

EUROPEAN COMMISSION CONSULTATION

A RETAIL INVESTMENT STRATEGY FOR EUROPE

- AMAFI answer

Association française des marchés financiers (AMAFI) is the trade organisation working at national, European and international levels to represent financial market participants in France. AMAFI members consist of investment firms and credit institutions (French, European and global firms), operating in and/or from France (corporate and investment banks (CIBs), brokers-dealers, exchanges, and private banks). AMAFI is deeply involved in all regulatory matters that concern financial instruments (MiFID, PRIIPs, intervention measures and product bans, AMF framework on product complexity, etc.). As far as financial products are concerned, we mostly represent all issuers/manufacturers of products (CIBs) and, through our private bank members, distributors as well. AMAFI has more than 150 members operating in equities and fixed-income and interest rate products, as well as commodities, derivatives and structured products for both professional and retail clients.

AMAFI welcomes the European Commission's initiative to consult on its Retail Investment Strategy for Europe which is a core issue for its members.

Before answering to the specific questions from the consultation, we would like to highlight the following general comments that include an executive summary of AMAFI key messages on each item of the Consultation Paper.

GENERAL COMMENTS

The sanitary crisis and Brexit 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 relaunching and deepening of the CMU project has a central role to play to increase the competitiveness of EU financial markets in a new post-Brexit ecosystem.

The main objectives should be to enable EU markets to further contribute (i) to the economic recovery 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 and the development of EU champions in strategic fields such as digital and sustainable finance.

As highlighted in the 2020 Capital Markets Union Action Plan, the Retail Investment Strategy is instrumental to facilitate the access of retail investors to financial markets.

While the issues of financial stability, market integrity and investor protection should be considered as key goals in upcoming reforms, those of competitiveness and attractiveness of financial market actors operating in the EU should be considered as equally important.

For the EU to successfully upgrade its markets' regulatory framework, the “do not significantly harm” principle should apply to these key objectives. This principle, which is similar to that established for sustainable finance, means that any reform aiming at strengthening one objective should not harm any of the others. Over the long run, it is necessary to adopt a considered approach that will allow healthy competition between European market participants and their foreign competitors: this is the necessary condition for globally attractive European markets to play their role in financing the economy.

In addition to the filling-in of the online questionnaire, AMAFI attached the present document for the sake for better readability of its answers to this consultation. Some of our answers make references to our MiFID II revision position paper ([AMAFI / 21-35](#)), also attached.

EXECUTIVE SUMMARY

Section	AMAFI key messages
1. General Questions	EU retail investor protection framework could be improved towards more investment in debt issuance or equity type financial instruments from retail investors, as well as simplified and more consistent disclosure requirements for a smoother functioning of the overall EU investor protection framework: <ul style="list-style-type: none"> - Exclude ordinary shares (and bonds) from PoG scope - Simplifying disclosure requirements in MiFID II/PRIIPs - Facilitate opt in of sophisticated retail clients as professional clients
2. Financial Literacy	Improving financial education of investors
4. Disclosure requirements	Simplify and better rationalise disclosure requirements (from MiFID II and PRIIPs)
5. PRIIPs	Sufficiently satisfactory as it is – need for regulatory stability. Still room for adjustments (TER instead of RiY – correct issues for autocallables products in RTS V2 – issues with scope : Hedging derivatives and corporate bonds)
6. Suitability and appropriateness	Current framework is globally satisfactory – need for regulatory stability. Same rules should apply to robo advisors
7. MIFID investor categorisation	No new category is needed but opt-in of sophisticated retail clients should be facilitated (revision of opt-in procedure)
8. MIFID inducement ban	A ban of inducement would have detrimental effects for retail investors. Full compliance with the current framework allows protection against conflict of interests and risk of mis-selling.
9. complex products	Complex products should not be presumed not compatible with retail investors without prevent them to access a wide range of investments with interesting features of specific investment objectives and/or performance or capital protection. The current regulatory framework aims at mitigating the risk that complex products are not properly understood.
10. Redress	No major issues identified in the current framework
11. Product intervention power	Better articulation between European and National measures
12. Sustainable investing	Need to wait until the framework is stabilised before issuing guidance. ESG research have indubitably value and it is already taken into account by many, but it does not seem appropriate to make it mandatory through MiFID II nor should it be limited to SME issuers.

CONSULTATION QUESTIONS

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.

**Question 1.1 - Does the EU retail investor protection framework sufficiently empower and protect retail investors when they invest in capital markets?
Please explain your answer and provide examples**

Yes/ no / don't know

If AMAFI considers that the new EU investor protection framework constitutes a major improvement, and is **globally satisfactory, we believe that EU retail investor protection framework could be improved towards more investment in financing growth and financial instruments from retail investors, as well as simplified and more consistent disclosure requirements** for a smoother functioning of the overall EU investor protection framework.

I. MiFID II Product Governance requirements

Like raised in its response ([AMAFI / 20-32](#)) to the MiFID II consultation in March 2020, and its MiFID II revision position paper ([AMAFI / 21-35](#)), specifically as regards PoG issues of scope and while the Quick Fix resolved some of those issues, **maintaining ordinary shares (and corporate bonds?) within the scope of PoG requirements remains one** and should be challenged as a matter of priority.

PoG requirements were primarily designed for structured products, which are actually “manufactured” by ISPs. Then, in the case of ordinary shares and bonds, the application of PoG obligations is more difficult to understand, in particular, on the primary market. PoG provides no added value apart from a purely formal exercise to identify a target market which, by its nature, is very broad¹ and identical for the same type of financial instrument. Even on the secondary market, given the inherent nature of these products, which must be accessible to as many people as possible, the current system is unsuitable (particularly with regards to identification of the positive target market, identification of the negative target market, costs by nature, regular reviews of the product, scenarios and reports of sales outside the target market).

We believe that the current regime **does not actually bring any real value** to the retail investors’ protection objective but rather constitutes a “formal” exercise. It may, on the other hand, **discourage firms to distribute shares to retail** investors (and notably with very low risk appetite) whereas (a) diversification of risks is the key for efficient investments and (b) it is detrimental to limit retail investors from investing in shares and bonds. It must be reminded that even without PoG protection, retail investors **would still benefit from disclosure and information requirements as well as from appropriateness and suitability protection features**.

AMAFI believes it is important to emphasise that the activity of distributing plain vanilla products amounts to financing the economy whereas PoG requirements **place objective constraints on the distribution of ordinary shares to as many investors as possible**.

¹ see Recital 18 of MiFID II DD, which clarifies: “(...) such products would be compatible with the needs and characteristics of the mass retail market”.

II. MiFID II & PRIIPs Costs and Charges disclosure requirements

Disclosure of costs is essential for investor protection purposes. However, this obligation did not take sufficient account the very heterogeneous nature of financial instruments, as outlined in our response to the EC consultation in 2020 ([AMAFI/20-32](#)), and its MiFID II revision position paper ([AMAFI/21-35](#)). To simplify further the regime and for retail investors' protection, AMAFI considers appropriate to amend Article 50 of the MiFID II DR to recognise in the Level 2 text the legitimacy of **using tariff grids² for simple financial instruments** (where it is not a **packaged product** within the meaning of the PRIIPs Regulation).

Where the financial instrument is a packaged product, a specific disclosure of the products costs should remain, based on the information provided in the KID PRIIPs.

To ensure more consistency between MiFID II and PRIIPs, AMAFI considers that the methodology used to present costs in PRIIPs KIDs should be changed to a Total Expense Ratio (TER) approach, which then enables the addition of service costs, in lieu of the current PRIIPs methodology, which looks at the Reduction in Yield (RiY). Experience shows that this concept is not well understood by retail investors.

III. MiFID II Opt-in procedure

As detailed in answer to Question 1.3, another area of improvement would be to review the opt-in procedure of MiFID II categorisation of clients, rather than introducing an additional client category (semi-professional) of investors.

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

Yes, they are justified

No, they unduly hinder retail investor participation

Don't know

Please explain your answer

As stated above in our answer to Question 1.1, we believe that EU retail investor protection framework could be improved towards more investment in financing financial instruments (ordinary shares and bonds) from retail investors, as well as simplified and more consistent disclosure requirements.

Indeed, from a retail investors protection perspective, we believe that some amendments (in particular regarding PoG, MiFID II & PRIIPs disclosure requirements and the opt-in procedure) aiming at simplifying the regime could help achieve better empowerment and protection of retail investors, and a smoother functioning of the overall EU investor protection framework.

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?

Yes/no/don't know

Please explain your answer

Please see our answers to Questions 1.1 and 1.2 above.

² This tariff grid should be broken down by asset class; the amounts shown in it may be fixed amounts or, where applicable, ranges or maximum amounts (provided that the latter reflect the economic reality of the costs as closely as possible). This grid, which must be sufficiently granular to reflect the activities of the ISP, must be communicated at the time of entering into the relationship or concluding the first transaction. It must be updated at least annually.

As announced in our answer to Question 1.1, another area of improvement would be to review the opt-in procedure of MiFID II categorisation of clients, rather than introducing an additional client category (semi-professional) of investors.

As reported by AMAFI in the same response ([AMAFI/20-32](#)), and its MiFID II revision position paper ([AMAFI / 21-35](#)), several issues have been identified concerning the opt-in procedure as currently defined. Specifically, the "non-professional clients" category covers a large variety of client profiles: some of these clients are in a strong financial position and have a very good knowledge of the financial markets while others have few resources or a very limited knowledge of the financial markets. This heterogeneity raises several issues.

Firstly, the current categorisation may in some cases prevent access to certain products (*i.e.* those designed for professional clients and eligible counterparties). This is the case for wealth management or private banking clients who may have a good (or very good) knowledge of the financial markets and a significant amount of money to invest (to diversify their portfolios) but who do not have access to sophisticated products (such as private equity funds or hedge funds). Secondly, this situation may also be problematic regarding certain corporate clients, who do not meet the criteria of professional clients *per se*, but sometimes carry out a large number of transactions, particularly for hedging purposes.

