



BIPAR Input

ESMA Call for evidence on the European Commission’s mandate on certain aspects relating to retail investor protection

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BIPAR is the European Federation of Insurance Intermediaries. It groups 47 national associations in 30 countries. Through its national associations, BIPAR represents the interests of insurance agents and brokers and financial intermediaries in Europe.

Apart from some large multinationals, the insurance intermediation sector consists of hundreds of thousands of SMEs and micro-type operators. It accounts for 0.7% of European GDP, and over one million people are active in the sector. Insurance and financial intermediaries facilitate the insurance and financial process for several hundreds of millions of customers. The variety of business models, the high level of competition and the geographical spread in the sector ensure that everyone in Europe has easy access to tailor-made insurance and financial services. The sector is highly regulated and strictly supervised.

BIPAR is a member of the World Federation of Insurance Intermediaries (WFII). Founded in Paris in 1937, BIPAR has been established in Brussels since 1989.

ESMA QUESTIONS – BIPAR INPUT



Q1: Please insert here any general observations or comments that you would like to make on this call for evidence, including any relevant information on you/your organisation and why the topics covered by this call for evidence are relevant for you/your organisation.



BIPAR reply

BIPAR welcomes the opportunity to provide feedback to ESMA’s consultation paper concerning the call for advice regarding certain aspects relating to retail investor protection.

BIPAR is the European Federation of Insurance Intermediaries. It groups 47 national associations in 30 countries. Through its national associations, BIPAR represents the interests of insurance agents and brokers and financial intermediaries with the European authorities.

In the investment area, BIPAR groups associations of thousands of smaller and SME-size financial advisers and intermediaries who are daily and locally dealing with investors, many of these investors being small, private “consumers”.

Most of the firms we represent are the link between the client and the final provider of a financial product. Many or most of MiFID II requirements are designed to apply higher up in the chain of activities but impact the client-intermediary relationship.

The assistance of an intermediary, of a financial adviser, can be of great assistance to investors. They can also be of great assistance to the economy and to the CMU, which wants to turn savings into investments.

Intermediaries play an important role in the development and implementation of innovative solutions in services, sometimes in partnership with start-ups or other players.

The client can choose, via the intermediary, from a wide range of services thanks to a wide variety and combination of tools and systems (apps, web, phone and... face-to-face meetings).

Intermediaries combine the best of technology with the best of human. With this hybrid approach, intermediaries who are members of BIPAR member associations can ensure real inclusion and transition in access to services and products, whether for the "hyper-connected" consumer or for those on the digital margin. We are aware that the ESMA call for advice does not cover the issue of business models.

However, during the ESMA webinar on the call for advice/call for evidence, the issue was mentioned and therefore we repeat here that the current system of MiFID II that allows choice between business models for the consumer/ investor and for the other parties in the chain is the best system going forward. Thanks to MiFID II (and thanks to IDD) investors are now optimally protected.

Various European initiatives (MiFID II, IDD) have indeed made it possible in recent years to create a legal framework that fully regulates and secures the relationship between distributor/intermediary/ advisor/independent advisor, customer and supplier. The existing framework results in transparent choice for the consumer.

After years of study and debate between all parties concerned (including consumers, providers, politicians, academics), MiFID II introduced the concept of independent advice for those consumers who want to pay a fee for advice.

Thanks to the commission system (strictly regulated) consumers who want can continue and shop around to find the ideal product and the intermediary or advisor that suits them best. Indeed, in a commission system, a consumer can ask the opinion of various intermediaries / advisors as he or she wishes without having to pay the intermediary or advisor. In a fee system, every "advice" has a cost. Choice is thus important to ensure that all consumers have access to advice and can also compare advisers/ intermediaries.

Similarly, the IDD allows MS to do the same for IBIPs.

Since always, consumers who want to pay for financial advice on a fee basis can ask their advisors to work on such basis.

Those who want to shop around or have different suggestions before deciding what the best investment is, considering their personal situation at a given time, may prefer a commission system (no cure no pay).

