

RETAIL INVESTMENT STRATEGY IMPROVING RETAIL INVESTOR'S ACCESS TO EU-27 FINANCIAL MARKETS

- AMAFI's position

About AMAFI

AMAFI is the trade association representing financial markets' participants of the sell-side industry located in France. It has a wide and diverse membership of more than 170 global and local institutions notably investment firms, credit institutions, broker-dealers, exchanges and private banks. They operate in all market segments, such as equities, bonds and derivatives including commodities derivatives. AMAFI represents and supports its members at national, European and international levels, from the drafting of the legislation to its implementation. Through our work, we seek to promote a regulatory framework that enables the development of sound, efficient and competitive capital markets for the benefit of investors, businesses and the economy in general.

Brexit, the sanitary crisis, and the conflict in Ukraine have underlined the necessity for the Union to develop and strengthen its open strategic autonomy globally and especially in the financial sector area.

In this context, the deepening of the CMU project has a central role to play to increase the competitiveness of EU actors and the attractiveness of EU financial markets in a post-Brexit ecosystem¹.

The main objectives should be to enable EU markets to further contribute (i) to the economic growth at national and European levels and (ii) to the financing challenges the Union is facing, in relation to the mitigation of climate change, the ageing of the population, the digital transition and the war in Ukraine.

In its July 2023 Strategic Foresight report², the EC stresses the green transition would require additional investments of 620 billion €/year, the digital transition 125 billion €/year, the demographic transition 26% of GDP/year as of 2070 (an increase of age-related expenditure by 2 percentage points) and the reconstruction of Ukraine 384 billion € over 10 years. In light of these colossal amounts, the share of investments through financial markets has to become significantly more important.

As part of the CMU 2020 Action Plan³, the Retail Investment Strategy (RIS), adopted by the European Commission (EC) on 24th May⁴, is instrumental to strengthen EU retail investors' confidence in capital markets so they can further contribute to the Union's core financing challenges. As per the EC, it appears critical to increase their participation to financial markets far beyond the 17% in 2021⁵. Especially given the high amount of savings accumulated by EU households which, according to the IMF, reached 1 trillion € in 2022 as a result of the pandemic⁶.

¹ For further details please see [AMAFI-CEPS report on Completing Capital Markets Union](#).

² https://files.commission.europa.eu/system/files/2023-07/SFR-23_en.pdf

³ https://finance.ec.europa.eu/capital-markets-union-and-financial-markets/capital-markets-union/capital-markets-union-2020-action-plan_en

⁴ https://finance.ec.europa.eu/publications/retail-investment-strategy_en

⁵ EC Impact Assessment, RIS proposal, <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52023SC0278>

⁶ <https://www.imf.org/en/Blogs/Articles/2022/02/10/europes-consumers-are-sitting-on-1-trillion-euros-in-pandemic-savings>

In a competitive financial environment, retail investors should be in a capacity to make profitable investments even in an inflationary context, and at the same time benefit from a sufficiently high level of investor protection.

While we are fully supportive of the overall objective of the EC, we have serious concerns regarding the impact of a number of the proposed reforms with regards to MiFID II and PRIIPs as we believe those could have a detrimental impact on the competitiveness of EU markets and in the end limit the choice offered to retail investors and limit their appetite for investments on financial markets. Moreover, we have strong concerns with the scope of the RIS as some of the proposed amendments would modify the regime applicable to professional clients and eligible counterparties, thereby going beyond the perimeter of retail clients as originally foreseen.

Ensuring the right calibration of the EU legislation is all the more important as the UK is in the process of moving towards a more competitive regulatory framework notably through the Financial Services and Markets Act⁷.

Through this paper, we aim at highlighting our key recommendations for (i) clarifying the scope of the RIS, the reviews of (ii) MiFID II, and (iii) PRIIPs in order to contribute to the ongoing negotiations in the European Parliament and in the Council.

