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RETAIL INVESTMENT STRATEGY
EUROPEAN COMMISSION'S LEGISLATIVE PROPOSALS
-
AMAFI's position

ABOUT AMAFI

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

AMAFI ■ 13, rue Auber ■ 75009 Paris ■ France
Phone : +33 1 53 83 00 70 ■ http://www.amafi.fr ■ E-mail : info@amafi.fr

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GENERAL OBSERVATIONS

AMAFI strongly supports the European Commission's (EC) objective of increasing retail clients' participation in capital markets to help meet the financing needs of the EU and achieve the investment objectives of EU savers.

We are also much aware that the competitiveness and attractiveness of EU capital markets are key to do so, in particular in a more competitive post-Brexit environment where the UK is working on simplifying its regulation. The impact analysis should consider these aspects as well as all of the proposals, including the many impactful Level 2 (L2) provisions.

As for the proposed measures, focusing on MiFID II and PRIIPs, we see several not serving the objectives of the RIS or even being counterproductive, as detailed below.

Scope of RIS. Several of the proposals are not limited to retail investors (e.g. SMEs and other corporates) or have the potential to impact considerably wholesale markets, none of which being part of the impact assessment. These aspects should be corrected.

Partial ban on inducements. The basis for this approach, i.e. the alleged potential biased behavior of the advisor caused by inducements, is questionable, as the Impact Assessment does not provide evidence of this issue. Also, the October 2022 Eurobarometer survey[1] shows that 74% of the EU population do not invest in investment products, the main reason being the lack of money (47%), the lack of trust in investment advice counting only for 12%. In the Netherlands, these figures are among the highest in Europe, at respectively 81% and 15%, despite a total ban on inducements already in place. We foresee that a ban on inducements for execution services will increase the price of services and deprive many clients of essential ongoing support for their investment decisions.

New "best interest of client" test. In light of its objective to avoid unduly costly products, this new requirement duplicates the current product governance and suitability rules, being an unnecessary addition. With its focus on cost, it is also likely to limit the product offering both in quantity and quality, and impair the distribution of ESG instruments.

Value for Money. While we agree that clients should get value for money, the proposal is too focused on costs. It also amounts to price regulation, incompatible with the EU fundamental principles of market economy and free competition. Together with the difficulty for ESMA to build meaningful EU benchmarks, it would cause a drastic drop in the products range offered to clients both in quantity and quality.

New disclosure requirements. Despite their stated objective to reduce information overload, many of these amendments would significantly extend information provided to clients, reversing also the recent Quickfix alleviations.

Implementation date. It should not be set based on the transposition deadline but on the publication date of L2 measures, critical for implementation. Crucial and complex such as the VFM, they will require significant time to develop. Learning from the past, a smoother implementation necessitates at least 18 months after the publication of the L2 texts. For VFM provisions specifically, the basis should be 18 months after the definition of the relevant benchmarks by ESMA.

[1] See Eurobarometer survey, Retail Financial Services and Products, October 2022, pages 18-19, https://europa.eu/eurobarometer/surveys/detail/2666

Ex-post assessment. The effectiveness of this new piece of EU regulation should be assessed ex post with regards to retail clients' participation in capital markets, without limiting it to the inducements provisions. We thus propose to add a complete review clause 5 years after the publication of the L2 texts.

PRIIPs. The proposals for the layering and personalisation of KID information should be based on consumer testing, to ensure the costs of these changes are offset by true benefits, which are not substantiated at present.

COMMENTS ON PROPOSED AMENDMENTS TO MIFID

a. Entry into force

Implementation date should not be set in consideration of the transposition deadline for Member States since the precise requirements necessary for implementation will only be known at best after the adoption of the Level 2 texts. These Level 2 measures are of critical importance as the RIS amendments to MiFID, in many instances, task ESMA to draft provisions on crucial and complex points. This is the case of the VFM provisions, which will require significant time to develop. Moreover, specific to this matter, in order to be able to properly implement the new requirements, not only will IFs need to have a full knowledge of the Level 2 measures but also the benchmarks will need to be defined. Sufficient implementation time will thus be needed to identify the category -if any- applicable to each of their products and assess them against these benchmarks.

While the envisaged proposals could result in major structural changes in terms of business models, processes (including client processes) and information systems, firms should not be put at risk of having to review and potentially redo the work already done to adapt to these changes all over again once the Level 2 provisions have been adopted.

This is all the more important given that, on several occasions in recent years, the deadlines for implementing new EU regulations have not been set with sufficient room for maneuver, with the result that Level 2 provisions have not been available on time and implementation dates have had to be pushed back (as an example, MiFIDII suitability regime amendments on clients' ESG preferences, including in terms of minimum proportion of sustainable investments, entered into application on the 2nd of August 2023 whereas SFDR Delegated Regulation defining sustainable investments applied only as of 1 St January 2023). With a reform of this magnitude, we must try to learn from the past and plan carefully to ensure a smoother and less costly implementation.

Therefore, **we suggest setting the implementation date between at least 18 months after the Level 2 texts are published and for VFM's related provisions, 18 months after the relevant benchmarks are made available**.

b. Inducements

The European Commission proposes several major amendments to the current inducement regime, on which AMAFI has the following comments.