More generally, the retail investor protection rules under MiFID II are very restrictive and, while they are generally well-suited to retail clients with little-knowledge, AMAFI considers them to be overly burdensome and restrictive for these more sophisticated clients. We believe the most appropriate solution to this issue would be the ability to treat these clients as "elective" professional clients. However, feedback shows that the current opt-in procedure too often prevents this option for the reasons discussed below, which is why AMAFI is proposing **a review of the opt-in procedure**.

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

	Strongly disagree	Rather disagree	Neutral	Rather agree	Strongly Agree
Lack of understanding of products by retail investors?		X			
Lack of understanding of products by advisers?	X				
Lack of trust in products?		X			
High entry or management costs?		X			
Lack of access to reliable, independent advice?		X			
Lack of access to redress?			X		
Concerns about the risks of investing?			X		
Uncertainties about expected returns?		X			
Lack of available information about products in other EU Member States?		X			
Other				X	

Please specify what other factor(s) might discourage or prevent retail investors from investing:

Like answered in Question 1.1, AMAFI considers that maintaining ordinary shares (and corporate bonds?) within the scope of MiFID II PoG requirements may discourage firms to distribute shares to retail investors.

And as detailed in answer to Question 1.3, the current MiFID II categorisation of clients may in some cases prevent retail investors from accessing to certain products (i.e. those designed for professional clients and eligible counterparties).

Question 1.5 - Do you consider that products available to retail investors in the EU are:

	Strongly disagree	Rather disagree	Neutral	Rather agree	Strongly Agree
Sufficiently accessible			X		
Understandable for retail investors				X	
Easy for retail investors to compare with other products				X	
Offered at competitively priced conditions				X	
Offered alongside a sufficient range of competitive products				X	
Adapted to modern (e.g. digital) channels			X		
Adapted to Environmental, Social and Governance (ESG) criteria			X		

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?

Select all applicable choices:

- financial literacy**
- digital innovation,
- disclosure requirements,**
- suitability and appropriateness assessment,
- reviewing the framework for investor categorisation,**
- inducements and quality of advice,
- addressing the complexity of products,**
- redress,
- product intervention powers,
- sustainable investing,
- other, and if so what area?**

Please explain your answer

Like developed in the answers below, AMAFI considers that financial literacy is key to improve financial education of retail investors (see item 2).

We also identified several points that could simplify and make more efficient disclosure requirements (see item 4).

We consider that the framework for investor categorisation should be reviewed to facilitate the opt-in of sophisticated retail investors as professional clients (see item 7).

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](#), 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

	Strongly disagree	Rather disagree	Neutral	Rather agree	Strongly Agree
Improve their understanding of the nature and main features of financial products					X
Create realistic expectations about the risk and performance of financial products					X
Increase their participation in financial markets			X		
Find objective investment information					X
Better understand disclosure documents					X
Better understand professional advice			X		

Make investment decisions that are in line with their investment needs and objectives					X
Follow a long-term investment strategy			X		

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?

AMAFI fully agrees with the importance of financial literacy and the need to increase knowledge that is too often notoriously lacking among the general public. But we also agree that the level of financial literacy varies greatly within the EU: the savings structure and the range of products available is often very different from one Member State to another, which means that financial literacy, beyond basic investment concepts, needs to focus on different types of investments or market segments with a higher priority in different Member States. This latter observation implies that the action that can be taken at European level must take account of this diversity and not bind Member States into an unsuitable straitjacket. Faced with this reality, **we believe that a first pragmatic step could be for the EU to design a label that could apply to the initiatives taken in this area, whether they are public or private.** Following the example of the [EDUCFI](#) label in France, this would certify that an action intended to enrich financial culture meets certain criteria, particularly in terms of neutrality, reliability, accessibility and free access. This EU label, which should be linked to possible national labels, would strengthen investors' confidence when they refer to actions that enable them to increase their financial literacy.

With this objective in mind, AMAFI has decided to expand its financial literacy activities to the general public: see "*Tout sur les marchés*" at www.amafi.fr

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

The objective of actions to increase the financial literacy of the public cannot - and should not - be to increase their participation in the financial markets or to orient them more actively towards long-term investment strategies. Although logically, AMAFI believes that these areas should be a priority for many investors, the choice is nevertheless up to each individual according to his or her expectations and needs. The aim is simply to provide them with the tools to measure their expectations and needs as accurately as possible so that they can make an informed choice from among the various options available to them. In this respect, although the primary responsibility for financial education lies with the States, the importance of private initiatives to make up for any shortcomings or malfunctions that may be observed from time to time should not be overlooked, and this accentuates the need for a label guaranteeing the objectivity of the media made available to the public.

Furthermore, investors financial education must serve first to improve the understanding of information which are provided to them so that they can assess as effectively as possible their objectives and their expectations. However, it is important to stress that investment advice stays an important service and is complementary to disclosure requirements (e.g. the KID PRIIPs cannot be self-sufficient as regards to investors' protection, but the entire MIF II framework – suitability/ appropriateness/ PoG – accompanying retail investors is complementary and essential to an effective investor's protection. Besides investment advice must in practice and generally meet high standards of quality and usefulness.

4. - DISCLOSURE 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:

	Strongly disagree	Rather disagree	Neutral	Rather agree	Strongly Agree
<i>The nature and functioning of the product</i>				X	
<i>The costs associated with the product</i>			X		
<i>The expected returns under different market conditions</i>			X		
<i>The risks associated with the product</i>				X	

Please explain your answer

To our understanding, question 4.1 relates to the situation where no KID/KIID requirements apply under EU legislation i.e. when distributing a financial instrument that is not a PRIIP (e.g. shares) or when distributing a PRIIPs product to professional clients. In such cases, the general pre-contractual disclosure rules in MiFID II and, in many cases, the prospectus regulation will apply.

In our experience, the disclosure requirements in MiFID II regarding the nature and function of financial instruments generally work well. The flexibility of the framework allows investment firms to adapt the information to the type of instruments and type of clients in question.

However, the information requirements in MiFID II regarding costs & charges are too complex and lead to an information overload for retail clients. Disclosure of costs is essential for investor protection purposes. However, this obligation did not take sufficient account the very heterogeneous nature of financial instruments, as outlined in our response to the EC consultation in 2020 ([AMAFI / 20-32](#)), and its MiFID II revision position paper ([AMAFI / 21-35](#)). To simplify further the regime and for retail investors' protection, AMAFI considers appropriate to amend Article 50 of the MiFID II DR to recognise in the Level 2 text the legitimacy of **using tariff grids³ for simple financial instruments** (where it is not a **packaged product** within the meaning of the PRIIPs Regulation).

³ This tariff grid should be broken down by asset class; the amounts shown in it may be fixed amounts or, where applicable, ranges or maximum amounts (provided that the latter reflect the economic reality of the costs as closely as possible). This grid, which must be sufficiently granular to reflect the activities of the ISP, must be communicated at the time of entering into the relationship or concluding the first transaction. It must be updated at least annually.

On disclosure requirements regarding the expected returns under different market conditions, such requirement is relevant for investment products only and should be exclusively within PRIIPs scope.

Question 4.2

	Understandability (please assess on a scale of 1-5)	Reliability (please assess on a scale of 1-5)	Amount of the information (please assess as insufficient, adequate, or excessive)	Please explain your answer
PRIIPs Key Information Document (as a whole)	4	5	Adequate	Globally sufficiently satisfactory – Need for regulatory stability
<i>Information about the type, objectives and functioning of the product</i>	5	5	Adequate	Sufficiently satisfactory, considering that KID PRIIPs cannot be always enough on its own.
<i>Information on the risk-profile of the product, and the summary risk indicator</i>	5	5	Adequate	SRI scale works well
<i>Information about product performance</i>	4	3	Adequate	Globally satisfactory except for autocallable products under RTS V2 and more generally that there will always be some uncertainty.
<i>Information on cost and charges</i>	3	5	Adequate	RiY not well understood. Even if less used under RTS V2
<i>Information on sustainability-aspects of the product</i>	NA	NA	NA	Too soon to be mandatory
Insurance Product Information Document (as a whole)				
<i>Information about the insurance distributor and its services</i>				
<i>Information on the insurance product</i>				
<i>Information on cost and charges</i>				
PEPP Key Information Document (as a whole)				
<i>Information about the PEPP provider and its services</i>				
<i>Information about the safeguarding of investments</i>				
<i>Information on cost and charges</i>				
<i>Information on the pay-out phase</i>				

Please explain your answers

AMAFI considers that PRIIPs KID as a whole is globally sufficiently satisfactory. And that we need now regulatory stability.

Regarding information on the risk profile the KID is sufficiently comprehensible for retail investors and SRI scale works well in our view.

As for product performance, it now seems relatively well understood and internalised by distributors of products designed for retail investors. For regulatory and legal stability purposes, no substantial changes should be expected. With that in mind, AMAFI deeply regrets that RTS V2 changed performance methodologies for structured autocallable products in a way that it would be even less understandable for retail investors. Besides, it is worth mentioning that forward looking expectations necessarily carry elements of uncertainty (hazard) considering market developments (i.e. there is always a possibility that the product does not perform exactly as the expectations would have anticipated).

Regarding cost and charges, like previously conveyed (see AMAFI /19-54 “AMAFI Position on PRIIPs KID revision”, AMAFI considers that the methodology used to present costs in PRIIPs KIDs should be changed to a Total Expense Ratio (TER) approach, which then enables the addition of service costs. Indeed, the current PRIIPs KID methodology, which looks at the impact on yield (Reduction in Yield or RiY method) leads to inconsistencies, toughly understandable for retail investors, in the figures disclosed to investors in PRIIPs KIDs and the required disclosures under MiFID II. Accordingly, AMAFI believes that the methodology of calculating product costs using the RiY method is overly complex for retail investors.