Overview of AMAFI's recommendations

Topic	Recommendation
Scope of RIS	<i>Clarifying the scope of the RIS proposal to ensure the proposed reforms are technically limited to retail markets investors.</i>
MiFID II	
Ban on inducement for non-advised services	<p><i>Removing the ban on inducement for non-advised services would be our preferred solution.</i></p> <p><i>As an alternative, improving the transparency towards clients on what they are paying for by providing information on the services they benefit from. Empowering clients in their investment decisions also lies on the quality of information accessible to them.</i></p> <p><i>Moving the 3rd paragraph of article 24a. (7) of MiFID II from the section dedicated to services where IFs are "not prohibited from getting or paying fees or benefits, from or to a third party" to a general section where it would apply equally to all services, to allow the mere provision of such services.</i></p> <p><i>Setting the review clause not earlier than five years after the entry into force of the level 2 measures, and not after the entry into force of level 1 measures, as proposed, in order to draw meaningful conclusions.</i></p> <p><i>Providing clarity on the criteria that will be used for the review to assess the efficiency of the reform to provide the industry with some predictability on a potential full ban.</i></p>
Best interest tests	<i>Removing the proposed "best interest test" as the conditions laid under the latter are overshooting compared to existing requirements (potentially enhanced by VFM requirements) that are sufficient to avoid situations where clients are being recommended to invest in overly costly products compared to their needs and preferences.</i>

⁷ <https://bills.parliament.uk/bills/3326>

<p>Value for Money</p>	<p><i>Considering expected performance as the first criteria for determining the different benchmarks, costs should come afterwards.</i></p> <p><i>Using benchmarks as a comparison tool, allowing product manufacturers to compare their products' cost and to justify any observed deviation.</i></p> <p><i>Removing distributors' requirement to re-assess products, which is already done by manufacturers, as they are not properly equipped to do so and because it would be a duplicate.</i></p> <p><i>Applying VFM requirements only to relevant products. Hedging products and simple products like vanilla bonds should be excluded.</i></p> <p><i>Providing VFM general principles in level 1 while further elaborating on the details in level 2 together with the industry as this requires a detailed knowledge of the different products.</i></p>
<p>Suitability & Appropriateness regimes</p>	<p><i>Applying the suitability regime in a way that is proportionate to the scope of the service provided to clients, in line with ESMA's suitability Guidelines⁸.</i></p> <p><i>Avoiding the systematic obligation to extend the service of investment advice⁹ to the entire client's portfolio or to consider diversification. There should still be room for targeted advice focusing on a share of the client's investable amount.</i></p> <p><i>Removing this requirement for professional clients who have the necessary knowledge to appreciate diversification matters. Besides, it should not be mandatory for retail clients who are able to appreciate their diversification needs.</i></p> <p><i>Removing this proposal as we consider that depriving clients from the protection afforded by the assessment of their knowledge and experience does not look to us sufficiently protective for clients.</i></p> <p><i>Proposing the confirmation procedure to clients through an opt in procedure.</i></p>
<p>Costs & charges</p>	<p><i>Ensuring wholesale clients would not be forced under a regime, as they have the expertise and the necessary sources of information to make informed decisions.</i></p> <p><i>Refraining from new disclosure requirements as these would significantly increase the information provided to clients and would reverse the recent Quick fix alleviations.</i></p>
<p>Marketing Communication</p>	<p><i>Clarifying this articulation in order to clearly define responsibilities. The envisaged measures would not cover all the different configurations between manufacturers and distributors and specifically situations where both of them collaborate for the preparation of the marketing communication of a product.</i></p>
<p>Client categorization</p>	<p><i>To ensure this is fully operational, ESMA should remove or soften its answer to question 2 section 11 of its Questions and Answers on MiFID II and MiFIR investor protection and intermediaries' topics¹⁰ stating "Investment firms should strictly refrain from implementing any form of practice that aims at incentivizing, inducing or pressuring a private individual investor to request to be treated as professional client".</i></p>

⁸ ESMA Suitability Guidelines, [link](#)

⁹ Article 4.1 (4) MiFID « investment advice' means the provision of personal recommendations to a client, either upon its request or at the initiative of the investment firm, in respect of one or more transactions relating to financial instruments."

