

## BIPAR Response to the European Commission's consultation on the Retail Investment Strategy for Europe



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### EUROPEAN COMMISSION'S BACKGROUND FOR THIS CONSULTATION

*The level of retail investor participation in EU capital markets remains very low compared to other economies, despite high individual savings rates in Europe. This means that consumers may currently not fully benefit from the investment opportunities offered by capital markets.*

*In its September 2020 new capital markets union (CMU) action plan, the European Commission announced its intention to publish a strategy for retail investments in Europe in the first half of 2022. Its aim will be to seek to ensure that retail investors can take full advantage of capital markets and that rules are coherent across legal instruments. An individual investor should benefit from adequate protection, bias-free advice and fair treatment, open markets with a variety of competitive and cost-efficient financial services and products, and transparent, comparable and understandable product information.*

*EU legislation should be forward-looking and should reflect ongoing developments in digitalisation and sustainability, as well as the increasing need for retirement savings.*

*In 2020, the Commission also launched an extensive study, focusing on the different disclosure regimes, the extent to which advice given to prospective investors is useful and impartial and the impact of inducements paid to intermediaries. It will involve extensive consumer testing, to ensure that any future changes to the rules will be conceived from the perspective of what is useful and necessary for consumers.*

*In line with the Commission's stated objective of "an economy that works for people", the Commission is seeking to ensure that a legal framework for retail investments is suitably adapted to the profile and needs of consumers, helps ensure improved market outcomes and enhances their participation in the capital markets.*

*The Commission is looking to understand how the current framework for retail investments can be improved and is seeking your views on different aspects, including the limited comparability of similar investment products that are regulated by different legislation and are hence subject to different disclosure requirements, which prevents individual investors from making informed investment choices; how to ensure access to fair advice in light of current inducement practices; how to address the fact that many citizens lack sufficient financial literacy to make good decisions about personal finances; the impact of increased digitalisation of financial services; sustainable investing.*

## 1) GENERAL QUESTIONS

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

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

Yes

#### BIPAR reply

Please see “BIPAR accompanying statement” attached to BIPAR’s response for the complete reply to this question.

Recent European legal instruments such as MiFID II, IDD, PEPP, PRIIPs have created the regulatory framework under which all investors, and in particular retail investors, have a safe choice of both products and distribution channels (products, services, the agreed conditions).

The rules leave choice on the basis of their own preferences and personal situation. MiFID II and IDD ensure that 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.

- (IBIPs) Investors are now better protected and informed than ever before.
- (IBIPs) Investment products are now manufactured in accordance with recent POG rules.
- Investment products are now better documented before they are marketed (KIDs).
- All activities are supervised.

EU legislation should be forward-looking and should reflect ongoing developments in digitalisation and sustainability, as well as the increasing need for retirement savings. However, other rules do not need to be changed. Changing regulation is costly and creates uncertainty. Time is now needed to ensure that the (recent) rules find their way into the philosophy of all market parties and investors. Supervisors have the powers to intervene in individual cases where necessary or to give guidance within the framework. Unregulated products and activities should be brought in the scope of the existing rules.

- **Investment is not insurance** - It is important that current and future legislation reflects the difference between insurance and investments. In “pure investment” the risk is transferred from the financial institution to the consumer. In insurance the risk is transferred from the consumer to the insurer.
- **Financial products are now “tested” before they come on the market** - Today, new regulation requires that all financial products go through a product oversight and governance process, all steps in the financial product manufacturing process are documented and traceable and manufacturers must, from the start, have a target market in mind. These products and this manufacturing and governance process are supervised by authorities at national and European level.
- **Financial products are now better documented before they are sold** - Thanks to modern legislation and important efforts from the industry, financial products are also much better documented for the consumer. PRIIPs KIDs need to be improved but are now available and these KIDs force the manufacturers to think more carefully about the way of communicating to the public, to the client, to advisors and to intermediaries and other service providers.
- **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.
- **Regulation forces consumers/ retail investors to go in dialogue about important decisions**
- **The economy is unpredictable, but consumers are better informed than ever before**
- **The market entrance cost is high**
- **There is great need for regulatory stability.** Adaptation to new rules and integrating them in the philosophy of the market takes time.

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

Yes, they are justified

**BIPAR reply**

Generally speaking, BIPAR believes that the current rules are justified. There are however exceptions where rules/ limitations hinder retail investor participation. BIPAR is not in favour of bans or caps on remuneration or costs for financial or insurance intermediaries and advisers, which increase the risk of advice gaps and hinder retail investor participation. BIPAR did for instance not support the cost cap in PEPP for Basic PEPPs in this respect. The unwanted possible side effects are various.

When it comes to warnings against purchase or prohibiting access, BIPAR calls for caution as well. In particular level 3 measures such as guidelines should not de facto lead to limiting access for investors to invest.

Over-regulation can have as a side-effect that it discourages customers from investing and may result in consumers investing in non-regulated investments. Investors should be encouraged to take informed decisions and to seek assistance from intermediaries. The capacity of consumers to make choices for themselves should however not be underestimated and all investors should have access to well-documented, well-regulated, well-manufactured and well-supervised investments via the channel of their choice and these choices should not be limited.

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

Don't know / no opinion / not applicable

**BIPAR reply**

We are not aware of any retail investment products that retail investors are prevented from buying in the EU due to EU regulation directly.

There are national regulators who have prohibited certain investments. We refer for instance to the Belgian moratorium on the distribution of particularly complex structure products: [Moratorium on the distribution of particularly complex structured products | FSMA](#)

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

**BIPAR reply**

Other factors<sup>1</sup> preventing retail investors from investing include lack of awareness: "investment / financial education" needs to be included in the curricula of secondary schools. Something BIPAR has been calling for, for 20 years. The public should also be made better aware that most of the products, investment market parties 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 are unpredictable. In this respect KIDs need to be improved.

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.

In insurance, the consumer has the right to always get her/his demands and needs met at any signed insurance policy investment, this is a flexible and useful tool. In this respect, we also want to stress that choice for the consumer/ investor between business models, intermediaries, direct operators, digital operators, advisors, products and choice about how to pay for these services is key. 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 investment markets that work for the client. All costs which have an impact on the return should be transparent.

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<sup>1</sup> Lack of understanding by retail investors of products, concerns about the risks of investing, uncertainties about expected returns

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

- financial literacy
- disclosure requirements
- addressing the complexity of products

**BIPAR reply**

See also question 1.4.

Some consumers who are not yet investing (we think that indeed a distinction should be made between consumers who already invest and consumers who never invested) may not be interested or do not want to spend much time receiving financial information or guidance. In our opinion, this issue should be the subject of more study.

For over 20 years, BIPAR has been asking that a "risk, finance and solutions" course be included in the curriculum of secondary schools. We appreciate the efforts of our national associations, governments, and consumer organisations to create awareness.