Yet, AMAFI recognises that the RTS (Delegated Regulation (EU) 2017/653) as amended (Draft “RTS V2”) will allow for better harmonisation between the PRIIPs regime of costs presentation and the MiFID’s one and thus will make it simpler and more understandable for retail investors. Indeed, costs table of the KID achieve this objective showing both raw cost in EUR and impact on annual return in % terms. Nevertheless, AMAFI outlines that these RTS V2 raise very important issues related to autocallable products because a specific costs presentation for autocallable products contradicts the principle of comparability and non-annualisation of costs impact below 1 year and leads to inconsistencies regarding the MiFID II regime.

To conclude on packaged products, current PRIIPs KID is sufficiently satisfactory to be understood by retail investors even if some adjustments and improvements could be made (TER instead of RiY / settling scope issues – see our answer in item 5 and flaws of RTS V2 for autocallable products). Indeed, the expected RTS V2 somehow failed to properly address this objective, especially for autocallable structured products.

It could be noted however that MiFID II also requires information on product returns and risks, not in a same prescriptive way than PRIIPs, and could raise some inconsistencies or redundancies. There might be ways to simplify and rationalise better the regime in that perspective. For instance, it could be contemplating that where PRIIPs applies, all information about the product is presumed to be provided through the PRIIPs KID and in compliance with MiFID II (please see our answer to Question 4.7 above).

Finally, it should be again pointed out that in some situations PRIIPs KID, on its own, cannot be sufficient for retail investors to help them take their investment decisions:

- (i) Other investor protection features like appropriateness, suitability and PoG of MiFID II regime complete appropriately the framework (e.g. sometimes, retail investors need to be accompanied with investment advice, as identified thanks to PoG and that would trigger suitability requirements in order to ensure that the investment is suitable for them).
- (ii) Also, it is necessary to improve financial education to enable retail investors to better understand the content of PRIIPs KIDs which cannot be oversimplified without remaining fully accurate.

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?

Yes/no/don't know

AMAFI considers that, given the requirement for investment firms to draft the PRIIPs KID in the investor's language, the language used in the pre-contractual documentation is necessarily understandable to retail investors. Moreover, as the PRIIPs regulation is extremely prescriptive, there is no leeway for producers to use a specific jargon or a sector-specific terminology, which ensures that the presentation of the products is homogeneous and understandable to retail investors. Even if the product description (nature, object and functioning) is less prescribed than the rest, and if it lets a certain flexibility to manufacturers, AMAFI considers there was a substantial effort of harmonisation, understandability, in the way in which products are displayed. Indeed, the work led by the industry enabled to go as far as possible on how to rationalise the products and their functioning.

It also should be outlined that the general issue of understandability of retail investors could not be solely addressed through disclosure requirements. Information itself is not enough to protect retail investors, no matter how well it is designed. Other features (mostly from MiFID II framework) such as PoG, appropriateness and suitability requirements are complementary and essential. It ensures that retail investors have the proper help, for instance with investment advice, where relevant.

A better level of understandability supposes as well to improve financial education and knowledge of mass retail (see item 2).

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

From AMAFI's understanding of Article 13.1 of [Regulation \(EU\) n°1286/2014](#) ("PRIIPs Regulation") the KID must be provided to the retail investor **in good time before she/he is bound by any contract or offer relating to the considered PRIIP**, which we believe is the correct stage. Therefore, for the sake of legal and regulatory stability, AMAFI suggests maintaining the principle adopted in Article 13.1 of PRIIPs Regulation and its exemptions provided for in Article 13.3 which are fully appropriate and necessary.

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

Yes/no/don't know

Please explain your answer

In general, the PRIIPs KID allows a clear comparison between different investment products. However, AMAFI notes that the comparison is limited for investment funds (still not in scope but will be soon with the coming PRIIPs RTS V2) and points out that some derivatives (OTC derivatives, corporate bonds and convertible bonds, and more generally equity-linked products – see below Question 5.10) are not suitable for the scope of PRIIPs.

Furthermore, AMAFI considers that PRIIPs RTS V2 (the amended version of the current PRIIPs RTS) introduce disproportionate changes by providing for a specific methodology for autocallable products (both in terms of performance scenarios and cost tables), thereby hindering comparability for Category 3 products. AMAFI is expecting many disruptive and detrimental effects from the amended PRIIPs RTS on this category 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)?

Yes/no/don't know

Please explain your answer

AMAFI considers that the PRIIPs KID should provide comparability at two levels with a different intensity. On the first hand, the comparability provided must be highly significant within a given PRIIPs category (i.e. between two funds - PRIIPs Category 2 - or between two structured products - PRIIPs Category 3). On the other hand, when the comparability concerns different products which do not belong to the same PRIIPs category (i.e. UCITS, structured products, retail AIF), the comparability can be simply reasonable.

Question 4.7 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:

a) Product cost information is calculated and presented?

Yes/no/don't know

Please explain your answer, and indicate which information documents are concerned

As seen above (see our answer to Question 4.2, a)), AMAFI considers that the methodology used to present costs in PRIIPs KIDs should be changed to a Total Expense Ratio (TER) approach, which then enables the addition of service costs. Indeed, the current PRIIPs KID methodology, which looks at the impact on yield (Reduction in Yield or RiY method) leads to inconsistencies, toughly understandable for retail investors, in the figures disclosed to investors in PRIIPs KIDs and the required disclosures under MiFID II. Accordingly, AMAFI believes that the methodology of calculating product costs using the RiY method is overly complex for retail investors.

AMAFI recognises that the RTS ([Delegated Regulation \(EU\) 2017/653](#)) as amended (Draft "RTS V2", cf. [Draft Final Report, JC 2020 66, p. 51 to 108](#)) will allow better harmonisation between the PRIIPs regime of costs presentation and the MiFID's one and thus will make it simpler and more understandable for retail investors. Indeed, the KID costs table achieves this objective showing both raw cost in EUR and impact on annual return in % terms.

Nevertheless, AMAFI outlines that these RTS V2 raise very important issues related to autocallable products because a specific costs presentation for autocallable products contradicts the principle of comparability and non-annualisation of costs impact below 1 year and leads to inconsistencies regarding MiFID II regime.

b) Risk information is calculated and presented?

Yes/no/don't know

Please explain your answer, and indicate which information documents are concerned

In situations where both PRIIPs and MiFID II regimes apply, the practice shows that financial institutions use the PRIIPs SRI (*Summary risk indicator*) to comply with MiFID II. This is therefore consistent. Besides, this is actually the approach used in the EMT (*European MiFID Template* - drafted by FinDatEx) in order to define target markets (which is a MiFID II requirement).

FinDatEx (Financial Data Exchange Templates) is a joint structure established by representatives of the European Financial services sector industry with the view to coordinate, organise and carry out standardisation work to facilitate the exchange of data between stakeholders in application of European Financial markets legislation, such as MiFID II, PRIIPs and Solvency 2.

FinDatEx's mission is to support the development and use of standardised technical templates to facilitate the exchange of data between stakeholders in the application of European Financial market legislation. For more information about FinDatEx, its mission and its structure: here the [link](#) to the dedicated website.

Regarding the current templates developed by FinDatEx and to which AMAFI refers to in this paper:

- "EMT" or *European MiFID Template*
- "EPT" or *European PRIIPs Template*

The current and last versions of the different FinDatEx templates are available through this [link](#).

Yet, AMAFI wishes to underline that, in theory, the MiFID II and PRIIPs risk information disclosure regimes are not in line. Indeed, while the calculation and presentation of risk information are prescribed in a very precise manner by PRIIPs, notably through the SRI, MiFID II provides for a general disclosure requirement on risk information.

c) Performance information is calculated and presented?

Yes/no/don't know

Please explain your answer, and indicate which information documents are concerned

Presentation of performance in PRIIPs KID, now seems relatively well understood and adopted by distributors of products designed for retail investors. For regulatory and legal stability purposes, no substantial changes should be expected. With that in mind, AMAFI deeply regrets that RTS V2 changed performance methodologies for structured autocallable products in a way even less understandable for retail investors.

It could be noted however that MiFID II also requires information on product returns, not in a same prescriptive way than PRIIPs, and could therefore raise some redundancies. There might be ways to simplify and rationalise better the regime in that perspective. For instance, it could be contemplating that where PRIIPs applies, all information about product performance is presumed to be provided through the PRIIPs KID and in compliance with MiFID II.

Besides, this is actually the approach used in the EMT (*European MiFID Template* - drafted by FinDatEx) that relies on PRIIPs SRI in order to define target markets (which is a MiFID II requirement).

d) Other elements

Yes/no/don't know

Please explain your answer, specifying what those elements are and indicating which information documents are concerned

AMAFI wishes to stress the fact that the target market definition is not the same in PRIIPs KIDs and in MiFID II. For simplification and harmonisation of the requirements purposes, financial institutions should be enabled to rely on target market definitions under MiFID II when drafting the PRIIPs KID, more particularly, they should be able to use the information gathered under MiFID II in the PRIIPs KID on this matter.

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

Information about:	Not relevant	Relevant, but not crucial	Essential
Product objectives/main product features			X
Costs			X
Past performance	X for structured products		
Guaranteed returns		X	
Capital protection			X for structured products
Forward-looking performance expectation			X for structured products
Risk			X
Ease with which the product can be converted into cash		X	
Other (please specify)			

Please explain your answer.

AMAFI believes that the following elements are the most essential to promote comparability considering retail investment products: product objectives/main product features information, capital protection information, forward-looking performance expectation, risk information. Furthermore, AMAFI wishes to highlight the fact that the three (3) following elements are already taken into account in the KID: costs information, risk information and, and performance scenarios. The KID is primarily a regulatory document, very prescriptive, and given the 3 pages limitation, it should be focusing on quantitative and objective data only i.e. these crucial 3 elements and the main product features information.

AMAFI wishes to point out that capital protection information is a concept that should only be understood at maturity of the structured product. This is a very important fact to make it understood by retail investor.

MiFID II has established a comprehensive cost disclosure regime that includes requiring that appropriate information on costs in relation to financial products as well as investment and ancillary services is provided in good time to the clients (i.e. before any transaction is concluded and on an annual basis, in certain cases).

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?

Yes/no/don't know

Please explain your answer

AMAFI considers that the current regime is sufficiently strong to ensure transparency of costs and cost impact for retail investors. Therefore AMAFI believes there is no need to add new disclosure requirements.

