

The Consumer Voice in Europe

MIFID II REVIEW – BEUC CONSULTATION RESPONSE

Review of the regulatory framework for investment firms and
market operators



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Why it matters to consumers

Consumers rely on financial advice when taking important financial decisions, such as saving for their retirement, taking out a life insurance policy or when investing money for a rainy day. When taking such decisions, consumers should be able to rely on impartial, competent and trustworthy advice, assisting them in carefully considering the options available.

Summary

BEUC welcomes the opportunity to provide input to the European Commission's consultation on the MiFID II Review. BEUC is primarily concerned with the investor protections afforded to consumers under MiFID II, and our remarks in this document are limited to these aspects from the consultation. Only the questions to which BEUC provided full written responses are replicated below. For the full comments and answers to all relevant questions, please refer to our full consultation response.

In brief, efforts to encourage greater retail participation in capital markets must be underpinned by stronger investor protections for consumers when investing in these markets. A full ban on inducements should be implemented under the MiFID II review to ensure that consumers have access to trustworthy, independent advice. For more information on this topic, please consult our website on www.thepriceofbadadvice.eu.

BEUC offers the following key recommendations to the European Commission:

- The European Commission should implement an **EU-wide ban on inducements**, as already implemented in the United Kingdom and the Netherlands.
- A **ban on in-house sales incentives** that fail to consider the consumer interest and can create unfair pressure on financial advisers to sell, without considering the needs of consumers.
- The European Commission should investigate the **creation of EU-wide investment product databases** to support the development of **independent comparison tools** for retail investors.
- Introducing a **certification requirement for staff providing investment advice**, to ensure that financial advisers are adequately qualified to provide financial advice.

32. Which MiFID II/MiFIR requirements should be amended in order to ensure that simple investment products are more easily accessible to retail clients?

BEUC calls for a full ban on the payment of commissions to financial advisers for advice on retail investment products, as implemented in the United Kingdom and the Netherlands. A ban on inducements would encourage the distribution of simpler and more cost-effective investment products to consumers, such as tracker funds or Exchange-Traded Funds (ETFs).

In the UK, following the introduction of the commission ban, there was an increase in the distribution of tracker funds and ETFs to retail investors. ETF investment funds generally do not pay out commissions, or pay out very low commissions, resulting in lower distribution to retail clients in countries where there are currently no inducement bans in place. The European Commission's [Retail Distribution Study](#) shows that, on the contrary, independent advisers in the UK (who are no longer able to be remunerated through commissions) do recommend ETFs and lower cost investment funds to their clients. In Europe, the share of ETF assets held by retail investors remains low, in part due to the distribution models in place in most European countries (based on inducements). In addition, according to the Retail Distribution Study, distributors in the UK and the Netherlands present the lowest ongoing fees for all types of investment funds accessible to retail investors. The FCA's post-implementation [review](#) of the Retail Distribution Review (that banned the payment of commissions to advisers) found that the UK inducement ban resulted in the "introduction of simpler products with lower charges" to UK consumers. The European Commission **should introduce a full EU-wide ban on inducements in the European Union to ensure that simpler investment products are more easily accessible to retail clients.** For more information, please consult our position papers available on thepriceofbadadvice.eu. See also our responses to Questions 49 and 50.

34. Should all clients, namely retail, professional clients per se and on request and ECPs be allowed to opt-out unilaterally from ex-ante cost information obligations, and if so, under which conditions?

No. Non-professional retail clients should not be allowed to opt-out of ex-ante cost information obligations.

35. Would you generally support a phase-out of paper based information?

Consumers should be sent **both** paper-based information and digital information (if they provide their relevant electronic contact details). Consumers should be able to **go online and 'check the box' to stop receiving paper-based information** on the basis of their own request, to ensure that it was in fact their own initiative to stop receiving paper-based information and to ensure that they know how to access their digital accounts and settings. A decision for electronic information should be reversible in the same way it was made. It is important that if the information is provided digitally, that this is provided to the consumer in a **durable format**.

37. Would you support the development of an EU-wide database (e.g. administered by ESMA) allowing for the comparison between different types of investment products accessible across the EU?

Yes, BEUC supports **the creation of an EU-wide database to facilitate easier comparison by retail investors between different types of investment products.** At the moment, no such EU-wide database exists. In 2019, the European Supervisory

Authorities published reports into the cost and performance of retail investment products. The ESAs faced considerable difficulties in gathering and aggregating data on the products under their supervision, and relied on information provided through commercial databases or in cooperation with market participants to carry out their analysis. The creation of an EU-wide database on investment products could assist the ESAs in monitoring the cost and performance of products under their supervision.