¹⁰ https://www.esma.europa.eu/sites/default/files/library/esma35-43-349_mifid_ii_qas_on_investor_protection_topics.pdf

Entry into force	<i>Setting the implementation date at least 18 months after the Level 2 texts are published and for VFM's related provisions, 18 months after the availability of relevant benchmarks.</i>
PRiIPs	
Sustainability disclosures in KID	<i>Increasing the three-page threshold for ESG information. Ensuring an harmonization of the ESG criteria in the KID and the ones in the MiFID suitability requirements.</i>
New section on product at a glance	<i>Removing such requirement and, in any case, ensuring that it is based on a proper cost-benefit analysis.</i>
Digitalisation of KID	<i>Ensuring the proposals for information layering and personalisation of KID information are based on a consumer testing.</i>
Scope	<i>Applying PRiIPs KID requirements only to packaged investment products used for investments. All plain vanilla bonds and tailor-made OTC derivatives that are only used for hedging should be excluded from the PRiIPs scope.</i>
Implementation timeline	<i>Extending the implementation timeline to at least a year and a half, after the level 2 is adopted, would be more appropriate given the highly complex changes that could be required.</i>



I. Clarifying the scope of the Retail Investment Strategy

In its impact assessment¹¹ the EC focuses its analyses on the impact of the RIS on retail investors and retail markets only. There is no reference to a potential impact on wholesale market activities which demonstrates the EC objective not to impact the latter.

Nevertheless, we are concerned that some of the proposed amendments may have unintended and detrimental consequences. This is particularly the case with the following proposals:

- Proposed changes in the recently adopted quick fix MiFID II amendments (see I. e));
- Lack of clarity regarding the exact scope of certain contemplated measures in particular regarding the “best interest” of the client, the product governance and value for money, the appropriateness and suitability regimes and the communication and advertising practices;
- Additional reporting obligations beyond retail activities.

Recommendation

Clarifying the scope of the RIS proposal to ensure the proposed reforms are technically limited to retail markets investors.

¹¹ <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52023SC0278>

II. The review of MiFID II

a. Enhanced disclosure rather than a ban on inducement for non-advised services

We are strongly opposed to a full ban on inducements which we consider would be very distortive for EU capital markets, would lead to advice gaps and limit the product offering to retail clients¹².

The October 2022 Eurobarometer report shows that in the EU the main reason why the EU population does not invest in investment products is the lack of money for 47% while the lack of trust in investment advice accounts for 12%. In the Netherlands, where a total ban on inducements is in place, these figures are respectively 30% and 15% which is one of the highest percentages in the Union. To us, this does seriously question the effectiveness of a ban to increase retail clients' participation in financial markets.

Regarding the proposed ban for non-advised services, we oppose such approach as by definition clients make their own decision without being guided by the investment firm (IF). Therefore, such ban is at odds with the nature of the service.

If such a ban were to be adopted, in order to maintain their profitability, IFs would have no other choice than either (i) reducing their revenue gap by raising fee levels or (ii) reducing their cost base by lowering the quality of the services provided to clients which in the end would be detrimental as they would highly likely be deprived of such services and therefore left without support.

Therefore, rather than focusing on inducements and the cost of products as the key element to increase retail investments in capital markets, we believe the focus should be on the availability of products and the support provided to clients in accessing them in an informed manner¹³.

Considering the scope of the proposed ban, we welcome the exemption for placement fees, which is essential to preserve the correct functioning of primary markets. Nevertheless, there remains a difficulty with the placement fees on simple bonds still embedded in PRIIPs, as they do not benefit from this exemption.

Recommendations

Removing the ban on inducement for non-advised services would be our preferred solution.

As an alternative, improving the transparency towards clients on what they are paying for by providing information on the services they benefit from. Empowering clients in their investment decisions also lies on the quality of information accessible to them.

Moving the 3rd paragraph of article 24a. (7) of MiFID II from the section dedicated to services where IFs are "not prohibited from getting or paying fees or benefits, from or to a third party" to a general section where it would apply equally to all services, to allow the mere provision of such services.