Nevertheless, AMAFI supports a lighter regime for the simplest products which do not fall under PRIIPs scope (see above our answer to Question 4.2, a)) to allow that information is provided through a tariff grid, rather than on a trade-by-trade basis, would be one way of meeting this requirement for proportionate transparency.

Furthermore, AMAFI believes that the obligation to provide *ex-post* information should be limited solely to investors who have an “ongoing relationship” with the ISP. Taking into account the feedback on this topic, it seems important to clarify the scope of the “ongoing relationship” to limit it to the provision of truly “ongoing” investment services: ongoing advice that involves providing a periodic assessment of suitability, portfolio management and safekeeping services.

Studies show that due to the complexity of products and the amount of the aggregate pre-contractual information provided to retail investors, there is a risk that investors are not able to absorb all the necessary information due to information overload.

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?

Please explain your answer.

AMAFI believes that it is essential to maintain the current PRIIPs rule, which (already) provides for a maximum length of three pages. While fewer pages would not be enough to provide sufficient information, more pages would dissuade retail investors from reading the PRIIPs KID. Furthermore, AMAFI believes it is important to emphasize the fact that a risk of diverging requirements on the maximum length of the KID in the different Member States of the EU would significantly affect comparability across European products and markets.

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.?

Please explain your answer.

AMAFI supports globally maintaining the current regulatory situation, as well for regulatory and legal stability purpose, which takes into account differences between most simple products (outside PRIIPs scope) and the other (within PRIIPs scope).

PRIIPs requirements sufficiently address the need of pre-contractual information/ disclosure for those products.

Complexity of products is not an issue that can be solely managed by disclosure requirements.

As already outlined, the issue of understandability of retail investors could not be solely addressed through disclosure requirements. Information by itself is not enough to protect retail investors, no matter how well is designed. Other features (mostly from MIFID II framework) such as PoG, appropriateness and suitability requirements are complementary and essential. It ensures that retail investors have the proper help, for instance with investment advice, where relevant.

A better level of understandability supposes as well to improve financial education and knowledge of mass retail (see item 2).

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

- On paper by default?
- In electronic format by default, but on paper upon request?
- In electronic format only?
- Don't know

Please explain your answer

AMAFI considers that the choice of paper as the default option for the provision of information to clients is no longer appropriate. Indeed, it is inconsistent with investment firm's economical requirements of digitalisation and irreconcilable with objectives of sustainable finance (which is among EU's priorities). Furthermore, AMAFI wishes to underline there is no evidence that the provision of paper-based information has any bearings on the quality of information delivered to the client.

Therefore, AMAFI proposes to proceed to a phase-out of paper-based information wherever it is relevant to do so. This phase-out should be possible for all firms and clients whenever it is appropriate to do so but with leaving some flexibility for firms (notably smaller firms) to proceed or not such general phase-out.

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

<i>Not at all important</i>	<i>Rather not important</i>	<i>Neutral</i>	<i>Somewhat important</i>	<i>Very important</i>
			X	

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 decisions?

Please explain your answer

AMAFI believes that there is no need to improve the accessibility, readability and intelligibility of pre-contractual disclosure documents.

Furthermore, if the question is whether to implement KID formats and use data extraction tools, AMAFI remains sceptical about the benefit of specifying a certain further KID format or the use of an IT tool, compared to the potentially high implementation costs. Indeed, as far as the Structured Securities industry is concerned, AMAFI wishes to outline that for exchange of data contained in the KIDs between manufacturers and distributors, there are already existing platforms where KIDs are published and raw data are used following the EPT (*European PRIIPs Template* – drafted by FinDatEx – please see box above at Question 4.7).

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

	<i>Not at all important</i>	<i>Rather not important</i>	<i>Neutral</i>	<i>Somewhat important</i>	<i>Very important</i>
<i>There are clear rules to prescribe presentation formats (e.g. readable font size, use of designs/colours, etc.)?</i>				X	
<i>Certain key information (e.g. fees, charges, payment of inducements, information relative to performance, etc.) is displayed in ways which highlight the prominence?</i>				X	
<i>Format of the information is adapted to use on different kinds of device (for example through use of layering)?</i>			X		
<i>Appropriately labeled and relevant hyperlinks are used to provide access to supplementary information?</i>		X			
<i>Use of hyperlinks is limited (e.g. one click only – no cascade of links)?</i>			X		
<i>Contracts cannot be concluded until the consumer has scrolled to the end of the document?</i>		X			
<i>Other (please explain)?</i>					

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 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:

	Yes/no – Please explain your answer
<i>Improving the level of understanding that retail investors have of retail investment products</i>	<p>Yes</p> <p>AMAFI considers that PRIIPs globally achieves this objective.</p> <p>However, the changes proposed by the RTS V2 (see above) will not improve the understanding of the products, particularly in that they introduce a specific methodology for performance of autocallable products.</p> <p>A more substantial change on the costs methodology (remove RiY by TER indicator) would have better improved understanding of costs presentation.</p>
<i>Improving the ability of retail investors to compare different retail investment products, both within and among different product types</i>	<p>Yes</p> <p>In general, the PRIIPs KID allows a clear comparison between different investment products. However, AMAFI notes that the comparison is limited for investment funds and points out that some derivatives are not suitable for the scope of PRIIPs.</p> <p>Furthermore, AMAFI considers that RTS V2 (the amended version of the current PRIIPs RTS) introduces disproportionate changes by providing for a specific methodology for autocallable products (both in terms of performance scenarios and cost tables), thereby hindering comparability for Category 3 products. AMAFI is expecting many disruptive and detrimental effects from the amended RTS on this category of products.</p>
<i>Reducing the frequency of mis-selling of retail investment products and the number of complaints</i>	<p>Yes</p> <p>If the KID PRIIPs contributes to reducing the frequency of mis-selling of retail investment products and the number of complaints, the risk of mis-selling is and should be essentially mitigated by MiFID II, whose features improved investor protection as a whole.</p> <p>Besides, AMAFI wishes to stress that since 2018, French banks have received very few complaints related to the distribution of financial instruments.</p>

<p><i>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</i></p>	<p>No It is mainly MiFID II that provides a means of ensuring that the product is suitable for the retail client, based on their individual sustainability preferences, financial situation, investment objectives and needs and risk tolerance.</p>
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Question 5.2 - Are retail investors easily able to find and access PRIIPs KIDs and PEPP KIDs?

Yes/no/don't know

Please explain your answer

Based on AMAFI's experience, retail investors are easily able to find and access PRIIPs KIDs. Indeed, when the investment service is provided face-to-face, the PRIIPs KIDs are in practice delivered to the clients on paper before any investment decision is taken. When the service is provided on distance (by phone or via digital means), PRIIPs KIDs are usually sent to the clients by e-mail and/or are easily accessible online before any investment decision is taken.

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

	Yes/no
<i>Requiring PRIIPs KIDs and PEPP KIDs to be uploaded onto a searchable EU-wide database</i>	No
<i>Requiring PRIIPs KIDs and PEPP KIDs to be uploaded onto a searchable national database</i>	No
<i>Requiring PRIIPs KIDs and PEPP KIDs to be made available in a dedicated section on manufacturer and distributor websites</i>	Yes
<i>Other</i>	

Please explain your answer.

AMAFI does not support the development of an EU-wide database allowing for the comparison between different types of investment products accessible across the EU. Indeed, such a database raises a lot of serious concerns and doubts on its legitimacy and usefulness. In particular:

- In practice, what data, who and how to upload it into the database?
- Considering that many data will have to be up-to-date, how to ensure that the information will be accurate and up-to-date?
- How ensuring the reliability of the data? Who shall update and oversee updating of the data and will they be able to update as fast as needed?
- Who will endorse such responsibility?
- At what cost? Financed how? Considering the huge amount of efforts, costs and work done on MiFID II target markets and PRIIPs KID, would be that be reasonable to add even more costs?

- Considering the large number of products available in the EU, would that be even feasible to have such database?
- How would we deal with products that are not marketed in all the EU?
- Would that mean that firms will be required to register their product(s) in the EU database before marketing? That does not seem feasible in practice.

In addition, AMAFI has trouble with identifying who exactly would benefit from such database and has serious doubt that a database would help retail investors. Finally, one may point out that aggregating and providing data are services provided today by private companies whose experience and technical expertise ensure a valuable service.

The PRIIPs KID

Question 5.3 - Should the PRIIPs KID be simplified, and if so, how (while still fulfilling its purpose of providing uniform rules on the content of a KID which shall be accurate, fair, clear, and not misleading)?

Yes/**no**/don't know

Please explain your answer

To ensure regulatory stability, AMAFI believes that the PRIIPs KID is sufficient and well understood while providing reliable information.

However, once again, AMAFI considers that RTS V2 (the amended version of the current PRIIPs RTS) introduce disproportionate changes by providing for a specific methodology for autocallable products (both in terms of performance scenarios and cost tables).

A more substantial change on the costs methodology (remove RiY by TER indicator) would have better improved understanding of costs presentation.

Implementation and supervision of the PRIIPs Regulation

Question 5.4 - Can you point to any inconsistencies or discrepancies in the actual implementation of the PRIIPs Regulation across PRIIPs manufacturers, distributors, and across Member States?

Yes/**no**/don't know

Please explain your answer

AMAFI has noted discrepancies in the implementation of PRIIPs for structured products in the Member States.

FSMA requires KIDs to be not longer than three pages with specific wording requirements and local interpretations (see [2021.06.17 - Communication FSMA 2021 13: "Feedback Statement containing the conclusions of a qualitative examination of PRIIPs KID, p. 3-4"](#)). Besides, FSMA requires manufacturers from other Member States to draft specific KIDs for the distribution of their products on the Belgian territory.

BaFIN seems to have specific interpretation of weblinks where the PRIIPs KIDs are made available to investors (i.e. they must be available on the document).

CNMV follows a specific treatment of autocallable products that is not shared with other NCAs, to the best of our knowledge.