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. To a certain extent, the demands and needs test and the appropriateness and suitability test are useful in this respect. The need for this accompanying by intermediaries has been made even more topical because of the sustainability framework coming into place.

The lack of financial education does not mean that the consumer has a lack of critical sense, but they may underestimate their future needs. For more background we refer, for example, to the 2016 OECD International Network on Financial Education (INFE) study. BIPAR in this respect looks forward to participating in the Commission and OECD work for a joint framework.

Intermediaries from their side need to be certain that they can count upon the correctness of the information they receive from the manufacturers of the products they offer - which is even more topical because of the sustainability framework coming into place - and consumers should be made aware that financial markets are - unfortunately - unpredictable.

Too much formality for the regulated products distribution may push the consumer in "gambling" in the unregulated market (influenced by social media for example).

Consumers should continue and have choice and easy access to information, advice, mentorship or distributors of investment products. Consumers should have broad choice between all forms of business models in order to ensure optimal access to investments. They should have choice between intermediaries, advisors, independent advisors, consultants, direct distributors. They should have choice between commission system "mentorship", advice or information and fee-based advice or guidance/ mentorship. In this respect, we also believe that consumers should be warned for "pure" robo-advice. The algorithms of robo-advice are mostly product-based while the situation of the consumer is more complex. This being said, robo-tools can assist intermediaries or "experienced" investors.

Consumers should also be made aware that most of the products and all activities of intermediaries are regulated and supervised. Existing regulation offers supervisors the necessary tools to intervene where necessary. Instead of changing rules, these tools should be used to enforce existing rules. The supervision system should result in a situation that unreliable financial products are removed from the market or blocked before they come on the mass retail market. If more experienced investors want to invest in the very complex products, then this should be possible - with or without the assistance of professionals.

Finally, regarding disclosures: certain European legislative texts still rely on default paper-based information. This should be adjusted. Also, disclosures in precontractual information as the KID needs to be looked at again since the information currently may in some cases be misleading for the investor. Disclosures should be limited to real key information.

## 2) FINANCIAL LITERACY

*For many individuals, financial products and services remain complex. To empower individuals to adequately manage their finances as well as invest, it is of crucial importance that they are able to understand the risks and rewards surrounding retail investing, as well as the different options available. However, as shown by the [OECD/INFE 2020 international survey of adult financial literacy](#), many adults have major gaps in understanding basic financial concepts. While the main responsibility for financial education lies with the Member States, there is scope for Commission initiatives to support and complement their actions. In line with the [2020 capital markets union action plan](#), Directorate General for Financial Stability, Financial Services and Capital Markets Union (DG FISMA) published a [feasibility assessment report](#) and will, together with the OECD, develop a financial competence framework in the EU. In addition, the need for a legislative proposal to require Member States to promote learning measures that support the financial education of individuals, in particular in relation to investing will be assessed.*

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

### **BIPAR reply**

BIPAR believes that increased financial literacy will help retail investors to improve their understanding of the nature and main features of financial products, create realistic expectations about the risk and performance of financial products, increase their participation in financial markets, find objective investment information, better understand disclosure documents, better understand professional advice, make investment decisions that are in line with their investment needs and objectives, follow a long- term investment strategy.

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

Please explain your answer, taking into account that the main responsibility for financial education lies with Member States:

### **BIPAR reply**

“Investment / financial education” needs to be included in the curricula of secondary schools. Something BIPAR has been calling 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.

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

### 3) DIGITAL INNOVATION

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

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

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

#### **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:

- Does open finance and perceived efficiencies from harnessing technological advancements result in better pricing and reduced costs to the end user/retail investor?
- Does open finance translate into a more cost-efficient and inclusive financial ecosystem overall for society?
- Do the cost savings generated ultimately end up lowering costs or simply add to the bottom line for the providers of “annex” services”?
- Are cost-effective plans the right plans for customers? At what price in terms of privacy?
- 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 collected by a car or by social media can be consciously or unconsciously wrong information (the car can be used by anyone else, the pictures on social media are snapshots of happiness, there should be a difference between behaviour and contractual commitments). There is a difference between correlation and causation. How do firms find that balance? Exclusion of consumers who opt out of data sharing is another key concern.
- Do comparison websites ultimately lead to greater price competition or to price alignment? Better quality?

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

#### **BIPAR reply:**

It is 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.

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

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

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

Yes

#### **BIPAR reply**

Our answer is yes 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.

Furthermore - even if the information provided is machine-readable, the quality (and intentions) of the algorithm which defines the “comparison” is also key. At the current state of technology, it would be necessary to first create the rules which define the comparison AI and the supervision of it.

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

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

Don't know / no opinion / not applicable

**BIPAR reply**

To answer this question more research about consumer behaviour is necessary. The question has various aspects, role of digital media (social media?), regulated / unregulated investment products? access to products in other EU markets?

Under MiFID II product governance rules, firms are -as mentioned by the Commission below- prevented from presenting products in ways which might mislead clients. Recent examples have however illustrated the limits of rules and regulations on the impact of social media.

In every advertisement or investment related publication, the consumer should be encouraged to seek assistance from an intermediary before investing.

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

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

Yes

**BIPAR reply**

In every advertisement or investment related publication, the consumer should be encouraged to seek assistance from an intermediary before investing. Such EU rules would however be without use if not all investment products are regulated.

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

Don't know / no opinion / not applicable

**BIPAR reply:**

It should first be studied if the current rules applicable to marketing and advertising are not enough. If they are activity-based, then they should already now apply to online marketing and advertising. What kind of online marketing and advertising would be exactly targeted? Also already heavily regulated market players do have online marketing and advertising activities.

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

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

**BIPAR reply**

Legal instruments like IDD and MiFID II and the national legislation based on them have created full protection, but this does not apply to non-regulated products. They also do not stop consumers from making choices relying upon information on social media. The importance of their influence is possibly different depending upon the consumer segment.

We refer to the importance of “financial education” but also to the freedom of choice of citizens.

Trust in the regulated market by consumers could possibly also be undermined by ever changing rules (as it might be an indication of the lack of trust by the governments/ regulators in their own rules) or by overregulation.

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

Somewhat significant

**BIPAR reply**

Do supervisors not have the powers to intervene? The IDD is activity-based.

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

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

Don't know / no opinion / not applicable

**BIPAR reply**

Do supervisors not have the powers to intervene? The IDD is activity-based.

Furthermore, in combination with “open finance” and “AI” we believe that many ethical issues could indeed arise in the use of machine learning or artificial intelligence by social media. Today for example consumers have minimal control over how machine learning and AI is used on their data. There is currently no mechanism to ensure consumers understand exactly how their data will be used in this respect or how value will be extracted from it.

The consumers should be encouraged to seek assistance from an intermediary before taking investment decisions.

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

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

No, the rules need to be updated

**BIPAR reply**

We believe that the MiFID II, IDD and Solvency II are a good starting point and include the principles necessary to capture most of the developments. It should be also noted that any of the potential risks emerging as a consequence of the use of “new” business models are no different from the risks caused by the provision of services using “less tech” means. Supervision in this respect is important.