In addition, the creation of an EU-wide database could facilitate the emergence of independent comparison tools or price comparison websites for consumers, allowing them to easily compare the costs and features of investment products. As an example, in Norway, **financial institutions are required under Norwegian law to provide price and other information to our member Forbrukerrådet in order to operate an independent comparison tool (finansportalen.no)** that covers investment funds, life insurance and private pension products. Comparison tools could assist retail investors to compare between providers and the key features of investment products (including cost, risk, etc.). Independent comparison tools can also give retail investors an overview of the available product providers on the market.

As demonstrated by the European Commission's [Retail Distribution Study](#) (p.78), retail investors struggle to collect comprehensive information on the fees of investment products, impeding their ability to compare between different products and distributors. Often, consumers need to talk directly with an adviser in order to receive necessary information to understand the cost of investment products. It can also often be difficult to find the relevant disclosure documents on the website of providers (such as the PRIIPs or UCITS KID). This in turn increases efforts for retail investors to compare products and distributors. As a result, the Retail Distribution Study concludes that retail investors might simply refrain from investing or simply choose among the products provided by the bank or insurance company where they are already a client, preventing them from shopping around. Independent comparison tools could assist retail investors to compare different providers on the market and shop around, in turn improving competition between different providers.

The creation of an EU-wide database on investment products could also facilitate the emergence of better disclosure for retail investors, and allow new tools to be developed for consumers to compare the features of investment products. In 2018, the UK Financial Conduct Authority published a [discussion paper](#) on 'drawing attention to charges in the asset management industry'. The paper drew attention to the fact that simply providing consumers with information in disclosure documents about charges, does not guarantee that they will use it in their decision-making. The paper found that clearly presenting engaging information in a prominent way can enhance the effectiveness of disclosures. For instance, the paper found that using colour, graphics and plain language as well as warnings and impact charts helped consumers in their decision-making when making investment decisions. In the United States, FINRA already operates a 'Fund Analyzer' tool (https://tools.finra.org/fund_analyzer/) that allows retail investors to compare investment funds. Similar comparison tools could allow European consumers to compare the core features of investment products offered to them by advisers, and could be signposted in relevant disclosure documents provided to retail investors (such as the PRIIPs KID, the UCITS KIID document, ex-post MiFID II costs disclosures, etc.).

38. In your view, which products should be prioritised to be included in an EU-wide database?

BEUC believes that at least the following products should be prioritised in an EU-wide database:

- All products that have a PRIIPs KID
- All products that have a UCITS KIID
- All national pension products
- Pan-European Pension Products

39. Do you agree that ESMA would be well placed to develop such a tool?

We agree that the European Supervisory Authorities are well-placed to develop such a tool. The creation of an EU-wide database should be a responsibility for the Joint Committee of the European Supervisory Authorities (ESMA, EIOPA, EBA). While ESMA is best placed to develop a database for AIFs marketed to retail investors and UCITS investment funds, EIOPA may be better placed to develop such a database for life insurance policies and pension products (including PEPP and national pension products). In addition, AIFs and UCITS funds are often sold to consumers in wrappers through unit-linked life insurance policies. As such, cooperation between the European Supervisory Authorities is necessary to ensure the databases are complementary to one another.

42. Would you see benefits in the creation of a new category of semi-professionals clients that would be subject to lighter rules?

If the European Commission proposes to introduce a new category of semi-professional clients, careful thought needs to be given as to what conditions would need to be satisfied in order for consumers to be labelled as a semi-professional client. In particular, BEUC sees **a risk of consumers being inappropriately identified as semi-professional clients**, and being subjected to lighter investor protection requirements.

45. What should be the applicable criteria to classify a client as a semi-professional client?

If a semi-professional client category is introduced, **stringent applicable criteria should apply**. A semi-professional client status should only be able to be requested on the own initiative of the retail investor, by him- or her-self. Retail investors requesting to be classified as a semi-professional client should be subject to a mandatory knowledge test, that should be carried out by national competent authorities, not the banks or other intermediaries themselves. Clients should have a minimum level of financial assets to qualify as a semi-professional client, such as €100,000 investable wealth.

49. Do you believe that the current rules on inducements are adequately calibrated to ensure that investment firms act in the best interest of their clients?