CONSOB requires to be notified of raw data of KIDs by the development of an API for meta data feed of securities (i.e. notes/warrants/certificates) KID sold in Italy, which goes beyond the Level 1 text requirement.

AMAFI wishes to stress that such additional national requirements represent obstacles to the cross-border commercialisation of products and may generate important additional costs for manufacturers.

Question 5.5 - In your experience, is the supervision of PRIIPs KIDs consistent across Member States?

Yes/**no**/don't know

Please explain your answer

See above AMAFI's answer to Question 5.4. As some Member States seem to have issued additional national requirements related to the PRIIPs KID, discrepancies in the supervision of these KIDS may also occur.

Question 5.6 - What is in your experience as a product manufacturer, the cost of manufacturing:

	<i>Cost in € per individual product</i>
<i>A single PRIIPs KID</i>	
<i>A single PEPP KID</i>	
<i>A single Insurance Product Information Document</i>	

Question 5.7 - What is in your experience as a product manufacturer the cost of updating:

	<i>Cost in € per individual product</i>
<i>A single PRIIPs KID</i>	
<i>A single PEPP KID</i>	
<i>A single Insurance Product Information Document</i>	

Question 5.8 - Which factors of preparing, maintaining, and distributing the KID are the most costly?

- ~~Collecting product data/inputs~~
- **Performing the necessary calculations**
- **Updating IT systems**
- ~~Quality and content check~~
- **Outsourcing costs**
- **Other**

Please explain your answer

Any change in the methodologies implies a cost for performing the necessary calculations. A substantial cost for implementing RTS V2 for autocallable products in particular is expected for our concerned members.

According to AMAFI, a very important cost is **implementation costs** following successive regulatory changes. Any change in the framework implies costs in **IT developments** but also for **comprehensive training of staff, clients and distributors** and **internal policies and procedures updates**.

Furthermore, for structured products, technically the KID generation set-ups under the current RTS are very heavy IT workflows due to much larger volumes than in other industries: more specifically many AMAFI members are issuing up to several hundred thousand of exchange traded products each year.

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?

Yes/no/**don't know / no opinion / not applicable**

Please explain your answer

AMAFI does not answer this Question because it is out of its scope.

 **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? If so, why?

Product	Should be in PRIIPs Regulation scope [include/exclude]
<i>Pension products which, under national law, recognised as having the primary purpose of providing the investor with an income in retirement and which entitle the investor to certain benefits;</i>	
<i>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.</i>	

<p>Other [Please note that this section was not loaded in the Commission online questionnaire]</p>	<p>OTC derivatives for corporate clients</p> <p>Although AMAFI agrees that those intended for mass distribution, e.g. CFDs, fall within the scope of the Regulation, those contracted with corporate clients classified as retail clients are not PRIIPs, for the following reasons:</p> <ul style="list-style-type: none"> - There is no distribution as such to retail investors, only a bilaterally negotiated contract; - There is no “investment opportunities” as such but the aim to risk hedging (rate or change); - There is no repayable amount to the retail investor, as stated in the definition of a PRIIP; - Some derivatives exposed solely to an interest rate are similar to fixed-rate or variable-rate deposits, which are outside the scope of PRIIPS. <p>In addition, since contract is different from the others, those OTC derivatives are not standard products ready for mass distribution to retail investors. PRIIPs KID is disproportionate considering the lack of value added for the corporate clients concerned.</p> <p>Corporate vanilla bonds / convertible bonds</p> <p>Like AMAFI already stressed in its answer to the ESAs consultation on the amendments to the PRIIPs KID held at the end of 2019 / beginning of 2020 (<i>AMAFI / 20-02</i>), and like ICMA said in its response to that same consultation, “<i>vanilla bonds’ scope is still problematic</i>”. Notwithstanding the 24 October Joint ESA Supervisory Statement (JC-2019-54) stepping in the right direction to reassure the markets that the vanilla bonds are indeed out of scope of the PRIIPs Regulation, differing views and so uncertainty endure in the market as to what may be interpreted as ‘packaged’ or not with significant ongoing reluctance to make vanilla bonds directly available to EEA retail investors. “<i>Should the European Commission feel that EEA retail investors should be generally able to directly invest in vanilla bonds, then it would need to ensure the PRIIPs legislation itself is clearly understood to exclude vanilla bonds</i>”. For a vanilla bond issuer, the challenge is not so much the logistical cost of producing a KID but rather the risk of being misleading (which can have a huge cost for issuers in terms of investor compensation and reputational damage).</p> <p>Moreover, as mentioned in Question 4.5, equity-linked products (i.e. convertible bonds) even if they correspond to the definition of packaged product is not suitable for the scope and objective of PRIIPs Regulation according to AMAFI. Convertible bonds are financing financial instruments that are not investment products for retail and are not purposely made available to them.</p>
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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?

Yes/No/don't know

Please explain your answer

On the first hand, AMAFI wishes to highlight the fact that when a client subscribes to a new product, he often receives in practice the last and the updated version of the PRIIPs KID. Afterwards, during the holding period, the client is in practice entitled to receive any past version of the PRIIPs KID on demand.

On the other hand, AMAFI considers that the past version of the KID does not add any value for retail investors. On the contrary, it entails a risk, as investors are likely to rely on an outdated version of the KID to reach their investment decision.

Furthermore, such access by investors to past versions of the PRIIPs KID would generate legal and IT impacts disproportionate to its usefulness (e.g. significant implementation costs, competition law issues, legal questions on the validity of past KIDs). Lastly, this would clutter up ISPs' servers and might have a significant impact on their carbon footprint.

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. Should the review and update occur more regularly? Should this depend on the characteristics of the PRIIPs? What should trigger the update of PRIIP KIDs?

Yes/no/don't know

Please explain your answer

AMAFI believes that there is no need to challenge the current regime by having the KID updated more often and by making specific rules dependent on PRIIP's characteristics. Indeed, the current triggers to update are sufficiently appropriate (i.e. at least every 12 months or upon a change of risk indicator or a change of moderate scenario by more than 5% or in case of significant change) and changing them would create an overly complex framework for retail investors to follow the rationale for KID updates. Moreover, AMAFI wishes to stress the fact that, in practice, there are regularly triggers leading to KID updates before / more frequently than the 12 months minimum.

AMAFI also opposes changes to structured products in that the update rules are well understood by investors and the triggers to update are appropriate (i.e. the change of risk indicator and moderate scenario).

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 disagree	Disagree	Neutral	Agree	Strongly agree
			X	

Please explain your answer

From AMAFI's point of view, the suitability assessment conducted by an investment firm is efficient in serving retail investors needs and effective in ensuring that they are not offered unsuitable products.

Question 6.2 -Can you identify any problems with the suitability assessment and if so, how might they be addressed?

Yes/no/don't know

Please explain your answer. Please explain how these problems might they be addressed.

Generally speaking, AMAFI does not identify any problems with the current suitability assessment regime. Legal and regulatory stability should therefore be preserved.

However, AMAFI supports some adjustments in the ESMA Suitability Guidelines (Level 3).

On the first hand, as it made known when the Guidelines were being drafted, AMAFI strongly objects to Guideline 7 "Arrangements necessary to understand investment products" of ESMA's Guidelines on Suitability⁴. Since MiFID II entered into force, and contrary to MiFID I, issues of product knowledge applicable to the ISP that markets such products are now governed by the Product Governance framework ("PoG") and should therefore no longer be included in the Suitability framework. Then, the requirements included in Guideline 7 are, at best, redundant and, at worst, in conflict with those of the PoG. AMAFI therefore proposes to delete Guideline 7.

On the other hand, AMAFI suggests that ESMA should recommend, as a best practice, that investment firms inform investors when, to their knowledge, investors' credit risk may be deemed overly concentrated, although firms cannot be required to closely and systematically monitor this risk or to apply methodologies that include threshold mechanisms.

⁴ [ESMA guidelines on certain aspects of the MiFID II suitability requirements, French version dated 6 November 2018](#) (ESMA35-43-1163).

Finally, even though paragraph 91 of ESMA’s Guidelines on Suitability requires ISPs to include in the suitability report “*the reasons why the benefits of the recommended switch are greater than its cost*”; AMAFI reminds that Levels 1 and 2 of MiFID II do not impose any formal requirements as to the manner in which ISPs are to provide this information to non-professional clients. Consequently, AMAFI suggests the deletion of paragraph 91 of ESMA’s Guidelines on Suitability.

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/no/don't know

Please explain your answer

AMAFI considers that suitability assessment requirements should be technology-neutral and sees no evidence that they are not appropriate or inadequate for online platforms.

Besides, AMAFI wishes to stress that the rules on suitability assessments must be the same whoever the professional is and whatever the distribution channel used. Furthermore, ensuring a level playing field between professionals is a priority as well as respecting the statement “same products, same service, same rules”.

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?

Strongly disagree	Disagree	Neutral	Agree	Strongly agree
			X	

Please explain your answer

From AMAFI’s point of view, the appropriateness test is efficient in serving retail investors needs and is effective in ensuring that they do not purchase products they are not able to understand and more generally, coupled with PoG, not appropriate for their profile. Thus, the appropriateness test is not the sole element allowing such improvement in the protection of retail investors. Indeed, client targeting is reinforced with the PoG regime, the enlarged disclosure requirements, the introduction of the PRIIPs KID and the strengthened training requirements for financial advisers under MiFID II. All these different elements contribute to reinforce retail investor protection.

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)?

Yes/no/don't know

Please explain your answer

Like said in our answer to Question 6.4, AMAFI does not identify any problems with the appropriateness test, except its length annoying some clients.

AMAFI wishes to stress that ISPs have made huge efforts to implement MiFID II regime and they deem they have reached a satisfying outcome. That is why, AMAFI would like to point again to the importance of preserving legal and regulatory stability.

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

Yes/no/don't know

Please explain your answer

From AMAFI's point of view, the rules on appropriateness tests are sufficiently adapted to the increasing use of online platforms or brokers.

In accordance with PoG requirements, distribution regime including no advise sales (under appropriateness or execution only regime) should be designed in adequation with the product features.