BIPAR is of the opinion that:

- A consistent, transparent, all-encompassing, and clear activity-based, risk-oriented regulatory framework should be maintained. It is crucial to remove any rules adding administrative burden to business, especially SMEs, when they bring no added value for customers or markets or supervision. The implementation of the rules currently in place should be evaluated and any new rules should be based on thorough impact assessment (also considering the real impact on SMEs and local employment).
- 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 new European Commission, and it should be recognized that every change in legislation (and thus compliance procedures) has a cost (in particular for SMEs) for the firms in the industry.
- Firms that are not regulated in the financial/insurance services sector but are active in the financial/insurance services value chain should be brought into the existing regulatory framework, so that the “chain” is consistent and can be properly supervised.
- There should be a regulatory level playing field between all providers of comparable services, so that consumers can make a choice.
- Regulation always needs to take into account the characteristics of the product

#### 4) DIGITAL REQUIREMENTS

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

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

BIPAR believes that pre-contractual disclosure documentation for retail investments, in cases where no Key Information Document is provided, can enable adequate understanding of the costs associated with the product, the expected returns under different market conditions, the risks associated with the product.

##### **BIPAR reply**

The answer to this question requires a broad study of consumer behaviour and of the influence of information on consumer decision making. It all depends upon the quality of the other information that is made available about the product. The answers to above questions depend also on the consumers' experience in investment. Even with a KID, in certain circumstances KIDs cannot be compared.

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

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

###### **Question 4.2.1 - PRIIPs Key Information Document**

##### **BIPAR reply**

The answer to this question requires a broad study of consumer behaviour and the influence of information on consumer decision making. It all depends upon the quality of the information that is made available.

###### **Question 4.2.2 Insurance Product Information Document**

##### **BIPAR reply**

The answer to this question requires a broad study of consumer behaviour and the influence of information on consumer decision making. It all depends upon the quality of the information that is made available.

With regard to IPID, our response below focuses on investment products, since this consultation paper deals with investment, and does not regard non-life.

In general, IPID is used effectively in the pre-contractual phase to support exchanges between clients and intermediaries/insurers. However, it was noted that in some markets, insurers apply it unevenly, which undermines the original objective. According to some reactions, it would also be advisable to remove any doubts about the legal scope of the document so that the judicial courts do not distort it to increase the liability of the players (insurers and distributors), for example in the event of imprecision of a word, given its synthetic nature.

###### **Question 4.2.3 PEPP Key Information Document**

##### **BIPAR reply**

In so far that the PEPP Regulation is not yet applicable, PEPPs are not yet on the market, it seems impossible replying to the above questions.

The answer to this question also requires a broad study of consumer behaviour and the influence of information on consumer decision making. It all depends upon the quality of the information that is made available.

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

No

**BIPAR reply**

The answer to this question requires a broad study of consumer behaviour and the influence of information on consumer decision making. It all depends upon the quality of the information that is made available but also the level of financial literacy and level of interest of the candidate investor. In general, KID is used effectively in the pre-contractual phase to support exchanges between clients and intermediaries/insurers. However, due to the doubt about the legal scope and possible litigation if not using the right wording, jargon, is in some cases used.

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

**BIPAR reply**

This is already defined by the law – before conclusion of the contract

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

Yes

**BIPAR reply:**

Comparison is only possible between really comparable products. This is one of the issues with the PRIIPs KID, which tries to compare insurance and investment products and does not sufficiently take into account the specificities of the insurance products. It is practically impossible to compare certain products and making a uniform pre-contractual information document will not solve this, but rather further hinder understanding of products.

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

No

**BIPAR reply:**

See our reply to question 4.5.

In practice apples cannot be compared with pears. It is practically impossible to compare certain products and making a uniform pre-contractual information document will not solve this, but rather further hinder understanding of products. The key is product supervision. When a product is good, it can enter the market. The rest depends upon the individual situation of the investor/ consumer and whether or not it fits into her/his investment/ patrimonium mix.

Consumers should have choice but the information on the product should be clear.

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

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

Yes

**BIPAR reply**

We refer to the current issues in relation to PRIIPs and the KID (which we have informed the co-regulators about during the regulatory process).

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

Yes

**BIPAR reply**

We refer to the current issues in relation to PRIIPs and the KID (which we have informed the co-regulators about during the regulatory process).

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

**BIPAR reply**

We refer to the current issues in relation to PRIIPs and the KID (which we have informed the co-regulators about during the regulatory process).

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

Yes

**BIPAR reply**

We refer to the current issues in relation to PRIIPs and the KID (which we have informed the co-regulators about during the regulatory process).

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

According to BIPAR, product objectives/main product features, costs, past performance, guaranteed returns, capital protection, forward- looking performance expectation, risk, ease with which the product can be converted into cash are essential.

**BIPAR reply**

The consumer should be warned that every investment also includes risks. It should be clear what they risk. Past performance is not a guarantee for future performance. The costs intrinsic to the product which have an impact on the return should be clear. The consumer should be informed about the relative impact of the costs as cheap products are not always the best products. We also refer to the current issues in relation to PRIIPs and the KID.

Although past performance is no guarantee for the future, we believe that information on past performance, where it is available, can be useful for retail investors in choosing if and which packaged retail and insurance-based investment product (PRIIP) to acquire.

If it is to be shown it could, for example, appear alongside a proper index-based benchmark. Also clear additional explanations should be provided in the KID regarding the (non-)relationship between past performance and future performance scenarios.

**Question 4.9 - Do you consider that the current regime is sufficiently strong to ensure costs and cost impact transparency for retail investors?**

In particular, would an annual ex post information on costs be useful for retail investors in all cases?

Don't know / no opinion / not applicable

**BIPAR reply**

Information should be clear at product level. Costs impacting the return should be transparent. Annual ex post product cost information should be the responsibility of the manufacturer.

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

**BIPAR reply**

This requires a detailed study of the influence of information on consumer decision making. ....

Over the last years we have participated actively in the debate about KID/PRIIPs. We refer to our comments given then and we refer to the current issues in relation to PRIIPs and the KID.

Ever-changing regulation is costly. We would prefer that time is taken to develop quality regulation based upon testing and dialogue with the industry, even if that takes some more time.

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

**BIPAR reply**

This requires a detailed study of the influence of information on consumer decision making.

We refer to the current issues in relation to PRIIPs and the KID

We think such a study would reveal that there is a difference between “experienced investors, and the mass market of potential investors. Product supervision before they enter the market is important (for retail investors), but experienced investors should have choice.

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

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

**BIPAR reply:**

This seems a simple question but in reality, the answer is very complex.

Overall, PDFs and electronically signed (Word or other documents) sent as an attachment in emails should be recognized as being legally equivalent to paper documents. More sophisticated systems should -obviously - also be considered as being equivalent. We opt for an electronic format as this creates the most legal certainty (in case of options, there might always be discussion about having received, not received etc).

