning of the product	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

Information on the risk-profile of the product, and the summary risk indicator	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Information about product performance	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Information on cost and charges	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Information on sustainability-aspects of the product	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

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

	1 (very low)	2 (rather low)	3 (Neutral)	4 (rather high)	5 (very high)	Don't know No opinion Not applicable
PRIIPs Key Information Document (as a whole)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Information about the type, objectives and functioning of the product	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Information on the risk-profile of the product, and the summary risk indicator	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Information about product performance	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Information on cost and charges	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Information on sustainability-aspects of the product	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

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

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

Please explain your answer to question 4.2.1:

UCITS and a very large number of AIFs are currently exempt from producing a PRIIP KID. Thus, our first-hand retail investors' experience with the PRIIP KID is currently very limited.

That being said, we would like to provide some insight into the use of the UCITS KIID among retail investors. While it is also required to provide this two-page document, it is questionable whether it is widely read and properly understood.

EFAMA, therefore, considers it essential that the future EU retail investment strategy does not solely rely on pre-disclosure documents, but rather see them as a part of the puzzle together with (properly aligned) ex-ante disclosures, high-quality advice and higher levels of investor education. A Key Information Document should not be the sole deciding factor for a retail investor's investment decision.

This being said, we believe that past performance information (for open-ended and non-structured funds) is critical for a retail investor's understanding of our products. EFAMA believes that future PRIIP KIDs should provide this information instead of historical performance scenarios.

Last but not least, EFAMA also believes that the current static paper-based format of the KID no longer meets investors' needs. Investors increasingly require interactive digital formats with information layered to render it more accessible, rather than overloading them with information. In this respect, we welcome the more interactive approach shown by the PEPP KID.

Question 4.2.2 Insurance Product Information Document

Question 4.2.2 a) IDD: Is the pre-contractual information provided to retail investors for each of the elements below sufficiently understandable and reliable so as to help them take retail investment decisions? Please assess the level of understandability:

	1 (very low)	2 (rather low)	3 (Neutral)	4 (rather high)	5 (very high)	Don't know No opinion Not applicable
Insurance Product Information (as a whole)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Information about the insurance distributor and its services	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Information on the insurance product (conditions, coverage, etc.)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Information on cost and charges	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

Question 4.2.2 b) IDD: Is the pre-contractual information provided to retail investors for each of the elements below sufficiently reliable so as to help them take retail investment decisions? Please assess the level of reliability:

	1 (very low)	2 (rather low)	3 (Neutral)	4 (rather high)	5 (very high)	Don't know No opinion Not applicable
Insurance Product Information (as a whole)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Information about the insurance distributor and its services	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Information on the insurance product (conditions, coverage, etc.)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Information on cost and charges	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

Question 4.2.2 c) IDD: Is the amount of information provided for each of the elements below insufficient, adequate, or excessive?

	1 (insufficient)	2 (adequate)	3 (excessive)	Don't know No opinion Not applicable
Insurance Product Information (as a whole)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Information about the insurance distributor and its services	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Information on the insurance product (conditions, coverage, etc.)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Information on cost and charges	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

Please explain your answer to question 4.2.2:

No comments.

Question 4.2.3 PEPP Key Information Document

Question 4.2.3 a) PEPP: Is the pre-contractual information provided to retail investors for each of the elements below sufficiently understandable and reliable so as to help them take retail investment decisions? Please assess the level of understandability:

	1 (very low)	2 (rather low)	3 (Neutral)	4 (rather high)	5 (very high)	Don't know No opinion Not applicable
PEPP Key Information Document (as a whole)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Information about the PEPP provider and its services	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Information about the safeguarding of investments	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Information on cost and charges	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Information on the pay-out phase	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

Question 4.2.3 b) PEPP: Is the pre-contractual information provided to retail investors for each of the elements below sufficiently reliable so as to help them take retail investment decisions? Please assess the level of reliability:

	1 (very low)	2 (rather low)	3 (Neutral)	4 (rather high)	5 (very high)	Don't know No opinion Not applicable
PEPP Key Information Document (as a whole)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Information about the PEPP provider and its services	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Information about the safeguarding of investments	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Information on cost and charges	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Information on the pay-out phase	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

Question 4.2.3 c) PEPP: Is the amount of information provided for each of the elements below insufficient, adequate, or excessive?

	1 (insufficient)	2 (adequate)	3 (excessive)	Don't know No opinion Not applicable
PEPP Key Information Document (as a whole)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Information about the PEPP provider and its services	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Information about the safeguarding of investments	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Information on cost and charges	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Information on the pay-out phase	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

Please explain your answer to question 4.2.3:

The PEPP KID is not yet being used by investors. Thus, we do not have any feedback to share at this point.

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

Yes

No

Don't know / no opinion / not applicable

Please explain your answer to question 4.3:

Generally speaking, fund managers are undertaking their best efforts to make UCITS KIIDs (and PRIIP KIDs in the future) as understandable and jargon-free as possible reflecting the current legal requirements.

However, understandable and jargon-free information is not always possible due to a number of essential restrictions:

- Legal considerations: Product manufacturers will err on the side of caution, with some preferring to use more complicated language to define concepts to guard against potential mis-selling claims arising from too simplistic language.
- High level of predetermined disclosures: The PRIIP KID, for example, already contains a number of technical disclaimers defined in the regulatory framework. We doubt whether these result in retail investors receiving jargon-free information.
- Overall size limits: To ensure that the PRIIP KID is kept within the 3-A4 page limit, certain sections of the KID limit the number of characters (not words) that can be used. Taking into consideration translations into multiple EU languages (some of which require more characters than others), fund managers are left having to explain difficult concepts with very few words, thus increasing the likelihood of using definitions and concepts not that familiar to retail investors.
- Additional disclosures at national level: Some national authorities require specific additional disclosures, which also increase the complexity.

With this in mind, the Commission must rather make a crucial linkage to financial literacy, as (a higher than present) level would allow the use of certain financial concepts to be more easily understood by retail investors. With the currently low levels of financial literacy, we stress again the crucial role financial advice plays for retail investors. For example, sector-specific terminology (even simple expressions like equities, bonds etc.) cannot be avoided and may still be difficult for retail investors to understand. Please see our additional comments on financial literacy above.

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

The current MiFID and PRIIPs frameworks already contain specific requirements about the timing. The PRIIP KID, in particular, was specifically designed (and mandated) as a pre-contractual document. We believe that this process is functioning well and should be continued.

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

- Yes
- No
- Don't know / no opinion / not applicable

Please explain your answer to question 4.5:

The (indirect) past experiences with the current PRIIP KID over the last couple of years have shown us that meaningful comparisons between different types of investment products are not always possible. In practice, due to its inherent design and requirement to provide such information via a durable medium (i.e. pdf), the PRIIP KID is not helpful for an investor to compare products. Digital comparison tools may be much more helpful instead. The starting point for such considerations should be how a retail investor nowadays consumes information, and subsequently build an information framework around this. Digital comparison tools (but also labelling & certification) may enable investors to compare between different investment products. The current overload of disclosures (as prospectuses, sustainability-related disclosures, MiFID disclosures, etc.) in addition to Key Information Documents does not help. Please see our detailed response to Q 4.6 below.

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

- Yes
- No
- Don't know / no opinion / not applicable

Please explain your answer to question 4.6:

The (indirect) past experiences with the current PRIIP KID over the last couple of years have shown us that comparison between different investment products is almost impossible.

Indeed, one of the current PRIIP KID's fundamental problems stems from its inherent conflict to provide clear, fair and not misleading information and comparability between widely different types of investment products. In their current iteration, the detailed PRIIP KID rules are overly focused on comparability, which has come at the cost of misleading information.

We believe it is essential to focus instead on what information is relevant to retail investors for each type of investment product. Such flexibility is fundamental because each type of investment product provides a different value proposition and thus requires slightly different disclosures on costs and performance. A loss in theoretical comparability will be more than offset by better explaining the fundamentals for each type of investment product and providing investors with more meaningful information. Standardising the disclosures for similar types of investment products will maintain broad

comparability.

With this in mind and as stressed previously, it is essential for the EU's future retail investment strategy not to rely solely on pre-disclosure documents, but rather see them as a part of a bigger set of tools together with (aligned) ex-ante disclosures, high-quality advice and higher levels of investor education. A Key Information Document should not be the sole deciding factor for a retail investor's investment decision.