The current rules on inducements are **not adequately calibrated to ensure that investment firms act in the best interest of their clients**. BEUC calls for an EU-wide ban on the payment of inducements to financial advisers for advice on retail investment products. The payment of inducements to financial advisers places a conflict of interest at the heart of the client relationship, preventing advice that is in the best interest of the consumer. The payment of commissions to intermediaries leads to biased investment advice, with advisers encouraged to sell higher-cost investment products that attract higher inducements for the adviser. It also means that products which do not pay out commissions or low commissions (such as ETFs) are neglected by advisers. In addition, inducements have played a central role in many recent mis-selling scandals. [Research](#) by

our member Forbrukerrådet shows that commissions lead to conflicts of interest and make investments more expensive for the average consumer in Norway.

BEUC does not believe that disclosure of commissions is a sufficient safeguard to enhance investor protection under MiFID II (please refer to our [position paper](#) for evidence on the limits of disclosure). **The quality enhancement rules introduced under MiFID II are insufficient to protect investors and risk being merely a 'box-ticking exercise'.**

- For instance, a recent [Thematic Review](#) by the Danish Financial Supervisory Authority found that the quality enhancement test was often not appropriately applied by intermediaries. Advisers in Denmark often regarded certain general services that are widely available to all banking clients (such as newsletters to clients or access to online banking) as 'quality enhancing'.
- In Germany, according to the national [law](#), having a "widespread network of branch offices" (including in rural areas) is sufficient to meet the needs of the quality enhancement test, allowing banks to sell investment products while receiving inducements without any further service improvements for clients.
- In Norway, a [survey](#) of how investment firms applied the quality enhancement test shows that many firms are not complying with the rules.

For our full recommendations, please refer to our position papers available on our website (thepriceofbadadvice.eu).

50. Would you see merits in establishing an outright ban on inducements to improve access to independent investment advice?

A full **outright ban on inducements should be implemented in the EU** for advice on and the sale of retail investment products to consumers, as already implemented in the UK and the Netherlands. For our full recommendations, please refer to our position papers available on our website (thepriceofbadadvice.eu).

The investment market works best when product providers compete on the price and quality of their products to secure distribution, rather than the commission that providers can pay out. Reviews by Dutch and UK authorities show that commission bans have reduced conflicts of interests for advisers, who increasingly focus on product quality and recommend simpler and more cost-efficient products to consumers.

A [study](#) by the UK FCA following the implementation of the Retail Distribution Review found that the commission ban reduced product bias. Products which used to pay out high commission witnessed a decline in distribution following the commission ban, whereas products that used to pay out no commissions witnessed a significant increase in sales (such as tracker funds or ETFs). There is also evidence in the UK of increased competition between product providers as result of the commission ban, resulting in lower charges of investment products for end-investors. Following the UK commission ban, financial intermediaries are negotiating lower annual management charges with product providers for their end-investors or choosing more cost-effective investment solutions for clients resulting in lower management fees for UK investors.

A ban on commissions should in any case be extended in case of execution-only (for instance, when a consumer purchases a UCITS investment fund through an online investment platform or on an execution-only basis through a bank). The commission bans in the Netherlands and the UK also apply in case of execution-only, and intermediaries are required to charge a separate directly applicable charge to the retail investor instead. In the Netherlands, according to a [speech](#) by Dutch AFM Board Member Theodor Kockelhoren, the commission ban in case of execution-only led to significantly reduced costs for retail

investors: “A striking feature of the inducement ban is the increased pricing differentiation. Previously, execution only customers in the Netherlands would pay easily 75 bp for a very narrow service, actually as much as customers that receive a fully fledged advice in return. Since the ban, execution only customers pay no more than 25 bp. With 70% of all customers being execution only customers in the Netherlands, who collectively own 40% of the invested assets, this differentiation represents a saving of 300 million euro a year.”

In 2019, the Canadian Securities Administrators (CSA) [announced](#) that it would ban the payment of commissions in case of intermediaries who only execute orders and do not provide advice or carry out a suitability determination. In its [publication](#) announcing the ban in case of execution-only, the CSA reasoned that such a ban would lead to “an increased use of more transparent and salient fees (such as trading commissions, transaction fees, or other directly-charged fees to retail investors) for the purchase and holding of mutual fund securities [...] that may better align with the cost of the services such dealers provide.” In Europe, intermediaries providing execution-only services are still permitted to retain inducements (as long as they comply with the quality enhancement test under MiFID II).