Before introducing one of the proposed options, this issue should be studied.

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

**BIPAR reply**

Although this may seem to be an answer that is in contradiction with the objectives of the Single Market, language is as a matter of fact part of the practical obstacles of the efficiency of the EU retail investment market.

The “simple translation” of words is not a guarantee for the understanding of the concepts as the basics of legal systems are still different. The distinction may have to be made between “experienced investors” and other retail investors, but on the other hand it would be unfair to deprive a citizen in one EU Member State from investing in an opportunity in another Member State. High quality information is key and perhaps it could be considered to offer a language opt-out option for consumers who consciously make the choice to invest in products for which information is not available in their language. This issue has many factors including guarantee funds considerations ...

As the POG rules require target market assessments, language of the target market may have to be part of it?

The concepts of active cross-border transactions versus passive cross-border transactions may have to be re-introduced in order to allow for a more flexible system.

**Question 4.14 - How can access, readability and intelligibility of pre- contractual retail disclosure documents be improved in order to better help retail investors make investment decision?**

**BIPAR reply**

Consumers should be encouraged to seek assistance from an investment or insurance intermediary before taking investment decisions.

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

**BIPAR reply**

This requires a detailed study of the influence of information on consumer decision making.

It depends on the product, the objective of the investment, ...

A pension product should not be sold “digital only”, there should be cooling off systems when selling for example pension products “purely” online (although perhaps at a certain cost).

Consumers should be encouraged to seek assistance from an investment or insurance intermediary before taking investment decisions.

## 5) THE PRIIPS REGULATION

*In accordance with the PRIIPS Regulation, and as part of the retail investment strategy, the Commission is seeking views on the PRIIPS Regulation. In February 2021, the ESAs agreed on a draft amending Regulatory Technical Standard aimed at improving the delegated (level 2) regulation. The Commission is now assessing the PRIIPS Regulation level 1 rules, in line with the review clause contained in the Regulation.*

### Core objectives of the PRIIPS Regulation

#### Question 5.1 - Has the PRIIPS Regulation met the following core objectives:

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

Yes

##### BIPAR reply:

Although the issues related to the KID (in particular with regard to IBIPs) are well-known, the KID represents an important progress in making investment products more understandable.

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

No

##### BIPAR reply:

The KID has not really improved the comparability. It is well-known that the current KID does not allow for a clear comparison of all “qualitative” aspects such as “guarantees” which make, objectively, KIDs of IBIPs, with an insurance/guarantee” element, difficult to compare with a KID for a pure packaged investment product.

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

##### BIPAR reply:

The KID is fairly recent. Study of complaints and ombudspersons and supervisors should answer this question.

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

Yes

##### BIPAR reply:

Partly most probably yes: the investor who reads the KID is certainly “inspired” by some of the disclosures and may, step by step become more “critical” and become more aware of the questions to be asked. It does not allow the investor to do for a suitability test himself / herself but the KID in combination with mentorship of an intermediary is certainly a way to become “more aware” and have a good conversation about a financial product.

#### Question 5.2 - Are retail investors easily able to find and access PRIIPS KIDs and PEPP KIDs?

##### BIPAR reply:

This depends on what you are looking for and how.

PEPP is not yet applicable.

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

##### BIPAR reply:

Requiring manufacturers to upload PRIIPS and PEPP KIDs onto a searchable EU-wide database or national database may indeed be useful. We only partly support the third proposal to require PRIIPS KIDs and PEPP KIDs to be made available in a dedicated section on manufacturer and distributor websites, but only because the Commission adds “distributors” to this proposal. This should be limited to manufacturers. Distributors often work with products from a multitude of manufacturers and requiring distributors to put these KIDs on their website would be overburdensome. Moreover, the distributor cannot be liable for the KID.

## Multiple-Option Products

*For PRIIPs offering the retail investor a range of options for investments (Multiple Option Products) the PRIIPs Regulation currently provides the manufacturer with two different approaches for how to structure the KID:  
A separate KID can be prepared for each investment option (Article 10(a))*

*A generic KID covering in general terms the types of investment options offered and separate information on each underlying investment option (Article 10(b))*

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

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

### **Question 5.9 - Should distributors and/or manufacturers of Multiple Option Products be required to provide retail investors with a single, tailor-made, KID, reflecting the preferred underlying portfolio of each investor?**

What should happen in the case of ex-post switching of the underlying investment options?

No

#### **BIPAR reply:**

For a life insurance contract, which can contain hundreds of units, it is very unlikely that the underlying portfolio will be comparable to what is withheld for the client. Therefore, such a presentation would only make the document more difficult to read.

## Scope

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

### **Question 5.10 Should the scope of the PRIIPs Regulation include the following products?**

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

Don't know / no opinion / not applicable

Please explain why the scope of the PRIIPs Regulation should include these pension products:

#### **BIPAR reply:**

The characteristics may be too different.

Please explain your answer to question 5.10 a):

#### **BIPAR reply:**

Ideally, the scope of the PRIIPs Regulation should include the pension products. However, it is difficult to imagine extending the scope of PRIIPs to another category of products when it is already not functioning as intended for the existing scope of products, and taking into account that national tax regimes and civil law are very different.

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

Don't know / no opinion / not applicable

Please explain why the scope of the PRIIPs Regulation should include these individual pension products:

#### **BIPAR reply:**

It is difficult to imagine extending the scope of PRIIPs to another category of products when it is already not functioning as intended for the existing scope of products.

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

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

Don't know / no opinion / not applicable

Please explain your answer to question 5.11:

**BIPAR reply:**

Having access to past versions of KIDs may be useful for some investors but care has to be taken not to confuse investors. The legal position of the pre-contractual info should be clarified. Once the contract is signed the KID is overruled.

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

**Question 5.12.1 Should the review and update occur more regularly?**

No

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

Yes

**Question 5.12.3 What should trigger the update of PRIIP KIDs?**

**BIPAR reply:**

The rules currently state that a review shall be carried out every time there is a change that significantly affects or is likely to significantly affect the information contained in the KID and, at least, every 12 months following the date of the initial publication of the key information document. Revision then has to be done where a review concludes that changes to the KID need to be made. We believe this is acceptable. It would however be desirable that manufacturers not only proactively inform the investor of changes but also the distributor/ intermediary/advisor.

Please explain your answer to question 5.12:

**BIPAR reply:**

See 5.11

## 6) SUITABILITY AND APPROPRIATENESS ASSESSMENT

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

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

Strongly agree

### **BIPAR reply:**

Firstly, the question should not state "seller of an IBIP" but "distributor or intermediary"

We believe that the MiFID II and IDD rules on suitability work well.

It is to be reminded that in IDD on top of the suitability test, there is also the demands and needs test.