For this system, MiFID II and IDD have introduced appropriate transparency of commissions together with a series of rules to manage conflicts of interest, to avoid mis-selling, POG rules, training, and strict supervision...

Those who opt to have advice on a fee basis need to be aware that they will have to pay a fee even if they decide not to follow the investment advice.

From an economic perspective, overall, there exists no system which is preferable in all circumstances and the co-existence of various remuneration systems, and, in particular, the freedom to decide on a transparent basis about the remuneration systems between the parties, is the best guarantee for competitive, efficient and dynamic markets that work for the client and guarantee to ALL consumers in the EU access to the investment market at low (because mutualised) cost.

The choice of systems also allows those systems to be in competition. All options are also heavily supervised. This transparent system is also helpful in the ecosystem of digital providers where incumbent players and digital players join forces to improve the service to the consumers.

It is also recognized that this system is the best system to avoid the advice gap. For smaller investors, fees are not affordable and the commission system allows intermediaries to spread the cost of know-how and to put their know-how paid by the "larger" investors to the service of the "smaller" investors (mutualization of advice and service costs).

The term "inducement" is furthermore misleading. Everybody has the right to be remunerated for work done.

More study that makes a distinction between costs higher up in the chain and costs and macro-economic value of intermediaries who are in direct contact with the consumer is necessary. For the latter, existing regulation deals with possible conflicts of interests.



Q2: Are there any specific aspects of the existing MiFID II disclosure requirements which might confuse or hamper clients' decision-making or comparability between products? Are there also aspects of the MiFID II requirements that could be amended to facilitate comparability across firms and products while being drafted in a technology neutral way? Please provide details.



BIPAR reply

Too many facts and figures make it impossible for the clients to be able to compare the different products.



Q3: Are there specific aspects of existing MiFID II disclosure requirements that may cause information overload for clients or the provision of overly complex information? Please provide details.



BIPAR reply

Ex ante calculations cannot always be understood by the clients if the information provided is not explained by a specialist.



Q4: On the topic of disclosures, are there material differences, inconsistencies or overlaps between MiFID II and other consumer protection legislation that are detrimental to investors? Please provide details.

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Q5: What do you consider to be the vital information that a retail investor should receive before buying a financial instrument? Please provide details.



BIPAR reply

Study is necessary in this respect. Consumers should be encouraged to compare. But apples cannot be compared with pears and the quality of the basic information is always the first condition, so the questions and the structure of the pre-contractual information are key. Furthermore, the "reader" of the information must be warned that information may be comparable at first sight but may therefore not be adapted to the individual situation of the investor. Therefore, consumers should be encouraged to compare and seek assistance from an intermediary before taking investment decisions.



Q6: Which are the practical lessons emerged from behavioural finance that should be taken into account by the Commission and/or ESMA when designing regulatory requirements on disclosures? Please provide details and practical examples.



BIPAR reply

We would like to refer in this respect to the recent EIOPA Technical Advice on the development of Pension Tracking Systems.

EIOPA states there on p 10, point 20: "Generally citizens across the EU tend to have little engagement with or ownership of their financial planning after retirement. This can be explained by people's cognitive and behavioural biases such as focus on the present (preference of consuming today over saving), inertia (people know they should save for old age but are reluctant to engage with a future and complex subject), projection bias (people overestimate the degree to which their future preferences remain the same as in the present and make short-sighted decisions), or reference dependence (people make decisions involving loss and risk in relation to a particular reference point).

And p 43, point 110: *“Behavioural research also shows that consumers tend to procrastinate or postpone decisions. Even if provided with the best designed information, they will only take action if nudged to do it through easy available steps that not only reduce the effort needed to take action, but also make a better PTS user experience.”*

We observe that intermediaries (who are highly regulated) are for many people the “nudge” to talk about (long-term) financial planning, to move from saving into investing as encouraged by the CMU. People need to be “motivated”, convinced or nudged to go and check the information that is available. In this respect we believe the role of intermediaries is very important. The modern legislation and supervision applicable to intermediaries and products guarantees that people can trust intermediaries and products for financial planning. Important in this respect is also the fact that citizens have the choice between intermediaries who work on a “no cure no pay system” (commissions) and intermediaries who work on a fee-basis.