Question 4.7 a) Are you aware of any overlaps, inconsistencies, redundancies, or gaps in the EU disclosure rules (e.g. PRIIPS, MiFID, IDD, PEPP, etc.) with respect to the way product cost information is calculated and presented?

Yes

No

Don't know / no opinion / not applicable

Please explain your answer to question 4.7 a), and indicate which information documents are concerned:

Yes, numerous substantial inconsistencies exist between MiFID/IDD and PRIIPs in how product cost information is calculated and presented to investors.

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

In essence, future cost disclosure must be aligned to disclosing the same cost information (i.e. MiFID and PRIIPs) to retail investors. In a sense, overarching frameworks like MiFID and IDD should provide the overall cost disclosure points and methodologies, which can be simply inserted into Key Information Documents. In any case, the current situation where the PRIIP KID created its own cost calculation methodologies (which are different to MiFID/IDD) must be avoided. This does not mean that all disclosures should be the same, as investment, insurance and pensions products each provide different value propositions and necessitate diverging disclosures.

This being said, we know that the (current) PRIIP KID uses standardised investment amounts (e.g. EUR 10,000) due to its paper-document nature. With a digital PRIIP KID, however, it would be possible also to provide investors with individualised investment amounts and so fully align MiFID and PRIIPs cost disclosures.

Question 4.7 b) Are you aware of any overlaps, inconsistencies, redundancies, or gaps in the EU disclosure rules (e.g. PRIIPS, MiFID, IDD, PEPP, etc.) with respect to the way risk information is calculated and presented?

Yes

No

Don't know / no opinion / not applicable

Please explain your answer to question 4.7 b), and indicate which information documents are concerned:

Again, substantial differences exist between MiFID and PRIIPs. The former does not contain a standardised risk measure like the PRIIPs Summary Risk Indicator (SRI). This being said, it could clearly be used for risk disclosure purposes under MiFID, creating necessary alignment for retail investors.

With this in mind, it is important to reiterate that our comments reflect only the interlinkages between PRIIPs and MiFID. We understand that not all MiFID disclosures may be suitable for other types of financial products (insurances and pensions with much longer recommended holding periods). Generally speaking, however, the same principle should apply that risk information should be calculated and presented to (retail) investors in the same manner.

Question 4.7 c) Are you aware of any overlaps, inconsistencies, redundancies, or gaps in the EU disclosure rules (e.g. PRIIPS, MiFID, IDD, PEPP, etc.) with respect to the way performance information is calculated and presented?

Yes

No

Don't know / no opinion / not applicable

Please explain your answer to question 4.7 c), and indicate which information documents are concerned:

Yes, there are substantial inconsistencies in how MiFID and PRIIPs calculate and disclose performance information.

Essentially, each of the frameworks provides retail investors with a contradicting view on performance. On the one hand, MiFID II (through its delegated acts) requires product manufacturers to provide investors with an explanation on the "functioning and performance of the financial instrument in different market conditions, including both positive and negative conditions". If past performance is shown, it must carry a clear warning to investors highlighting that past performance does not constitute future returns. On the other hand, the current PRIIP KID requires future performance scenarios, in essence transposing past performance into the future. This situation will be slightly remedied by the revised PRIIPs RTS, which will allow funds to produce product performance scenarios based on historical instead of future scenarios.

In line with our previous comments, we strongly recommend that funds should provide retail investors only with past performance information (with the necessary disclaimers), as past performance is based on actual (i.e. historical) facts and is presented in a standardised way that shows how the fund is run and allows for easy comparisons. It also allows investors to appreciate that a fund's value will fluctuate.

Disproving some concerns of MEPs and the Commission, there is very strong evidence that retail

investors understand that future performance cannot be accurately predicted by historical information. This was underlined in the original UCITS KIID testing and has since been reaffirmed by the Commission's PRIIPs consumer testing. In addition, as part of the revised PRIIPs RTS, the ESAs argued to "include past performance information within the main contents of the KID on the basis that it is key information to inform retail investors about the risk-reward profile of certain types of PRIIPs".

Question 4.7 d) Are you aware of any overlaps, inconsistencies, redundancies, or gaps in the EU disclosure rules (e.g. PRIIPS, MiFID, IDD, PEPP, etc.) with respect to other elements?

Yes

No

Don't know / no opinion / not applicable

Please explain your answer to question 4.7 c), and indicate which information documents are concerned:

As mentioned above, a more coherent EU disclosures policy should ensure that disclosure elements from the overarching EU frameworks (such as MiFID and IDD) are simply inserted into a Key Disclosure Document without the latter creating its own set of (sometimes contradicting) calculation and disclosure methodologies.

Here are some examples for the Commission's consideration:

First, due to the siloed and prescriptive approach taken for PRIIPs, it is not easily possible to insert (soon to be needed) ESG information into the PRIIP KID without complicated and long-winded changes to the PRIIPs Regulation and its RTS. As the current PRIIP KID is prescriptive in each of the elements to be disclosed, it is impossible to provide this necessary information (unless it is squeezed together with 'other information', such as a link to the past performance), which would be unhelpful in providing such new key information elements to investors.

Second, both MiFID II and PRIIPs require the disclosure of transaction costs. The definition in MiFID (and IDD) explicitly forbids the inclusion of "market movements" as a cost. The PRIIPs RTS, however, have come up with a calculation methodology referred to as "arrival price" (also known as "slippage"), which considers certain market movements as a transaction cost. While the arrival price methodology incorporates certain fundamental flaws (that could be rectified only to a certain degree by the revision of the PRIIPs RTS), in the context of this consultation it is essential to point out that it can result in misaligned transaction cost disclosures between PRIIPs or MiFID.

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

	1 (not relevant)	2 (relevant, but not crucial)	3 (essential)	Don't know No opinion Not applicable
Product objectives/main product features	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Costs	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Past performance	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Guaranteed returns	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Capital protection	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Forward-looking performance expectation	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Risk	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Ease with which the product can be converted into cash	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Other	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

Please explain your answer to question 4.8

The above table clearly highlights the diverging essential elements for different types of investment products and is in line with our response above, highlighting that it is almost impossible to make meaningful comparisons across product types.

For example, linear, open-ended funds insist on disclosing past performance disclosures and consider forward-looking performance expectation to be misleading. Only a tiny fraction of funds have “guaranteed returns” and “capital protection” elements built-in and, therefore, do not consider such information meaningful for investors. We would even consider that, for funds, forward-looking performance scenarios can mislead retail investors, as investors may misinterpret them as return expectations, leading to client complaints and litigations in the future. Also, we strongly doubt that the complex underlying assumptions and calculation methodologies can be easily explained even by financial advisors and, thus, properly understood by retail investors.

That being said, we appreciate that forward-looking performance scenarios are essential elements for structured bonds and insurance-based investment products. Also, for these products, past performance may be misleading and they would consider forward-looking performance expectations to be of crucial importance to ensure a retail investor’s understanding of the product.

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

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

Yes

No

Don't know / no opinion / not applicable

Please explain your answer to question 4.9:

The PRIIP KID is a pre-disclosure document and should not contain any ex-post disclosures to avoid confusing retail investors.

When talking about ex-post information more generally, we believe that the current MiFID II cost disclosure regime is sufficiently strong to ensure costs and cost impact transparency for retail investors and should be the basis for any future ex-post disclosure considerations.

This being said, the current regime is very detailed and may add to the information overflow currently experienced by retail investors. It would be in their interest to reconsider some of the explicit and detailed elements (such as the line-by-line cost disclosures found in the MiFID Delegated Regulation's Annexes) and either to replace them with more high-level principles or, at least, to consider some sort of layering already found in the PEPP KID. This could be especially useful in a digital context. For example, the all-in cost information would be shown as standard, but retail investors could receive a more detailed line-by-line breakdown through a drop-down field.

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

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

We understand the Commission's concerns about a maximum length for the PRIIP KID. A KID is meant to provide meaningful and concise pre-disclosure information to retail investors and should not become a full-fledged prospectus. More fundamentally, discussion on page length assumes that consumers engage with paper-based formats. We strongly believe that most consumers would prefer a more interactive digital format, in which case the debate should be about how to empower consumers rather than maximum document length.

With this in mind, it is rather about the meaningful content (especially when displayed digitally) than the overall length. For example, the UCITS KIID has a maximum length of two A4 pages (three for structured UCITS), which has proved more than sufficient in providing the information necessary for

funds. Due to the larger scope of PRIIPs and the intention to compare different types of products, the length of the PRIIP KID increased to three pages, but this still does not allow, for example, for the inclusion of past performance information necessary for open-ended funds. While the ESAs supported its inclusion in the PRIIP KID, it would not have been possible as it would have exceeded the page limit. With this example, we seek to highlight that some flexibility (more space) may be needed to allow retail investors to understand better certain product types and features. The same is true for upcoming SFDR disclosures, which are not yet included in the PRIIP KID.