If there are any issues, one has to keep in mind that consumers are not always willing to share all information. They can have more than one financial or investment intermediary (IBIPs with an insurance intermediary, an investment portfolio with a bank or other intermediary or advisor, a mortgage somewhere else ...a crypto portfolio elsewhere...).

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

Don't know / no opinion / not applicable

### **BIPAR reply:**

We believe that the MiFID II and IDD rules on suitability work well. It is to be reminded that in the IDD, on top of the suitability test, there is also the demands and needs test. If there are any issues, one has to keep in mind that consumers are not always willing to share all this information. They can have more than one financial or investment intermediary (IBIPs with an insurance intermediary, an investment portfolio with a bank or other intermediary or advisor, a mortgage somewhere else ...a crypto portfolio elsewhere...)

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

Yes

### **BIPAR reply:**

There should be a level playing field between distributors.

Online channels should be required to carry out the same demands and needs / suitability test as non -online channels. We have however a problem with the term robo-advice, which may be a misleading term.

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

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

Agree

### **BIPAR reply:**

We believe that the MiFID II and IDD rules on appropriateness work well.

To be reminded that in IDD on top of the appropriateness test, there is also the demands and needs test.

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

Don't know / no opinion / not applicable

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

Yes

**BIPAR reply:**

There should be a level playing field between distributors. Online channels should be required to carry out the same demands and needs / appropriateness test as non-online channels

However, the current framework could be clarified re. the responsibility for robo-advisors to evaluate and calibrate their algorithms.

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

Yes

**BIPAR reply:**

The provision of a warning is indeed sufficient. There should be no stricter rules which would actually discourage customers from making investments and would even motivate them to invest in investments that are not regulated.

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

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

Yes

**BIPAR reply:**

We believe that the current choices in MiFID II and IDD between sales with suitability test / appropriateness test or execution only should be kept.

When properly carried out and supervised, this existence of options can contribute to further achieving the CMU aims.

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

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

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

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

Yes

**BIPAR reply:**

BIPAR generally has a concern regarding shifts of responsibility from product manufacturers to distributors. With regard to MiFID II for instance, the ESMA Guidelines on product governance (assessment of the target market) contained a

shift of responsibility where they required distributors to set the target market for products marketed before 3 January 2018 (the application date of MiFID II) but distributed after 3 January. The Guidelines added that a target market should be assigned by the manufacturer to such products, at the latest, following the next product review process cycle, but the above provision should not have been the responsibility of distributors in the first place.

Also in MiFID II, even with ESMA Guidelines in place which further develop the MiFID II POG framework, the current MiFID II rules regulating sales within the negative Target Market (TM) have caused many distributors to stay away of such sales, fearing they could possibly be blamed for mis-selling. This reaction can thus lead to very “conservative” investment advice, which is not necessarily beneficial for the investor. In some markets it is noted that the available product range for retail clients reduced during the last two years, due to the administrative burden caused by the product governance process and the information requirements. POG is key for investment products and distributors and intermediaries must be able to rely upon the manufacturer’s POG process.

### **Demands and needs test (specific to the Insurance Distribution Directive (IDD))**

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

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

Strongly agree

#### **BIPAR reply:**

See also above, the demands and needs test helps to establish a dialogue between the consumer and the intermediary. It often leads to better insights in risks by the client him / herself. The formality of it is sometimes burdensome. In some cases, proportionality is not applied by supervisors.

**Question 6.11 - Can you identify any problems with the demands and needs test, in particular its application in combination with the suitability assessment in the case of insurance-based investment products?**

Yes

#### **BIPAR reply:**

In practice the one overlaps the other to a certain extent, but the demands and needs test remains the best basis and the information obtained there can, if the consumer chooses for IBIPs for advice with a suitability test, already be useful.

This question seems to start from a product basis while intermediaries start their demands and needs from a client’s situation perspective. In such an approach, the suitability test is a complement to the demands and needs.

Supervisors should allow that in case of control it is accepted that demands and needs and suitability can be integrated into one process and one document.

*The IDD does not contain detailed rules on the demands and needs test and leaves it to Member States to decide on the details of how the test is applied in practice. This results in slight differences between Member States (but often adapted to the national needs).*

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

**BIPAR reply:**

Even if in all Member States the market players have made a good start in integrating the new requirements regarding, intermediation advice, intermediation and distribution methods specifically in IBIPs, the introduction of these requirements is still too recent to assess their effects and to allow for any meaningful conclusions about their application in practice.

In most of the Member States, based on available information, the demands-and-needs concept seems to be functioning well. Intermediaries adjust the demands-and-needs test according to type of product and type of client in a proper manner.

It appears that this concept does provide a structured process of recommendation without adding additional 'overload' in itself and therefore has had a positive impact. It is by some considered as a trigger for clients and intermediaries to go in dialogue about the risk or the insurance product.

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

Yes

**BIPAR reply:**

We believe that it would be interesting for the Commission to assess how the demands and test requirements is complied with by digital platforms or in the cases of pure "robo-advice".

## 7) REVIEWING THE FRAMEWORK FOR INVESTOR CATEGORISATION

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

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

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

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

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

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

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

#### **BIPAR reply:**

We believe there should be lighter rules for certain clients in MiFID II. Perhaps it is not optimal though to create a new category as such, since additional categories will lead to extra administrative costs and burden. Maybe there can be another solution to ensure fluidity of transactions in certain circumstances. We also suggest considering simplifying the requirements for smaller investments, but always on a level playing field basis. There is an overall tendency to be overly burdensome to the direct client-adviser relationship. From this perspective, the current MiFID categorisation of clients lacks granularity. Moreover, for example in France, financial investment advisers cannot allow a non-professional client to opt for the professional client category. As a result, the client of a financial investment adviser who could, under certain conditions, opt for professional status does not have this possibility and must be subject to all the rules protecting non-professional clients. Generally speaking, we believe the first need is to ensure that clients understand that things can go wrong when they invest and take risks.

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

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

#### **BIPAR reply:**

A comprehensive suitability test that would be completed at the time of entry into the relationship, but not repeated at each investment, seems to be both a reliable solution for classifying such "category of client", without being overly burdensome

## 8) INDUCEMENTS AND QUALITY OF ADVICE

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

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

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

#### **BIPAR reply:**

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

A whole set of measures in line with what is referred to in the question already currently exist.

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. 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. 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 independent financial advisor's 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). A ban on all forms of "inducements" for every retail investment product across the EU would be a draconian measure. It is certainly not simpler to enforce or supervise than the current conduct rules and disclosure rules. A total ban does not automatically lead to better investment choices. In one way or another it leads to an advice gap and reduction of choice for the consumer.

The term “inducement” is furthermore misleading. Everybody has the right to be remunerated for work done. A ban on commission favours direct/own distribution from the product providers and limits access to assistance from an intermediary / advice. The cost of distribution does not simply disappear by banning commission, it would merely redirect consumers to direct distributors.