Although the above is not directly applicable to the kind of information referred to here in this consultation paper, we believe that the above extracts from the EIOPA advice are a good source for reflection in terms of disclosures.



Q7: Are there any challenges not adequately addressed by MIFID II on the topic of disclosures that impede clients from receiving adequate information on investment products and services before investing? Please provide details.



BIPAR reply

See answer to Q6.

See also our answers to Q2 and Q3: Information overload impedes clients getting the core information. Consumers should be made more aware that investing means taking risk. A key aspect in the information is whether or not the consumer risks to have less at the end than what he or she invested, and at what time horizon (possibly in combination with a correction regarding inflation and an explanation of total entry and exit costs).



Q8: In case of positive answer to one or more of the above questions, are there specific changes that should be made to the MiFID II disclosure rules to remedy the identified shortcomings? Please provide details.



BIPAR reply

Less and more understandable information for the clients.



Q9: On the topic of disclosures on sustainability risks and factors, do you see any critical issue emerging from the overlap of MiFID II with the Sustainable Finance Disclosure Regulation (SFDR) and other legislation covering ESG matters?



BIPAR reply

The issue here is the timing of the different rules, with for instance the Regulatory Technical Standards to specify what information is to be provided under the SFDR and the Taxonomy not being finalised. For the time being, this leads to uncertainty / unclarity (see also debate about nuclear energy). Ideally the entire “sustainable” finance regulatory framework should be finalized before it comes into force. Also how to expect from consumers that they understand sustainability?



Q10: Are there any other aspects of the MiFID II disclosure requirements and their interactions with other investor protection legislations that you think could be improved or where any specific action from the Commission and/or ESMA is needed?

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Q11: Do you have any empirical data or insights based on actual consumers usage and engagement with existing MiFID II disclosure that you would like to share? This can be based on e.g., consumer research, randomized controlled trials and/or website analytics.

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Q12: Do you observe a particular group or groups of consumers to be more willing and able to access financial products and services through digital means, and are therefore disproportionately likely to rely on digital disclosures? Please share any evidence that you may have, also in form of data.



BIPAR reply

As also expressed in BIPAR response to the ESAs' call for evidence on PRIIPs, experience shows us that the preferred medium for many retail investors is the digital one (PDF file or similar). Retail investors who are less at ease with new technologies however, continue to prefer paper-based information.

When we hear statements that better client experience seems to be considered as a given characteristic of the technology-driven financial services, we'd like to point out however that such implied or even directly expressed assertion may not always be valid. In case of a "streamlined buying experience", where one click of the "Accept" button binds the financial products may be accompanied by poor advice or no advice, no awareness at all. Client support may be provided by chatbots and text messages only, which may bring consumer protection concerns.

Relying on all-digital models may lead to concerns of a lack of proximity to the client, which potentially leads to for example:

- a poor understanding of the risk when it presents a specificity and consequently an inadequate financial investment;
- a poor understanding of the product by the client;
- loss of client knowledge in the field ("non-legal" in the strict sense).

Data does not replace personal knowledge and can thus create pockets of incomprehension that are detrimental to the client.

In addition to the above comments on consumer groups relying on digital access to services and products and digital disclosures, we would like to point out that in reality, in particular in the intermediation market, there has been a "hybrid model" for a long time.

The discussion about digitalization and new business models should not only be about benefits and risks of innovation but about transition and choice and mixed business models and mixed consumer experiences where the human and the digital can go hand in hand in the interest of consumers, and efficiency.

We also refer to our answer to Question 6.

