

The Consumer Voice in Europe

## PUBLIC CONSULTATION ON A RETAIL INVESTMENT STRATEGY FOR EUROPE

BEUC response



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## Why it matters to consumers

Consumers often rely on financial advice when investing into investment funds, life insurance policies or pension products. Unfortunately, the current legal framework governing financial advice in the EU does not adequately protect them. The low quality of financial advice has been documented widely, and the investment recommendations given by financial advisers are often not in the best interest of their clients. The payment of inducements by fund managers and life insurers to financial advisers leads to conflicts of interests that have played a key role in many recent mis-selling scandals. The EU should implement an EU-wide ban on the payment of inducements to financial advisers, modelled on similar reforms already implemented in the UK and the Netherlands.

## Summary

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BEUC welcomes this opportunity to provide input to the European Commission's public consultation on its Retail Investment Strategy for Europe. Efforts to increase the participation of retail investors into capital markets must be underpinned by stronger efforts to ensure that consumers can have confidence in the financial advice that is given to them. At the same time, consumers are also becoming increasingly more aware of the serious environmental, social and economic risks that are arising from climate change, and further measures are needed to help consumers when choosing between sustainable financial products. We offer the following main recommendations to the European Commission for its Retail Investment Strategy:

**Banning the payment of inducements:** Commission-based financial advice, where advisers are remunerated by product manufacturers for recommending specific financial products to consumers, puts a conflict of interest at the heart of advice. The **payment of inducements** to advisers have played a key role in many recent [mis-selling scandals](#) and leads to **biased financial advice**. To ensure that advice to consumers is in the best interest of clients, **the payment of inducements for advice on retail investment products should be banned.**

Studies carried out in the UK and the Netherlands show that the commission bans in these countries have reduced conflicts of interests for financial advisers, and encouraged the distribution of simpler and lower-cost investment products to consumers. For instance, a [study](#) by the UK Financial Conduct Authority (FCA) found that while as much as 60% of British fund savings were injected into the most expensive funds prior to the UK inducement ban, this proportion had fallen to 20% almost two and half years after the ban came into place. In the absence of a full ban, BEUC supports several measures to improve outcomes for consumers:

- Full alignment between inducement rules under MiFID II and the Insurance Distribution Directive.
- Stricter enforcement and enhanced supervisory convergence of the quality enhancement criteria, including a requirement for ESMA to carry out a mandatory peer review into the quality enhancement rules under MiFID II.
- A ban on the payment of inducements in case of execution-only sales.

**Training and qualification requirements for financial advisers:** Financial advisers should be adequately trained in order to be able to give suitable investment advice to consumers. BEUC supports mandatory minimum professional qualification requirement for intermediaries providing financial advice. Financial advisers will soon also be required by EU law to assess the sustainability preferences of clients when giving financial advice. However, research shows that most **financial advisers are currently untrained about sustainability issues**, despite these looming rule changes. BEUC believes that all financial advisers should be adequately trained and knowledgeable about sustainability matters, and **ESG training should be mandatory for all advisers under the IDD and MiFID II**. In addition, the European Supervisory Authorities should be required to develop guidance and/or template questionnaires to assist advisers in adequately assessing the ESG preferences of their clients.

**Better sustainability disclosures:** There is a significant need to improve sustainability disclosure in the Key Information Documents (KIDs) that are provided to retail investors. All retail investment products, including investment funds, pension products and life insurance policies should be required **to disclose in a simple and standardised way how sustainable they are to retail investors**. For example, simple disclosures could provide an indication about whether the fund is aligned with international climate scenarios such as a Paris-compliant 1,5°C or well below 2°C pathway, or is heading towards climate chaos above +4°C. Alternatively, a coloured rating system similar to the well-known energy label (where a dark green category A is the most sustainable, while a red G category is considered the least sustainable) should in future be provided to consumers when taking investment decisions.

## 1. General questions

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

No. The current retail investor protection framework does not sufficiently empower and protect retail investors when investing into capital markets. In 2018, BEUC launched a [campaign](#) on The Price of Bad Advice, a web-map of mis-selling scandals to have affected European consumers in the last fifteen to twenty years. Our web-map demonstrates the continuing inadequacy of financial advice in the EU, and the need introduce further reforms to ensure financial advice is trustworthy and fair. The EU should introduce an EU-wide ban on the payment of inducements to financial advisers for advice on retail investment and complex financial products, as already implemented in the United Kingdom and the Netherlands.

### **1.2. 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). Are the existing limitations justified, or might they unduly hinder retail investor participation in capital markets**

The suitability rules and appropriateness requirements under MiFID II aim at protecting investors from investing into financial products that are either not suitable for them, or that are too complex for them. We support these rules and believe that they should be reinforced (for more on this, please see our responses in Section 6).

## 2. Financial literacy

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### **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.**

Financial services products are often complex, and most consumers struggle with the basics of retail finance. It is tempting to assume that the remedy to a lack of financial literacy should be more and better financial education for consumers. However, research<sup>1</sup> shows that the effectiveness of financial education in having lasting effects on the knowledge (and especially the behaviour) of consumers is often limited at best. In particular, psychology and emotions (rather than knowledge) are often a main factor driving consumer decision-making in retail finance. Consumers frequently focus on inappropriate information when taking financial decisions, or are distracted by too much information and choice when taking investment decisions, or may be unaware about the conflicts of interests at play in advice settings. For other consumers, financial education appears to increase confidence, without improving ability, leading to potentially worse financial decisions.

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<sup>1</sup> Financial Services Authority, 'Financial Capability: A behavioural Economics Perspective', <https://www.fca.org.uk/publication/research/fsa-crpr69.pdf>

Personal education is not the solution to structural issues in the way that financial products are marketed and sold to consumers, and the incentives for advisers must be changed to ensure they are aligned with those of the consumer. The key task for policymakers should be to focus on **'changing the offer, not the consumer'**<sup>2</sup>, and decisions in financial services should be made easier by (i) promoting product simplicity, including the use of default option (ii) nudging consumers in the right direction (iii) banning toxic financial products that give rise to investor protection concerns (iv) increasing access to independent advice and financial guidance.

### 3. Digital innovation

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#### **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.)?**

The use of data and technology is changing how financial markets work for firms and consumers. The Payment Services Directive (PSD2) first introduced a legal environment enabling consumers to consent to third parties accessing their payment account information and established clear technical rules for accessing this consumer data. However, the scope of PSD2 is currently limited to payment accounts, and does not cover savings accounts, investment accounts, pension savings or life insurance products.

BEUC believes that an Open Finance approach to retail investment could make it easier for consumers manage their finances and to compare price and product features associated with different retail investment products, in turn improving competition among financial services providers. Open Finance initiatives could also lead to the development of new services that provide information about a consumer's financial situation (such as their level of savings, their current pension accrual, etc.), reducing the need and time for financial advisers to understand a consumer's financial situation, and thereby helping consumers to receive more tailored financial advice.

However, new risks could emerge for consumers, including concerns related to data protection and privacy. Extending Open Banking principles beyond payment accounts should only be considered if it is accompanied with strong consumer safeguards (for our full recommendations see our [position paper](#) on Open Banking, our [consultation response](#) to the EU's Digital Finance Strategy, and our consultation response to EIOPA's [Discussion Paper](#) on Open Insurance).

An EU-wide Open Finance framework with data sharing based on consent should empower consumers to access better financial products and more easily switch between financial services providers, including to services offered by new FinTech and BigTech providers. But in exchange for establishing such an EU-wide data sharing framework, some banks and financial institutions are calling for 'reciprocal' data access to the non-financial data held by big tech platforms (such as a consumer's search history, location data, or other personal information). BEUC firmly opposes<sup>3</sup> proposals to require reciprocal data access by financial services firms to the personal (non-financial) data that BigTech firms hold on consumers.

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<sup>2</sup> BEUC, 'Finance: when more education isn't the answer', <https://www.beuc.eu/blog/finance-when-more-education-isnt-the-answer/>.