This issue is especially important since only a small fraction of retail investors closely study the (legally required) disclosure materials, partly because they consider them too difficult to understand. As stated above, part of the solution could be to allow for the layering of information, allowing the KID to be shorter and thus more accessible. Second, we need to ensure that the information is meaningful and understandable so it is read and understood. The focus should therefore not be on comparability but rather on meaningfulness. There is no point in pushing for comparability if the basic information is not understood in the first place. Please also consider our additional comments in our response to Question 5.1.

From a more operational angle, we note that a number of National Competent Authorities (NCAs) sometimes require additional content as a result of their own interpretation of the PRIIPs rules (e.g. more detailed narratives on the main investment (or even marginal) strategies. This also increases the overall information content, making it harder for fund managers to provide all necessary information within the three-page limit. Such national gold-plating should be prohibited. Please also consider our response to Question 5.4.

This being said, the notion of a maximum number of pages may be less relevant when providing disclosures digitally. As seen with the PEPP KID, certain information can be layered allowing investors to click on a certain section to receive more information. This could provide a good compromise between reducing retail investors' information overload while still providing essential product information.

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

As mentioned previously, layering of information could be a way to provide more information to investors where necessary. This should allow the possibility to present essential (i.e. additionally required) information while keeping the key information sections to allow for easier comparison.

Moreover, we believe that the current EU investor protection disclosure framework does not sufficiently differentiate between the type of investment products available. It is currently the case that many (younger) retail investors perceive investing in and access to, for example, crypto-assets and CFDs easier than non-complex investment funds.

Also, warnings play an important part in the perception of risks. While current warnings slightly differ between non-complex and complex products, they may not be easily understood by retail investors. In particular, if each type of investment product carries a standardised risk warning that investors can lose all their money. From the investors' perception, this means all products are similarly risky.

For example: While the risk of losing all your money by investing in an ETF tracking a world index is theoretical, this may be different when investing in leveraged derivatives. Essentially, we must

differentiate between disclosure requirements in terms of risk warnings for more speculative products, on one hand, and non-complex products, such as investment funds intended to be sold for the longer term, on the other.

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

- On paper by default?
- In electronic format by default, but on paper upon request?
- In electronic format only?
- Don't know / no opinion / not applicable

Please explain your answer to question 4.12:

5000 character(s) maximum

The recent MiFID 'quick fixes' established electronic disclosure by default, but allow investors to request paper disclosure. This is essential as not all retail investors have access to the internet. This guiding principle should be extended to all disclosures requirements.

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

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

Please explain your answer to question 4.13:

We support the notion that retail investors should be provided with information documents in their own language. However, the main focus should lie on marketing materials and KIDs rather than fund prospectuses. Rules regarding the translation of the UCITS KIID have existed for a number of years and are, generally speaking, working well. We understand that the same fundamental principles apply to the PRIIP KID.

This being said, we acknowledge that the situation may be a bit more complex in reality. For instance, the Netherlands and some Nordic countries struggle with the number of financial products being made

available, as all information documents must be translated for these (comparatively speaking) small populations. Due to the high translation costs, fund managers may simply decide not to distribute their products in these countries which can also have negative effects on providing well-priced competitive products. We are aware that there have even been discussions in these countries about whether or not to allow financial products with English documentation due to the very large number of retail investors that understand English.

In this regard, ESMA's recent guidelines on fund marketing communications have provided a workable compromise: The marketing communication should be written in the official language(s) where the fund is distributed. However, another language accepted by the national competent authorities is also possible.

Also, it is important to point out that fund prospectuses are not always translated, as they are quite long and technical and generally not aimed at retail investors. SFDR, however, requires additional sustainability-related information to be published as an annex to the prospectus. This requirement should not be the trigger for blanket translations of all prospectuses. A better solution for retail investors would be to integrate the relevant SFDR information into the PRIIP KID itself.

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

First, we would differentiate between the types of documents. Whereas KI(I)Ds (and their translations) are very important for retail investors, some other documents (such as annual or semi-annual reports) may be of less relevance.

Second, as mentioned previously, the readability and intelligibility of the documents (including the PRIIP KID) are key. That being said, while the access of pre-disclosure documents is essential (and already required by law), the Commission should not forget that appropriate disclosures work efficiently only if complemented by the availability of high-quality financial advice (both independent and non-independent).

Third, in line with our above response, the language used must be easy to understand for investors themselves and, in any case, that the same is accompanied by the provision of high-quality advice.

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

	1 (not at all important)	2 (rather not important)	3 (Neutral)	4 (somewhat important)	5 (very important)	Don't know No opinion Not applicable
There are clear rules to prescribe presentation formats (e.g. readable font size, use of designs/colours, etc.)?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Certain key information (e.g. fees, charges, payment of inducements, information relative to performance,	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>

etc.) is displayed in ways which highlight the prominence?						
Format of the information is adapted to use on different kinds of device (for example through use of layering)?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Appropriately labelled and relevant hyperlinks are used to provide access to supplementary information?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Use of hyperlinks is limited (e.g. one click only – no cascade of links)?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Contracts cannot be concluded until the consumer has scrolled to the end of the document?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Other ?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

Please explain your answer to question 4.15:

As regards the format and layout, we are certain that a clear structure helps investors to understand the information (e.g. graphics/charts/narratives).

As mentioned above, we believe that the layering of information (and the use of hyperlinks) can help in finding a balance between disclosing key information while at the same time allowing for more details, if required by the investor.

Regarding the last point, it is up to distributors to ensure that investors have to scroll until the end of the document before contracts can be concluded. That being said, we have to be mindful that scrolling does not equate to reading or having understood the content. Hence, the mechanism that contracts cannot be concluded until the consumer has scrolled to the end of the document, does not add much investor protection.

5. THE PRIIPS REGULATION

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

Core objectives of the PRIIPs Regulation

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

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

Yes

No

Don't know / no opinion / not applicable

Please explain your answer to question 5.1 a):

EFAMA continues to support the overarching aim of the PRIIP KID as a single pre-disclosure document for all types of investment products. However, recent experiences with the current PRIIP KID over the last couple of years have shown us that its current aim to provide meaningful comparison between different investment products is almost impossible.

Indeed, one of the current fundamental problems of the PRIIP KID stems from its inherent conflict to provide clear, fair and not misleading information and comparability between widely different types of investment products. In their current iteration, the detailed PRIIP KID rules are overly focused on comparability which has come at the cost of misleading information. This means the current PRIIP KID has not sufficiently contributed to its aim of increasing retail investors' understanding.

To remedy this situation, a successful PRIIP KID must focus on what information is relevant to retail investors for each type of investment product. Such flexibility is fundamental because each type of investment product provides a different value proposition and thus requires slightly different disclosures on costs and performance. A loss in theoretical comparability will be more than offset by better explaining the fundamentals for each type of investment product and providing investors with more meaningful information. Standardising the disclosures for similar types of investment products will maintain broad comparability.

We must also stress the lack of consumer testing in ensuring that the PRIIP KID is fit-for-purpose. Until now, neither the current nor the revised PRIIP KID have ever been consumer tested. (The Commission's consumer testing in 2020 was limited to very specific alternatives to the current PRIIP KID rather than holistic testing of the whole document.) Such testing should lay the foundations for defining how information is accessed and presented, rather than making this a political decision that may or may not help investors in better understanding financial products. With this in mind, and as stressed above, it is essential for the EU's future retail investment strategy not to rely solely on pre-disclosure documents, but rather see them as a part of the puzzle together with (aligned) ex-ante disclosures, high-quality advice and higher levels of investor education. A Key Information Document should not be the sole deciding factor for a retail investor's investment decision.

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

Yes

No

Don't know / no opinion / not applicable

Please explain your answer to question 5.1 b):

As stated above, we strongly believe that the current PRIIP KID has put theoretical comparability of all types of PRIIPs (i.e. one type of disclosure no matter what type of product) above providing fair, clear

and non-misleading information to retail investors.

