



**European Forum of
Securities Associations**

FOR REGULAR USE

9 April 2024

Key messages regarding the Retail investment strategy

EFSA is a collaboration between trade associations representing the interests of investment firms in Europe.

EFSA strongly believes in the policy objective of CMU II to build retail investors' engagement and trust in the capital markets. However, it is important to keep in mind that retail markets in Europe today have different level of maturity. In order for investment firms to be able to serve retail clients' needs in all of Europe, it is therefore important that the regulatory framework does not unduly restrict retail clients' access to different types of investment services (e.g., advisory and execution) and different types of investment products. Moreover, it is important to ensure that disclosures to retail clients are simple and easy to understand and that the level of information to be collected from such clients in the advisory process is proportionate. In fact, one of our key concerns is the increasing complexity of the regulatory framework which does not only create operational risks for investment firms but also creates barriers of entry to retail clients.

EFSA associations closely follow the ongoing discussions regarding Retail Investment Strategy (RIS). To our understanding, the discussions in Council are moving forward rather quickly. In order to provide input to the discussion, we have listed our key messages below:

Partial ban on inducements for execution services

EFSA opposes the Commission's proposal for a partial ban on execution services as it is our strong view that this would limit product offerings to retail clients and increase costs. Also, it would negatively affect the competitiveness of independent and smaller asset managers/investment firms to the benefit of larger institutions with in-house products. It is important to note that not all retail clients will be willing or able to pay directly for value added services. In addition, since there is no common interpretation across Member States about which payments to be included in the concept of "inducement" or "third party payment," imposing a ban for execution services could also have a number of

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Asociación de Mercados
Financieros (AMF)

Association française des
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Mercati Finanziari (AMF Italia)

Belgian Association of Stock
Exchange Members (ABMB-
BVBL)

Bundesverband der
Wertpapierfirmen (bvf)

Capital Market Denmark (CMD)

Polish Chamber of Securities
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serious unexpected consequences, e.g. for primary market transactions in bonds, with a negative effect on the real economy as a result.¹

EFSA also opposes the proposal for a partial ban on inducements for **complex products** as proposed by the Belgian Presidency (Bel Pres. Working Paper dated 11 April 2024). Complexity is different from high risk, complex products can have low risk, and non-complex products can have high risk. In our view the proposal would limit retail client's access to a wide range of retail products such as non-UCITS funds, exchange traded derivatives and structured products. It should be noted that for some retail clients such products are particularly useful for diversification purposes.

New inducement test

EFSA agrees that the existing "quality enhancement- test" is not fit for purpose in its current form and that there is a lack of supervisory convergence within the EU. However, we find the new inducement test as proposed by the Belgian Presidency (Bel Pres. Working Paper dated 11 April 2024) to be overly complex. In particular, we question the first criterion as, to us, fees would necessarily be based on quantitative commercial criteria even if qualitative criteria will be taken into account. Additional work is needed in order to ensure that the new inducement test is actually an improvement compared to the existing quality enhancement-regime.

Value for Money

EFSA opposes all forms of benchmarks which we consider to be a form of price regulation. We find the proposals as put forward by the Commission and currently discussed in Council to be complex and we struggle to understand how this is going to work from an operational perspective, in particular taking different types of PRIIP- products into account (e.g., investment funds, bonds, structured products and derivatives). Value for money is not only about costs but also about performance and qualitative elements. EFSA would be in favour of an internal model that is based on the existing product governance regime, combined with strong internal governance requirements. We also consider the reporting requirement regarding costs to the supervisory authority to be unproportionate.

Best interest test

Taking into consideration that the best interest test was intended as a replacement for the quality enhancement-test and a new inducement test is proposed, we support that it is deleted. Moreover, the test with its narrow cost-focus could have secondary effects on the product offering on the market. (It should also be noted that there is already an overarching principle in the MiFID II-rulebook that firms should act in the best interest of clients which applies to all investment services).

¹ See article 41 delegated regulation to MiFID II which provides that a placing fee/underwriting fee is an inducement in relation to end-clients that receive investment services and ESMA technical advice: https://www.esma.europa.eu/sites/default/files/library/esma35-43-2126_technical_advice_on_inducements_and_costs_and_charges_disclosures.pdf

Appropriateness and suitability

EFSA supports the proposals by the Belgian Presidency (Bel Pres. Working Paper dated 27 March 2024) to delete the previously proposed criteria on ability to bear losses and on risk tolerance from the appropriateness assessment. We agree that adding such criteria would make the distinction between suitability and appropriateness more difficult. EFSA also finds the compromise proposed regarding the portfolio diversification to be a positive step in the right direction. However, we consider that the scope of the “suitability light” should apply regardless of if the investment firm claims to be independent or not and also include portfolio management. This is important for competition reasons and considering that the protection of the retail client should be the same regardless of the type of advice/investment service i.e., portfolio management.

Cost & Charges

EFSA is genuinely concerned with the complexity of the disclosure regime. We would like to emphasize that one of the key objectives with RIS was to tackle the problems with information overload faced by retail clients. Evidence shows that retail clients are interested in price and total costs, not detailed breakdowns, or methods of calculation.² It would also be welcome with closer alignment between PRIIPs/MiFID II, as previously suggested by ESMA³. Against this backdrop, the new requirement regarding an annual report on both portfolio and instrument level is unproportionate.

Professional clients (opt-up)

Retail clients is a wide concept which includes also sophisticated retail investors and SME-companies, and it is therefore important to review the opt-up criteria. In some markets the “transaction” criteria are difficult to apply e.g., for corporate bonds which do not trade very often.

PRIIPs scope

EFSA supports a review of the PRIIPs scope ensuring that it is only applicable to packaged products that are used for investment purposes. For example, PRIIPs requirements are currently applicable to hedging derivatives used to mitigate risks for SME corporates, which is not consistent with the intended objective to provide information for investment products only. The application of PRIIPs to simple bonds unduly restricts clients access to these products which is negative for the capital market as a whole.

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² <https://op.europa.eu/en/publication-detail/-/publication/5d189b3c-120a-11ed-8fa0-01aa75ed71a1/language-en>

³ <https://www.esma.europa.eu/press-news/esma-news/esma-makes-recommendations-improve-investor-protection>