<sup>3</sup> BEUC, 'Making Open Finance consumer-friendly', <https://www.beuc.eu/publications/beuc-x-2020-054-making-open-finance-consumer-friendly.pdf>.

### **3.2. Should the information available in various pre-contractual disclosure documents be machine-readable?**

Yes.

In the field of retail investment, applicable EU legislation does not currently require pre-contractual documents provided to consumers (such as the PRIIPs KID) to be machine-readable. While PRIIPs KIDs are publicly available documents, there is currently no obligation for such information to be provided to consumers in a centralised place. The documents are generally also published in a PDF format, making it difficult for financial supervisors or other interested stakeholders to extract information from them and challenging to use in a supervisory context. The development of machine-readable Key Information Documents (KIDs) could support market monitoring from a conduct of business perspective. The European Securities and Markets Authority (ESMA) recently published a study<sup>4</sup> into the potential SupTech applications associated with analysing PRIIPs KID information. The study includes a recommendation that “when a law requires the widespread production of documents, it is essential that these be made available in a flexible format such as open document format, even if in addition to PDF.” The creation of machine-readable PRIIPs KID documents could also make it easier for third parties to develop online comparison tools for consumers, which in turn could assist consumers in making informed investment choices.

### **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?**

Social media platforms are increasingly used as vehicles to disseminate investment related information, and there is evidence that certain groups of consumers increasingly rely on such information when taking investment decisions. Consumer organisations and financial supervisors (including ESMA<sup>5</sup>) have warned consumers from relying on unregulated investment advice offered through social media platforms. Please refer also to our answer in Question 3.9.

### **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. Retail investment products are increasingly marketed towards investors through online platforms towards ordinary investors, including potential high-risk investments that are not the most appropriate for many consumers. For instance, in 2021, the UK Financial Conduct Authority published [research](#) findings showing how high-risk investment products, such as crypto-currencies, speculative mini-bonds or other high-risk products are often targeted towards consumers through online adverts and social media. There is evidence, that younger consumers are more likely to consider taking out such high-risk investments, prompted in part by the accessibility of new investment apps. However, many of the products promoted to consumers through online platforms may not always be the most suitable for consumers. According to the FCA’s research findings, “those with less than three years’ experience are more than twice as likely [compared to more experienced investors] to rely on YouTube or social media for research or finding investment opportunities.”

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<sup>4</sup> ESMA, ‘ESMA Report on Trends, Risks and Vulnerabilities’, [https://www.esma.europa.eu/sites/default/files/library/esma50-165-1524\\_trv\\_1\\_2021.pdf](https://www.esma.europa.eu/sites/default/files/library/esma50-165-1524_trv_1_2021.pdf), pages 93-105.

<sup>5</sup> ESMA, ‘Episodes of very high volatility in trading of certain stocks’, [https://www.esma.europa.eu/sites/default/files/library/esma70-155-11809\\_episodes\\_of\\_very\\_high\\_volatility\\_in\\_trading\\_of\\_certain\\_stocks\\_0.pdf](https://www.esma.europa.eu/sites/default/files/library/esma70-155-11809_episodes_of_very_high_volatility_in_trading_of_certain_stocks_0.pdf).

In 2020, the UK Financial Conduct Authority<sup>6</sup> permanently banned the mass marketing of speculative mini-bonds through online channels, following a series of scandals that left ordinary investors £1bn out of pocket. The ban was spurred by the case of London Capital and Finance (LCF), which issued mini-bonds to consumers by offering very tempting rates of return. According to our member Which?<sup>7</sup>, these speculative mini-bonds were often promoted to consumers through online platforms. The firm went into administration in January last year and the collapse saw nearly 12,000 people lose £236m. Mini-bonds allow small firms to easily raise money from ordinary investors, who are often attracted to investors in these financial instruments due to the promise of higher returns. However, ordinary savers frequently do not understand the risks involved with these instruments, and misleading practices by firms meant that many ordinary consumers were not aware that their investments were not protected and that they could lose all of the money they invested.

In addition, increasingly frauds and online investments scams are marketed through online platforms to consumers. For instance, Which? has found evidence<sup>8</sup> that search engines such as Google and Bing routinely advertise investment scams through their platforms, and that online platforms fail to properly verify or vet the promoters of financial products and services. Investors must be better protected online, and online platforms should have a legal obligation for preventing fake and fraudulent content from being marketed on their platforms. Which? has called for stricter measures to be introduced under the UK's Online Safety Bill, including requiring online platforms to identify, remove and prevent fake and fraudulent content from being hosted on their sites. BEUC supports a new requirement under the Digital Services Act (DSA) for online platforms to "know your business customer" and have greater traceability of the products and services offered on platforms, introducing for instance a requirement for platforms to regularly and randomly check and stop fraudulent companies from using their services to sell and promote illegal and unsafe products to consumers.<sup>9</sup> This requirement should also apply to financial services products that are marketed through online media platforms to consumers.

### **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?**

No, the rules need to be updated. Retail investment products (including complex products) are increasingly marketed towards consumers online, and EU rules should be updated to ensure that consumers are adequately protected. The appropriateness rules under MiFID II should be strengthened (see our responses in Section 6).

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<sup>6</sup> Financial Conduct Authority, 'FCA confirms speculative mini-bond mass-marketing ban', <https://www.fca.org.uk/news/press-releases/fca-confirms-speculative-mini-bond-mass-marketing-ban>.

<sup>7</sup> Which?, 'FCA permanently bans mini-bond ads: are investors still at risk of losing money?', <https://www.which.co.uk/news/2020/06/fca-permanently-bans-mini-bond-ads-are-investors-still-at-risk-of-losing-money/>.

<sup>8</sup> Which?, 'Investment scammers run riot on search engines, while victims pay the price', <https://www.which.co.uk/news/2021/03/investment-scammers-run-riot-on-search-engines-while-victims-pay-the-price/>.

<sup>9</sup> BEUC, 'The Digital Services Act Proposal', [https://www.beuc.eu/publications/beuc-x-2021-032\\_the\\_digital\\_services\\_act\\_proposal.pdf](https://www.beuc.eu/publications/beuc-x-2021-032_the_digital_services_act_proposal.pdf).



## 4. Disclosure requirements

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### 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.

Further improvements are needed to the pre-contractual information provided to retail investors in the PRIIPs KID. We call for the following changes:

Information on the sustainability-aspects of the product: There is a significant need to improve sustainability disclosure in the Key Information Documents (KIDs) that are provided to retail investors. Concise disclosure documents (such as the PRIIPs KID and UCITS KIID) currently lack standardised information about the sustainability aspects of the product, making it difficult for consumers to easily compare how sustainable their investment products are. All retail investment products, including investment funds, pension products and life insurance policies should be required to disclose in a simple and standardised way how sustainable they are to retail investors (see also our response to question 4.8).

Past performance: Our member organisations have identified issues with the use of future performance scenarios in PRIIPs KID documents. In 2018, following complaints from consumers, vzbv carried out a study<sup>10</sup> of PRIIPs offered to consumers, and found that the future performance scenarios provided in KID documents were often highly misleading, predicting (highly) unreasonable performance predictions that consumers were unlikely to be able to obtain with the product. Overly optimistic future performance scenarios could mislead consumers into take wrong investment decisions. Ideally, past performance information should be provided to consumers in the PRIIPs KID document, with a clear and effective warning that past performance information is not a reliable predictor of future performance. If future performance scenarios are maintained in the PRIIPs KID document, then the methodologies for calculating these scenarios should be revised, and/or industry

Costs and charges: There is mounting evidence, drawing from behavioural economic studies, that consumers struggle to understand the costs of investment products and the impact that these have on investment returns. For instance, the UK's Financial Conduct Authority's (FCA) recently completed market study<sup>11</sup> into the asset management industry, found evidence that consumers "rarely engage with [the] charges associated with fund investment." The study also found that "investors' awareness and focus on charges is mixed and often poor," with nearly half of retail investors not even aware that they are paying fund charges for their asset management services.