Introducing a ban on inducements for non-advised services (new Art. 24a MiFID)

The amendments proposed amount to a ban on inducements for non-advised services (RTO and execution). AMAFI strongly disagrees with such a ban for the following reasons:

- These amendments suggest a very narrow approach to investment advice by the Commission, as the only inducements that can be exempted from the ban seem to be the ones that specifically relate to a client's transactions subject of the advice. This implies that non-advised transactions made within the same client's portfolio (e.g. transactions made by the client through non advised services) would not be exempted. We do not think this approach is right, as it conflicts with the requirement that investment advice should be provided taking into account all positions held by clients in their portfolio, including transactions carried out autonomously.

- The purpose of the rules on inducements is to deal with conflicts of interest that such payments or benefits can generate. The rationale is that IFs could have a financial interest in driving their clients towards products that may not best serve their interests, and that the rules protecting the client's interests and framing the conflicts of interest management are still not sufficient to prevent this behavior. This is not documented at all, neither in the outcome of the supervisory monitoring conducted by NCAs nor in the studies conducted by ESMA since MiFIDII implementation. However, under non advised services, by definition, the client makes his/her own decision by him/herself without being guided by the firm. Therefore, a ban on inducements is at odds with the nature of the service itself.

- However, in case, as the Commission seems to assume, the firm has the power to exert some kind of influence on the client's decision making, the prohibition of inducements could have adverse impacts: It could lead IFs to induce their clients towards churning their portfolio, the only potential source of revenue left to IFs being attached to transactions.

- If the proposed ban was adopted, IFs would have no other choice to maintain their profitability than reducing their revenue gap by raising fee levels or else reducing their cost base by lowering the quality of the services provided to clients. The first option is unlikely to be workable due to competition to a level where the firm would offset its loss of revenue, which means that the second course of action is almost certain in any case. Eventually, these outcomes would not benefit the clients.

- In particular, it should be recalled that a condition for receiving inducements under MiFID II is the provision of value-added services to clients, such as: *"the assessment of the continuing suitability of the financial instruments in which the client has invested" or "another ongoing service that is likely to be of value for the client*"[2]. This provision has led firms to develop on large scales the provision of these value-added services to clients since the implementation of MiFID II. In case these services are not remunerated sufficiently due to an inducement ban, **there is a high probability for clients to be deprived of them and therefore being left without support.** This seems all the more regrettable as there is a need to channel savings to capital markets, which is more likely to happen if support is provided to investors, especially the ones not accustomed to such types of investments. It is also undesirable in a context where clients face the challenge of understanding the extreme complexity of the sustainable finance features.

[2] Article 11.2 of Commission Delegated Directive 2017/593

We are therefore of the view that rather than focusing on inducements and the cost of products as the key to retail investment in capital markets, the focus should be on the availability of products and the support provided to clients in accessing them in an informed manner. This is in line with the Retail investment strategy Study requested by the ECON committee of the European Parliament to the policy Department for economic, Scientific and quality of life policies Directorate which notes[3] that : "*Rather than simply concentrating on the alternatives between allowing or prohibiting inducements, what legislation should ultimately ensure is that investors are able to effectively understand and evaluate whether, in a certain context or transaction, they are indeed being provided with some kind of "support" for their investment decisions or not, and, if so, what this support effectively consists of*".

Empowering clients in their investment decisions also lies on the quality of information accessible to them. In that respect, **AMAFI suggests improving transparency towards clients on what they are paying for by providing information on the value-added services provided to them**:

- at the time of opening a securities account and when subscribing to a new investment service (such as investment advice), and
- annually, with the ex-post costs and charges disclosure.

The exemption proposed for placement fees

AMAFI welcomes the exemption from the inducements ban envisaged for placement fees, which is essential to preserve the correct functioning of primary markets.

That said, there remains a difficulty with the placement fees on PRIIPs, as they do not benefit from this exemption. Such difficulty is linked to the extended scope of PRIIPs regulation, still encompassing many plain vanilla types of bonds[4] (see point d. of the section on PRIIPS below). As a consequence, the ban would still apply to the placement of vanilla bonds, which will hamper the raising of funds through such securities. This runs contrary to one of the main CMU's objectives which is to increase retail clients' participation in financial markets and more generally to increase the role of capital markets in financing the economy. **The exemption for placement fees should therefore be extended to all vanilla shares and bonds.**

Transfer of inducements to clients

AMAFI strongly opposes, for services for which inducements are intended to be banned (portfolio management, independent advice and non-advised services), the deletion of the former possibility afforded under MiFIDII to receive remunerations and transfer them in full to clients. As such transfer implies that the IF does not benefit from the inducement, the conflict-of-interest situation that the rules on inducements is intended to mitigate is not remaining. Therefore, AMAFI does not see the rationale of this draft amendment and asks for the current provision to not "*accept and retain*" inducements to be kept. If not, clients being provided a service of either portfolio management or independent advice would no longer have access to any products embedding inducements which may reduce significantly the array of financial instruments they will have access to. Another potential consequence relates to the cost of products and services for clients: clients being provided an independent advice, or a non-advised service may decide autonomously (i.e without advice) to invest in financial instruments embedding inducements. In case the IF

[3] Page 19
[4] In terms of PRIIPS' scope, the amendment foreseen under the RIS package solely provides for a carve out for bonds with make-whole clause, leaving in scope other plain vanilla types of bonds.

is prohibited to pass on to clients the remunerations received from the product manufacturers, such clients will have to bear double costs: service costs + inducements embedded in products' costs.