Setting the review clause not earlier than five years after the entry into force of the level 2 measures, and not after the entry into force of level 1 measures, as proposed, in order to draw meaningful conclusions.

Providing clarity on the criteria that will be used for the review to assess the efficiency of the reform to provide the industry with some predictability on a potential full ban.

¹² For further details on AMAFI's positioning, please refer to AMAFI/23-64

¹³ This is in line with the RIS Study requested by the ECON committee of the European Parliament to the policy Department for economic, Scientific and quality of life policies Directorate, [Link](#), which notes¹³ that : "Rather than simply concentrating on the alternatives between allowing or prohibiting inducements, what legislation should ultimately ensure is that investors are able to effectively understand and evaluate whether, in a certain context or transaction, they are indeed being provided with some kind of "support" for their investment decisions or not, and, if so, what this support effectively consists of."

b. Refraining from introducing unsuited best interest tests

To our knowledge, it has not been demonstrated that the current requirements result in poor outcomes for clients. Therefore, one can wonder the added value compared to current MiFID II requirements¹⁴.

More precisely, the proposed new test raises a number of difficulties:

- There is an uncertainty on the exact requirement, either to include the corresponding financial instruments (FIs) in the range of possible suitable products before the final recommendation is provided, or else to recommend specific FIs, potentially together with another one, possibly more sophisticated.
- The requirement to recommend the most “*cost-efficient financial instrument*” among FIs identified as suitable to the client (Art. 25(2)) creates major legal uncertainty for firms. Clients discontent by the performance of a product could take advantage of it to seek compensation using the argument of cost. Moreover, the terms of “*cost-efficient financial instrument*” are problematic, first because they are not defined and second because they relate solely to costs with no consideration of associated potential performance.
- The requirement to recommend among the range of FIs identified as suitable to the client (Art. 25(2)), one without additional features that are not necessary to the achievement of the client’s financial objectives and that give rise to extra costs is problematic. It builds to the denial of the potential benefits for clients of some additional features and also of the role and the competence of the advisors. We strongly disagree with this proposal and on the contrary, believe some products are designed to provide clients with specific benefits such as enhanced ESG characteristics.

Recommendation

Removing the proposed “best interest test” as the conditions laid under the latter are overshooting compared to existing requirements (potentially enhanced by VFM requirements) that are sufficient to avoid situations where clients are being recommended to invest in overly costly products compared to their needs and preferences.

c. Product Governance: for a relevant Value for Money

AMAFI agrees that some form of assessment by manufacturers and distributors of the value for money (VFM) received by clients could be useful¹⁵.

However, the VFM provisions foreseen in the EC proposal raise very significant concerns:

- The approach is exclusively quantitative, with an exclusive focus on costs and no consideration for the performance and quality or for the associated services provided ;
- The envisaged process appears incredibly long and burdensome and likely to have major impacts for many stakeholders (e.g. reporting requirements for IFs, NCAs check of data) ;
- The ability for ESMA to design sufficiently reliable and relevant benchmarks is highly questionable, especially with regards to ESG features. Should ESG characteristics not be taken into account in this comparison exercise, the risk is high that many ESG products could not be launched.
- Some products are country specific and therefore should not be compared to other countries’ products with different features.

¹⁴ We refer in particular to the existing product governance requirements which already entails demanding assessments aiming to prevent the launch by product manufacturers and hence the distribution by distributors of unduly costly products.

¹⁵ For further details please refer to AMAFI / 22-92.

- Products and markets characteristics are evolutionary in nature and can change very rapidly so that benchmarks, which will necessarily be based on historical data, would be outdated very rapidly if not updated frequently, which would require dedicated resources.
- The requirements, as they are drafted, constitute in our view price intervention which to our understanding does not feature in the EC Regulations establishing the ESAs¹⁶.

Recommendations

Considering expected performance as the first criteria for determining the different benchmarks, costs should come afterwards.

Using benchmarks as a comparison tool, allowing product manufacturers to compare their products' cost and to justify deviations.

Removing distributors' requirement to re-assess products, which is already done by manufacturers, as they are not properly equipped to do so and because it would be a duplicate.