We appreciate that the recent PRIIPs RTS revisions will provide some alleviations, but the PRIIP KID remains far from perfect both from a conceptual (i.e. how to (not) compare different types of PRIIPs) and a technical (operational complexity of providing performance scenarios, calculations of transaction costs, etc.) viewpoint. The revised PRIIP KID will allow for some more tailored information depending on the product type (e.g. funds providing historical scenarios, and cost disclosure better aligned with MiFID II or IDD), but there are still too many instances where unnecessary or confusing information is provided to retail investors (e.g. providing scenario performance breakdowns for a one-year holding period even though a product cannot be redeemed until the end). In light of these concerns, we strongly advocate for a future revision of the PRIIP KID that puts comparability of the same type of products above the need to compare all types of products. As stated above, such flexibility is fundamental because each type of investment product provides a different value proposition and thus requires slightly different disclosures on costs and performance. A loss in theoretical comparability will be more than offset by better explaining the fundamentals for each type of investment product and providing investors with more meaningful information. Standardising the disclosures for similar types of investment products will maintain broad comparability.

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

- Yes
- No
- Don't know / no opinion / not applicable

Please explain your answer to question 5.1 c):

No comments.

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

- Yes
- No
- Don't know / no opinion / not applicable

Please explain your answer to question 5.1 d):

The Key Information Document is meant to provide retail investors with general and standardised information about a PRIIP. It may (theoretically) help retail investors understand a product's features and compare them with other PRIIPs.

However, it can never provide (as the Commission seems to suggest) a personalised assessment of whether a particular product is suitable for the needs and requirements of a particular retail investor.

As stated previously on a number of occasions, disclosure elements (like the PRIIP KID) alone cannot replace personalised, high-quality advice.

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

- Yes
- No
- Don't know / no opinion / not applicable

Please explain your answer to question 5.2:

While most UCITS and AIFs still currently provide the UCITS KIID to retail investors, we see that the rules regarding provision and access are similar to the PRIIP KIDs and PEPP KIDs. Thus, outside the remit of investment advice (which requires those documents to be provided on an ex-ante basis), we believe that the current rules are sufficient.

This being said, we see room for improvement regarding the provision of the PRIIP KID concerning successive transactions. In essence, successive transactions such as savings plans should avoid that a new PRIIP KID is being sent to the retail investors in case of minor revisions of the PRIIP KID, as it is questionable whether retail investors will engage with this pre-disclosure document on an ongoing basis after their initial investment decision. Please see our additional comments to Question 13 below.

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

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

Please explain your answer to question 5.2.1:

PRIIP KIDs are available on the websites of manufacturers. Distributors must provide them to investors before they make an investment decision, no matter where they are stored. Investors should be clearly pointed to the disclosure documents and be required to read them before they decide to invest in a product.

While we are not against the idea of searchable databases, we wonder what wider purpose such databases would serve and what the concrete benefits would be for retail investors. This is, in particular, important to determine whether it would justify the up-front and operating costs of designing and running such infrastructure. As far as we understand, such a publicly searchable database would be of more benefit to third-party providers or NCAs. However, there is already a number of Member States with national databases requiring the upload of information.

The PRIIPs KID

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

- Yes
- No
- Don't know / no opinion / not applicable

Please explain your answer to question 5.3:

Yes, we believe that further simplifications are necessary (when compared to the revised PRIIP KID to be used after the end of the exemption period for funds using the UCITS KIID). As stated above, the easiest way to simplify the PRIIP KID is to keep the overarching structure of the PRIIP KID (with its existing sections) but allow for more tailored information regarding the specific product type. For example, the UCITS KIID only needed two A4 pages instead of the three used by the PRIIP KID. However, please see our detailed response to Question 4.10 regarding maximum length.

In terms of disclosures, there must be an alignment between the overarching MiFID and IDD frameworks and the disclosures in the PRIIP KID. Instead of the latter developing its own disclosures and calculation methodologies, existing disclosure information (such as cost disclosures) should be copied and pasted into the PRIIP KID. Flexibility regarding product types will also allow the disclosure of other meaningful and relevant information (such as past performance with no performance scenarios for open-ended investment funds).

As mentioned above, a digital PRIIP KID may also allow the use of individualised investment amounts to be displayed, potentially reducing the amount of duplicate (and sometimes contradictory) information retail investors currently receive. Also, digital disclosures would allow product manufacturers to layer information and ensure that retail investors are not overwhelmed by the disclosures, as will be the case for the PEPP KID.

Implementation and supervision of the PRIIPs Regulation

Multiple Option Products

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

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

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

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

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

- Yes
- No
- Don't know / no opinion / not applicable

Please explain your answer to question 5.9:

No. Although fund manufacturers do not produce MOP KIDs themselves, a tailor-made PRIIP KID for insurance companies does not make sense. We fear that such a scenario could oblige insurance companies to manipulate the data provided by the fund manufacturer, which would as a result increase the risk and responsibility of the MOP manufacturer. We think that the current process of exchanging information between fund manufacturers and insurers is well established and should not be changed. By keeping the MOP as general as today, any issue related to the ex-post switching of the underlying investment option in case of tailor-made MOPs is also avoided.

Scope

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

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

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

- Yes
- No
- Don't know / no opinion / not applicable

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

- Yes
- No
- Don't know / no opinion / not applicable

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

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

- Yes
- No
- Don't know / no opinion / not applicable

Please explain your answer to question 5.11:

The PRIIP KID is meant as a pre-disclosure document before an investment decision takes place. On the contrary, we believe that there could be certain downsides to providing retail investors with access to past versions of PRIIP KIDs, in particular since the information disclosed may be different to the time of purchase. In any case, PRIIP KIDs should not contain any ex-post information as this would unnecessarily confuse retail investors (i.e. ex-post disclosures should be part of separate client communications as is currently required by MiFID II). Of less importance to retail investors, but significant for producers of the PRIIP KIDs, such as fund managers, providing past versions would require substantial and costly changes to the underlying operating systems.

Question 5.12 The PRIIPs KIDs should be reviewed at least every 12 months and if the review concludes that there is a significant change, also updated.

Question 5.12.1 Should the review and update occur more regularly?

- Yes
- No
- Don't know / no opinion / not applicable

Question 5.12.2 Should this depend on the characteristics of the PRIIPs?

- Yes
- No
- Don't know / no opinion / not applicable

Question 5.12.3 What should trigger the update of PRIIP KIDs?

We believe that the current rules around updates to the PRIIP KID are working well and do not need further revisions. We do not believe that updates should depend on the characteristics of the PRIIPs. In any case, the current PRIIP KID rules already require monthly recalculations to ensure that the 5% threshold for the moderate performance scenario is not breached and an update at least once a year. We have some more technical suggestions on how the updating methodology can be improved, but these technical suggestions should be addressed outside of this consultation. We, therefore, generally consider the current rules appropriate to ensure that the PRIIP KID is sufficiently up-to-date.

Please explain your answer to question 5.12:

We think the annual update and updates in case of material changes are appropriate. If there is no need for an updated KID within the year, there should also be no need to spend more time and costs for updates.

6. SUITABILITY AND APPROPRIATENESS ASSESSMENT

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

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

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

Please explain your answer to question 6.1:

In essence, we believe that the current suitability assessment is an appropriate tool for ensuring that investment firms provide investors with suitable investment products. This suitability assessment is essential for retail investors as part of financial advice. Any future framework must ensure that retail investors have easy and affordable access to financial advice to ensure their participation in the EU capital markets.

Please also see our response to Q 6.2 for further details.

Question 6.2 Can you identify any problems with the suitability assessment?

- Yes
- No
- Don't know / no opinion / not applicable

Please explain your answer to question 6.2:

We strongly support the current suitability assessment which ensures that retail investors are provided with access to suitable products in line with their personal situation.

This being said, improvement can be envisaged. We see an issue with the current length of the assessment, as too long assessments can dissuade retail investors from investing. Thus, the right balance between investor engagement and appropriate investor protection must be found. This is even more important in light of impending changes to the suitability assessment, which will incorporate sustainability preferences from late 2022, making the assessment even longer.

A potential solution could be to consider a simplified assessment of non-complex products that can be generally regarded as suitable for the mass retail market, such as non-structured UCITS or other retail funds (in line with national product legislations). For example, non-structured UCITS (and AIFs following national retail schemes) could be considered generally as having no negative target market making

them suitable for any retail investors wishing to invest.

Another potential remedy could be to make the suitability assessment more portable, allowing investment firms to build on existing investor data (with their explicit consent). Please see further remarks on this in our response to Section 3.

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

- Yes
- No
- Don't know / no opinion / not applicable

Please explain your answer to question 6.3:

With regards to the suitability assessment, we believe that the rules should be technology agnostic to ensure the same level of investor protection. For example, no difference should be made whether investment advice is provided by a human adviser or through robo-advice.