Other considerations on the foreseen inducement regime

Necessary payments or benefits should be possible in all cases, whatever the service provided, since, by nature, they do not give rise to conflicts of interest. Therefore, to us, it is essential that the 3rd paragraph of article 24a. 7 should not sit within such 7 which is dedicated to services where IFs are "*not prohibited from getting or paying fees or benefits, from or to a third party"*. It should apply equally to all services, to allow the mere provision of such services. If not, as an example, IFs providing execution services to their clients would not be legitimate anymore to pay their membership fees to execution venues, settlement systems, central repository… Such a ban of mandatory payments is unworkable, and those payments should be possible in all cases as it is currently the case. We believe that this change to the previous wording is a mistake that it is crucial to correct, as the adequate references have been kept in the RIS proposal for IDD.

Likewise**, IFs providing any investment or ancillary services, including the ones subject to a current or future ban of inducements, should still benefit from the possibility to receive payments from their clients or from any person acting on behalf of such clients**. Whereas such possibility arises from future Article 24 a.1 for portfolio management, it is not provided for Article 24 a. 2 for RTO or execution services. Again, such a difference in treatment does not make any sense to AMAFI and such payments should be authorized in all cases, the reason being that they do not generate any conflict of interests.

AMAFI also draws the European Commission's attention to the fact that the **proposed wording of Article 24 a. 1[5] also results in prohibiting not only payments received by the portfolio manager from third parties, but also payments made to third parties**. However, ESMA expressly confirmed[6] that the inducement prohibition only covers inducements received by IFs and that payments made to third parties are allowed under the existing regime, provided that the client is informed and receives a higher quality or an additional service. AMAFI notes that such a prohibition has not been subject to any impact assessment or industry discussion and strongly opposes this amendment, especially given the impact it may have on portfolio managers who may find themselves unable to use distributors to market their portfolio management services.

Including a strong review clause

To AMAFI, such review should intervene after a sufficient observation phase of the functioning of the new regime. Therefore, the review date should not be set based on the date of entry into force of the Level 1 provisions but at least on the one of the Level 2 measures and should not occur earlier than **five years** after, which to us is the minimum period of time to draw meaningful conclusions.

Moreover, **such review should not be solely limited to the measures concerning the inducement regime, since other provisions, like the ones on VFM, are also extremely impactful.**

[5] Under the proposal suggested by the European Commission, Article 24a(1) would read as follows: "Member States shall ensure that investment firms, when providing portfolio management, do not pay or receive any fee or commission, or provide or are provided with any non-monetary benefit, in connection with the provision of such service, to or by any party except the client or a person on behalf of the client".
[6] ESMA, Q&A on MiFID II investor protection, ESMA35-43-349, 19 November 2021, Section 12.1, p. 106.

In addition, the **criteria that will be used for the review** in order to assess the efficiency of the measures **should be made clear** in order to provide market participants with some predictability on the possible decision on a full ban.

Such criteria should include, inter alia, the share of investments made by retail clients on capital markets after the entry into force of the RIS. Moreover, to ensure that such observed evolution is due to the RIS, the review should also take into account the estimated level of compliance with the RIS that could be assessed through NCAs' control reports and sanctions.

c. Introducing a "client best interest test" for both types of investment advice (Art. 24.1a MiFID)

This article introduces a new threefold test, both for independent and non-independent advice, in the following terms:

"Member States shall ensure that, in order to act in the best interest of the client, when providing investment advice to retail clients, investment firms are under the obligation of the following:

a) to provide advice on the basis of an assessment of an appropriate range of financial instruments.

b) to recommend the most cost-efficient financial instruments among financial instruments identified as suitable to the client pursuant to Article 25(2) and offering similar features.

c) to recommend, among the range of financial instruments identified as suitable pursuant to Article 25(2), a product or products without additional features that are not necessary to the achievement of the client's investment objectives and that give rise to extra costs. "

This new test raises a number of difficulties:

- First, the terms "*to recommend…among financial instruments identified as suitable"* are used several times under Article 24.1a of MiFIDII, in § (b) and c). However, their meaning is unclear as the term "*recommend*" points to the definition of the service of investment advice itself, whereas the terms "*from the range of financial instruments…*" point towards an intermediate step of the selling process[7] which is to construct the IF's offer of FIs. There is Therefore an uncertainty on the exact requirement: either to include the corresponding FIs in the range of possible suitable products that are identified as suitable before the final recommendation is provided, or else to recommend specific FIs, potentially together with another FI, possibly more sophisticated.

  In that second case, this is likely to result in an increased degree of complexity for the suitability statements, potentially to the detriment of clarity for clients.