Besides the data- and AI aspects, the risks in the digital market are more or less similar to the risks in the hybrid market. In the digital market however, there risk is potentially of a much larger scale (multiplier effect of a mistake in an algorithm for example).

Study is necessary in order to find out in how far digital (and other disclosures) are actually read. Why do some people prefer digital disclosures?



Q13: Which technical solutions for digital disclosures (e.g., solutions outlined in paragraph 27 or additional techniques) can work best for consumers in a digital - and in particular smartphone - age? Please provide details on solutions adopted and explain how these have proven an effective way to provide information that is clear and not misleading.



BIPAR reply

In practice, intermediaries (and product providers) have clear “transparency” obligations toward the clients. In some “new” more digital business models, outside the “system”, this transparency is often reduced to click on “accept terms and conditions”. Perhaps more “warnings” should be imposed to digital transactions. In addition, financial education should be promoted (at secondary school level).



Q14: Would it be useful to integrate any of the approaches set out in paragraph 27 above in the MIFID II framework? If so, please explain which ones and why.

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Q15: Should the relevant MIFID II requirements on information to clients be adapted in light of the increased use of digital disclosures? If so, please explain how and why.



BIPAR reply

BIPAR believes that the existing rules for the distribution of financial products are in principle technologically neutral (activity-based) and fit-for-purpose to allow for an uptake of the new technological developments in the sector.

The basic rules that are in place are a sound basis for any kind of business model and level of digitalization. Many of the potential risks emerging as a consequence of the use of digital business models are (besides the tech itself and the scale) no different from the risks caused by the provision of services using “less tech” means. Supervision in this respect is important.

The main issue is the application of the philosophy of the “level playing field” and the “activity-based” interpretation of the rules. Firms which are not governed by the financial services legislation and supervision but are active in the financial services value chain should be brought into the existing regulatory framework, so that the “chain” is consistent and can be properly supervised.

Data and access to data in combination with choice by consumers are also a key aspect.

The volume and cumulation of the rules recently adopted and implemented have come at a high cost for firms. These rules should be consolidated so that the initial investments can be written off over a reasonable time (and be a basis for future economic and legal) stability. BIPAR supports the “one in, one out” principle endorsed by the European Commission, but it should be recognized that every change in legislation (and thus compliance procedures) has a cost (in particular for micro and SME firms) for the firms in the industry.

Please see also our answer to Q13.



Q16: Do you see the general need for additional tools for regulators in order to supervise digital disclosures and advertising behind ‘pay-walls’, semi-closed forums, social media groups, information provided by third parties (i.e., FINfluencers), etc? Please explain and outline the adaptations that you would propose.



BIPAR reply

Focus should now be on the implementation, application and supervision on the basis of the existing rules. Some recent cases where the role of social media was illustrated may indicate where the most urgent action is necessary. In line with the level playing field and what we said in response to Question 15, we believe that the focus should now be on market players / “FINfluencers” or information providers who are situated in the “grey area” of the scope of the rules.



Q17: To financial firms: Do you observe increased interest from retail investors to receive investment advice through semi-automated means, e.g., robo-advice? If yes, what automated advice tools are most popular? Please share any available statistics, data, or other evidence on the size of the market for automated advice.



BIPAR reply

To consider robo-advice as advice, could be misleading. Is robo “advice” the correct terminology? is it advice? It is confusing for consumers.

Robo advice is as good as the questions and factors it includes in the algorithm.

Regarding long term investment at this stage, we experience that attention of citizens is mainly raised thanks to **personal conversation**.

Consumers should be encouraged to go and see intermediaries before investing. Intermediaries, in practice, often accompany their clients not only in the choice of investment products, but help to create awareness, in dialogue, about future needs, patrimonium planning, old age planning, and similar issues. The need for this accompanying by intermediaries has been made even more topical because of the sustainability framework coming into place.

Finally, and as already stated in our reply to Question 12, our market is a hybrid market. Intermediaries use robo-systems to assist them in their work.