Particularly in an online and digital platform context, we see an issue with the current length of the assessment. Too long assessments and lengthy KYC questionnaires can dissuade retail investors from investing. The right balance between investor engagement and appropriate investor protection must be found, particularly in an online context.

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

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

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

Please explain your answer to question 6.4:

The appropriateness assessment serves retail investor needs. However, in recent years, considerations around the assessment by investment firms have increased substantially (i.e. ESMA guidelines and additional requirements by NCAs). In any case, it should ensure that it does not become a 'mini' suitability test ensuring that retail investors have easy access to either simple or well-diversified investment products.

Finally, we advocate for the appropriateness test not to apply to retail AIFs, which - according to ESMA - should be considered as complex products. For a retail client, such distinction in treatment is not being well understood by investors, where the difference may only exist in regulatory classification.

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

- Yes
- No
- Don't know / no opinion / not applicable

Please explain your answer to question 6.5:

We do not see any problem with the appropriateness test in relation to the MiFID Level 1 Directive and its Level 2 measures.

However, in line with our response to Q 6.2, we disagree with ESMA's interpretation of these rules and consider that AIFs following national retail schemes should also be considered as non-complex, thus allowing retail investors easy access to these types of products. Several EU Member States have (in many cases, for a long time) permitted certain types of retail AIFs, which are subject to management and product rules akin to UCITS rules, to be marketed to retail investors in that Member State.

Question 6.6 Are the rules on appropriateness tests sufficiently adapted to the increasing use of online platforms or brokers?

- Yes
- No
- Don't know / no opinion / not applicable

Please explain your answer to question 6.6:

We consider the current rules are already technology-agnostic and any changes should ensure the same for future revisions.

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

- Yes
- No
- Don't know / no opinion / not applicable

Please explain your answer to question 6.7:

Yes. In the current MiFID context and based on additional national rules (especially around execution-only), the current rules are working as intended, i.e. investors should be allowed access to investment products after sufficient warnings that these may not be appropriate for them. This being said and in line with our above comments, it must be kept in mind that the effectiveness of the warnings depends on their capacity to be clear, brief and not misleading.

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

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

- Yes
- No
- Don't know / no opinion / not applicable

Please explain your answer to question 6.8:

We believe that the current rules are sufficient and should not be changed.

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

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

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

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

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

- Yes
- No
- Don't know / no opinion / not applicable

Please explain your answer to question 6.9:

The fund industry has thoroughly implemented the target market process and provides detailed information in the form of the [FinDatEx European MiFID Template](#) (EMT) for distributors to be able to meet their target market requirements.

However, if the Commission intends to alleviate the current rules, it could be considered that certain financial products, such as non-complex financial instruments, do not generally have a negative target market and can, thus, be considered as suitable for all retail investors. No negative target market would also mean that distributors do not have to prepare a feedback template for product manufacturers.

Moreover, it should be kept in mind that the recent revisions to MiFID and IDD require sustainability preferences to be integrated into the product governance processes. While this legal change is still ongoing (coming into force around Q3 2022), we would not consider additional changes helpful in this transitional period.

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

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

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

- Strongly disagree
- Disagree
- Neutral
- Agree

- Strongly agree
- Don't know / no opinion / not applicable

Please explain your answer to question 6.10:

No comments.

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

- Yes
- No
- Don't know / no opinion / not applicable

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

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

- Yes
- No
- Don't know / no opinion / not applicable

Please explain your answer to question 6.12:

No comments.

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

- Yes
- No
- Don't know / no opinion / not applicable

Question 6.13.2 Are procedural improvements or additional rules or guidance needed to ensure the correct and efficient application of the test in cases of online distribution?

- Yes
- No
- Don't know / no opinion / not applicable

Please explain your answer to question 6.13:

No comments.

7. REVIEWING THE FRAMEWORK FOR INVESTOR CATEGORISATION

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

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

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

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

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

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

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

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

Please explain your answer to question 7.1:

We are acutely aware of important gradients among the existing 'retail investor' category in MiFID that are not yet properly reflected in the existing framework. For this very reason, some EU Member States (such as Germany) have already created a category of 'semi-professional clients' in their national legislations which also prompted the Commission to raise similar questions in its 2020 consultation.

While we agree with the underlying notion and intention to provide more targeted investor protection rules for 'sophisticated' retail investors, we do not believe that the creation of a new 'semi-professional' client category is the right way forward. The creation of a fourth client category would create a large number of changes to the entire MiFID framework and lead to very high follow-up implementation costs for the financial industry.

We are convinced that the same objectives can be better achieved by (1) calibrating the preconditions to allow these types of 'sophisticated' retail clients to opt-op under certain conditions and (2) providing a more flexible regime for professional investors.

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

a) "the client has carried out transactions, in significant size, on the relevant market at an average frequency of 10 per quarter over the previous four quarters"

- No Change
- 30 transactions on financial instruments over the last 12 months, on the relevant market
- 10 transactions on financial instruments over the last 12 months, on the relevant market

- Other criteria to measure a client's experience
- Don't know / no opinion / not applicable

Please explain your answer to question 7.2 a):

We agree that the number of transactions should be reduced to 10 transactions per year. However, as indicated above, one may also need to consider what type of transactions took place and whether this involved a liquid or illiquid instrument. For the former, one must consider that if a retail client manages their own portfolio, it will be easier to reach this number of transactions. However, this may not be the case if the same investment is achieved by investing in a (well-diversified) fund. This should, therefore, also be considered in a future threshold.

b) “the size of the client’s financial instrument portfolio, defined as including cash deposits and financial instruments exceeds EUR 500,000”

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

Please explain your answer to question 7.2 b):

We agree that the size of the client’s financial instrument portfolio should be reduced to EUR 250,000. It should be considered to expand the current definition of a “client’s financial instrument portfolio” to also encompass all types of investment and holdings, including life insurance products.

c) “the client works or has worked in the financial sector for at least one year in a professional position, which requires knowledge of the transactions or services envisaged”

- No change
- Extend definition to include relevant experience beyond the financial sector (e.g. in a finance department of a company).
- Adjust the reference to the term ‘transactions’ in the criteria to instead refer to ‘financial instruments’
- Other criteria to measure a client's financial knowledge
- Don't know / no opinion / not applicable

Please explain your answer to question 7.2 c):

We agree with the Commission that further clarifications on a client's knowledge and experience would be helpful. While the above suggestions are helpful, we would also refer to (1) a master-level diploma (or higher) in economics or finance, (2) having worked in a professional position for at least one year that assume the financial knowledge of the relevant transactions or (3) having managed a portfolio of more than EUR 500,000 over the last five years.

d) Clients need to qualify for 2 out of the existing 3 criteria to qualify as professional investors. Should there be an additional fourth criterion, and if so, which one?

- No change
- Relevant certified education or training that allows to understand financial instruments, markets and their related risks.
- An academic degree in the area of finance/business/economics.
- Experience as an executive or board member of a company of a significant size.
- Experience as a business angel (i.e. evidenced by membership of a business angel association).
- Other criteria to assess a client's ability to make informed investment decisions
- Don't know / no opinion / not applicable

Please specify to what other criteria to assess a client's ability to make informed investment decisions you refer in your answer to question 7.2 a)

5000 character(s) maximum

Another possible criterion could be a sufficiently large transaction, i.e. EUR 100,000 and above.

Please explain your answer to question 7.2 d):

We agree that the current number of criteria should be increased from three to four. Two (or more) would have to be met before a retail client could be considered eligible to opt-up to professional status. While not possible above, we would argue that the additional criterion should either be "relevant certified education or training" and "an academic degree".

Companies below the thresholds currently set out in MiFID II (2 of 3: turnover of €40 mln, balance sheet of €20 mln and own funds of €2 mln) would also qualify as retail investors.

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

- No change
- Reduce thresholds by half.

Other criteria to allow companies to qualify as professional clients

Don't know / no opinion / not applicable

Please specify to what other criteria to allow companies to qualify as professional clients you refer in your answer to question 7.3:

We propose replacing the term „undertakings“ with „entities“. Currently, it is not clear whether all large entities would fall under this type of investor. This would clarify that e.g., large family offices and foundations are subject to this category.

Please explain your answer to question 7.3

No comments.