- The requirement to "*recommend the most cost-efficient financial instruments among financial instruments identified as suitable to the client pursuant to Article 25(2) and offering similar*

[7] See §81 of the 23 September 2022 Guidelines on certain aspects of the MiFID II suitability requirements ESMA *"Sustainability preferences should only be addressed once the suitability has been assessed in accordance with the criteria of knowledge and experience, financial situation and other investment objectives.* ***Once the range of suitable products has been identified following this assessment, in a second step*** *the product or, with regard to portfolio management or investment advice with a portfolio approach, an investment strategy that fulfils the client's sustainability preferences should be identified."*

features" creates major legal uncertainty for firms as clients discontent by the performance of a product could take advantage of it to seek compensation using the argument of cost. Moreover, the terms of "*cost-efficient financial instrument*" are problematic because they are not defined and they relate solely to costs: costs should be assessed with respect to potential performance. Another legal uncertainty lies with the reference to "*similar features*", a concept which is not defined. In addition, such requirement may lead to recommend systematically products with the minimum sustainable preferences of clients under the suitability regime. This contradicts the objective to encourage a market shift towards sustainable products. The same comment also applies to the third requirement below.

- The requirement to "*recommend, among the range of financial instruments identified as suitable to the client pursuant to Article 25(2), a product or products without additional features that are not necessary to the achievement of the client's financial objectives and that give rise to extra costs*" amounts to the denial of the potential benefits for clients of some additional features and also of the role and the competence of the advisors whose task consists precisely in identifying the needs, preferences and expectations of their clients. AMAFI strongly disagrees with the idea underpinning this draft requirement that the only effect of products' additional features is to raise costs for clients without providing them any benefit. On the contrary, some products are designed to provide clients with specific benefits such as advanced capital protection or ESG characteristics for instance.

  More fundamentally, it has not, to our knowledge, been demonstrated that current requirements result in poor outcomes for clients. Therefore, one can wonder the added value compared to current MiFIDII requirements among which some of them are already very demanding and aim at the same result:

  - Article 54.9 of current MiFID II Delegated Regulation requires IFs to "*have, and be able to demonstrate, adequate policies and procedures in place to ensure that they understand the nature, features, including costs and risks of investment services and financial instruments selected for their clients and that they assess, while taking into account cost and complexity, whether equivalent investment services or financial instruments can meet their client's profile".* Moreover, article 54.11 of current MiFID II Delegated Regulation requires that *"When providing investment advice or portfolio management services that involve switching investments, either by selling an instrument and buying another or by exercising a right to make a change in regard to an existing instrument, investment firms shall collect the necessary information on the client's existing investments and the recommended new investments and shall undertake an analysis of the costs and benefits of the switch, such that they are reasonably able to demonstrate that the benefits of switching are greater than the costs".*

  - Current MiFID II product governance requirements[8] already entail demanding assessments aiming to prevent the launch by product manufacturers and hence the distribution by distributors, of unduly costly products: Article 9.10 of [MiFID Delegated Directive]() requires *"investment firms to undertake a scenario analysis of their financial instruments which shall assess the risks of poor outcomes for end clients posed by the product and in which circumstances these outcomes may occur; Article* 9.11 requires investment firms to examine if…*(c) the financial instrument design is driven by features that benefit the client and not by a business model that relies on poor client outcomes to be profitable. Article 9.12 requires investment firms to "consider the charging structure proposed for the financial instrument, including by examining the following: (a) financial instrument's costs and charges are*

[8] See Articles 9.2, 9.10 and 9.12 of MiFID Delegated Directive

compatible with the needs, objectives and characteristics of the target market; (b) charges do not undermine the financial instrument's return expectations, such as where the costs or charges equal, exceed or remove almost all the expected tax advantages linked to a financial instrument; and (c) the charging structure of the financial instrument is appropriately transparent for the target market, such as that it does not disguise charges or is too complex to understand". ESMA's guideline 9 also requires that "*Suitability policies and procedures should ensure that, before a firm makes a decision on the investment product(s) that will be recommended or invested in the portfolio managed on behalf of the client, a thorough assessment of the possible investment alternatives is undertaken, taking into account products' cost and complexity*".

- The Commission envisages to strengthen even further these requirements through its proposal to introduce VFM measures.

The threefold test which is envisaged for the provision of the service of advice is therefore a duplicate: once the necessary measures have been taken to make sure that the products offered are not overly costly, extra constraints weighing at the time the advice is provided to clients are highly redundant.

The conditions laid under the new "client best interest test" are therefore overshooting compared to existing requirements (potentially enhanced by VFM requirements) that are sufficient to avoid situations where clients are recommended to invest in overly costly products compared to their needs and preferences.

For all these reasons, the new best interest test should be deleted.

d. Value for money

AMAFI agrees that some form of assessment by manufacturers and distributors of the value for money (VFM) received by clients could be useful. However, the VFM provisions foreseen under RIS raise very significant concerns for the following reasons:

- The approach is exclusively quantitative, with an exclusive focus on costs and without regard for performance and quality: despite their importance, there is no consideration for qualitive criteria either attached to the product (e.g. capital protection, liquidity, issuer credit rating, ESG objectives...) or to the associated services provided.
- The envisaged process appears incredibly long and burdensome and likely to have major impacts for many stakeholders, which do not seem necessary and could be avoided: IFs having to implement very heavy new reporting requirements, NCAs having to check data they receive from IFs and make them more reliable and finally ESMA having to check consistency and reliability and to determine meaningful subsets of products.
- The ability of ESMA to design sufficiently reliable and relevant benchmarks is highly questionable, considering the granularity needed to avoid comparing products that are not comparable. For some very specific products, among which structured products which do not have historical NAV and which asset classes and return profiles can be very diverse, such benchmarks may even not be available. Following the PRIIPS experience, the industry is concerned that the VFM requirements would be another one size fits all exercise that would need lengthy adjustments to accommodate the diversity of products. In that respect, it should be noted that taking into account the ESG features of the different products, which are very varied, considerably increases the number of product categories.