One has to bear in mind that intermediaries and financial advisers have a real responsibility towards their client. They see the whole picture when they work for their clients. Indeed, their relationship is traditionally one of long-term and it is therefore not in their interest to recommend the most “charged” products, but they will look at those that are best adapted to the client's situation. A contrario, the relationship with the client would quickly end, which is not in the intermediary's interest.

Also it has to be reminded that financial advisors and intermediaries who do not comply with the MiFID II and/or IDD rules not only face severe monetary penalties, but are also subject to civil charges of their clients.

One should furthermore have trust in the power and competence of national competent supervisory authorities, courts and legal systems.

Considerations about advice and intermediation costs and fees in relation to an investment should not be reduced to a product-per-product approach. A sound investment portfolio of a consumer is always a mix of instruments in function of the client's personal situation and wishes. Success or failure of one or other distribution system cannot be measured on the basis of the kind of products that are more or less invested in at a certain period of time.

Examples of mis-selling (often pre-dating the new rules) should not be generalized or used for propaganda against the system that is established by the regulators and politicians over the last years.

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

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

**BIPAR reply:**

See previous question.

The word “inducement” in its generic sense is reflecting something completely different than a remuneration for work done, for services rendered. We regret the choice of the word inducement and its definition in MiFID II and IDD IBIPs level II. It creates confusion and complicates the debate about business models and systems of remuneration.

Both MiFID II and IDD regulate robustly a transparent system of choice. This choice of systems allows also those systems to be in competition with one another. 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 or are in competition to improve the service to the consumers. It is also recognized that this system of choice 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).

A ban on commission favours direct/own distribution from the product providers and limits the consumer's access to fair advice or choice. The cost of distribution does not simply disappear by banning commission, it would merely redirect consumers to the product providers with no real possibility to compare investment vehicles and insurance contracts.

In insurance, because of the commission system, newly established insurers with innovative products can enter other EU-markets without having to establish and invest in a full organization. Instead they can access markets by intermediaries already established and who are well familiar with market conduct, consumer behaviour and demands and needs. This benefit of competition should not be underestimated since it keeps already established companies alert and progressive.

In the UK, where inducements were banned in 2013, 54% of UK adults with £10,000 or more of investible assets, around 8.4 million people, did not receive any formal support to help them make investment decisions over 12 months. («Evaluation of the impact of the Retail Distribution Review and the Financial Advice Market Review», Financial Conduct Authority, December 2020, p 6, point 1.21).

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

**BIPAR reply**

See previous questions: such a ban would have a disastrous impact on many savers / investors who would have to do without valuable sources of information and advice, where the need for financial awareness is particularly high. Investors who cannot afford to pay fees may seek informal guidance, not provided by financial services firms or advisors. Consequently, the quality of advice will be lower. Product providers would be the only distributors of their own products.

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

**BIPAR reply:**

People who are already investing would possibly continue and invest but without assistance. Newcomers in the investment market would however consider the cost for advice at the outset as a barrier.

In a commission system there is “no cure” “no cost”, which lowers the barrier to seek an opinion

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

**BIPAR reply:**

In the UK, where inducements were banned in 2013, 37% of those consumers with more than £10,000 of investible assets did not have any investments at all and were holding their assets entirely in cash, and a further 18% were holding more than 75% of their investible assets in cash («Evaluation of the impact of the Retail Distribution Review and the Financial Advice Market Review», Financial Conduct Authority, December 2020) p 6, point 1.21).

In the absence of advice, investors would probably retain their money in cash.

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

**BIPAR reply:**

IDD and MiFID II are the right framework and regulate a transparent system of choice with all options being heavily supervised.

This system of choice is also helpful in the further development of the ecosystem of hybrid/digital service providers and helps turn savings into investments.

However, practice shows that in case of comparison websites, there is still some opacity and a level playing field should be better ensured. While comparison websites are supposed to put pressure on prices, they may also result in price/product alignment.

How is the cost of publicity of direct writers interpreted? Marketing costs for hits in search systems?

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

No

**BIPAR reply:**

Investment is not insurance. It is important that current and future legislation reflects the difference between insurance and investments. In pure investment the risk is transferred from the financial institution to the consumer. In insurance the risk is transferred from the consumer to the insurer. This is one of the basic differences, but other differences are for example related to the mutualization character of insurance which is not the case in investments.

Some insurance intermediaries are active in insurance-based investment products and pension products. For many this is however only a part of their activities. Non-life and pure risk insurances are the main focus of most insurance intermediaries. Financial intermediaries in some markets are however active in all kinds of investment and long-term saving activities or patrimonium advice and solutions. National markets are still very different in this respect and these differences (besides the main differentiation Investments/ non-life (and pure risk life) insurance) should be recognized.

With regard to IBIPs specifically, the IDD is more recent than MiFID II. The differences between IDD and MiFID II are differences which reflect the differences between the insurance IBIPs market and the MiFID II product market. In essence, the end result in terms of consumer protection is similar. As the differences are minimal, we believe it is too early to change the rules. Focus should now be on the implementation, application and (proportional) supervision on the basis of the existing rules.

#### **Question 8.5 How should inducements be regulated?**

##### **BIPAR reply:**

See previous answers.

With regard to transparency we agree for investment products with transparency of nature and amount of “inducements” and all costs which have a possible impact on the return for the retail investor, on the basis of a level playing field for all distributors.

The word “inducement” in its generic sense is reflecting something completely different than a remuneration for work done, for services rendered. We regret the choice of the word inducement and its definition in MiFID II and IDD IBIPs level II. It creates confusion and complicates the debate about business models and systems of remuneration.

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

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

No

##### **BIPAR reply:**

Focus should now be on the implementation, application and supervision on the basis of the existing rules. The “Gamestop-case” and the role of social media may indicate where action is necessary.

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

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

##### **BIPAR reply:**

IDD already contains detailed rules in Article 10 on professional and organisational requirements (including continuous professional development), completed by Annex I which lays down minimum professional knowledge and competence requirements for insurance and reinsurance intermediaries. The same article also states that Home Member States may require that the successful completion of the training and development requirements is proven by obtaining a certificate. There is no obligation for certificate at European level

The financial advisor “concept” can be further developed at national level: both MiFID II and IDD provide for a common regulatory framework in which such national initiatives can fit. The “independent advice” concept, both in MiFID II and IDD, could be the basis for a private initiative to develop a European label. BIPAR is prepared to reflect about the possible

feasibility, cost and advantage of this with the European Commission. This being said, BIPAR is of the opinion that all basics are in the existing rules.

There is now a need for structural regulatory stability so that the current framework can be used to promote the CMU objectives and the sustainable products. Supervisors should intervene where necessary.

With regard to the criteria for the assessment of knowledge and competence required under Article 25(1) of MiFID II (1. Member States shall require investment firms to ensure and demonstrate to competent authorities on request that natural persons giving investment advice or information about financial instruments, investment services or ancillary services to clients on behalf of the investment firm possess the necessary knowledge and competence to fulfil their obligations under Article 24 and this Article. Member States shall publish the criteria to be used for assessing such knowledge and competence.), ESMA established minimum standards promoting greater convergence in the knowledge and competence of staff 's guidelines providing investment advice or information about financial instruments and services.