8. INDUCEMENTS AND QUALITY OF ADVICE

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

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

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

	1 (Not at all effective)	2 (rather not effective)	3 (Neutral)	4 (somewhat effective)	5 (very effective)	Don't know No opinion Not applicable
Ensuring transparency of inducements for clients	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
An obligation to disclose the amount of inducement paid	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Allowing inducements only under certain conditions, e.g. if they serve the improvement of quality	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Obliging distributors to assess the investment products they recommend against similar products available on the market in terms of overall cost and expected performance	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Introducing specific record-keeping and reporting requirements for distributors of retail investment products to provide a breakdown of products distributed, thus allowing for supervisory scrutiny and better enforcement of the existing rules on inducements	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Introducing a ban on all forms of inducements for every retail investment product across the Union	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Please explain your answer to question 8.1

Before providing a detailed answer, it is important to clarify our understanding of the above points 1 to 3, as the wordings used are different from the current frameworks. Coming from a MiFID perspective, we understand:

- Point 1 as requiring to disclose whether the advice is provided on an independent or non-independent basis, in line with MiFID Articles 24(4)(a)(i) and 24(9)
- Point 2 as suggesting the full disclosure of all costs, including inducements, according to MiFID Article 24(4)(c)

- Point 3 as suggesting that receipt of inducements is tied to enhancing the quality of the service, in line with MiFID Article 24(9)(a)

With the above in mind, we believe that the current MiFID requirements are already effective in protecting retail investors against receiving biased advice due to potential conflicts of interest. These measures could be extended to all types of financial advice to ensure the same investor protection standards. However, we note that the concept of enhancing the quality of the service allowing the receipt of inducements is sometimes operationally daunting to achieve. However, we fundamentally disagree with an inducement ban for retail investment products, especially if it covers only products distributed through the MiFID framework. Such a move would be counterproductive and lead to those financial products with less stringent rules being distributed in greater numbers to retail investors,

In addition, when reading the above questions, there seems to be a prejudice against inducements in general, which relies on the assumption that financial advisers are incentivised to “sell” products (receiving commissions in return) rather than recommending the most suitable products for their clients. This is not the case for the distribution of financial products under MiFID.

Should the Commission, nevertheless, be inclined to ban inducements, this decision should be based on a careful and holistic assessment (in line with ESMA’s recent advice to the Commission on the impact of the inducements), as such a ban will have substantial consequences for the availability of advice to retail investors and the overall amount paid by retail investors (see reply to question 8.2).

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

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

We fundamentally disagree with an outright ban on inducements. While independent investment advice is important, one must consider that non-independent advice is the prevalent form of distribution in the majority of Member States.

Thus, banning inducements would have substantial and far-reaching consequences in terms of overall access to investment advice for all European citizens. Experiences in other countries, which have chosen to ban inducements, have shown that certain parts of the population, in particular mass retail investors, are left with no possibility to access advice as distributors had put in place minimum investment amounts. As the cost of advice still has to be paid, it also does not necessarily decrease the total cost of ownership. Given that fee-based investment advice incurs certain fixed costs (e.g. per hour of the investment adviser’s time), this again favours rather large investments compared to smaller investment amounts. Furthermore, in those countries with inducement bans, we notice a certain correlation between the availability of financial advice and the prominence of ‘execution-only’ transactions. In other words, when advice is no longer easily accessible, retail investors tend to make their own investment decisions. Given the significance of financial advice for EU citizens economic well-being, we doubt whether this is the right way forward.

We, therefore, caution the Commission against any hasty decision to dismantle the existing EU distribution model without robust alternatives to be put in place concomitantly. In particular, the effects of the MiFID II overhaul, which only entered into force in 2018, should be studied and the overall quality of advice compared with insurance-based investment products. We understand that this view is shared by ESMA, which said in its recent advice to the Commission that further research is needed.

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

While a complete ban on inducements may theoretically lower the potential conflicts of interest and, thus, increase the quality of advice, this must be measured against the likely widespread loss of access to financial advice by retail investors. The ban on inducements in the UK initially led to an advice gap for retail investors, as many high-street banks introduced high five to six-digit figures as a minimum investment. While the situation around retail advice has since improved, it remains difficult. We note that the UK government is trying to compensate for the lack of retail investment engagement by auto-enrolling employees in workplace pension schemes. This more holistic approach of saving/investing for retirement is not matched in any past or current EU initiatives.

It may also be important to consider the number of incidents involving mis-selling. The vast majority of reported cases happened in the 2000s before the implementation of MiFID II and PRIIPs, which precisely aimed at increasing transparency towards clients in the context of the distribution of retail investment products. In France, for example, among the four cases recorded, none relates to the existence of retrocessions. These elements show that there is no 'commission bias' in the decision of the financial advisor to recommend one product over another.

We strongly believe that a theoretical increase in the quality of advice will not make up for the loss of access to advice. As explained above, we consider investment advice (and its availability) paramount to increasing retail participation in the European capital markets, working in tandem with better financial disclosures and increased financial literacy.

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

As mentioned above, an inducement ban would lead to a clear reduction in the availability of advice for retail investors throughout the EU. This would lead to retail clients investing less (than they already do) keeping even more of their cash in savings deposits.

Those investors who still choose to invest will do so via execution-only services, thus having access only to non-complex financial products (at least under the current MiFID framework). It is also highly likely that investors with only small amounts to invest will not find it economically viable to pay their distributor for investment advice. Thus, their investment decisions will be based solely on pre-disclosure documents and potentially other factors (e.g. social media, family, etc.). Due to the lack of professional advice, there is an increased chance that the chosen products will not be suitable for the investor, potentially leading to short-termism with regards to their set investment horizon.

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

We believe that a ban on inducements could lead to a decrease in retail investment in the EU. The more important issue, though, is how such a ban would affect how retail investors in the EU choose to invest if financial advice is no longer easily accessible. Taking the UK as an example, we note that a system of financial guidance (sitting in between financial advice and execution-only) was introduced (partly) to mitigate the effects of the inducement ban. Its take-up has, unfortunately, been disappointing.

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

	Yes	No	Don't know No opinion Not applicable
In the case of investment products distributed under the MiFID II framework?	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
In the case of insurance-based investment products distributed under the IDD framework?	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
In the case of inducements paid to providers of online platforms/comparison websites?	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>

Please explain your answer to question 8.3

We believe that the current inducement rules in MiFID ensure sufficient protection. However, there are no equivalent investor protection rules in IDD, which does not include the distinction between independent (i.e. fee-paying) and non-independent (i.e. retrocession-based) advice, clear rules on quality enhancement and important cost disclosure elements.

In addition, online platforms should be regulated. They have become an essential part of the financial distribution chains in the EU and it is, therefore, of paramount importance that their services be regulated to ensure proper investor protection.

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

- Yes
- No
- Don't know / no opinion / not applicable

Please explain your answer to question 8.4:

We believe that the rules on the payment of inducements paid to distributors for investment product and insurance-based investment products should be aligned.

Question 8.5 How should inducements be regulated?

Please select as many answers as you like

- Ensuring transparency of inducements for clients

- Ensuring transparency of inducements for clients, including an obligation to disclose the amount of inducement paid
- Allowing inducements only under certain conditions, e.g. if they serve the improvement of quality
- Obliging distributors to assess the investment products they recommend against similar products available on the market
- Introducing specific record-keeping and reporting requirements for distributors of retail investment products to provide a breakdown of products distributed, thus allowing for supervisory scrutiny and better enforcement of the existing rules on inducements
- Introducing a ban on all forms of inducements for every retail investment product across the Union
- Other

Please explain your answer to question 8.5:

We draw your attention to the interpretation of the above options in line with our response to Question 8.1.

With that in mind, we believe that the current MiFID II rules on the receipt of inducements are working well and should be continued. In line with our previous responses, we are vehemently against a full ban of inducements, as this would have devastating effects on the availability of investment advice for retail investors.

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

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

- Yes
- No
- Don't know / no opinion / not applicable

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

- Yes
- No

Don't know / no opinion / not applicable

Please explain your answer to question 8.7:

The recent MiFID quick fixes already suspended RTS 27 governing the best execution reports for trading venues, systematic internalisers and execution venues. However, RTS 28 detailing the best execution reports by investment firms are still in operation. They should also be deleted, as these reports are generally not scrutinised by investors, in particular retail ones. The suspension would free up resources that are currently used for the production of the report, without requiring investment firms and venues to invest in costly implementation.

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

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

Yes

No

Don't know / no opinion / not applicable

Please explain your answer to question 8.8 and indicate what would be the main advantages and disadvantages:

EFAMA supports the development of a voluntary pan-EU label for financial advisors to promote high-level common standards across the EU.