Conversely, if ESG characteristics were not to be taken into account in this comparison exercise, the risk is high that many ESG products could not be launched, which would be very detrimental for the EU economy.

- It should also be noticed that some products are country specific, for example the ones that provide some tax benefits. For that reason, they should not be compared to other countries' products not providing the same advantage. For those products whose costs encompass distributions costs (because they are distributed under investment services allowing the perception of inducements), the level of such cost will also vary depending on the purchasing power specific to each European country. For that reason, cross countries comparison may not always be meaningful.
- Another difficulty we anticipate lies with the fact that products and markets characteristics are evolutionary in nature and can change very rapidly so that benchmarks, which will necessarily be based on historical data, will be outdated very rapidly if not updated frequently, which would require dedicated resources. This issue is particularly acute for ESG products whose market is not mature yet and is rapidly evolving and for the consideration of innovative products, whose development may be prevented.
- The requirements, as they are drafted, constitute in our view price intervention likely to impair the free play of competition. In that respect, one could question the legal capacity for the ESAs to regulate pricing matters. Institutionally, having regard to the EC regulations of 2010 establishing the ESAs, we fail to see how their entrusted missions would include defining such product cost and performance benchmarks. Rather to the contrary, Recital 18 of the Regulation No 1095/2010 instituting ESMA, clearly states that "the Authority should take due account of the impact of its activities on competition and innovation within the internal market". In that respect, it seems important to recall that the Retail investment strategy Study requested by the ECON committee of the European Parliament to the policy Department for economic, Scientific and quality of life policies Directorate notes9 "Rules focused on (indirectly) regulating prices, as the ones currently proposed, may hinder the organic development of markets and represent an obstacle to innovation."

Again, AMAFI does not oppose the implementation of an assessment aiming at making sure that the products manufactured provide clients with a good value for money. In that regard, it is worth recalling that the French industry issued a position paper on RIS at the end of 2022, encompassing amendments proposals to the current MiFID regime, including a VFM process (see annex). However, and along the lines developed in this paper, in order to make such process workable, AMAFI recommends the followings:

- **The first criteria for determining the different benchmarks should be the expected performance of the product and the manufacturer's characteristics (such as credit risk, reputation…) and not the costs, which should come afterwards.** When deciding to invest in a FI, clients typically do not aim for a specific level of costs but rather to have access to some specific asset classes or products (potentially with some specific characteristics, like ESG, revenue generation, geographic reach, industry sector, tax relief, etc.) and/or to an expected yield. The risk AMAFI sees with an approach based on costs, is that clients would all end up with the same categories of FIs in their portfolio with potential detrimental attached consequences on concentration risks and innovation but also on the capacity to answer the diverse needs of clients.
- **The benchmarks should be used as a comparison tool,** allowing product manufacturers to compare their product costs and to justify any observed deviation. It should not be used as a target to be reached for each product, as this would require an infinite granularity of product categories, considering the variety of products. Therefore, the presumption that "*costs and charges are too*

[9] Page 36

high, and that the product will not deliver Value for Money" in case of a deviation from the relevant benchmark should be removed.

- **Distributors should not be required to re-assess products already assessed by manufacturers,** as they are not properly equipped to do so and because it would be a duplicate.
- **The VFM requirements should not apply to products for which such an approach is not relevant.** This is the case of hedging products as, by essence, their purpose is to meet very specific needs in terms of risk coverage which make them not comparable. **Thi**s is also the case of simple products like vanilla bonds because they do not include any manufacturing costs. Vanilla **exchange** traded derivatives should also be out of scope as their price depends on market conditions and whether their being in or out of the money and their number (more than 100 000 ISINs per year for a large player) make it impractical to apply such a test.
- **Level 1 requirements on VFM should stick to general principles and the details should be further refined latter on at Level 2 together with the industry** as this requires a detailed knowledge of the different products.

e. Appropriateness and suitability regimes (Art. 25 MiFID)

Adding the need for portfolio diversification in the list of elements that distributors will have to assess under the suitability test.

AMAFI does not agree with the fact that such a requirement should be made in all cases. In AMAFI's view, it should apply in a way that is proportionate to the scope of the service provided to clients, in line with § 39[10] and 43[11] of the ESMA's suitability guidelines. Considering the definition given to the service of investment advice[12], there should be no systematic obligation for such advice to extend to the entirety of a client's portfolio or to consider diversification. This is especially important for clients who choose a financial institution to be advised on some specific asset classes (for example private equity, real estate, emerging markets, etc.) on which the firm has expertise, and have the rest of their wealth invested with other financial institutions. There should still be room for targeted advice focusing on a share of the client's investable amount. For example, diversification obligation should not apply to one shot / punctual advice provided on FIs such as derivatives acquired for hedging purposes. As required under current Article 58 of MiFID Delegated Regulation, the extent of the advice provided is part of the mandatory clauses of the agreement concluded by IFs with their retail clients, which ensures the client and the firm are both knowingly engaged on the scope and purpose of the service.