To access the profession, BIPAR believes that everyone should have appropriate knowledge/ability (incl. CPD).

As professional qualifications/ability are covered in the legislation, there is no need for (expensive; in practice difficult to enforce/supervise) quality labels. This would lead to confusion. Any further consideration should be done in close cooperation with industry representative bodies. CPD should remain flexible.

Due to the diversified national educational and professional systems, there are still various options on how to test the relevant knowledge and competences across Member States. BIPAR is of the opinion that professional knowledge and ability must be required.

Markets and national rules – financial and cross-sectoral rules – are very different, education matters are a Member State responsibility, specific characteristics of “financial advisers” are different in the different Member States.

BIPAR remains at the Commission’s disposal to explore the idea of a label.

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

**BIPAR reply:**

see our reply above

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

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

No

**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.

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.

We believe that the existing MiFID II and IDD 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.

The basic rules that are in place are a sound basis for any kind of business model (more or less tech, more or less outsourcing). Many of the potential risks emerging as a consequence of the use of “new” business models are no different from the risks caused by the provision of insurance 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.

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 or insurance sector but are active in the investment or insurance services value chain should be brought into the existing regulatory framework, so that the “chain” is consistent and can be properly supervised.
- There should be a regulatory level playing field between all providers of comparable (quasi) insurance services, so that consumers can make a choice. The existing legal framework is the best basis for this “hybrid” approach.
- 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.

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

Greater trust in human advice

**BIPAR reply:**

Please see out answer under Q 8.9

**Question 8.11 Are there any unnecessary barriers hindering the take-up of robo-advice?**

No

*If such unnecessary barriers do exist, which measures could be taken to address them?*

**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.

Our market is a hybrid market. Intermediaries use robo-systems to assist them in their work.

People do not look for investments as they look for a nice holiday destination. Most consumers need a little push to think about their old age savings and investments.

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.

## 9) ADDRESSING THE COMPLEXITY OF PRODUCTS

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

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

Yes

#### **BIPAR reply:**

In this respect, POG is very important for investment products and intermediaries need to be able to rely on information provided by manufacturers and need to be able to rely on supervisors that the latter supervise (proportionally) the POG processes of manufacturers.

We refer in this respect to Article 8.2/3 of Commission Delegated Regulation (EU) 2017/2358 with regard to product oversight and governance requirements for insurance undertakings and insurance distributors: “2. Manufacturers shall provide insurance distributors with all appropriate information on the insurance products, the identified target market and the suggested distribution strategy, including information on the main features and characteristics of the insurance products, their risks and costs, including implicit costs, and any circumstances which might cause a conflict of interest to the detriment of the customer. That information shall be clear, complete and up to date.

3. The information referred to in paragraph 2 shall enable the insurance distributors to: (a) understand the insurance products; (b) comprehend the identified target market for the insurance products; (c) identify any customers for whom the insurance product is not compatible with their needs, characteristics and objectives; (d) carry out distribution activities for the relevant insurance products in accordance with the best interests of their customers as prescribed in Article 17(1) of Directive (EU) 2016/97. »

Overall, we believe it is important that costs which have an impact on the potential return must be transparent. Simpler investment products that are well supervised, well documented and distributed by regulated investment and insurance intermediaries are, simply said, the key to ensure that more people will convert their savings into investments. To achieve this there is no need for major changes in IDD or MiFID II. There is a need for more attention to product oversight and development and supervisory attention for the quality of the products which target the mass market.

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

#### **a) Should they aim to reinforce or adapt execution of orders rules to better suit digital and online purchases of complex products by retail investors?**

#### **BIPAR reply:**

See our answer to question 9.1

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

#### **BIPAR reply:**

See our answer to question 9.1

#### **c) Should they aim to develop a new label for simple products?**

No

#### **BIPAR reply:**

See our answer to question 9.1

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

No

**BIPAR reply:**

See our answer to question 9.1

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

No

**f) Should they have another aim?**

Yes

**BIPAR reply:**

See our answer to question 9.1

## **10) REDRESS**

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

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

**BIPAR reply:**

We do not know exactly how important this aspect is in the decision making of an investor. Behavioral economists could answer such a question perhaps from a theoretical perspective.

As for all questions in this questionnaire we believe it would have been necessary to make a distinction between investors (meaning citizens who already have an investment portfolio or who have experience in the investment world) and savers or other consumers who are potential investors but until now keep their money on their savings account and have no experience with investments.

How many of this mass market of potential investors will have part of their investment in another Member State?

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

Yes

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

Yes

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

Very effective

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

Domestically

In a cross-border context

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

**11) PRODUCT INTERVENTION POWERS**

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

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

Yes

**BIPAR reply**

We start from the assumption they do. We need to be able to have trust in the supervisors that they use their powers to fulfill the mission they have.

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

Don't know / no opinion / not applicable

**BIPAR reply**

Product intervention powers together with POG are the main issues to be focused on.

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

Don't know / no opinion / not applicable

**BIPAR reply:**

There is very little information that is publicly available. Discussions are always focused on conflicts of interest and distribution issues while product quality, product information and POG and the supervision of these issues is key. Supervisors should remove un-adapted products from the market or prevent them from entering the market.

## 12) SUSTAINABLE INVESTING

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

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

Financial returns

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

#### BIPAR reply:

A level of flexibility is required. Based upon the "process" that is reflected in the European Commission proposals to amend the Delegated Regulations of IDD on IBIPs and on POG as well as its proposals to amend the Delegated Regulations of MiFID II (in accordance with the EIOPA and ESMA Technical Advice) in relation to the integration of sustainability risks, factors and preferences into the advice for IBIPs and the investment advice, clients would have a clear indication on whether or not sustainability factors are taken into consideration in the advice/suitability test they receive. Clients should also have a choice (according to their preferences / needs/ wishes...).

In order to be practically feasible and cost effective – which will help facilitate the transition towards sustainable investments – BIPAR believes that for retail investors a summary of the sustainability-related information should be provided in combination with the fact that manufacturers have in any event to publish the detailed information on their website. Those investors who would like to have more details can consult the statement online or choose investment advisors/ intermediaries who pro-actively offer detailed analysis.

Information overflow is great concern. While technical disclosures might be useful, if too prescriptive, they can become very complex and rather confusing for customers, particularly retail customers.

The current issues with data availability and data quality should be taken into account in the framework and standards for ESG disclosures. As the "sustainability" concept (what investment can be considered or not sustainable) will undergo changes in the future owing to scientific and technological developments, liability risks arising for advisors and investment firms should be kept in mind. The long-term credibility and understandability of the project in the eyes of the public should also be considered.