Q18: Do you consider there are barriers preventing firms from offering/developing automated financial advice tools in the securities sectors? If so, which barriers?

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Q19: Do you consider there are barriers for (potential) clients to start investing via semi- automated means like robo-advice caused by the current legal framework? If so, please explain and outline what you consider to be a good solution to overcome these barriers.



BIPAR reply

As mentioned above, we are wondering whether robo-advice is the correct term to use. Robo advice is as good as the questions and factors it includes in the algorithm.

As also mentioned above, BIPAR believes that the existing rules for the distribution of retail investment products are in principle technologically neutral and fit-for-purpose to allow for an uptake of the new technological developments in the sector.

For the consumer (and the economy at large) to benefit from digitalization, actions to support digital / hybrid solutions and services must not result in a limitation of the intensity of competition, either because certain types of players have been granted exemptions to the detriment of others, or because the focus is only on price and not on the quality/price ratio, or because excessive regulation only allows "large" players to develop. It is widely recognized that SMEs play a key role in the European economy. In the financial services sector there are many micro and SMEs active who employ people at local level.

A key challenge will be the control / supervision of algorithms and in particular AI and deep learning: the more AI and deep learning there is, the more difficult this supervision will be. Data and access to data is an important aspect.

Are supervisory authorities ready for the supervision of AI driven – deep learning – systems?



Q20: In case of the existence of the above-mentioned barriers, do you have evidence of the impact that they have on potential clients who are interested in semi-automated means? For instance, do they invest via more traditional concepts or do they not invest at all?

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Q21: Do you consider the potential risks and opportunities to investors set out above to be accurate? If not, please explain why and set out any additional risk and opportunities for investors.



BIPAR reply

We are somewhat confused by this question because questions 17 to 19 refer both in a mixed way to semi-automated and automated ways of advice. As intermediaries, we consider ourselves as “hybrid”. Intermediaries use robo-systems to assist them in the analysis that helps them in giving advice, so this could be called semi-automated advice whereas “fully automated advice” in our opinion is at this moment creating an issue in combination with the word “advice”. We refer to our answer to Q 17 and 19.

In the current “hybrid” system individual investors already now can benefit from: (i) adequate protection, (ii) bias-free advice and fair treatment, (iii) open markets with a variety of competitive and cost-efficient financial services and products, and (iv) transparent, comparable and understandable product information.

Quality of service remains the key in a competitive financial market – it is the intermediaries’ service to client that gives added value and justifies both their existence and necessity. Consumers should be encouraged to seek assistance from intermediaries before investing.

Regarding the risks to fully automated advice, like in any digital transition the risks may be more or less comparable to current risks, but to a larger extent. Regarding robo/automated advice, we believe it is necessary to develop principles for AI or to adopt in every stage, at every level of the process of the value chain, principles of prudent use of AI and algorithms. The objectives should be transparent / supervisable AI systems.... This issue is related to the quality of data used by AI systems, who has access to data,....



Q22: Do you consider that the existing MiFID regulatory framework continues to be appropriate with regard to robo-advisers or do you believe that changes should be added to the framework? If so, please explain which ones and why.



BIPAR reply

BIPAR believes that the existing rules for the distribution of retail investment products are in principle technologically neutral and fit-for-purpose to allow for an uptake of the new technological developments in the sector.

We recall that a key challenge will be the control / supervision of algorithms and in particular AI and deep learning: the more AI and deep-learning there is, the more difficult this supervision will be. Data and access to data in combination with choice by consumers are also a key aspect. Consumers (and businesses) should have the choice between more or less “human”, more or less “digital”, depending upon the preference and the situation.

BIPAR is also of the opinion that:

- A consistent, transparent, all-encompassing and clear activity-based, risk-oriented regulatory framework should be maintained. Where necessary rules should be extended and adapted to the digital world but the “philosophy” of the rules should not be changed. Digital should adapt to the existing rules, existing rules should not be adapted to promote the digital.
- Firms, services and products which are not regulated in the investment sector but are active in the investment services value chain should be brought into the existing regulatory frameworks, so that the “chain” is consistent and can be properly supervised.
- There is a real danger – also in the financial, investment and insurance world - to develop towards a global oligopolistic market controlled by “gatekeepers” on the basis of data.