In the absence of a full EU-wide ban on inducements, BEUC also supports several of the measures proposed by ESMA in its recent [Technical Advice](#) on costs and charges and inducements under MiFID II, including:

- **Alignment of inducement rules between the IDD and MiFID II**, including full disclosure of inducements, the introduction of an independent advice regime under IDD and a requirement for quality enhancing services to be applied for any inducements received.
- Introducing a clear obligation to include, in all inducements disclosures, **an explanation in layman’s terms of what inducements are**, using simple terms to ensure that retail clients understand the nature and impact of inducements.
- **A requirement under MiFID II for investment firms to bring to their clients’ attention the specific quality enhancing services that they benefit from.** The list of such quality enhancing services should be easily accessible on the websites of distributors and updated on a continuous basis. This recommendation is especially relevant in the context of findings by NCAs that quality enhancement tests are not being properly applied by intermediaries or interpreted in different ways (see also question 49). Should a quality enhancement test be introduced under IDD, this requirement should also be extended to insurance intermediaries.

In addition, **inappropriate sales incentive schemes and sales targets also frequently lead to inappropriate advice and have played a key role in many recent mis-selling scandals.** According to a study by Consumers International, inappropriate sales incentive schemes often encourage financial advisers to sell more financial products, without considering whether the products match the need of the consumer. Inappropriate sales incentive schemes can create unfair pressure on retail staff, who may rely on bonuses in order to maintain their salary and thereby be driven to sell financial products to consumers. Often, sales incentive schemes can conflict with advisers’ duty and their desire to do the best by their customer. Sales incentive schemes often offer a financial incentive or a bonus to employees who meet or exceed sales targets, such as a bonus, an increase in pay or a prize. Sales incentive schemes were a key driver of mis-selling in many of the cases included on our web-map on thepriceofbadadvice.eu. Consumers International has also [identified](#) inappropriate sales incentive schemes as a key driver behind many recent mis-selling scandals.

Article 24 of MiFID II requires investment firms to ensure that they do not remunerate or assess sales staff in a way that conflicts with their duty to act in the best interest of their clients. ESMA has also published [guidelines](#) on the governance and design of remuneration policies to ensure that they are aligned with effective conflicts of interests management. For instance, ESMA recommends that when designing remuneration policies and practices, firms should ensure that the ratio between fixed and variable pay is appropriate (high variable remuneration can increase adviser's focus on sales, rather than the client's best interest). **BEUC believes that all types of financial incentives linked to targets that do not consider the consumer's interest should be banned under MiFID II.**

51. Would you see merit in setting-up a certification requirement for staff providing investment advice and other relevant information?

There is merit **in setting up a certification requirement for staff providing investment advice to consumers.** Increased training and qualification of financial advisers would translate into better financial outcomes for consumers and enhance confidence and trust in the financial advice industry more generally. High levels of qualifications and skills of financial advisers would lead to improvements in the quality of advised services.

As part of the Retail Distribution Review, the UK introduced higher minimum levels of qualification for financial advisers, along with requirements for continuing professional development and adherence to ethical standards. New professional requirements in the UK require advisers to hold an appropriate qualification (at the minimum QCF Level 4), adhere to ethical standards, and carry out at least 35 hours of Continuing Professional Development (CPD) a year.

All financial advisers in the EU should be subject to similar qualification requirements as introduced under the UK reforms. All investment firms and employees of investment firms who provide investment advice to clients must possess appropriate knowledge to perform their duties, and should be required to take at least 35 hours of Continuing Professional Development per year. Such ongoing training and development of knowledge are particularly important given the complexity and continuous innovation of financial products. Member States should be required to put in place mechanisms to effectively control and assess the knowledge of insurance intermediaries and their employees, based on at least 35 hours of CPD per year. Member States should require that the successful completing of the training and development requirement is proven by obtaining a certificate. It is worth noting that such requirements already exist under the recently implemented under Article 10(2) of the Insurance Distribution Directive, and should also be extended to investment firms under MiFID II.

However, higher professional qualifications do not automatically translate into improved conduct of business, and a ban on inducements remains necessary to ensure that advisers deliver trustworthy investment advice to their clients.

52. Would you see merit in setting out an EU-wide framework for such a certification based on an exam?

BEUC believes that continuous or on-going professional development should be required for financial advisers to increase the quality of financial advice delivered to consumers (see also Question 51). There is merit in setting up a framework for such a certification based on an exam, which could be done at the European level or the national level. Due to the national specificities of investment markets, there could be merit in requiring certification to be done at the national level.

54. Are taping and record-keeping requirements necessary tools to reduce the risk of products mis-selling over the phone?

Yes. Taping requirements and record-keeping requirements are necessary to reduce the risk of products mis-selling over the phone. Record-keeping arrangements give insights into why an investment decision was made and why a specific advice was given to a client. This could be important information in the event of a dispute arising between the client and the firm.