According to FCA analysis of browsing data from online investment platforms, very few investors seek out information related to costs. Of all the visits to the website to look at funds, fewer than 9% of visitors looked for charges' information, while under 3% look at documents (including the KID). A lack of understanding about the fees and costs associated with investing harms retail investors in two ways: directly by causing savers to hold poorer-value-for money products, and indirectly by reducing competition between asset managers to lower charges over time. Indeed, the FCA's study confirms that there is evidence of "weak price competition in a number of areas of the asset management industry" – firms "do not typically compete on price, particularly for retail active asset management services." The FCA's study meanwhile also found that there is "no clear relationship

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<sup>10</sup> vzbv, 'Performance-Szenarien in Basisinformationsblättern nicht nachvollziehbar', <https://www.vzbv.de/pressemitteilungen/performance-szenarien-basisinformationsblaettern-nicht-nachvollziehbar>.

<sup>11</sup> Financial Conduct Authority, 'Asset Management Market Study', 2018, <https://www.fca.org.uk/publication/marketstudies/ms15-2-3.pdf>.



between price and performance – the most expensive funds do not appear to perform better than other funds before or after costs.” In fact, “there is some evidence of a negative relationship between net returns and charges.”

Better transparency about the impact that costs can have on net returns could benefit consumers, and tools should be made available to consumers in the PRIIPs KID and/or effective cost warnings should be included in all investment documents to help them understand how charges might impact returns.

#### **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?**

The language used in PRIIPs KID document is often not simple enough for consumers to adequately understand the products being sold to them. In 2021, the Belgian FSMA carried out an investigation<sup>12</sup> of the PRIIPs KID documents given to Belgian consumers for unit-linked life insurance products and structured products and found that the quality of the documents was often insufficient. Providers often did not use clear and explainable language, impeding consumer’s ability to understand the products. The FSMA found that the language used in PRIIPs KIDs can be too technical, and that there is often a lack of clear information for consumers about the characteristics of the product and its risk-profile. Furthermore, the letter-type and font used in PRIIPs KID documents is often too small, making it difficult for consumers to read the document. The FSMA published a feedback statement<sup>13</sup> with clear recommendations on how industry can improve consumer-facing information provided through PRIIPs KID documents, including a recommendation to avoid using technical jargon.

#### **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 PRIIPs KID document should be provided as soon as possible and without any delay to retail investors prior to making an investment decision. Too often, pre-contractual information is provided at a late stage during advice (i.e. just before the conclusion of the contract), leaving no time for consumers to understand the key features outlined in PRIIPs KID document, or to compare it with other similar products available on the market. For this reason, we also believe that all financial intermediaries should be required to publish (on the public part of their website, in a prominent way) all of the relevant KID documents for the products that they offer to consumers. Other approaches, such as setting up independent comparison tools for consumers, or developing an EU-wide database with easy access to PRIIPs KID documents for consumers would also be worth considering.

As demonstrated by the European Commission’s Retail Distribution Study<sup>14</sup>, 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 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

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<sup>12</sup> FSMA, ‘De FSMA verwacht van de sector een verbetering van de kwaliteit van de essentiële-informatiedocumenten die aan de retailbeleggers worden verstrekt’, <https://www.fsma.be/nl/news/de-fsma-verwacht-van-de-sector-een-verbetering-van-de-kwaliteit-van-de-essentiele>.

<sup>13</sup> FSMA, ‘Feedback statement over de conclusies van een kwalitatieve controle van PRIIP’s KIDs’, [https://www.fsma.be/sites/default/files/media/files/2021-06/fsma\\_2021\\_13\\_nl.pdf](https://www.fsma.be/sites/default/files/media/files/2021-06/fsma_2021_13_nl.pdf).

<sup>14</sup> European Commission, ‘Study on the distribution systems of retail investment products’, [https://ec.europa.eu/info/publications/180425-retail-investment-products-distribution-systems\\_en](https://ec.europa.eu/info/publications/180425-retail-investment-products-distribution-systems_en), p. 78.

documents). This in turn increases efforts for retail investors to compare between 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.

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

	Not relevant	Relevant, but not crucial	Essential
Product objectives / main product features			X
Costs			X
Past performance			X
Guaranteed returns			X
Capital protection			X
Forward-looking performance expectation	X		
Risk			X
Other			X

**Please specify to what other type(s) of product information you refer in your answer to question 4.8:**

Sustainability information

**Please explain your answer to question 4.8:**

There is a significant need to improve sustainability disclosure in the Key Information Documents (KIDs) that are provided to retail investors. All retail investment products, including investment funds, pension products and life insurance policies should be required **to disclose in a simple and standardised way how sustainable they are to retail investors**. For example, simple disclosures could provide an indication about whether the fund is aligned with international climate scenarios such as a Paris-compliant 1,5°C or well below 2°C pathway, or is heading towards climate chaos above +4°C. Alternatively, a coloured rating system similar to the well-known energy label (where a dark green category A is the most sustainable, while a red G category is considered the least sustainable) should in future be provided to consumers when taking investment decisions. Similarly, in 2021, the German government published a report<sup>15</sup> on sustainable finance, with a recommendation calling for the EU to develop a 'sustainability traffic light' for all retail investment products. The traffic light system would give quick and easy information to consumers to assess and take into account sustainability information when taking out retail investment products.

<sup>15</sup> Die Bundesregierung, 'Deutsche Sustainable Finance-Strategie', [https://www.bundesfinanzministerium.de/Content/DE/Downloads/Broschueren\\_Bestellservice/deutsche-sustainable-finance-strategie.pdf?\\_\\_blob=publicationFile&v=6](https://www.bundesfinanzministerium.de/Content/DE/Downloads/Broschueren_Bestellservice/deutsche-sustainable-finance-strategie.pdf?__blob=publicationFile&v=6).

#### **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?**

Ex-post information is very useful for consumers, and should be provided to all consumers investing into retail investment products.

MiFID II requires providers to inform their customers of the properties and costs of the products they sell. This information comes at two times: before the sale is concluded (ex-ante) and at regular intervals, once a year – to inform consumers about the costs their financial market activity has incurred in the past year (ex-post). We support the cost transparency measures under MiFID II, including the requirement to disclose inducements to consumers (on an ex-ante and ongoing on ex-post basis). Despite the benefits of this information regime, further improvements could be useful, and the phrasing used in cost disclosure documents should be simplified for consumers, avoiding the use of jargon and using simpler language. We support the Technical Advice<sup>16</sup> given by ESMA to the European Commission that measures are needed to improve client's understanding of inducements, including by:

- **Introducing an obligation to provide in all inducement disclosures an explanation, in layman's terms, what inducements are.** Such an explanation should be sufficiently clear and rely on simple language to ensure that all retail clients understand the nature and impact of inducements.
- **Clarifying that ex-ante and ex-post inducement disclosures should always be done on an ISIN-by-ISIN basis.** This would allow clients to more easily see where the firm might be more incentivised to recommend and sell a certain product (i.e. showing more clearly to consumers on which products the firms make the most money).

For further recommendations on how to enhance cost disclosures for consumers under MiFID II, please read vzbv's [position paper](#).

#### **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?**

The language used in pre-contractual information should be simplified and written from the consumer perspective. All phrasing in consumer information documents should be re-evaluated, and the use of technical jargon and/or legalistic language should be avoided as much as possible. The language used should be easily comprehensible to laypeople, who will often be reading pre-contractual documents with limited time at their disposal or in sales situations. Empirical testing and consumer focus groups should be carried out to find out what wordings would be most likely to be effective in conveying the information provided in pre-contractual documents.

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<sup>16</sup> ESMA, 'Final Report with Technical Advice on the impact of inducements', [https://www.esma.europa.eu/sites/default/files/library/esma35-43-2126\\_technical\\_advice\\_on\\_inducements\\_and\\_costs\\_and\\_charges\\_disclosures.pdf](https://www.esma.europa.eu/sites/default/files/library/esma35-43-2126_technical_advice_on_inducements_and_costs_and_charges_disclosures.pdf).