[10] "*Similarly, the extent of the service requested by the client may also impact the level of detail of information collected about the client. For example, firms should collect more information about clients asking for investment advice covering their entire financial portfolio than about clients asking for specific advice on how to invest a given amount of money that represents a relatively small part of their overall portfolio.*"

[11] "*Information about a client's financial situation includes information regarding his investments. This implies that firms are expected to possess information about the client's financial investments he holds with the firm on an instrument-by-instrument basis. **Depending on the scope of advice provided,** firms should also encourage clients to disclose details on financial investments they hold with other firms, if possible also on an instrument-by-instrument basis.*"

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

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

It also has to be considered that many clients do not want their IF to receive detailed information regarding their holdings with competitors. As advice is not allowed when complete information is not provided by clients, such clients may be discouraged from requiring advice or may choose to limit their access to one single IF. Moreover, IFs, especially the smallest or specialized ones, do not necessarily have information on products they do not advise on, and therefore may not be able to use the information provided by their clients relating to their external portfolios. This is likely to limit the number of firms able to provide advice, and therefore the number of competitors in the market, which runs contrary to the diversity needed to ensure an optimal functioning of capital markets.

In any case, **such a requirement should not apply to professional clients** who have the necessary knowledge to appreciate diversification matters. **It should not be mandatory either to non-professional clients who are able to appreciate their diversification needs** (which also includes small and medium companies classified as retail clients).

Extending the required information under the appropriateness test to the capacity to bear full or partial losses and risk tolerance.

AMAFI sees many difficulties with the proposal made by the Commission to enhance the appropriateness test by adding the capacity to bear full or partial losses and the risk tolerance:

- It constitutes a modification of the fundamental *summa divisio* between advised and non-advised services that is likely to create confusion for the clients: With the integration of new criteria in the appropriateness test, more and more alerts are likely to be triggered that will require confirmations by clients. This will inevitably lead clients to get the perception that the adequacy to their personal situation has been assessed by their IF, creating expectations that are inconsistent with non-advised services. This could also potentially lead to potential disputes with clients.

- Clients who want to access the market as freely and quickly as possible to execute transactions on their own will have to go through a process made lengthier by the assessment of their capacity to bear losses and their risk tolerance. This process is often considered too time-consuming by advised clients, so it is unlikely to fit with the desire of non-advised clients to get unencumbered access to markets. One could note that this measure, which would raise the entry to barrier for these clients is at odds with the EC's objective to improve retail access to capital markets. This is also paradoxical to make these barriers higher for capital markets than for crypto money and crypto assets, whereas the protections in capital markets are already at a level well above the ones clients can benefit from in the crypto world. It is likely to generate very significant costs to be implemented: this is particularly true for the capacity to bear losses that needs to be assessed by collecting and processing a lot of information on clients' revenues and assets, which will be particularly difficult to collect, many clients having several bank accounts.

- It has to be recalled that such costs will be accompanied by a drop in revenues stemming from the foreseen ban on inducements perceived under non advised services. Such situation is very likely to result in difficulties for new market players to access the business and might also jeopardize the survival of some historical players, potentially reducing competition at the expense of clients and the vigor of capital markets.

- As for the new confirmation procedure required in case the product or service is not appropriate, AMAFI has the following remarks:

- The time lapse required for this confirmation process is likely to run contrary to the best execution requirement that includes speed of execution[13] as one of the criteria to assess the quality of the execution of a transaction.
- Such process is also likely to generate operational issues for some specific categories of orders available on many execution venues such as orders with trigger thresholds.

Therefore, to AMAFI, the confirmation procedure should not be mandatory but instead made available to clients through an opt in procedure.

AMAFI also urges the Commission to confirm that the execution only regime will remain unchanged.

Requiring providing clients, upon request, with a report presented in a standardized format, on the information collected for the purpose of the suitability or appropriateness assessment

AMAFI is concerned that such standardization will run contrary to the proportionality principle and the required personalisation of the advice delivered.

In addition, this standard is likely to impact the way suitability information is collected form clients which will trigger the need to question them again, raising significant extra costs for IFs, and hence necessarily for clients.

Therefore, to AMAFI, **this requirement should be deleted**.

Introducing the possibility to provide independent advice using a more simplified suitability assessment on simple, "cost-efficient" and diversified products

Such a simplified regime would provide an undue advantage to independent advice which appears as a bias in favour of a specific distribution model (fee-based vs commission-based). Such advantage provided to the fee-based model is not justified by investors protection considerations.

In addition, this proposal seems to be biased towards ETFs which seems to be considered as simple products.

Conversely, to AMAFI, such a regime, even if limited to ETFs and independent advice, is likely not to be protective enough for clients since:

- ETFs are not always simple products. They can provide exposure to the assets of an index in a single transaction, which is convenient, but this does not make them simple products : they constitute an indirect investment through an envelope, their index underlying is itself a construction not an asset as such, the investor needs to have expectation for the index itself (i.e. several assets not only one), differing features impacting performance exist, for e.g. dividends reinvested or not, tracking difference between the ETF and the index... ; .

- They are as risky as their underlying (equities ETFs are on average rated 6 in terms of PRIIPs risk ratio).

[13] 3.d) Article 66 of MiFID II Delegated Regulation

In such a context, depriving clients from the protection afforded by the assessment of their knowledge and experience, as well as their diversification, does not look to us sufficiently protective for clients. All the more so as those products will be sold without any appropriateness test through non advised services.