Applying VFM requirements only to relevant products. Hedging products and simple products like vanilla bonds should be excluded.

Providing VFM general principles in level 1 while further elaborating on the details in level 2 together with the industry as this requires a detailed knowledge of the different products.

d. Reform of the suitability and appropriateness regimes

We have serious doubts regarding the proposal to add the need for portfolio diversification in the list of elements that distributors would have to assess systematically under the suitability test.

Recommendations

Applying the suitability regime in a way that is proportionate to the scope of the service provided to clients, in line with ESMA's suitability Guidelines¹⁷.

Avoiding the systematic obligation to extend the service of investment advice¹⁸ to the entire client's portfolio or to consider diversification. There should still be room for targeted advice focusing on a share of the client's investable amount.

Removing this requirement for professional clients who have the necessary knowledge to appreciate diversification matters. Besides, it should not be mandatory for retail clients who are able to appreciate their diversification needs.

With regards to the possibility to provide independent advice using a more simplified suitability assessment, we consider it would provide an undue advantage to such advice which appears as a bias in favour of a specific distribution model (fee-based vs commission-based). Such advantage provided to the fee-based model is not justified by investors protection considerations. This proposal seems to favour ETFs which seem to be considered as simple products. Nevertheless, one should keep in mind that these instruments remain more risky than other instruments which for instance include a total or partial protection of the capital. Besides, it appears that the US economy seems to be the main destination for ETFs investments. In light of the EU financing needs highlighted at the beginning of this note, it would be unfortunate that EU households' investments could be channelled to the US up until European alternatives develop.

¹⁶ ESAs Regulations, [link](#)

¹⁷ ESMA Suitability Guidelines, [link](#)

¹⁸ Article 4.1 (4) MiFID « investment advice' means the provision of personal recommendations to a client, either upon its request or at the initiative of the investment firm, in respect of one or more transactions relating to financial instruments.”

Recommendation

Removing this proposal as we consider that depriving clients from the protection afforded by the assessment of their knowledge and experience does not look to us sufficiently protective for clients.

With regards to the proposal to enhance the appropriateness test by adding the capacity to bear full or partial losses and the risk tolerance, we foresee many difficulties. It constitutes a modification of the fundamental *summa divisio* between advised and non-advised services that is likely to create confusion for the clients.

Besides, with the proposed integration of new criteria in the appropriateness test, more and more alerts are likely to be triggered that will require confirmations by clients. This will inevitably lead clients to get the perception that the adequacy to their personal situation has been assessed by their IF, creating expectations that are inconsistent with non-advised services.

Clients who want to access the market as freely and as quickly as possible to execute transactions on their own would have to go through a process made lengthier by the assessment of their capacity to bear losses and their risk tolerance.

As for the new confirmation procedure required in case the product or service is not appropriate, we consider that (i) the time lapse required for this confirmation process is likely to run contrary to the best execution requirement (e.g. speed of execution) and that (ii) such process is also likely to generate operational issues for some specific categories of orders available on many execution venues (e.g. orders with trigger thresholds).

Recommendation

Proposing the confirmation procedure to clients through an opt in procedure.

e. Disclosure requirements on cost and charges to focus on retail investors

Despite their stated objective to reduce information overload, we consider that many of these proposed amendments would have the opposite result in significantly increasing the information provided to clients.

In particular, we have strong concerns with regards to the possible reintroduction of the cost and charges disclosures for professional clients and eligible counterparties that were significantly alleviated through the MiFID II Quick Fix¹⁹.

Recommendation

Ensuring wholesale clients would not be forced under a regime, as they have the expertise and the necessary sources of information to make informed decisions.

Refraining from new disclosure requirements as these would significantly increase the information provided to clients and would reverse the recent Quick fix alleviations.

f. Marketing communication: clarification of responsibilities

We support the clarifications on the respective responsibilities and practices of manufacturers and distributors on marketing material, as well as the introduction of definitions for marketing communications and marketing practices.