If you would see merit in developing that voluntary pan-EU label, what would you consider the essential characteristics of such a label and how should it be similar to or different from those that already exist in the market:

We have no concrete comments on the essential characteristics of such a label.

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

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

Yes

- No
- Don't know / no opinion / not applicable

Please explain your answer to question 8.9:

We believe that robo-advisors (or hybrid advisors) are already covered under the current investment advice and disclosure MiFID rules.

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

- Lack of awareness about the existence of robo-advisors
- Greater trust in human advice
- Other
- Don't know / no opinion / not applicable

Please explain your answer to question 8.10:

We do believe that the reasons for the limited use of robo-advisors are multi-faceted.

First of all, the differences among the different types of robo-advisors are not always well identified and disclosed and this could cause uncertainty among retail investors.

Secondly, a greater trust in human advice still prevails. However, we do believe that this trust in human advice is (hopefully) going to be mitigated through financial literacy in the near to medium-term future.

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

- Yes
- No
- Don't know / no opinion / not applicable

9. ADDRESSING THE COMPLEXITY OF PRODUCTS

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

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

- Yes
- No
- Don't know / no opinion / not applicable

Please explain your answer to question 9.1:

We believe that the Commission confuses the notion of “simple product” and “non-complex product”, in many of the subsequent questions, as these terms are not interchangeable. Please carefully consider our comments regarding complexity in our responses to the subsequent questions.

We note that MiFID II already provides a list of non-complex financial instruments, such as non-structured UCITS, that can be distributed without suitability and appropriateness tests. The list of non-complex products unfortunately currently does not recognise that national AIF regimes exist in some Member States, which are targeted at retail investors. We believe that these types of funds should also be allowed to be sold without advice to facilitate access of retail investors to these types of products designed especially for this client type.

We take this opportunity to stress that EFAMA does not agree with ESMA's Q&As stating that only non-structured UCITS can be considered non-complex. Several EU Member States have (in many cases, for a long time) permitted certain types of retail AIFs, which are subject to management and product rules akin to UCITS rules, to be marketed to retail investors in that state. These types of funds should also have access to the test in Article 57 of the MiFID II Delegated Regulation, thus allowing these funds to be sold through execution-only channels. To prevent such products from being able to be considered against the Article 57 test not only misunderstands the breadth of the AIF universe but also effectively nullifies a provision in Regulation. We would question the legal basis for this.

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

a) should they aim to reinforce or adapt execution of orders rules to better suit digital and online purchases of complex products by retail investor:

- Yes
- No
- Don't know / no opinion / not applicable

Please explain your answer to question 9.2 a):

We are not in favour of diverging rules for complex products with regards to their distribution channel. The same investor protection rules should apply whether these products are distributed online or in person.

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

- Yes
- No
- Don't know / no opinion / not applicable

Please explain your answer to question 9.2 b):

We are resolutely against a potential ban of more complex investment products for retail investors, as it will not be in the interest of retail investors.

First, we would question what constitutes an “excessively complex product” as this notion is not legally defined in the current financial framework. MiFID II currently differentiates only between non-complex products (such as, among others, simple shares, bonds and non-structured UCITS) and complex products. The latter cannot be sold execution-only and must be sold with investment advice.

However, simply because investment products are non-complex or ‘simple’ does not mean they are more suitable (especially for first-time investors). While investment products such as diversified funds may be considered more complex than simple shares or bonds, they allow investors to invest in capital markets while enjoying the necessary diversification of their underlying investments, for example. Rather than defining what is considered as “simple”, “complex” or “excessively complex” (to ban investors’ access to certain types of products), it is more essential to ensure that retail investors have access to and receive high-quality advice, which ensures the suitability of the products in question given the individual investor’s needs.

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

- Yes
- No
- Don't know / no opinion / not applicable

Please explain your answer to question 9.2 c):

We are not in favour of developing a new label for simple products. In line with our response to the previous question, we strongly doubt whether a “simple” product, such as a share or bond, is always the most appropriate form of investment for retail investors, as they are missing the necessary risk diversification which is offered by other financial products, such as investment funds. Again, the key question is whether a financial instrument or product is suitable for the investor’s need.

Previous discussions at the level of individual Member States have also shown how difficult it is to define what constitutes a “simple” product. We see a big risk that the time and effort spent creating those definitions will not lead to satisfactory results for retail investors. Reflecting on the fragmented European distribution landscape, we also fear that Member States may have diverging interpretations of complexity, which would further inhibit cross-border distribution throughout the EU. We rather believe that these efforts should be spent in ensuring that retail investors receive financial advice if needed.

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

- Yes
- No
- Don't know / no opinion / not applicable

Please explain your answer to question 9.2 d):

We are not in favour of defining and regulating so-called "simple" products, in line with our response to Question 9.2 (d). We believe that the current approach to defining financial instruments and products that can be accessed without financial advice is the right way to go.

e) should they aim to *tighten the rules restricting the sale of very complex products to certain categories of investors*

- Yes
- No
- Don't know / no opinion / not applicable

Please explain your answer to question 9.2 e):

We are against a potential ban of "very complex" investment products for retail investors, as it will not be in the interest of retail investors, creating the exact opposite effect of "enabling" retail investors.

In line with our response to Q 9.2 (b), we would question what constitutes a "very complex product" as this notion is not legally defined in the current financial framework. MiFID II currently differentiates only between non-complex products (such as, among others, simple shares, bonds and non-structured UCITS funds) and complex products. The latter cannot be sold execution-only and must be sold with investment advice.

Second, simply because an investment product is more complex does not mean it is not suitable (especially for first-time investors). For these types of products, those investors must receive advice to ensure suitability rather than banning them from accessing these types of products.

f) should they have another aim?

- Yes
- No
- Don't know / no opinion / not applicable

Please specify to what other aim you refer and explain your answer to question 9.2 f)

One aim not yet mentioned is the need to reduce the excessive disclosure of information retail investors currently face. In line with our previous comments, these disclosures should be reduced to the

essentials.

10. REDRESS

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

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

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

Please explain your answer to question 10.1:

No comments.

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

- Yes
- No
- Don't know / no opinion / not applicable

Please explain your answer to question 10.2:

Yes, existing MiFID II requirements adequately address client needs regarding complaints management. Clients have access to a transparent description of the complaints process, which

includes a description of processing and feedback timelines as well as contact points.

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

- Yes
- No
- Don't know / no opinion / not applicable

Please explain your answer to question 10.3:

The client complaint contacts and processes are outlined at several client touchpoints, providing the required transparency.

When opening an account, retail investors receive a description of the complaints process for both out-of-court (i.e. directly at investment manager, Ombudsman) and court settlements. Further, the PRIIPs KID contains a specific section that describes what to do and whom to contact in the case of complaints. Besides the before-mentioned procedures, further out-of-court procedures are available for retail investors (e.g. complaints via NCAs, mediation procedures).

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

- Not at all effective
- Rather not effective
- Neutral
- Somewhat effective
- Very effective
- Don't know / no opinion / not applicable

Please explain your answer to question 10.4:

The existing Ombudsman dispute resolution procedure is very effective for retail investors as it provides easy access, is free of charge and does not require any engagement of lawyers. Also, for vulnerable consumers, the Ombudsman dispute resolution procedure is adequate due to its low complexity and guided procedure.

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

Please select as many answers as you like

- Domestically?
- In a cross border context?

Please explain your answer to question 10.5:

In case of any changes, it should be ensured that these are applicable EU wider to ensure no impediments from a cross-border distribution context.

Certain groups of consumers (e.g. the elderly, over-indebted or those with disabilities) can be particularly vulnerable and may need specific safeguards. If the process of obtaining redress is too complex and burdensome for such consumers and lacks a specially adapted process (e.g. assistance on the phone), redress may not be an effective option for them.

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

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

Please explain your answer to question 10.6

We share the Commission's concerns in relation to vulnerable customers that may need specific safeguards. In this regard, we believe distribution partners and financial advisors play an instrumental part in providing support in case of clients' complaints. Typically, distribution partners and financial advisors are trusted intermediaries especially for vulnerable customers reducing the barrier for redress. In addition, see also answer to Q 10.4.

11. PRODUCT INTERVENTION POWERS

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

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

- Yes
- No
- Don't know / no opinion / not applicable

Please explain your answer to question 11.1:

ESMA's intervention powers seem to be effective as the European supervisor was able to prohibit the marketing and sales of binary options in 2018 and contracts for difference in 2019 to retail clients in light of investor protection concerns. National supervisors are, however, better placed than the asset management industry to assess whether ESMA should more actively use these powers to target fraudulent financial products.