## 5. The PRIIPS Regulation

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

It can be challenging for retail investors to find PRIIPs KID documents on the intermediaries of website (see also our answer to question 4.4). Often these documents may not be accessible on the public-facing part of the financial services provider website (i.e. you have to be a client in order to get access to PRIIPs KID documents), or are not easily accessible (e.g. consumers need to spend significant time searching the website in order to find the relevant pages for these documents). Requiring PRIIPs KIDs to be easily uploaded on an EU-wide database or national database, or requiring these documents to be made available in a dedicated section on manufacturers and distributors website could help to improve access to these documents for consumers. A similar database could be developed for PEPP KID documents as soon as these products become available for consumers.

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

	Yes	No	Don't know / No opinion
Requiring PRIIPs KIDs and PEPP KIDs to be uploaded onto a searchable EU-wide database	X		
Requiring PRIIPs KIDs and PEPP KIDs to be uploaded onto a searchable national database	X		
Other	X		

**Please specify to what other improvement(s) you refer in your answer to question 5.2.1:**

Providing independent comparison tools for consumers

**Please explain your answer to question 5.2.1:**

Independent comparison tools can also give retail investors an overview of the available product providers on the market (including their key cost, risk and return profiles), and should ideally also give information on the sustainability-aspects of investment products. In 2020, the European Commission published a [study](#) on the potential development of online tools and services that could help consumers to have access to more transparent, comparable and independent information when taking investment decisions, including potential policy recommendations to make independent comparison tools more widely available to consumers. The European Commission should also consider extending support to initiatives that help consumers to compare the sustainability practices of their financial institutions, including for retail investment products. For instance, the [Fair Finance Guide](#) is an example of a project implemented in several EU countries that promotes consumer awareness by ranking financial institutions according to their sustainability criteria. It is currently active in five European countries ([Belgium](#), [Germany](#), the [Netherlands](#), [Norway](#) and [Sweden](#)), while several other European countries have expressed interest in starting Fair Finance Guides in their countries.

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. The European Supervisory Authorities regularly publish reports into the cost and performance of retail investment products. However, they often face considerable difficulties in gathering and aggregating data on the products under their supervision, and need to rely 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.).

### **5.10 Should the scope of the PRIIPS Regulation be extended to other products?**

Yes. There are currently no EU disclosure requirements for personal pension products offered to consumers. The PRIIPs Regulation should be extended to personal pension products to ensure that consumers have access to concise comparable pre-contractual information when taking out a personal pension product.

## **6. Suitability and appropriateness assessment**

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### **6.2 Can you identify any problems with the suitability assessment?**

Yes.

Mystery shopping exercises by our members show that the **investment advice that is given to consumers is often not in line with the risk profile and/or the investment horizon of the investor**, and that investment recommendations given by advisers often could not be considered suitable (see our [position paper](#) on the Price of Bad Advice for a list of mystery shopping exercises carried out by our members). Our members mystery shopping exercises demonstrate that advisers are often primarily focused on selling their products, rather than taking the interest of the consumer on board. The advice that is given to clients is not always necessarily in their best interest, and it is common for consumers to receive advice to buy very expensive products that generate higher commissions for the adviser.

To fix this problem, BEUC favours a ban on the payment of inducements. In the absence of a ban, we believe that the MiFID II requirement on the assessment of suitability should be significantly strengthened. As recommended by the High Level Forum on the Capital Markets Union, the European Commission should introduce an obligation in relevant sectorial legislation (IDD, MiFID II) for distributors to inform clients of the existence of third-party products. All investment firms, including those operating in closed-architecture models (offering only in-house products), should be required to assess their products against third-party products, and should provide details of such an assessment in the suitability report, including informing the client of whether less costly and/or less complex alternatives are available.

Lastly, BEUC believes that **the level of debt that consumers hold should be a key criterion that is considered during the suitability assessment by advisers.** A mystery shopping exercise<sup>17</sup> by our Norwegian member, the Norwegian Consumer Council, revealed that only half of financial advisers asked consumers about their level of credit card or consumer debt, even though this is a key criterion that advisers should take into consideration when giving investment advice. If a consumer has significant levels of debt (in particular, expensive credit card debt), then advisers should generally always recommend the consumer to repay the debt, before considering investing into stocks or investment funds. The Covid-19 pandemic has also had a significant impact on the over-indebtedness and/or the financial situation of certain groups of households. A criterion should be added to the suitability assessment to require advisers to assess the level of existing consumer debt when giving investment advice.

To ensure that financial advice is in the best interest of clients, an EU-wide ban on the payment of inducements to financial advisers should be implemented. Studies by the UK FCA and the Dutch government in the wake of their inducement bans show a reduction in the conflicts of interests for financial advisers, and an increase in the quality of financial advice given to consumers (for our full recommendations read our answers to Section 8).

#### **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?**

The appropriateness test provides an important protection for consumers in the context of execution-only sales for complex financial products, requiring investment firms to ask clients for information on their knowledge and experience to assess whether the envisaged investment product or service is appropriate or not. Investment firms are required to issue a warning to the client in case the product is deemed inappropriate based on their knowledge and skill.

BEUC welcomes ESMA's recent consultation on implementing new guidelines<sup>18</sup> for the appropriateness test under MiFID II. When adopted, these guidelines should improve the way that investment firms carry out appropriateness tests with consumers. However, the European Commission should reflect if there are further ways to improve these rules:

- **The questionnaires designed to assess consumers knowledge about complex financial products are often inadequately designed.** Many investment firms often used standardized questionnaires in order to gather information on client's knowledge and experience. However, according to the Central Bank of Ireland<sup>19</sup> the questionnaires often fail to take into account the characteristics, risk or complexity of the proposed investment products, meaning that consumers are not adequately tested about their knowledge of the investment products in question.

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<sup>17</sup> Norwegian Consumer Council, 'The bank's advice can quickly become expensive', <https://www.forbrukerradet.no/siste-nytt/bankens-rad-kan-fort-bli-dyre/>.

<sup>18</sup> ESMA, 'ESMA consults on appropriateness and execution-only under MiFID II', <https://www.esma.europa.eu/press-news/esma-news/esma-consults-appropriateness-and-execution-only-under-mifid-ii>.

<sup>19</sup> Central Bank of Ireland, 'Thematic inspection of appropriateness under MiFID II', <https://www.centralbank.ie/docs/default-source/regulation/consumer-protection/compliance-monitoring/themed-inspections/stockbroking-investment-firms/thematic-inspection-of-appropriateness-under-mifid-ii.pdf>.

- **Risk warnings provided to consumers should be improved.** According to research by national competent authorities, including the UK's Financial Conduct Authority<sup>20</sup> and the Central Bank of Ireland<sup>21</sup>, the risk warnings that are provided to retail investors who fail appropriateness assessments are often inadequate. For instance, the UK's FCA found that prospective clients who failed the appropriateness assessment for entering into complex CFD products often easily over-rode risk warnings and proceeded to open account and enter into CFD transactions, despite the products being inappropriate for them. Risk warnings should be designed in a way to interrupt the trading process, and they should use clear language to communicate that a specific product or service is not appropriate for the consumer. Suggestions by the UK FCA include, for instance, introducing a mandatory cooling off period before a client can proceed with the transaction. The warnings used by firms should also advise the client that this product is too complex, and that the consumer may wish to seek financial advice before proceeding with their transaction.
- **The appropriateness should be mandatory for all complex products.** There is a broad exception under Article 25(3) sub-paragraph 3 of MiFID II allowing investment firms to provide a warning to clients if they were not able to obtain the necessary information to assess the client's appropriateness. According to the Dutch AFM<sup>22</sup>, investment firms often provide this warning by default to avoid the hurdle of having to assess the client's relevant knowledge about the product. Investment firms should be obliged to carry out the appropriateness test for all complex products.

In addition, the Financial Conduct Authority has published a [discussion paper](#) looking at strengthening the UK's financial promotion rules for high-risk investments. The FCA is consulting on several potential policy remedies, which may be relevant for upgrading the appropriate rules under MiFID II, including introducing:

- More effective risk warnings for potential high-risk investments.
- Requiring consumers to watch 'just in time' education videos on the risks associated with certain types of high-risk investments.
- Requiring consumers to demonstrate sufficient knowledge about financial products, for example by passing an online test.