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/no/don't know

Please explain your answer

AMAFI considers that providing a warning about the fact that a product is inappropriate is sufficient to protect retail investors.

Again, in accordance with PoG requirements, distribution regime including no advise sales (under appropriateness or execution only regime) should be designed in adequation with the product features.

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/no/don't know

Please explain your answer

From AMAFI's point of view, no appropriateness test should be required in case of the execution of orders or transmission and reception of orders of certain non-complex products, at the initiative of the client. Besides, if the execution-only regime was removed, there are good chances that many clients would be annoyed as a consequence.

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/no/don't know****Please explain your answer**

PoG obligations have so far applied to all types of clients, all investment services and all products regardless of their complexity. However, as mentioned previously, when the MiFID II Quick Fix will come into force, investment firms will be exempted from the Product Governance regime where the investment service relates to plain vanilla corporate bonds or corporate bonds with a make-whole clause. Meanwhile, ordinary shares remain within the scope of the requirements.

In the case of ordinary shares and bonds, the application of PoG is more difficult to understand, in particular in the primary market where the added value is, in principle, very low or non-existent. Therefore, **AMAFI proposes excluding ordinary shares and bonds from the scope**. Accordingly, AMAFI believes the definition of a target market is not appropriate. In this line, AMAFI made in 2018 different proposals to standardise the criteria used by manufacturers to identify the target market and the distribution strategy for simple products (cf. [AMAFI / 18-60: MiFID 2 Product Governance Implementation Guide, Annex 2](#)).

However, AMAFI notes that PoG requirements were primarily designed for structured products, which are actually "manufactured" by investment firms. The PoG regime operates satisfactorily for packaged/structured products and does not prevent retail clients from accessing products that would be appropriate to them. Consequently, **in AMAFI's view there should be no change to the current regime when structured products are concerned**.

✚ 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 disagree	Disagree	Neutral	Agree	Strongly agree

Please explain your answer

AMAFI does not answer to this Question because it is out of its scope.

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? If so, how might they be addressed?

Yes/no/~~don't know / no opinion / not applicable~~

Please explain your answer.

AMAFI does not answer to this Question because it is out of its scope.

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 differences between Member States.

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?

Yes/no/~~don't know / no opinion / not applicable~~

Please explain your answer.

AMAFI does not answer to this Question because it is out of its scope.

Question 6.13 - Is the demands and needs test sufficiently adapted to the online distribution of insurance products? 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/no/~~don't know / no opinion / not applicable~~

Please explain your answer.

AMAFI does not answer to this Question because it is out of its scope.

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?

	Yes/no
Introduction of an additional client category (semi-professional) of investors.	No
Adjusting the definition of professional investors on request	Yes
No changes to client categorisation (other measures, i.e. increase product access and lower information requirements for all retail investors)	No

Please explain your answer.

As detailed above in answer to Question 1.3, another area of improvement would be to review the opt-in procedure of MiFID II categorisation of clients, rather than introducing an additional client category (semi-professional) of investors.

As reported by AMAFI in the same papers (*AMAFI / 20-32* and *21-35*), several issues have been identified concerning the opt-in procedure as currently defined. Specifically, the "non-professional clients" category covers a large variety of client profiles: some of these clients are in a strong financial position and have a very good knowledge of the financial markets while others have few resources or a very limited knowledge of the financial markets. This heterogeneity raises several issues.

Firstly, the current categorisation may in some cases prevent access to certain products (i.e. those designed for professional clients and eligible counterparties). This is the case for wealth management or private banking clients who may have a good (or very good) knowledge of the financial markets and a significant amount of money to invest (to diversify their portfolios) but who do not have access to sophisticated products (such as private equity funds or hedge funds). Secondly, this situation may also be problematic regarding certain corporate clients, who do not meet the criteria of professional clients per se, but sometimes carry out a large number of transactions, particularly for hedging purposes.

More generally, the retail investor protection rules under MiFID II are very restrictive and, while they are generally well-suited to retail clients with little-knowledge, AMAFI considers them to be overly burdensome and restrictive for these more sophisticated clients. We believe the most appropriate solution to this issue would be the ability to treat these clients as "elective" professional clients. However, feedback shows that the current opt-in procedure too often prevents this option for the reasons discussed below, which is why AMAFI is proposing a review of the opt-in procedure.

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

<i>"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"</i>	
No change	
30 transactions on financial instruments over the last 12 months, on the relevant market	
10 transactions on financial instruments over the last 12 months, on the relevant market	
Other criteria to measure a client's experience: please specify	<p>AMAFI proposes to review this criterion to allow transactions to be carried out on other asset classes and, in particular, to give clients access to new products.</p> <p>AMAFI also proposes adapting the required number of transactions to the specific features (types/category) of each asset class, based on an average frequency per year rather than per quarter.</p> <p>Lastly, this modified criterion could be combined with or replace a more qualitative approach to substantiate the client's experience through greater reliance on the client's actual knowledge (whether gained from personal experience or from training delivered by the ISP) and which could then be verified using a special expanded questionnaire.</p>

<p>Please explain your answer</p>	<p>The first criterion, which requires the client to have carried out an average of 10 transactions of a significant size per quarter over the previous four quarters, poses several problems: it limits the possibility of being treated as a professional client on “new” products and the fixed number of transactions to be carried out is not suited to the specific characteristics of certain products.</p> <p>Indeed, question and answer 11.4 of ESMA’s Q&A on investor protection states that the significant size of these transactions must be assessed with regard to the specificities of the product concerned, which tends to indicate that the 10 transactions must involve the type of product for which the client wishes to be treated as an “elective” professional client. However, the client may not have any products of that type in the portfolio since professional client status is required for such products. At the same time, to be treated as a professional client for these products, the client must have already traded in them.</p> <p>Furthermore, for certain asset classes such as private equity, the requirement to carry out 10 transactions per quarter is completely disproportionate and perhaps unrealistic. The use of this rule to classify clients as “professionals” for all asset classes also raises questions: in such a situation, how do we verify compliance with this criterion across all asset classes, especially at the onboarding stage.</p> <p>Furthermore, from an operational standpoint, rather than referring to the number of transactions carried out per quarter, it seems more appropriate to look at the “annual” frequency, particularly for clients who only submit orders at certain times of the year.</p> <p>Finally, in order to maintain a sufficient level of protection and ensure that only “sophisticated” non-professional clients may be treated as professional clients, we might consider asking clients to complete a special expanded questionnaire to check that they have the necessary knowledge (through personal experience or through the transfer of knowledge from their ISP) to understand the risks and complexity of the new types of products that they would have access to.</p> <p>AMAFI proposes to review this criterion to allow transactions to be carried out on other asset classes and, in particular, to give clients access to new products.</p> <p>It also proposes adapting the required number of transactions to the specific characteristics of each asset class, based on an average frequency per year rather than per quarter.</p> <p>Lastly, this modified criterion could be combined with or replace a more qualitative approach to substantiate the client’s experience through greater reliance on the client’s actual knowledge (whether gained from personal experience or from training delivered by the ISP) and which could then be verified using a special expanded questionnaire.</p>
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<i>“The size of the client’s financial instrument portfolio, defined as including cash deposits and financial instruments exceeds EUR 500,000”</i>	
No change	
Exceeds Euro 250,000	
Exceeds Euro 100,000	
Exceeds Euro 100,000 and a minimum annual income of EUR 100,000	
Other criteria to measure a client’s capacity to bear loss: please specify	AMAFI proposes to keep a €500,000 threshold while expanding the scope to investments in financial instruments, life insurance products, employee savings plans and retirements savings plans.
Please explain your answer	<p>The second criterion requires the client to hold a portfolio of financial instruments of more than €500,000. Only cash deposits and financial instruments can be included in the calculation. AMAFI considers this to be overly restrictive; it excludes, for no apparent reason, investments with similar characteristics such as life insurance policies, employee savings plans and retirement savings plans.</p> <p>AMAFI proposes that this criterion be reviewed to broaden the valuation of the client portfolio to include all financial vehicles and in particular life insurance policies, employee savings plans and retirement savings plans.</p>
<i>“The client works or has worked in the financial sector for at least one year in a professional position, which requires knowledge of the transactions or services envisaged”</i>	
No change	
Extend definition to include relevant experience beyond the financial sector (e.g. in a finance department of a	X
Adjust the reference to the term ‘transactions’ in the criteria to instead refer to ‘financial instruments’	
Other criteria to measure a client’s financial knowledge: please specify	

<p>Please explain your answer</p>	<p>AMAFI proposes to expand the scope of the accepted roles to measure a client's financial knowledge to include two (2) situations:</p> <ul style="list-style-type: none"> • The client works in the financial sector or has undergone higher training in finance and/or holds professional positions in industry requiring financial expertise. Indeed, The third criterion states that the client must have worked in the financial sector for at least one year. This criterion is too restrictive. It excludes a number of professional clients who nevertheless have a high level of financial knowledge. For example: <ul style="list-style-type: none"> - people with higher training in Finance; - persons who hold positions in industry requiring advanced financial knowledge (chief financial officers and company directors, for example). <p>As in the previous proposal (see criterion 1), a dedicated questionnaire for "sophisticated" products could be created to check the knowledge and experience of these clients. This questionnaire would be produced by each ISP so that it could be adapted to the firm's particular products and services.</p> <p>AMAFI proposes to expand the scope of accepted roles to include, for example, people with higher training in finance and/or professional positions in industry that require financial skills.</p> <ul style="list-style-type: none"> • As in criterion 1, this expansion may be tied to a new obligation to complete a special expanded questionnaire.
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Clients need to qualify for 2 out of the existing 3 criteria to qualify as professional investors. Should there be an additional fourth criterion, and if so, which one?