The scope of products on which a simplified advice service would be permitted should be clarified, especially as concerns the diversification criteria : does it have to be assessed based on the asset classes that are invested in or on the variety of assets within a single asset class or from a geographical or sectorial viewpoint or else depending on the credit risk attached to such products (including any capital guarantee that may be provided by an IF)?

In any case, it should be possible to provide simplified advice on shares and vanilla bonds, and to allow non-independent advisers to provide such advice in order not to unduly discriminate one business model versus another one.

f. Disclosure requirements

AMAFI views favorably the proposal made by the Commission to alleviate disclosure requirements by grouping together several ex-post disclosure requirements.

However, we have several remarks on the proposed amendments:

- **AMAFI is strongly concerned by the possible reintroduction of the cost and charges disclosures for professional clients and eligible counterparties that were significantly alleviated through the Quick Fix Directive (EU) 2021/338)**: wholesale clients have the expertise and the necessary sources of information to make informed decisions. Accordingly, they do not need and do not want this form of "protection". As acknowledged under recital 5 of Quick Fix, "*counterparties do not need standardised and mandatory costs information as they already receive the necessary information when they negotiate with their service provider. The information provided to professional clients and eligible counterparties is tailored to their needs and often more detailed".* Therefore, they should not be forced under a regime which for them is burdensome and useless.
- On a general note, it should also be noted that the operational implementation of the cost and charges requirements is one of the most difficult and burdensome in terms of IT systems, the reason being that the cost calculations require the processing of many different information available under different systems. Therefore, and again, AMAFI would like to call for as much stability as possible on these matters. In that regard, it has to be recalled that costs and charges requirements have already been subject to three major changes since MiFID II and PRIIPs were initially adopted (ESMA 's Q&As on MiFID II; PRIIPs RTS V2; MiFID II Quick Fix)

  This is even more a source of concern for AMAFI as existing requirements aim to be significantly strengthened under the RIS proposals:

  - Under new 1. of Article 24b, information on cost and charges should not only, as under current MiFID II, be provided to clients in good time prior the provision of any investment or ancillary service, but also prior to the conclusion of any transaction on a FI. AMAFI is unclear about the intention behind such an amendment but reads it as requiring a transaction-by-transaction information in case a portfolio management service is being provided. If so, AMAFI is highly concerned that this would increase significantly the amount of information provided to clients, which runs contrary to one of the objectives assigned by the CMU initiative[14]. AMAFI is also of the view that providing such information to clients is at odds with the scope of the mandate given to their portfolio managers consisting of taking investment decisions on their behalf.

- With regard to the requirement to disclose ex post information, AMAFI has the following comments:

  - In all cases, there should **be no requirement to provide separate information on taxes paid or borne by clients,** the reason being that the taxes are already embedded in the cost of products and / or the costs of services[15].
  - As for the requirements imposed on firms providing an investment service together with a service of safekeeping and administration of FIs**: apart from firms providing a portfolio management service**, **there should not be any requirement to report on the performance of the portfolio and of each FI included in the portfolio or on dividends, interest and other annual payments.** Unlike IFs providing a portfolio management service, IFs providing any other investment service are not responsible for the portfolio's performance, clients making their own investment decision by themselves. Generally speaking, we see it as inappropriate and a source of legal risk to require firms to report on elements on which they have no responsibility. Moreover, if adopted, such requirement would necessitate very costly IT developments that will necessarily impact the cost of service for clients[16]. This will also increase very significantly the quantity of information provided to clients who already complain about information overload.
  - For IFs providing a portfolio management service, **requiring the systematic provision of detailed information on the annual performance of each of the financial instruments included in the portfolio is also viewed as too burdensome** compared to the expected benefits for clients who, again, already complain about information overload.
  - AMAFI also **strongly opposes the requirement for IFs not providing the service of safekeeping and administration of FIs or ongoing advice, to provide ex post information on costs of products**: Such IFs having provided one shot services will be in no position to have access to reliable information on the actual positions held by their clients and therefore should not be required, as under 4 a) ii) of new draft Article 24 b), to provide any information on the "financial instruments held by retail clients".

g. Marketing communications and practices

AMAFI sees favorably the clarifications ((4) of Article 24C[17]) on the respective responsibilities and practices of manufacturers and distributors on marketing material, as well as the introduction of definitions for marketing communications and marketing practices.

[14] See action 8 of CMU Action Plan
[15] See question 26 section 9 of the ESMA Questions and Answers On MiFID II and MiFIR investor protection and intermediaries topics
[16] The post-market industry estimates the extra costs to 20% of the actual costs.
[17] Where a manufacturer of a financial instrument prepares and provides a marketing communication to be used by the distributor, the manufacturer shall be responsible for the content of such marketing communication and its update. The

However, we see a difficulty to articulate such proposed split of responsibilities with the overarching principle that "*all information addressed by an investment firm to its clients or potential clients to be fair, clear and not misleading*" (*Article 24.3 MiFID II*) in case a marketing communication prepared by a manufacturer and disseminated by a distributor entails information that does not comply with such principle. To AMAFI, such articulation should be clarified in order to **clearly define responsibilities**.