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<sup>20</sup> FCA, 'CFD firms fail to meet our expectations on appropriateness assessments', <https://www.fca.org.uk/publications/multi-firm-reviews/cfd-firms-fail-expectations-appropriateness-assessments>.

<sup>21</sup> Central Bank of Ireland, 'Firms must enhanced measures to protect consumers when selling complex investment products', <https://www.centralbank.ie/news/article/firms-must-enhance-measures-to-protect-consumers-when-selling-complex-investment-products-central-bank-of-ireland>.

<sup>22</sup> Dutch AFM, 'AFM: Impact analysis MiFID II', <https://www.afm.nl/en/nieuws/2020/mei/risico-mifid2>.



## 8. Inducements and quality of advice

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

	1 (not at all effective)	2	3	4	5 (very effective)
Ensuring transparency of inducements for clients		X			
An obligation to disclose the amount of inducement paid			X		
Allowing inducements only under certain conditions, e.g. if they serve the improvement of quality			X		
Obliging distributors to assess the investment products they recommend against similar products available on the market in terms of overall cost and expected performance				X	
Introducing specific record-keeping and reporting requirements for distributors of retail investment products to provide a breakdown of products distributed				X	
Introducing a ban on all forms of inducements for every retail investment product across the Union					X

**Please explain your answer to question 8.1:**

Commission disclosure: Prior to the commission bans, the UK and the Netherlands introduced inducement disclosure rules, but found that these rules had limited impact on consumer’s decision making. While ensuring inducement transparency is an important first step, disclosure will not guarantee that consumers will act on the information that is presented to them, and **many consumers will not fully understand how the inducements could influence the financial advice process or the types of investment products that are recommended to them.** Research by the Dutch government found that most consumers who purchased complex investment products **rarely considered the inducement information that was provided to them during the financial advice process.** Financial supervisors too often rely on disclosure to help consumers to make good financial decisions, even if research<sup>23</sup> shows that disclosures often have a very limited impact in terms of influencing consumer behaviours.

Quality enhancement rules: Under MiFID II, investment firms are required to provide a quality enhancing service to their client, and inducements are only permitted to be paid to the adviser where these improve the relevant service for the client. Unfortunately, studies by several national competent authorities show that **these requirements have been implemented and supervised in different ways in EU Member States.** ESMA’s Technical Advice<sup>24</sup> on inducements also notes that many respondents to its consultation on this topic reported that “competent authorities have differing interpretations of the quality enhancement criteria for acceptable inducements.” For instance:

- A recent Thematic Review<sup>25</sup> by the Danish Financial Supervisory Authority found that the quality enhancement rules were in many cases not appropriately applied by investment firms. The Thematic Review showed that Danish financial advisers often regarded certain general services that are widely available to all banking clients (such as general newsletters sent to all clients or access to online banking accounts) as ‘quality enhancing’. In addition, some of the quality enhancing services provided to consumers were not considered relevant by the Danish FSA for the purpose of the quality enhancement test (for instance, offering a physical advisory meeting to an execution-only client, who has already chosen to forego advice should not be relevant for the purpose of meeting the quality enhancement criterion).
- In Germany, according to the [national law](#) implementing the EU quality enhancement rules, having a “widespread network of branch offices” (including in rural areas) is sufficient to meet the requirements of the quality enhancement test. In 2017, the Bundestag scientific committee came to the conclusion<sup>26</sup> that the gold-plating of the German national law is in violation with the requirement set out in the EU law (i.e. European Commission Delegated Directive 2017/953, which specify the quality enhancement criteria).
- In Norway, the Norwegian supervisor carried out a [survey](#) of how investment firms were complying with the detailed requirements of the quality enhancement rules, and [found](#) that many firms were not properly applying the rules. Following the survey, the Norwegian financial supervisor stepped up supervision and enforcement of the MiFID II quality enhancement rules (under MiFID II, investment firms are not

<sup>23</sup> ASIC and Dutch AFM, ‘Disclosure: Why it shouldn’t be the default’, <https://asic.gov.au/regulatory-resources/find-a-document/reports/rep-632-disclosure-why-it-shouldn-t-be-the-default/>.

<sup>24</sup> ESMA, ‘ESMA’s Technical Advice to the Commission on the impact of the inducements and costs and charges disclosure requirements under MiFID II’, <https://asic.gov.au/regulatory-resources/find-a-document/reports/rep-632-disclosure-why-it-shouldn-t-be-the-default/>.

<sup>25</sup> Finanstilsynet, ‘Thematic survey of quality improvement services for investment clients’, <https://www.finanstilsynet.dk/Nyheder-og-Presse/Pressemeddelelser/2019/Temaundersogelse-af-kvalitetsforbedrende-services-til-investeringskunder-050219>.

<sup>26</sup> Deutscher Bundestag, ‘Zur geplanten Neufassung von § 6 Abs. 2 WertpapierdienstleistungsVerhaltens- und Organisationsverordnung (WpDVerOV) und ihrer Vereinbarkeit mit Unionsrecht’, <https://www.bundestag.de/resource/blob/507552/e14b5acd6376ae5d432c0de4888b131a/PE-6-018-17-pdf-data.pdf>.

allowed to receive and retain inducements if they do not provide a quality enhancing service to their client). Enhanced enforcement of the quality enhancement provisions under MiFID II has led to significant changes in the way that investment firms charge clients for advice in Norway. Following the [review](#) by the Norwegian FSA, many investment firms stopped accepting and retaining inducements, and began to charge direct fees to clients. According to the latest [figures](#):

- 70% of investment firms in Norway now charge direct fees to clients (and no longer receive remuneration in the form of inducements from product suppliers);
- 16% of investment firms lowered commissions;
- only 14% continue to receive and retain commissions.

In the absence of a full ban on the payment of inducements under MiFID II, stricter enforcement of the quality enhancement rules under MiFID II is necessary by national competent authorities, and a **mandatory peer review should be carried out by ESMA to enhance supervisory convergence** in this area. In addition, we believe that all investment firms should be required to maintain on their website (easily accessible and updated on a continuous basis) the types of quality enhancing services that clients are benefiting from when receiving financial advice. Where firms do not provide quality-enhancing services to clients, firms should be prohibited from receiving inducements (as required under MiFID II) and move to a direct fee charging model for clients instead.

Record-keeping requirements: As recommended in ESMA's Technical Advice, stricter record-keeping requirements reporting the breakdown of products (e.g. in-house versus external products) which are distributed to clients could be helpful for financial supervisors to monitor the types of investment recommendations given to clients, and should be introduced under MiFID II.

Ban on inducements: An inducement ban would be the most effective measure to limit conflicts of interests in the financial advice that is given to consumers and help to ensure that advice is in the best interest of clients.

## **8.2 If all forms of inducements were banned for every retail investment product across the Union:**

### **What impact would this have on the availability of advice for retail investors?**

The introduction of a commission ban would require financial advisers to charge a separate fee for the cost of financial advice to clients, revealing the true cost of their services when providing financial advice. There are concerns that by making the cost of advice more transparent to consumers, that an advice gap could emerge for low-income consumers who may not be able to afford the cost of financial advice. Equally, there is a concern that certain consumers would be unwilling to pay upfront fees for advice and turn to execution-only channels when making investment decisions.