Q23: Do you think that any changes should be made to MiFID II (e.g., suitability or appropriateness requirements) to adequately protect inexperienced investors accessing financial markets through execution only and brokerage services via online platforms? If so, please explain which ones and why.



BIPAR reply

What is key in this respect, is that investment / financial education is included in the curricula of secondary schools. This is something that BIPAR has been calling for for 20 years. The public should also be made better aware that most of the products and activities are regulated and supervised and that such a system should create the necessary trust in the financial products and manufacturers and distributors, intermediaries and advisors.

Intermediaries and advisors but also investors themselves need to be certain that they can rely upon the correctness of the information they receive from the manufacturers of the products and consumers should be aware that investment markets and the economy are unpredictable. Investing means taking risk.

The supervision system should result in a situation that unreliable investment products and/or market parties which are not compliant are improved or removed from the market.

Consumers should be encouraged to compare and seek assistance from an intermediary before taking investment decisions.

BIPAR is also of the opinion that professional knowledge and ability must be required from all those active in an investment activity.



Q24: Do you observe business models at online brokers which pose an inherent conflict of interest with retail investors (e.g., do online brokers make profits from the losses of their clients)? If so, please elaborate.

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Q25: Some online brokers offer a wide and, at times, highly complex range of products. Do you consider that these online brokers offer these products in the best interest of clients? Please elaborate and please share data if possible.

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Q26: One of the elements that increased the impact on retail investors in the GameStop case was the widespread use of margin trading. Do you consider that the current regular framework sufficiently protects retail investors against the risks of margin trading, especially the ones that cannot bear the risks? Please elaborate.

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Q27: Online brokers, as well as other online investment services, are thinking of new innovative ways to interact and engage with retail investors. For instance, with “social trading” or concepts that contain elements of execution only, advice, and individual portfolio management. Do you consider the current regulatory framework (and the types of investment services) to be sufficient for current and future innovative concepts? Please elaborate.

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Q28: Are you familiar with the practices of payment for order flow (PFOF)? If yes, please share any information that you consider might be of relevance in the context of this call for evidence.

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Q29: Have you observed the practice of payment for order flow (PFOF) in your market, either from local and/or from cross border market participants? How widespread is this practice? Please provide more details on the PFOF structures observed.

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Q30: Do you consider that there are further aspects, in addition to the investor protection concerns outlined in the ESMA statement with regards to PFOF, that the Commission and/or ESMA should consider and address? If so, please explain which ones and if you think that these concerns can be adequately addressed within the current regulatory framework or do you see a need for legislative changes (or other measures) to address them

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Q31: Have you observed the existence of “zero-commission brokers” in your market? Please also provide, if available, some basic data (e.g., number of firms observed, size of such firms and the growth of their activities).

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Q32: Do you have any information on “zero-commission brokers” business models, e.g., their main sources of revenue and the incidence of PFOF on their revenue? If so, please provide a description.

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Q33: Do you see any specific concern connected to “zero commission brokers”, in addition to the investor protection concerns set out in the ESMA statement that the Commission and/or ESMA should consider and address? Please explain and please also share any information that you consider might be of relevance in the context of this call for evidence. Please also explain if you consider that the existing regulatory framework is sufficient to address the concerns listed in the ESMA statement regarding zero-commission brokers or do you believe changes should be introduced in the relevant MiFID II requirements.

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Q34: Online brokers seem to increasingly use gamification techniques when interacting with clients. This phenomenon creates both risks and potential benefits for clients. Have you observed good or bad practices with regards to the use of gamification? Please explain for which of those a change in the regulatory framework can be necessary. Do you think that the Commission and/or ESMA should take any specific action to address this phenomenon?