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

yes

#### BIPAR reply:

BIPAR encourages the promotion of sustainable investments. EU insurance and financial intermediaries wish to assist retail investors in "orienting capital flows towards sustainable investments".

Clear, understandable (in preference label style), comparable and reliable information provided by product manufacturers on the principal adverse impacts and on sustainability characteristics/objectives of products marketed as sustainable, is crucial for the intermediaries/advisers' orderly functioning and compliance with legal obligations, including their duty to assist clients in understanding what they invest in.

Manufacturers of products marketed as targeting sustainability preferences should provide intermediaries with the necessary sustainability-related information and any updates thereof. Subsequently intermediaries can assist clients in making an informed choice amongst financial products marketed as sustainable. In this light, insurance and financial intermediaries should not be expected to constantly screen the websites of all insurance and investment companies concerned in order to collect such information.

Attention should be paid not to have overdetailed sustainability guidance/information documents (at the advice or intermediation level) as this may unnecessarily complicate the suitability and advice process, which can be rather confusing for retail investors. This, in combination with lack of financial literacy or sustainability literacy of consumers, may become in practice a real barrier to the objective of orienting (as much as possible) capital flows towards sustainable investments.

As the regulatory landscape evolves (not all EU sustainability-related legal initiatives are ready to apply), further guidance might be needed by the EU/national supervisory authorities which should be, however, principle-based and not rule-based.

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

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

No

**BIPAR reply:**

As mentioned above, based upon the “process” that is reflected in the European Commission proposals to amend the Delegated Regulations of MiFID II (in accordance with the ESMA Technical Advice) in relation to the integration of sustainability risks, factors and preferences into the investment advice, clients would have a clear indication on whether or not sustainability factors are taken into consideration in the advice/suitability test they receive. This initiative, in combination with the sustainable-related disclosures Regulation (SFDR) which is already into application and the taxonomy-related initiatives put forward, for the time being, a complete legal framework.

A level of flexibility should be allowed.

The principle of proportionality should be respected at all times.

# BIPAR accompanying statement

29 July 2021

## **BIPAR accompanying statement to BIPAR's response to the European Commission's Consultation document: A retail investment strategy for Europe**

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.

More information on BIPAR can be found on [www.bipar.eu](http://www.bipar.eu)

BIPAR welcomes the opportunity to comment on the European Commission's Consultation document: A retail investment strategy for Europe.

This accompanying statement also has to be seen as a more detailed response to the consultation's Question 1.1 "Does the EU retail investor protection framework sufficiently empower and protect retail investors when they invest in capital markets?"

BIPAR supports that CMU aims to ensure that retail investors can take full advantage of the capital markets, to put capital markets at the service of people, offering them both increased investment opportunities, and strong investor protection.

In the insurance-based investment and pure investment area, BIPAR groups associations of thousands of micro or small and SME-size intermediaries and financial advisers who are daily and locally dealing with investors, many of these investors being the small, private "consumers" that the Retail Investment Strategy will focus on.

Recent European legal instruments such as MiFID II, IDD, PEPP, PRIIPs have created the regulatory framework under which all investors, and in particular retail investors, have a safe choice of both products and distribution channels (products, services, the agreed conditions).

The (rather recent) rules leave choice on the basis of their own preferences and personal situation. MiFID II and IDD ensure that 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.

- (IBIPs) Investors are now better protected and informed than ever before.
- (IBIPs) Investment products are now manufactured in accordance with recent POG rules.
- Investment products are now better documented before they are marketed (KIDs).
- All activities are supervised.

EU legislation should be forward-looking and should reflect ongoing developments in digitalization and sustainability, as well as the increasing need for retirement savings. However, other rules do not need to be changed. Changing regulation is costly and creates uncertainty. Time is now needed to ensure that the (recent) rules find their way into the philosophy of all market parties and investors. Supervisors have the powers to intervene in individual cases where necessary or to give guidance within the framework. Unregulated products and activities should be brought in the scope of the existing rules.

**Investment is not insurance.**

It is important that current and future legislation reflects the difference between insurance and investments. In “pure investment” the risk is transferred from the financial institution to the consumer. In insurance the risk is transferred from the consumer to the insurer.

When consumers invest via insurance, for many products other factors such as the risk associated with their life-expectancy matter and whether the consumers are using the insurance contract as a way of allocating private capital to family members or other parties.

**Financial products are now “tested” before they come on the market**

Today, new regulation requires, as in the food, car and pharmaceutical industry, that all financial products go through a product oversight and governance process, all steps in the financial product manufacturing process are documented and traceable and manufacturers must, from the start, have a target market in mind. These products and this manufacturing and governance process are supervised by authorities at national and European level. There is a responsibility even for intermediaries to inform product providers, and in the end avoid distributing products, if any flaws regarding target market and risk of consumer harm have been identified.

**Financial products are now better documented before they are sold**

Thanks to modern legislation and important efforts from the industry, financial products are also much better documented for the consumer. PRIIPs KIDs need to be improved but are now available and these KIDs force the manufacturers to think more carefully about the way of communicating to the public, to the client, to advisors and to intermediaries and other service providers.

**Quality of service remains the key in a competitive financial market**

As with any liberal profession or business and commerce in the service sector, whether it is a local intermediary or an international one, it is above all the service to their client that gives added value and justifies both their existence and necessity. Consumers should be encouraged to seek assistance from intermediaries before investing.

**Regulation forces consumers/ retail investors to go in dialogue about important decisions**

Since MiFID II and IDD, this service quality which distinguishes one intermediary or advisor from another in a very competitive market of (IBIPs and other) investment products is complemented by a very strict set of rules defining under which conditions a financial / insurance intermediary can offer investment-related advice or other intermediary services to a client. On top of the above-mentioned product manufacturing related requirements, there is a variety of checks in the relation between the offer and the demand of investments which protect the consumer.

**The economy is unpredictable, but consumers are better informed than ever before**

Although the volatility and stability of the economy and financial markets cannot be predicted, consumers are now in a situation where they are optimally informed, and they have the choice on how to be guided in their investment decisions.

**The market entrance cost is high**

In the 80's and 90's the threshold for new market actors to access the financial, insurance or credit intermediation market was fairly low. This is no longer the case. The cost of « authorization » is at a fair level in most EU markets, but the on-going compliance cost, also for smaller intermediaries, for the members of the board and the employees is very high. It includes costs both directly and indirectly in relation to training and expertise, internal compliance processes, reporting, complaints handling, conflict of interest management, remuneration and ethics, information requirements, data protection and AML procedures, supervisory reporting, tax administration, ...

Although this compliance cost is not the only reason, it contributes to consolidation in the market (and in some markets to a high degree of vertical integration).

There is great need for regulatory stability. Adaptation to new rules and integrating them in the philosophy of the market takes time.

We look forward to working with the Commission on initiatives in relation to the retail investment strategy and are convinced that the intermediaries we represent can, in practice, contribute to the objectives of the strategy.