However, **government reviews by the UK and the Netherlands show that advice remains widely accessible for most consumers.** For instance, a government [review](#) by the Netherlands found that the inducement ban has not had a negative impact on the accessibility of financial advice, and concluded that most consumers are prepared to pay for advice if advisers are able to demonstrate their added value to the consumer. A [survey](#) carried out as part of the UK's Financial Advice Market Review (FAMR) found that the main reason for not taking advice "was not having a need for it, or deciding to make decisions on their own, rather than any explicit issues with accessibility." Indeed, evidence as part of the FAMR found that of consumers seeking financial advice, only 9% were concerned that they would not be able to afford to pay the adviser's charges, and only 0.5% said that they were unable to find an adviser willing or able to offer them advice. Since the

introduction of the Retail Distribution Review, the UK Financial Conduct Authority published [data](#) showing that the financial advice sector is continuing to deliver advice to consumers:

- The reported **number of adviser staff at financial advisers' firms increased by 3%** from 2016 to 2017, reaching 26,311 staff members. The number of intermediary firms increased from 4,970 in 2016 to 5,049 in 2017. With the number of firms steadily increasing in recent years by 10% since 2013.
- UK financial advisers' revenue and profits have been increasing, despite a fall in the revenue that they receive from commissions (firms in the UK continue to receive trail commissions for advice given to consumers prior to the RDR).
- There has **been a statistically significant increase in the number of people taking regulated financial advice since 2017, with an additional 1.3m people taking advice**. There was also an increase in the use of guidance services, and automated-advice services.

Advice can be expensive and is not always a cost-effective or appropriate option for all consumers, particularly those seeking help in relation to a smaller pot of money or with simpler needs. In the UK and the Netherlands, consumers not wishing to make their own financial decisions (through the execution-only channel) can continue to rely on robo-advice services at a low cost to help guide their investment decision needs. In order to address any potential concerns about any potential advice gap, EU Member States could also consider promoting complementary services for consumers to financial advice, such as [financial guidance](#).

Lastly, there are concerns that a ban on third-party commissions would reduce the incentive for banks or insurers to give advice about external third-party products (for which they used to receive inducements), and that this could lead to a decrease in open-architecture distribution models in the European Union (and conversely an increase in closed-architecture distribution models). However, as demonstrated by the European Commission's [Retail Distribution Study](#), in Europe, most banks tend in any case to offer mostly in-house investment products to their clients. Furthermore, in the UK, advisers who only provide in-house recommendations to clients are clearly required to clearly label their advice as 'restricted' to clients. UK financial advisers are [divided](#) between independent and restricted advisers:

- Independent advisers need to make recommendations based on products from all firms across the market and provide unbiased recommendations that meet the client's best interest.
- Advisers must label their services as restricted if the adviser only offers a restricted range of products to their clients, for instance if they only work with one product provider.

In the UK, BEUC's member organisations such as Citizens Advice generally [recommend](#) consumers to seek independent advice (and not restricted advice). Labelling advisers as 'restricted' would create a competitive advantage for banks and financial advisers that are actually independent and offer advice on products from the whole of the market (including external third-party products). Consumer organisations and financial supervisors should play a role in informing consumers about the differences between restricted and independent advice.

### **What impacts would this have on the quality of advice for retail investors?**

Government reviews of the inducement bans show that the quality of financial advice has increased for consumers in the UK and the Netherlands. Commission bans have also encouraged the distribution of simpler and lower-cost investment products to UK and Dutch consumers:

A 2014 [study](#) by the UK's Financial Conduct Authority reduced found that the UK inducement ban **reduced conflicts of interests and reduced product bias** for financial advisers. The study found that following the UK inducement ban, product manufacturers who sold lower or no-commission products were "competing on a more equal basis" with manufacturers who used to pay high commissions to intermediaries (advisors). For instance, tracker funds or passive investment funds (which used to pay out low or no commissions) attracted an inflow of investment following the UK inducement ban, as advisers began recommending products based on their merit, not for the commission they could attract. The FCA also [concluded](#) that the **commission ban led to a "shift in the dynamics of competition, with providers no longer competing via commission for advisers to sell their products."** In the past, financial advisers were keen to negotiate the most favourable distribution inducement with product manufacturers. However, following the commission ban, financial intermediaries (such as financial advisers and investment platforms) began negotiating lower annual management charges for their end-investors or choosing more cost-effective investment solutions for clients (such as passive investment funds).

In 2014, one year follow the entry into force of its inducement ban, the Dutch Authority for Financial Markets [concluded](#) **the inducement ban had improved financial advice outcomes** for consumers by encouraging distributors to recommend better quality and lower-cost investment products to consumers. At the end of 2014, the Dutch Authority for Financial Markets (AFM) drew its first lessons from the inducement ban, witnessing that the ban had led to an increased sensitivity of distributors to product quality: "Previously, [distributors] were keen to negotiate the most favourable distribution inducement, or retrocession. Indeed, the biggest distributors typically could extract higher inducements from asset managers than their smaller competitors. Since the inducement ban, necessarily distributors are trying to optimize their revenues in other ways. They are now focusing more on their customers, experimenting to find that mix of service concepts that best serves their customers' needs. Part and parcel of this new strategy are efficient as well as high quality investment funds. As we hear from the industry, this has fundamentally changed the discussions between asset managers and distributors."

For a full overview of the benefits associated with the UK and Dutch inducement bans on the quality of financial advice, please read our [position paper](#) on the Price of Bad Advice.

### **What impacts would this have on how much retail investors would invest in financial instruments?**

The payment of inducements to financial advisers have played a key role in many recent mis-selling scandals. According to the European Commission's 2018 [Consumer Markets Scoreboard](#), the Retail Investment Market is the second-worst performing market for consumers in the European Union. Consumer trust in financial advice has been severely shaken in the wake of mis-selling scandals across the EU, and **a lack of trust** in the financial services industry (i.e. a 'trust gap') **is one of the main barriers preventing consumers from seeking financial advice.**

An inducement ban should lead to higher levels of confidence in the quality of financial advice given to consumers. If consumers feel adequately protected and empowered, their willingness to seek financial advice and invest into capital markets would substantially increase. An inducement ban would also encourage the distribution of more efficient, cost-effective investment products to consumers, generating higher returns for investors, thereby encouraging investors to remain invested into capital markets.

#### 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.

An EU-wide ban on the payment of inducements should be implemented in the European Union. In the absence of a ban, inducement and consumer protection rules under the IDD and MiFID II should be aligned as much as possible, ensuring similar investor protection standards for insurance-based investment products (IBIPs) as are already applicable under MiFID II:

- **Disclosure:** Insurance intermediaries and undertakings should be required to disclose the nature and full amount of inducements received in relation to the insurance contract, as investment firms receiving inducements are already required to under MiFID II.
- **Quality enhancement:** Under the IDD, insurance intermediaries or undertakings are permitted to continue receiving inducements so long as these do not have a detrimental impact of the quality of the relevant service to the client. Under MiFID II, investment firms are permitted to continue receiving inducements, so long as these are designed so as to enhance the quality of the service provided to the consumer. The IDD and MiFID II rules should be aligned, and insurance intermediaries and undertakings receiving inducements should also be required to provide a quality-enhancing service to their clients.
- **Independent advice:** An independent advice regime should be introduced under IDD comparable to the current rules under MiFID II. Independent advisers under the IDD should not accept and retain fees, commissions or any other monetary benefits by any third parties for the advice provided to consumers. In addition, where advice is given independently, intermediaries should be required to assess a sufficiently large number of insurance products available on the market.

#### 8.5 How should inducements be regulated?

A ban should be implemented in all EU Member States for advice on retail investment and complex financial products. In the absence of a full ban, at the very least, inducements should be **banned in case of execution-only services under MiFID II** (where no investment advice is given to the client). Under MiFID II, investment firms can continue to receive inducements in the case of execution-only sales, as long as firms comply with the MiFID II quality enhancement criteria and the inducements are disclosed to the clients. However, in the UK and the Netherlands, the ban on inducements also applies in case of execution-only sales. The evidence shows that the fees that banks and investment platforms charge directly to investors are lower than they were prior to the commission ban:

For instance, in the Netherlands, according to a [speech](#) by Dutch AFM Board Member Theodor Kockelkoren, 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." Looking at the costs of execution-only services, in the Netherlands, some banks (like [ABN AMRO](#)) provide execution-only services for a 0.20% annual service fee. The Dutch bank [Rabobank](#) charges a 0.06% annual service fee.



In the UK, investment platforms offering execution-only services are no longer permitted to receive inducements from clients, and charge annual platform fees based the level of investment assets of the client (typically ranging between 0,15% and 0,45%).<sup>27</sup> These costs compare favourably compared to the level of inducements that execution-only platforms can typically still get for execution-only sales in European countries without an inducement ban (typically ranging between 0,45% to 1%).