¹⁹ <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32021L0338>

However, we see a difficulty to articulate such proposed split of responsibilities with the overarching principle that “*all information addressed by an investment firm to its clients or potential clients to be fair, clear and not misleading*” as per Article 24.3 MiFID II²⁰ in case a marketing communication prepared by a manufacturer and disseminated by a distributor entails information that does not comply with such principle.

Recommendation

Clarifying this articulation in order to clearly define responsibilities. The envisaged measures would not cover all the different configurations between manufacturers and distributors and specifically situations where both of them collaborate for the preparation of the marketing communication of a product.

Finally, we would like to underline that the foreseen amendments would need to be articulated with the future sponsored research regime that is currently being discussed under the Listing Act proposal, since sponsored research falls under current MiFID II marketing communication’s definition.

g. Client categorization: facilitating retail client opt up procedure

We welcome the enlarged criteria for the test allowing a retail client to opt up for the professional client category.

Recommendation

To ensure this is fully operational, ESMA should remove or soften its answer to question 2 section 11 of its Questions and Answers on MiFID II and MiFIR investor protection and intermediaries’ topics²¹ stating “Investment firms should strictly refrain from implementing any form of practice that aims at incentivizing, inducing or pressuring a private individual investor to request to be treated as professional client”.

h. Entry into force

The implementation date should not be set in consideration of the transposition deadline for Member States since the precise requirements necessary for implementation will only be known at best after the adoption of the Level 2 texts.

In particular, with regards to the envisaged VFM measures, in order to be able to properly implement the new requirements, not only will IFs need to have a full knowledge of Level 2 measures but also they will need to access the benchmarks defined and have sufficient time to (i) identify the category -if any- applicable to each of their products and (ii) assess them against these benchmarks.

Recommendation

Setting the implementation date at least 18 months after the Level 2 texts are published and for VFM’s related provisions, 18 months after the availability of relevant benchmarks.

III. The targeted review of PRIIPs

a. Introduction of new sustainability disclosures in the KID

We consider the required ESG information cannot fit within the three-page constraint. Moreover, it is not acceptable that the ESG criteria which have to be mentioned in the KID are not the same as the ones to be assessed under the MiFID suitability requirements. This would create undue difficulty and complexity in the distribution process and should be avoided.

²⁰ <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32014L0065>

²¹ https://www.esma.europa.eu/sites/default/files/library/esma35-43-349_mifid_ii_gas_on_investor_protection_topics.pdf

Recommendations

Increasing the three-page threshold for ESG information.

Ensuring an harmonization of the ESG criteria in the KID and the ones in the MiFID suitability requirements.

b. Refraining from creating a new section on “product at a glance”

We are concerned by the feasibility of such requirement which would add to the KID a dashboard with summarized information on the product. Experience shows that concentrating all important information on a specific product in a three-page document has already been a major challenge since the entry into force of the PRIIPS Regulation.

Recommendation

Removing such requirement and, in any case, ensuring that it is based on a proper cost-benefit analysis.

c. The digitalisation of KIDs: layering and personalisation of information should be subject to consumer testing

We have difficulties to react to the drafting proposal on the digitalization of KIDs layering as we consider that some specifications are missing. In particular, the trigger for the provision of the digital interactive information is unclear regarding who will make the call *i.e.* the end client or the distributor. If the capacity to ask for such digitalised interactive format was left to clients, all IFs would have to develop extremely costly comparison / interactive layering tools without any expected clear benefit for the end clients.

Recommendation

Ensuring the proposals for information layering and personalisation of KID information are based on a consumer testing.

d. Precision on the scope of the PRIIPs regulation

The newly proposed exemption for bonds with make-whole clause, while being a very positive step forward, is far from encompassing all simple non structured products for which applying PRIIPs is not relevant and constitutes an obstacle to their distribution.

Recommendation

Applying PRIIPs KID requirements only to packaged investment products used for investments. All plain vanilla bonds and tailor-made OTC derivatives that are only used for hedging should be excluded from the PRIIPs scope.

e. A too short implementation timeline

The proposed timeline is only 18 months after the date of entry into force of the regulation.

Recommendation

Extending the implementation timeline to at least a year and a half, after the level 2 is adopted, would be more appropriate given the highly complex changes that could be required.