No change	
Relevant certified education or training that allows to understand financial instruments, markets and their related risks.	<p>X</p> <p><i>See AMAFI's answer above on criterion 3</i></p>
An academic degree in the area of finance/business/economics.	<p>X</p> <p><i>See AMAFI's answer above on criterion 3</i></p>
Experience as an executive or board member of a company of a significant size.	<p>X</p> <p><i>See AMAFI's answer above on criterion 3</i></p>
Experience as a business angel (i.e. evidenced by membership of a business angel association).	
Other criteria to assess a client's ability to make informed investment decisions: please specify.	<p>X</p> <p><i>See AMAFI's answer above on criterion 3</i></p>

<p>Please specify to what other criteria to assess a client's ability to make informed investment decisions you refer in your answer</p>	<p>AMAFI believes that several criteria are relevant:</p> <ul style="list-style-type: none"> - Relevant certified education or training that allows to understand financial instruments, markets and their related risks; - An academic degree in the area of finance/business/economics; - Experience as an executive or board member of a company of a significant size. <p>Indeed, as mentioned above, the third criterion states that the client must have worked in the financial sector for at least one year. This criterion is too restrictive. It excludes a number of professional clients who nevertheless have a high level of financial knowledge. For example:</p> <ul style="list-style-type: none"> - people with higher training in Finance; - persons who hold positions in industry requiring advanced financial knowledge (chief financial officers and company directors, for example). <p>As in the previous proposal (see criterion 1), a dedicated questionnaire for "sophisticated" products could be created to check the knowledge and experience of these clients. This questionnaire would be produced by each ISP so that it could be adapted to the firm's particular products and services.</p> <p>AMAFI proposes to expand the scope of accepted roles to include, for example, people with higher training in finance and/or professional positions in industry that require financial skills. As in criterion 1, this expansion may be tied to a new obligation to complete a special expanded questionnaire.</p>
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Companies below the thresholds currently set out in MiFID II (2 of 3: turnover of €40 mln, balance sheet of €20 mln and own funds of €2 mln) would also qualify as retail investors.

Question 7.3 - Would you see merit in reducing these thresholds in order to make it easier for companies to carry out transactions as professional clients?

- **No change.**
- ~~Reduce thresholds by half.~~
- ~~Other criteria to allow companies to qualify as professional clients: please specify~~

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?

	Not at all effective	Rather not effective	Neutral	Somewhat effective	Very effective
Ensuring transparency of inducements for clients				X	
An obligation to disclose the amount of inducement paid					X
Allowing inducements only under certain conditions, e.g. if they serve the improvement of quality					X
Obliging distributors to assess the investment products they recommend against similar products available on the market in terms of overall costs and expected performance				X	

<p><i>Introducing specific record-keeping and reporting requirements for distributors of retail investment products to provide a breakdown of products distributed, thus allowing for supervisory scrutiny and better enforcement of the existing rules on inducements</i></p>		X			
<p><i>Introducing a ban on all forms of inducements for every retail investment product across the Union</i></p>	X				

Please explain your answers

According to AMAFI, current rules are already quite demanding and sufficiently protective of the clients' interest. MiFID II strengthened the previous inducement regime and make sure that the client is informed precisely and properly of any inducement and require a quality enhancement test that ensure that firms act in the best interest of their clients. In that context, financial advisors or any other distributors MiFID II compliant could not push more products for which they receive high commissions from manufacturers if those are not suitable since (i) they must recommend only suitable product anyway and (ii) justify that those commissions enhance the quality of the service provided.

AMAFI is strongly opposed to the establishment of an outright ban on inducement. Indeed, independent investment advice is already in the current framework and precisely because it implies a total ban of inducements, many advisors did not or could not opt for it. Independent advice would be more expensive for clients to stay profitable so the risk with a total ban is to significantly reduce the offer of advisors and consequently, it might result in further reduction of the products offered and a reduction of the amounts invested by the investor. Furthermore, the independent advisor business model implies a higher cost of advice service for investor to still make it profitable for advisors, to compensate the lack of income from manufacturers. That is why it cannot be mandatory and both advisors and investors should be free to choose the most suitable model.

AMAFI does not share the opinion that the perception of inducements might bias the quality of financial advice provided to the clients due to potential conflicts of interest. Besides, we believe that introducing a ban on inducements would have detrimental effects for retail investors what must be considered.

Question 8.2 - If all forms of inducement were banned for every retail investment product across the Union, what impacts would this have on:

- **The availability of advice for retail investors?**
- **The quality of advice for retail investors?**
- **The way in which retail investors would invest in financial instruments?**
- **How much retail investors would invest in financial instruments?**

Please explain your answers

As seen above (cf. Question 8.1), an outright ban on inducements would reduce the offer of advisors and consequently, it might result in further reduction of the products offered and a reduction of the amounts invested by the investor as well as implying a higher cost of advice service.

AMAFI would like to emphasize the fact that, as noticed in the UK and the Netherlands (“commission-based model”), the independent advisor business model implies a higher cost of financial advice service for investors to compensate the lack of income from manufacturers and the loss of costs’ mutualisation between investors at the heart of the inducements model (where inducement is not banned but authorised under current MiFID II conditions, like in France). This situation has resulted in a significant portion of retail clients being excluded from the investment advice service, creating an “advice gap” detrimental to retail clients.

This analysis is coming from an ongoing study we are currently working on that compares the total cost of ownership bear by retail investors respectively under the two models.

Therefore, introducing a ban on inducements or any measure that would make the perception of inducements more difficult would jeopardise the provision of investment advice to a large majority of retail clients in the European Union.

It is also important to note that a decrease of investment advice would probably be detrimental for the distribution of ESG products due to the complexity of those features in a financial product that makes challenging the ability of an average retail client to assess, by himself, products that are the most suitable.

Finally, survey of retail investors, as part of the above-mentioned study, show that a majority of retail investors in Europe value investment advice, are not-willing to pay upfront for it and will not if the cost is too high.

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:

	Yes	No
<i>In the case of investment products distributed under the MiFID II framework?</i>	X	
<i>In the case of insurance-based investment products distributed under the IDD framework?</i>		
<i>In the case of inducements paid to providers of online platforms/comparison websites?</i>	X	

Please explain your answers

The current MiFID II framework is sufficiently well designed to ensure protection for retail investors from receiving conflicted advice.

As above mentioned, an ongoing study on this issue tends to demonstrate that MiFID II inducement regime has been beneficial to end clients since firms are required to enhance the quality of service provided.

Preliminary results from this study shows that thanks to quality enhancement requirement, firms have been provided several services to their clients like added value information and tools made available to all clients, free of charge, by distributors receiving inducements. In addition, some countries testified that in general, MiFID II inducement regime resulted in an increase of financial advice provided to retail investors. This Study also points out that the “inducement model” grants all clients, including the smaller ones, access to financial advice at a reasonable cost. This is due to the mutualization of costs supported by the model.

A total ban of inducement would jeopardise those benefits granted to retail clients as well as widely disturbed the eco system of retail distribution of financial products in continental Europe.

In our view, this framework applies or should equally apply to providers of online platforms and therefore does not justify any change of the current rules.

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?

Yes/no/don't know

Please explain your answer

AMAFI believes that in the interests of better protection for retail investors, who are likely to invest in both MiFID and IDD environments, it would be more appropriate to align the two regimes on the issue of rules on the payment of inducements before the MiFID regime is changed.

Question 8.5 - How should inducements be regulated?

Yes/no	
<i>Ensuring transparency of inducements for clients</i>	Yes
<i>Ensuring transparency of inducements for clients, including an obligation to disclose the amount of inducement paid</i>	Yes
<i>Allowing inducements only under certain conditions, e.g. if they serve the improvement of quality</i>	Yes
<i>Obliging distributors to assess the investment products they recommend against similar products available on the market</i>	No
<i>Introducing specific record-keeping and reporting requirements for distributors of retail investment products to provide a breakdown of products distributed, thus allowing for supervisory scrutiny and better enforcement of the existing rules on inducements</i>	No
<i>Introducing a ban on all forms of inducements for every retail investment product across the Union</i>	No

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 favorable 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?

Yes/No/don't know

Please explain your answer

AMAFI is in favour of a more harmonised enforcement of the provisions relative to investor protection in MiFID II. In light of ESMA's recent public statement on the risks arising from PFOF, AMAFI recommends that ESMA issues a clear opinion on the compatibility of PFOF and other similar inducement and conflicts of interest with the current regime.

Question 8.7 - Do you see a need to improve the best execution regime in order to ensure that retail investors always get the best possible terms for the execution of their orders?

Yes/No/don't know

Please explain your answer

AMAFI is not in favour of a legislative change on the best execution regime.

We would rather recommend a clarification of the objective criteria required from the broker to justify their execution policy through the issuance of a Q&A from ESMA to favour common supervision in the matter.

AMAFI also outlines that a revision of best execution regime could have consequence that go beyond execution of retail orders with potential high impacts on markets structure.

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?

Yes/No/don't know

Please explain your answer and indicate what would be the main advantages and disadvantages.

AMAFI sees merits in developing a voluntary pan-EU label for financial advisors if such label is considered as an appropriate way to comply with the requirement to assess knowledge and competence of financial advisors and other relevant information as defined in Article 25(1) of MiFID II.

It is the case in France. Indeed, the French NCA (AMF) already set up and put in place, since July 2010, a certification mechanism aiming at checking the minimum level of knowledge of current and prospective employees of ISPs. This exam certified by the AMF constitutes a tangible recognition of a core of professional knowledge and strengthens the quality and consistency of the investment advice given to clients in France.

It should be outlined that a voluntary pan-EU label despite the merit of foster convergence in that matter would probably result in further costly implementation and regulatory changes for the industry and therefore should be carefully assessed beforehand. Thus, if the advantages of setting up a voluntary pan-EU label are confirmed, AMAFI would recommend the EC to have a close look at the AMF framework in that matter even if other NCAs have taken upon similar but different initiatives.

If yes, 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?

AMAFI suggests the EC when providing the broad outline of this voluntary pan-EU label to be attentive as it should be sufficiently reasonable and not too much demanding for professionals. Thus, that exam should be defined in closed consultation with professionals. Furthermore, given the French situation outlined above, AMAFI invites the EC to draw this voluntary pan-EU label from the AMF certification, regarding its content as well as its format.