In 2019, Canada [announced](#) that it would ban the payment of trailing commissions in case of execution-only sales. 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.”

Instead of complying with complicated quality enhancement requirements for execution-only sales under MiFID II, it would be easier to implement a simple ban in case of execution-only sales, and require intermediaries to charge a separate fee to the investor instead, one that is lower than the average commissions intermediaries receive for advice (given that the costs of executing orders on behalf of customers should be much lower for intermediaries compared to providing full-fledged advice). In addition, it would be significantly easier for retail investors to compare the costs of execution-only services between distributors, if they charged a single fee for execution-only sales (rather than often very different commission levels, which can diverge depending on the product, and which in many cases can often be very difficult to find on distributors websites unless you're a client).

### **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?**

According to our members<sup>28</sup>, zero-commission trading models are becoming increasingly more popular in the European Union, allowing consumers to trade at increasingly lower costs. However, consumers should be aware that there is no such thing as a ‘free lunch’, and that many of the zero-commission brokers offering services to retail clients often receive payments from third parties in order to execute orders (i.e. ‘payment for order flow’) which could generate a conflict of interest. Payment for order flow models can incentivise brokers to route clients orders to counterparties who are willing to pay higher commissions<sup>29</sup>, to the potential disadvantage of the consumers. Since brokerage platforms benefit from payments from third parties that execute their trades, brokers may also have very little incentive to respect their ‘best execution’ obligations under MiFID II. Lastly, payment for order flow models can also potentially decrease cost transparency for consumers.

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<sup>27</sup> Monevator, ‘Best trading platforms and stock brokers’, <https://monevator.com/compare-uk-cheapest-online-brokers/>.

<sup>28</sup> See for instance, Test Aankoop, ‘De Beursapp BUX Zero is geland in België’, <https://www.test-aankoop.be/invest/beleggen/aandelen/news/2020/08/bux-zero-app-applicatie-mobiel-aankoop-verkoop-aandelen-tracker-gratis-tarief-broker-nederlands>. Stiftung Warentest, ‘Smartphone broker put to the test’, <https://www.test.de/Smartphone-Broker-im-Test-5468655-0/>.

<sup>29</sup> Better Finance, ‘GameStop case highlights discrimination of ‘retail investors’ in stock markets’, <https://betterfinance.eu/wp-content/uploads/PR-GameStop-highlights-Discrimination-of-Non-professional-Investors-in-Stock-Markets-04032021.pdf>.



In July, ESMA published a warning<sup>30</sup> to investors about the risks stemming from payment for order flow practices by 'zero-commission' brokers, highlighting significant potential investor protection concerns. The European Commission should closely investigate **payment for order flow investment models and assess whether they are in line with MiFID II rules on inducements and conflicts of interests**. Further legislative changes, including a **potential full explicit ban on payment for order flow models should be considered under the review of MiFID II**.

### **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.

The High Level Forum (HLF) on the Capital Markets Union adopted a recommendation in June 2020 for the creation of a voluntary pan-European quality mark (label) for European financial advisers. BEUC sees merit in setting up a voluntary certification requirement for staff when giving investment advice, however would favour minimum **mandatory professional qualification requirements under IDD and MiFID II**.

Financial advisers should be adequately trained in order to be able to give suitable investment advice to consumers. In the UK, higher professional standards for financial advisers were introduced as part of its Retail Distribution Review in 2013, requiring financial 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. Many other EU Member States do not impose similar comparable requirements on financial advisers operating in their country, thereby putting consumers at risk of receiving poorly qualified financial advice. 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.

Research shows that most **financial advisers are currently untrained about sustainability issues**, despite pending EU rule changes requiring them to assess client's sustainability preference. For instance, according to Aviva<sup>31</sup>, **half of UK financial advisers admitted to having received "no ESG training at all**. ESMA in its Sustainable Finance Consultation Response<sup>32</sup> said that "integrating sustainable finance literacy in the training requirements of finance professionals would be helpful and would fit perfectly well with the proposed amendments to integrate sustainability in the MiFID II delegated acts." EIOPA said in its consultation response<sup>33</sup> that "integrating sustainable finance literacy in the training requirements of insurance distributors selling ESG products should be required." In France, the French AMF<sup>34</sup> has already strengthened its professional certification requirement for financial advisers for verifying their knowledge about sustainable finance issues. BEUC believes that all financial advisers should be adequately

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<sup>30</sup> ESMA, 'ESMA warns firms and investors about risks arising from payment for order flow and from certain practices by 'zero-commission brokers', [https://www.esma.europa.eu/sites/default/files/library/esma35-43-2749\\_esma\\_public\\_statement\\_pfof\\_and\\_zero-commission\\_brokers.pdf](https://www.esma.europa.eu/sites/default/files/library/esma35-43-2749_esma_public_statement_pfof_and_zero-commission_brokers.pdf)

<sup>31</sup> FT Adviser, 'Half of advisers untrained in ESG despite looming rule change', <https://www.ftadviser.com/investments/2020/10/21/half-of-advisers-untrained-in-esg-despite-looming-rule-change/>.

<sup>32</sup> ESMA, 'Response to public consultation on Renewed Sustainable Finance Strategy', <https://www.esma.europa.eu/document/response-ec-consultation-renewed-sustainable-finance-strategy>, p. 41.

<sup>33</sup> EIOPA, 'Response to European Commission's consultation on the renewed sustainable finance strategy', [https://www.eiopa.europa.eu/content/eiopa-response-european-commission-consultation-renewed-sustainable-finance-strategy\\_en](https://www.eiopa.europa.eu/content/eiopa-response-european-commission-consultation-renewed-sustainable-finance-strategy_en), p. 10.

<sup>34</sup> French AMF, 'The AMF strengthens professional certification requirements in sustainable finance', <https://www.amf-france.org/fr/actualites-publications/communiqués/communiqués-de-lamf/lamf-renforce-les-exigences-de-certification-professionnelle-en-matiere-de-finance-durable>.

trained and knowledgeable about sustainability matters to be able to give good advice on ESG products, and **ESG training should be mandatory for all advisers under the IDD and MiFID II.**

## 9. Addressing the complexity of products

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### 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. Financial products are often highly complex, and further measures should be taken at the EU level to facilitate retail investors access to simpler investment products. Simple products would seek to serve the majority of disengaged consumers in the retail investment market, while keeping other investment possibilities open for consumers interested to go beyond the default products. **Establishing or labelling simpler products would improve financial inclusion by giving consumers a default option to invest in**, while also serving as a benchmark for other products, challenging the sector to deliver a better deal for consumers.

Examples of good practices can be found in several countries. For instance, in the UK, a Simple Products Initiative<sup>35</sup> was launched, designed to help consumers navigate the financial services market. In the EU, the pan-European Pension Product will soon become available to all EU consumers, which will include a default option (called the Basic PEPP) with a fee cap of 1 percent.<sup>36</sup> Similar simple product initiatives could be replicated at the EU level for other retail investment products (such as for investment funds or life insurance policies, etc.), helping to simplify the decision-making process for consumers.

## 10. Redress

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### 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?

Very important. Alternative Dispute Resolution (ADR) mechanisms, leading to the settlement of disputes by the intervention of independent third parties, can be an inexpensive and effective solution to individual consumer disputes. As such, ADR is an important tool for consumer redress and its use should be promoted.

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

No.

According to evidence from our members, many consumers struggle to know where to turn to in the event of a dispute with a firm or are put off by the complexity of ADR schemes, impeding their ability to confidently resolve their complaints or seek redress. Our French member Que-Choisir for instance highlights that in France, which counts approximately

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<sup>35</sup> UK Government, 'Simple financial products a step closer', <https://www.gov.uk/government/news/simple-financial-products-a-step-closer>.

<sup>36</sup> BEUC, 'Trilogue negotiations on PEPP – BEUC calls for a cap on costs', [https://www.beuc.eu/publications/beuc-x-2018-117\\_proposal\\_for\\_a\\_pan-european\\_pension\\_product.pdf](https://www.beuc.eu/publications/beuc-x-2018-117_proposal_for_a_pan-european_pension_product.pdf).