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

- Yes
- No
- Don't know / no opinion / not applicable

Please explain your answer to question 11.2:

No comments.

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

- Yes
- No
- Don't know / no opinion / not applicable

Please explain your answer to question 11.3:

We would note that product intervention powers primarily concern unregulated products that represent a threat to investor protection. Although valuable, these powers are of limited relevance to the asset management industry, where both management companies and the funds they manage are not only regulated at the EU and national level but also directly supervised by national competent authorities.

Currently, ESMA can prohibit or restrict the marketing, distribution, or sale of investment funds based on Article 40 of MiFIR. Although this provision does not directly apply to asset managers and their

funds, it allows ESMA to forbid fund distributors such as banks and insurance companies to market and sell investment funds where these lead to investor harm. An asset manager could rely on its own distribution channel as an authorised ancillary service under Article 2 of the UCITS Directive and/or Article 6 of the AIFMD, but such practice constitutes the exception rather than the rule. In fact, despite greater disintermediation through technological innovation easing access to financial products and services, asset managers still rely heavily on other intermediaries to market and distribute funds.

Moreover, we question whether the use of such potential powers over investment funds would be appropriate, considering that asset managers and investment funds are entities that are regulated, authorised, as well as supervised by NCAs. It is not to say that there are no risks to consumers when investing in funds, but these are mostly idiosyncratic. NCAs have multiple supervisory powers at their disposal to address any concerns they may have regarding market developments in the fund industry. They may, for instance, refuse or withdraw authorisations for funds that they deem unfit or even suspend investment funds in the interest of the unit-holders or of the public.

In our view, product intervention powers would therefore bring little added value, enough to not warrant changes to Article 9(5) of the ESMA’s Founding Regulation, nor to the UCITS and AIFM Directives.

12. SUSTAINABLE INVESTING

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

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

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

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

	1 (not at all helpful)	2 (rather not helpful)	3 (Neutral)	4 (somewhat helpful)	5 (very helpful)	Don't know No opinion Not applicable
Measurements demonstrating positive sustainability impacts of investments	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Measurements demonstrating negative or low sustainability impacts of investments	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Information on financial returns of sustainable investments compared to those of mainstream investments	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Information on the share of financial institutions' activities that are sustainable	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Require all financial products and instruments to inform about their sustainability ambition	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Obligation for financial advisers to offer at least one financial product with minimum sustainability ambition	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
All financial products offered should have a minimum of sustainability ambition	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

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

	1 (not at all important)	2 (rather not important)	3 (Neutral)	4 (somewhat important)	5 (very important)	Don't know No opinion Not applicable
Poor financial advice on sustainable investment opportunities	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Lack of sustainability-related information in pre-contractual disclosure	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Lack of EU label on sustainability related information	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Lack of financial products that would meet sustainability preferences	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Financial products, although containing some sustainability ambition, focus primarily on financial performance	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Fear of greenwashing (i.e. where the deceptive appearance is given that investment products are environmentally, socially or from a governance point of view, friendly)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Other	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>

Please specify to what other factor(s) you refer in your answer to question 12.3:

Enhancing the clarity and simplicity of ESG-related disclosures for distributors and clients is key to encouraging more sustainable investments from retail investors. While we welcome the integration of clients' sustainable preferences as part of the suitability process introduced by the Delegated Regulation (EU) 2017/565, the new definition of 'sustainability preferences' will cause some operational issues that might hinder the overall goal of the delegated acts to increase clients' awareness of the availability of financial instruments with sustainability ambitions.

First, the new definition of sustainability preferences introduced in the Delegated Regulation (EU) 2017/565 Article 2(7) introduced a high level of complexities in the distribution channels, which might not be fully comprehended by the clients. Recital 6 of the delegated regulation seems to require distributors to ask about each of the three distribution channels of sustainable investments to retail investors. This approach assumes a level of ESG expertise that the average investor might not possess.

Second, the introduction of the investor-defined minimum proportion of sustainable investment introduced in Delegated Regulation (EU) 2017/565 Article 2(7) might negatively impact firms' ability to provide standardised ESG offerings. This approach seems to point to the possibility of 'bespoke' products and could make the distribution process more complex and less effective.

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

- Yes
- No
- Don't know / no opinion / not applicable

Please explain your answer to question 12.4

Any future guidance to be developed for financial advisers should take into account the level of complexity introduced by the MiFID/ IDD criteria for sustainable preferences. The amendments to MiFID II will require firms to translate the sustainability preferences standards into understandable client preferences. Retail investors will need to have clear, fair, and not misleading language to articulate the sustainability products and how that translates into product standards in line with the regulatory

requirements.

Any guidance should also aim at facilitating adviser suitability assessment for sustainability preferences as there will be no single standard for MIFID sustainable products. This will impact firms' ability to provide standardised ESG offerings and will lead to 'bespoke' products. The suitability of a product will be driven by a client's own tolerance, thresholds, or preferences regarding sustainability. This could be articulated via minimum thresholds, clients' interest in sustainability themes, or general ESG standards or exclusion preferences depending on how firms update their suitability questionnaires. Distributors will also need practical solutions for implementing the sustainability preferences test for the mass retail market without overstraining the overall advice process.

Finally, in relation to SFDR and the EU Ecolabel for retail financial products, products managers will need user guidelines clarifying the outstanding implementation challenges.

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

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

- Yes
- No
- Don't know / no opinion / not applicable

Please explain your answer to question 12.5

Increased transparency in research provided by brokers and data providers would be beneficial. To expand the offering of sustainable investment products, asset managers need trustworthy and comparable ESG company information. Given the lack of publicly available information, asset managers are heavily reliant on the information from third-party providers of ESG data, research and ratings, which comes with high costs and many questions related to transparency, data sources, applied methodologies and potential conflicts of interest.

We hope this will be progressively achieved also via the CSRD, the proposal for a European Single Access Point and the forthcoming regulatory framework for ESG research, data and rating providers, in line with the recent joint call from the AFM and AMF.

13. OTHER ISSUES

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

5000 character(s) maximum

Savings plans for funds are very popular in a number of Member States. They are often used as long-term retirement savings, making them particularly important in the current low-interest environment.

As funds will also produce PRIIP KIDs in 2022, we fear that PRIIPs-specific bureaucratic requirements will make savings plans less appealing for retail investors. This issue relates to PRIIPs Regulation Art. 13(4) which obliges distributors to provide a KID when conducting the savings plan and afterwards, every time the KID has been modified (according to the requirements of Art. 10).

Due to this requirement and the foreseen deluge of revised PRIIP KIDs being sent to retail investors, many banks are now requiring the opening of an electronic mailbox (to ensure that the KIDs can be sent electronically) as a precondition for the opening of a savings plan.

In the past, there has been no reason to open an electronic mailbox when conducting a savings plan (since the KIID under the current regime only needs to be provided once). That is why many clients do not have an electronic mailbox. This would mean, that the KIDs need to be sent by post (whenever there is a change in the KID) if a more flexible approach is not allowed. This is not only very burdensome but would cause very high costs.

It should be allowed to inform the client where the revised KID can be found, hence enabling the client to access the latest version of the KID whenever he wants to. That would prevent distributors from sending millions of letters every time the KID has been modified.

Furthermore, this aligns with the current market practice: investors can generally either download an up-to-date version of the UCITS KIID via their online banking service or from the manufacturer's website or they can contact their distributors and receive the KIID there.

Having in mind that millions of savings plans have been conducted under the assumption that the investor only needs to be informed once at the conclusion of the savings plan, we also strongly support the implementation of a grandfathering provision stating that PRIIPs Regulation Art.13(4) only applies to savings plans on funds after the end of the UCITS exemption



About EFAMA

EFAMA, the voice of the European investment management industry, represents 28 member associations, 58 corporate members and 24 associate members. At end Q1 2021, total net assets of European investment funds reached EUR 19.6 trillion. These assets were managed by more than 34,600 UCITS (Undertakings for Collective Investments in Transferable Securities) and almost 29,600 AIFs (Alternative Investment Funds). At the end of 2020, assets managed by European asset managers as investment funds and discretionary mandates amounted to an estimated EUR 27 trillion.

More information is available at www.efama.org

Contact

Andreas Stepnitzka

Senior Regulatory Policy Advisor

Andreas.spentizka@efama.org | +32 2 548 26 .54.