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Q35: The increased digitalisation of investment services, also brings the possibility to provide investment services across other Member States with little extra effort. This is evidenced by the rapid expansion of online brokers across Europe. Do you observe issues connected to this increased cross-border provision of services? Please elaborate.



BIPAR reply

- In this respect we refer to some of the conclusions of the July 2019 ESA report on the cross-border supervision of retail financial services that have not been followed up until now. The ESAs: *“have noted that the cross-border provision of retail financial services to customers is growing quickly and that there are more and more cases where financial institutions are providing their services to customers residing in other MSs, especially through digital means and using digital platforms.”* They add that this benefits consumers (wider offer) but at the same time challenges the competent authorities (CA) who have to supervise these institutions and activities. *“Therefore, there are more and more situations where Competent Authorities need to assess whether the provision of the services is taking place across borders and falls within the FPS or the ROE. However, there is no definition of cross-border provision of financial services in any of the Level1 texts reviewed. The ESAs have noticed that the legislation reviewed lacks clear criteria for determining the location where the service is provided, which is key to determining whether there is cross-border provision of services and whether it falls under the FPS and the ROE, and, as a consequence, which CA is responsible for its supervision. This lack of clear criteria is even more problematic when services and products are provided through digital means.”*
- Supervisors should look at issues, such as:
 - Application of distant marketing rules
 - Cross-border/national/ international and supervisory powers/ reach?
- The consultation question states: *“The increased digitalization of investment services, also brings the possibility to provide investment services across other Member States **with little extra effort**”*. We regret the use of the words “little extra effort”. In reality a cross border transaction is always a challenge due to the many barriers such as language, applicable tax, applicable national legislation ... these are not solved just by using digital means.
- Finally, we also refer here to our reply to Question 21. In a digital context, risks are perhaps not different from a “live” context, but they are potentially exponential.



Q36: Do you observe an increasing reliance of retail clients on information shared on social media (including any information shared by influencers) to base their investment decisions? Please explain and, if possible, provide details and examples. Do those improve or hamper the decision-making process for clients?

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Q37: What are, in your opinion, the risks and benefits connected to the use of social media as part of the investment process and are there specific changes that should be introduced in the regulatory framework to address this new trend?



BIPAR reply

There is a need for specific attention with regard to:

- Certain activities need to be evaluated in the framework of the scope of MiFID II
- Use of data by social media? Transparency / supervision
- The consumer should have access to her/his data that is collected by social media (when data are used for finance/investment related activities, consumers should know what data are being used)



Q38: Are you aware of the practices by which investment firms outsource marketing campaigns to online platform providers/agencies that execute social media marketing for them, and do you know how the quality of such campaign is being safeguarded?

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Q39: Have you observed different characteristics of retail clients, such as risk profiles or trading behaviour, depending on whether the respective client group bases their investment decision on information shared on social media versus a client group that does not base their investment decision on social media information? Please elaborate.

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Q40: Do you have any evidence that the use of social media (including copy/mirror trading) has facilitated the spreading of misleading information about financial products and/or investment strategies? Please elaborate and share data if possible.

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Q41: Have you observed increased retail trading of 'meme stocks', i.e. equities that experience spikes in mentions on social media? Please share any evidence of such trading and, if possible, statistics on outcomes for retail investors trading such instruments.

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Q42: Do you consider that the current regulatory framework concerning warnings provides adequate protection for retail investors? If not, please explain and please describe which changes to the current regulatory framework you would deem necessary and why.



BIPAR reply

As mentioned before, consumers should be encouraged to seek assistance from an intermediary before taking investment decisions.



Q43: Do you believe that consumers would benefit from the development of an 'open finance' approach similarly to what is happening for open banking and the provision of consumer credit, mortgages, etc? Please explain by providing concrete examples and outline especially what you believe are the benefits for retail investors.