100 certified ADR bodies, the landscape is currently too complicated to navigate for consumers and traders. In many cases, it is very difficult for consumers to identify the competent ADR body. This is because there may be several ADR entities per sector (e.g. in the banking sector). Some professionals have also set up several ADR schemes (e.g. some local branches of big banks have set up their own ADR entities). UFC-Que Choisir took the view that the large number of in-house ADR entities (so-called “médiateurs d’entreprises”) has contributed to complexify the French ADR landscape.

In parallel, the French competent authority (*Comité d’Evaluation et de Contrôle de la Médiation de la Consommation* – CECMC) has also wondered whether keeping a high number of ADR entities in the banking sector is relevant given that at least one third of them receive less than 50 complaints per year.<sup>37</sup> In Belgium, the residual ADR entity (Consumer Mediation Ombudsman – “*Service de médiation pour le consommateur/Consumentenombudsdienst*”) highlighted in its annual report for 2020 that several ADR entities still propose partial sectorial coverage, which impairs consumer navigability and create some uncertainty as to which ADR entities is ultimately competent for solving their disputes.<sup>38</sup> Evidence tends to show that having one ADR body covering a sector in its entirety complemented with a residual ADR entity in charge of covering the complaints not falling within the remit of the other sectoral ADR entities may simplify landscapes, as it is currently the case in Austria. In the UK, our member organisation Which? highlights that there is little evidence to support the case for allowing more than one approved ADR provider in any single sector.<sup>39</sup>

Even in cases where consumers do know where to turn to, many of them are often unfamiliar with the procedural rules to be followed when submitting their complaints. For instance, in the UK, Which? found that only 20% of UK consumers had a good understanding of how dispute resolution schemes work.<sup>40</sup> Our French member organisation UFC Que Choisir highlighted that many consumers still do not have clear views on the procedural rules for reaching out to consumer ADR bodies. UFC Que Choisir stressed that, for disputes in the banking sector, consumers must first contact their bank advisors and their customer services. Consumers must go through these different steps to be able to finally reach out to the ADR body. Because of this complex process (that is largely unknown to the majority of consumers) many requests remain inadmissible.

## 11. Product intervention powers

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

No.

Consumers should not be exposed to financial products that give rise to significant investor protection concerns. While some National Competent Authorities (NCAs) and the European Supervisory Authorities (ESAs) have implemented product intervention powers to restrict the marketing and distribution of toxic financial products (e.g. ESMA<sup>41</sup> product intervention

<sup>37</sup> CECMC, ‘Rapport: La Médiation bancaire at de l’assurance’, [https://www.ccsfin.fr/sites/default/files/medias/documents/2021\\_mediation.pdf](https://www.ccsfin.fr/sites/default/files/medias/documents/2021_mediation.pdf).

<sup>38</sup> Consumentenombudsdienst,

<sup>39</sup> Which?, ‘Are Alternative Dispute Resolution schemes working for consumers?’, <http://www.which.co.uk/policy/consumers/7428/adrschemes>.

<sup>40</sup> Which?, ‘Are Alternative Dispute Resolution schemes working for consumers?’, <http://www.which.co.uk/policy/consumers/7428/adrschemes>.

<sup>41</sup> BEUC, ‘Call for evidence on product intervention: BEUC response’, [https://www.beuc.eu/publications/beuc-x-2018-009\\_esma\\_product\\_intervention.pdf](https://www.beuc.eu/publications/beuc-x-2018-009_esma_product_intervention.pdf).

on CFDs and binary options, FSMA<sup>42</sup> ban on financial products based on virtual currencies, FCA<sup>43</sup> ban on contingent convertible debt instruments), many other NCAs have not actively relied on their product intervention powers to intervene in the market. BEUC encourages the NCAs and the European Supervisory Authorities to use their product intervention powers more actively in cases of significant investor protection concerns.

## 12. Sustainable investing

### 12.3 What are the main factors preventing more sustainable investments?

	1	2	3	4	5
Poor financial advice on sustainable investment opportunities					X
Lack of sustainability-related information in pre-contractual disclosure					X
Lack of EU label on sustainability related information					X
Lack of financial products that would meet sustainability preferences					X
Fear of greenwashing					X
Other					X

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

Default ESG option: To increase the level of sustainable investments, the EU should take further steps to promote the up-take of sustainable investment products by consumers.

<sup>42</sup> FSMA, 'Ban on the marketing of certain financial products', <https://www.fsma.be/en/news/ban-marketing-certain-financial-products>

<sup>43</sup> Financial Conduct Authority, 'Restrictions in relation to the retail distribution of contingent convertible instruments', <https://www.fca.org.uk/publication/tpi/restrictions-in-relation-to-the-retail-distribution-of-cocos.pdf>

Studies demonstrate that an overwhelming majority of consumers (70% or more) want their money to be invested in a sustainable way.<sup>44</sup> A supportive framework should be developed for consumers to shift their investments towards more sustainable options. Investing sustainably must become the 'easy choice', that is offered by default to consumers when seeking financial advice on how best to invest their money. In the Commission's public consultation<sup>45</sup> on the Renewed Sustainable Finance Strategy, a majority of stakeholders (68%) agreed that retail investors should be systematically offered sustainable investment products, while only a small minority disagreed (3%). Such a strong majority should reverse the current 'opt in' system as proposed in the European Commission's sustainable finance advice<sup>46</sup> rules (in which the retail investor needs to explicitly express its demand to invest in a sustainable way) to an 'opt out' system (in which financial advisers propose by default a sustainable investment option and consumers need to opt out in case of disagreement).

#### **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, detailed guidance should be developed by the ESAs.

Simply asking a consumer whether they value sustainability is likely to result in very inconsistent answers by clients that do not fully reveal their ESG preferences. A wide variety of approaches exist to investing sustainably, including for instance: negative screening or exclusionary screening (excluding certain sectors or companies), best-in-class (companies selected on the basis of being the best when it comes to ESG in a particular industry), shareholder engagement (where asset owners enter into dialogue with companies in relation to ESG issues). The preferences of clients between these different investment strategies will significantly differ, and advisers will need to carefully assess their clients' preferences to ensure that any chosen investment strategy matches the consumer's expectations when it comes to sustainability. The European Supervisory Authorities (ESAs) should be required to **develop detailed guidance or template questionnaires that could be used by financial advisers to adequately assess the ESG preferences of their clients.**

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

There is a growing need for ESG data and research, as fund managers integrate ESG principles into their investment process and increasingly begin to offer sustainable investment funds to consumers. Asset managers would benefit from having more ESG information, and the research regime under MiFID II should be amended to ensure that ESG criteria are always considered. In France, the French AMF<sup>47</sup> is also looking to introduce new certification rules to ensure that all financial analysts producing ESG research have at least some basic knowledge of non-financial matters. This would contribute to a better understanding of the ESG risks and opportunities of companies, and should drive an improvement in the quality of their investment recommendations. Similar rules could be implemented on an EU-wide basis.

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<sup>44</sup> 2DII, 'A large majority of retail clients want to invest sustainably', <https://2degrees-investing.org/resource/retail-clients-sustainable-investment/>.

<sup>45</sup> European Commission, 'Summary report of the Stakeholder Consultation on the Renewed Sustainable Finance Strategy', [https://ec.europa.eu/info/sites/default/files/business\\_economy\\_euro/banking\\_and\\_finance/documents/2020-sustainable-finance-strategy-summary-of-responses\\_en.pdf](https://ec.europa.eu/info/sites/default/files/business_economy_euro/banking_and_finance/documents/2020-sustainable-finance-strategy-summary-of-responses_en.pdf), p. 17.

<sup>46</sup> European Commission, '

<sup>47</sup> AMF France, 'Reviving research in the wake of MiFID II', <https://www.amf-france.org/en/news-publications/news-releases/amf-news-releases/amf-adopts-its-action-plan-promote-investment-research>.



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