Moreover, if this approach is the one adopted, AMAFI considers it is essential that this voluntary pan-EU label benefits from an European passport, i.e. once recognised to an individual (current and prospective employee of an investment firm) in a given Member State, it needs to be acknowledged in any other Member State without the need for the individual to re-pass the exam or to be subject to any kind of examination of equivalence. Also, it is necessary, for logical and practical reasons, to provide a grandfathering clause applying to current employees of investment service providers whose knowledge and competence have been labelled.

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?

Yes/no/don't know

Please explain your answer

AMAFI believes that regulation should be technology neutral and should not lead to the creation of a specific regime for robo-advisors. The current MiFID II regime should be sufficiently robust to protect retail investors and therefore no reform of the regulation of advisory services is needed.

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?

- Lack of awareness about the existence of robo-advisors
- Greater trust in human advice
- Other

Please explain your answer

In our view, the increasing of robo-advisors demonstrates that it can be sources of opportunities for retail investors but it probably, at this stage, cannot fully replace human advisors but be complementary to one and the another.

Question 8.11 - Are there any unnecessary barriers hindering the take-up of robo-advice? If so, which measures could be taken to address them?

Yes/**no**/don't know

Please explain your answer

AMAFI does not believe that there are unnecessary barriers hindering the take-up of robo-advice. Moreover, such barriers do not correspond to an economic reality and are not a regulatory issue.

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/no/don't know

Please explain your answer

AMAFI believes that changing the current applicable regulation is not appropriate. Moreover, AMAFI wishes to stress that the notion of "complexity" is subjective and evolves over time, making a fixed definition impossible in the regulation. Furthermore, it is difficult to harmonise this notion since it is perceived differently locally depending on national cultures (e.g. certain credit-based products are used in some jurisdictions and not in others). This explains why some local regulation exists already to manage the complexity question but in a way that is suitable to the local market.

Then, not all financial products are complex, and many are or can be properly understood by retail investors. Measures should be taken to facilitate access of retail investors to ordinary shares and bonds (as said above, like taking them out of scope of PoG and PRIIPs).

As far as investment products/package products are concerned, and in particular structured products, complex products should not be presumed not compatible with retail investors without preventing them to access a wide range of investments with interesting features of specific investment objectives and/or performance or capital protection. The current regulatory framework aims at mitigating the risk that those are not properly understood through disclosure requirements (KID PRIIPs and MiFID) but also with the requirements against mis-selling (PoG, distribution regime – appropriateness and suitability arrangements and financial advice).

Question 9.2 - If further measures were to be taken by the EU to address the complexity of products, should they aim to:

	<i>Yes/no/don't know (please explain)</i>
Reinforce or adapt execution of orders rules to better suit digital and online purchases of complex products by retail investors	<p>No</p> <p>AMAFI believes that regulation should be technology neutral and should not lead to the creation of a specific regime for digital and online purchases. The current MiFID II regime should be sufficiently robust to protect retail investors and therefore no reform of the regulation of advisory services is needed.</p>

<p><i>Make more explicit the rules which prohibit excess complexity of products that are sold to retail investors</i></p>	<p>No</p> <p>AMAFI believes that changing the current applicable regulation is not appropriate. Moreover, AMAFI wishes to stress that the notion of "complexity" is subjective and evolves over time, making a fixed definition impossible in the regulation.</p> <p>As far as structured complex products are concerned, they should not be presumed not compatible with retail investors. Indeed, they provide access to a wide range of investments with interesting features of specific investment objectives and/or performance or capital protection. Therefore, it would be counterproductive to prohibit sales of complex products to retail investors. The current regulatory framework aims at mitigating the risk that those are not properly understood through disclosure requirements (KID PRIIPs and MiFID) but also with the requirements against mis-selling (PoG, distribution regime – appropriateness and suitability arrangements and financial advice).</p>
<p><i>Develop a new label for simple products</i></p>	<p>No</p> <p>AMAFI would have concerns about such proposal as it could result into prohibiting access for retail investors to complex products, for the reasons explained above.</p>
<p><i>Define and regulate simple products (e.g. similar to PEPP)</i></p>	<p>No</p> <p>For the same reasons, AMAFI is not convinced that it is the best way to go forward.</p>
<p><i>Tighten the rules restricting the sale of very complex products to certain categories of investors</i></p>	<p>No</p> <p>For the same reasons, AMAFI is not convinced that it is the best way to go forward.</p>
<p><i>Other</i></p>	<p>AMAFI encourages measures to be taken in financial education to improve the ability of retail investors to handle the complexity of products.</p>

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?

<i>Not at all important</i>	<i>Rather not important</i>	<i>Neutral</i>	<i>Somewhat important</i>	<i>Very important</i>
			X	

Please explain your answer

AMAFI believes that investment firms do not yet have enough experience to be able to answer properly to this Question. However, AMAFI would like to highlight the effectiveness of the French mediation system, both at the regulated entities' level and the regulators' level.

In addition to the MIFID requirement for investment firms to have in place a complaint handling procedure, PRIIPs offers the right to the investor to directly complain to the manufacturer under the section "how can I complain?" of the KID thanks to a dedicated email address.

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/No/don't know

Please explain your answer

From AMAFI's point of view, the publication of the details of the process to be followed when handling a complaint is a sufficient requirement to ensure an efficient and timely treatment of the clients' complaints.

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/no/don't know

Please explain your answer

Given that AMAFI does not represent investors, it does not answer this Question.

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?

<i>Not at all effective</i>	<i>Rather not effective</i>	<i>Neutral</i>	<i>Somewhat effective</i>	<i>Very effective</i>
		X		

Please explain your answer

Given that AMAFI does not represent investors, it does not answer this Question.

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

- **Domestically?**
- **In a cross border context?**

Please explain your answer

AMAFI does not answer this Question.

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.

Question 10.6 - To what extent do you think that consumer redress in retail investment products is accessible to vulnerable consumers (e.g. over-indebted, elderly, those with disabilities)?

<i>Not accessible at all</i>	<i>Rather not accessible</i>	<i>Neutral</i>	<i>Somewhat accessible</i>	<i>Very accessible</i>	<i>Don't know / no opinion / not applicable</i>
					X

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/no/don't know

Please explain your answer

See AMAFI's answer below to Question 11.2.

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

Yes/no/don't know

Please explain your answer

AMAFI proposes that if a Member State has implemented national measures equivalent to measures that ESMA has published and recognised, ESMA's measures should cease to apply in that Member State, thereby avoiding the coexistence of divergent measures. Moreover, given the temporary and exceptional nature of the power of intervention granted to ESMA by Article 40 of MiFIR, it seems indispensable to strengthen consultation requirement (i.e. that ESMA consults the various stakeholders affected by its intervention measures before implementing them or deciding to renew them).

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

Yes/no/don't know

Please explain your answer

See AMAFI's answer above to Question 11.2.

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?

	<i>Please rank your answers (1, 2, or 3)</i>
An investment that contributes positively to the environment and society	
An investment that reduces the harm on the environment and society (e.g. environmental pollution, child labour etc.)	
Financial returns	

Question 12.2 What would help you most to take an informed decision as regards a sustainable investment?

	<i>Please indicate on a scale of 1-5</i>
Measurements demonstrating positive sustainability impacts of investments	
Measurements demonstrating negative or low sustainability impacts of investments	
Information on financial returns of sustainable investments compared to those of mainstream investments	
Information on the share of financial institutions' activities that are sustainable	
Require all financial products and instruments to inform about their sustainability ambition	
Obligation for financial advisers to offer at least one financial product with minimum sustainability ambition	
All financial products offered should have a minimum of sustainability ambition	

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

Please indicate on a scale of 1-5 (1= least important, 5 = most important)	
Poor financial advice on sustainable investment opportunities	
Lack of sustainability-related information in pre-contractual disclosure	
Lack of EU label on sustainability related information	
Lack of financial products that would meet sustainability preferences	
Financial products, although containing some sustainability ambition, focus primarily on financial performance	
Fear of greenwashing (i.e. where the deceptive appearance is given that investment products are environmentally, socially or from a governance point of view, friendly)	
Other, please explain	

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/no/**don't know**

Please explain your answer

The implementation of regulation such as SFDR and the MiFID II delegated act are a step towards a better integration of sustainable investment in financial advice process and governance in general. Nevertheless, these regulations lack practical guidance on how to integrate sustainability risks and preferences in a **practical manner**. At this stage, this leads sometimes to very different approaches adopted by market players which may cause *in fine* dissymmetry of information and treatments regarding clients. This asymmetry of information is also experienced by advisors. There is also a need to harmonise concepts feeding these regulations such as "sustainability risk" (for instance clarifying the underlying way of calculating sustainability risks and on how to render their results). Indeed, as of today financial product issuers also have different methods and scales, which leads to the financial advisors' inability to compare products in an adequate manner. At last, we consider that there is room for improvement concerning the definition of criteria allowing products to be eligible to Article 8 of SFDR: we consider that current Article 8 contains too many different degrees of integration of ESG factors, because it depends mostly on the way financial market participants consider it. It makes it difficult for financial advisors to play their part.

That is why, in the **long-term**, it will probably be necessary to have guidelines to assist financial advisers on overall ESG issues, since they present complex questions that are covered in different bodies of regulations.

However, AMAFI believes that we **first need to wait until the regime is stabilised**. Also, the content of the guidelines should be determined, at least as a first step, by NCA **locally to be suited to the local market**; and investment firms should be responsible to set up **the appropriate sustainable investment training(s) according to their respective activities and offers**.

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?

Yes/no/don't know

Please explain your answer

ESG research has indubitably value and is already taken into account by many, but it does not seem appropriate to make it mandatory through MiFID II (since the MiFID II is only applicable to investment firms and not to all financial analysts) nor should it be limited to SME issuers.

13. OTHER ISSUES

Question 13 Are there any other issues that have not been raised in this questionnaire that you think would be relevant to the future retail investments strategy?

Please explain your answer

AMAFI believes that this questionnaire raises all the issues relevant to the future retail investment strategy.