BIPAR reply

It seems to be generally promoted that open finance can facilitate the adoption of a consumer-centric approach by operators, they would better assess evolving customer needs and develop new products and services accordingly, leveraging also more innovative solutions (e.g. new advice and switching services). It could also help to reach new consumers and work against financial exclusion. If consumers get more information on products of more different providers, competition will improve.

BIPAR would like to highlight that the financial sector is populated by financial and insurance intermediaries already playing those roles efficiently, using new technologies to do so, such as eIDAS solutions. They take part in the creation of a vibrant and competitive distribution market providing innovative services and solutions to customers.

Many of these financial and insurance intermediaries are micro and SME entities and are an integral part of their local communities. It should be ensured that the benefits of open finance/insurance are available to start-up “FinTechs” and “InsurTechs”, as well as to incumbent intermediaries alike, so that there is no significant detrimental effect on competition (e.g. data accessibility).

Today, systems combining automation and human intervention/assistance are preferable from a consumer protection perspective. For the (retail) consumers to have trust in an open finance system, financial and technological literacy initiatives should be enhanced and increased at EU and national level.



Q44: What are, in your opinion, the main risks that might originate from the development of open finance? What do you see as the main risks for retail investors? Please explain and please describe how these risks could be mitigated as part of the development of an open finance framework.



BIPAR reply

- It is difficult to accurately foresee how the different potential impacts and forms of open finance might affect the industry, consumers and supervisors. There is a balance to be found between significant and very realistic downsides of open finance, ((sensitive) data breach; misuse; fraud; cyber risk; financial exclusion; concentration risk; regulatory perimeter risk; implementation cost; etc..) and maybe some potential and less realistic benefits.
- In a way the system is already open. A client can transfer his or her investment information to any provider at any moment.
- If due to the technology related to open finance only a few actors end up dominating the finance investment market, this could also result in a lack of competition and of innovation.
- The relationships between third party providers, financial product providers, intermediaries will be important to consider. It will be important to avoid creating an asymmetric/unbalanced relationship between micro/SMEs intermediaries and third- party service providers for example.
- It is crucial that an impact assessment should be made on the following aspects:
 - what would be the real added value of open finance? Is it really necessary? What is the cost-benefit analysis on the market as a whole, including micro and SME intermediaries in the sector?
 - does open finance translate into a more cost-efficient and inclusive financial ecosystem overall for society?The advantages / disadvantages of open finance for daily transactions (banking) may be different from those for other financial activities (investments, pensions, insurance)
Consumers should be able to provide the information they wish to their (financial) intermediaries. If the information is not correct, then they should assume the responsibility of that information. Information collected by social media can be consciously or unconsciously wrong information (the pictures on social media are snapshots of happiness, there should be a difference between behaviour and contractual commitments). How do firms find that balance?
 - Do comparison websites ultimately lead to greater price competition or to price alignment?



Q45: Which client investor data could be shared in the context of the development of an open finance framework for investments (e.g., product information; client’s balance information; client’s investment history/transaction data; client’s appropriateness/suitability profile)?



BIPAR reply

The principle should be that it is the client who has the right to manage his or her cluster of data and in how far he or she shares this cluster of data with service providers.

For the rest we refer to GDPR as a starting point (for example sensitive data should not be included in open finance).

Product information, basic customer data (name, address,...) could be included in an open finance framework.



Q46: What are the main barriers and operational challenges for the development of open finance (e.g., unwillingness of firms to share data for commercial reasons; legal barriers; technical/IT complexity; high costs for intermediaries; other)? Please explain.

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Q47: Do you see the need to foster data portability and the development of a portable digital identity? Please outline the main elements that a digital identity framework should be focusing on.

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Q48: Do you consider that regulatory intervention is necessary and useful to help the development of open finance? Please outline any specific amendments to MiFID II or any other relevant legislation.

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Q49: What do you consider as the key conditions that would allow open finance to develop in a way that delivers the best outcomes for both financial market participants and customers? Please explain.

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