To AMAFI, such envisaged measures would not cover all the different configurations between manufacturers and distributors and specifically situations where both of them collaborate for the preparation of the marketing communication of a product.

AMAFI also wonders about the exact meaning of the terms used under draft Article 24c §4 second indent "*organizes its own marketing communication*. In particular, it is rather counter intuitive that the distributor would bear full responsibility on the content of a marketing communication it has not drafted or contributed to. **AMAFI therefore suggests that the distributor's responsibility should encompass and be limited to the amendments it makes to the marketing communication designed by the manufacturer (and of course of the marketing communication it drafted himself) as well as the use it will make of the marketing communication.** The drafting should be amended accordingly.

In addition, there is a difficulty with the foreseen requirement to provide the IF's management body with a report on the use of marketing communications and strategies. The Compliance function already has the responsibility and duty to report to the management body on its work and findings at least on an annual basis, including with regards to deficiencies in marketing and communication. **Making this a specific requirement for marketing communications and strategies is to us overshooting and unnecessary.**

Finally, AMAFI raises ESMA's attention on the fact that the **foreseen amendments would need to be articulated with the future sponsored research regime** that is currently being discussed in the course of the MiFIR revision workstream, since sponsored research falls under current MiFIDII marketing communication's definition.

h. Enhanced competence standards for financial advisors (*Art. 24 d MiFID*)

We understand the foreseen regime as requiring:
- an initial assessment of staff's knowledge and competence,
- an ongoing update of that knowledge and competence through regular training of minimum 15 hours per year.

AMAFI reads the proposed new regime[18] as duplicating the high-level principle set under article 16.4 of MiFIDII for IFs to employ appropriate resources. IFs are already responsible for putting in place

distributor shall be responsible for the use of this marketing communication and shall ensure that it is used for the identified target market only and in line with the distribution strategy identified for the target market.
Where an investment firm offers or recommends financial instruments which it does not manufacture, organises its own marketing communication, it shall be fully responsible for its appropriate content, update and use, in line with the identified target market and in particular in line with the identified client categorisation.

[18] Article 24d
(1) Member States shall require investment firms to ensure and demonstrate to competent authorities on request that natural persons giving investment advice or information about financial instruments, investment services or ancillary services to clients on behalf of the investment firm possess the necessary knowledge and competence to fulfil their

arrangements and procedures to make sure they "*employ personnel with the skills, knowledge and expertise necessary for the discharge of the responsibilities allocated to them"* as required under 1 (d) of Article 21 of MiFID delegated regulation. This provision, while setting clear responsibilities on firms to ensure the quality of their HR resources, also enables them to adapt their arrangements to their activities, business models and internal processes and procedures, which is critical to accommodate for the variety of firms and business models.

Therefore, **we do not see the merit of a one size fits all approach that will encompass issues other than the ones focused on the responsibilities discharged by the firm's staff and conversely, not encompassing the IF's business model or the IF's processes and procedures' specificities**.

However, if such regime was to be retained, AMAFI is of the view that it should meet the following conditions:

- It should be clarified that national regimes pursuing the purpose of an initial assessment of the knowledge and competence of persons giving advice or providing information about FIs that are in place in some Member States [19] are equivalent to the envisaged measures. A grandfathering clause should also be granted for equivalent certificates delivered under such pre -existing equivalent regimes.
- For more adequacy with their businesses, organisation and procedures, it is essential that IFs would have full leeway as to the way they update their staff's knowledge and competence. in order for such training to be tailored to their activities, organisation and characteristics. In that regard, it is essential that ongoing training regularly provided by IFs to their staff on their internal processes and procedures on topics listed in Annex V of MiFIDII fall under the required yearly 15 hours training.
- Since the rules are intended to be aligned between the distribution of insurance and investment services, firms offering both types of services involving comparable products should only be required to provide 15 hours training per year to staff involved in the provision of any of these services or both, without doubling the number of hours of training.

i. Professional clients (Annex II of MiFID)

AMAFI welcomes the enlarged criteria for the test allowing a retail client to opt up for the professional client category.

However, **for this possibility to be fully operational, ESMA should remove or soften its answer to question 2 section 11 of its** ***Questions and Answers on MiFID II and MiFIR investor protection and intermediaries topics*** stating *"Investment firms should strictly refrain from implementing any form of*

obligations under Articles 24, 24a, 24b, 24c and Article 25 and maintain and update that knowledge and competence by undertaking regular professional development and training including specific training where new financial instruments and investment services are being offered by the firm. Member States shall have in place and publish the criteria to be used for assessing effectively such knowledge and competence.
(2) For the purpose of paragraph 1, Member States shall require investment firms to ensure and demonstrate to competent authorities on request that natural persons giving investment advice to clients on behalf of the investment firm possess and maintain at least the knowledge and competence set out in Annex V and undertake at least 15 hours of professional training and development per year. Compliance with the criteria set out in Annex V as well as the yearly successful completion of the continuous professional training and development shall be proven by a certificate …."

[19] Among which France: see III Article 312-3 of AMF General Regulation

practice that aims at incentivizing, inducing or pressuring a private individual investor to request to be treated as professional client".

If not, such a change will remain purely cosmetic as there is very little chance a client, not being aware of such possibility, will take the initiative of asking for such a change, whereas the firm would be seen as" inducing" the client if it were to inform the latter.

COMMENTS ON PROPOSED AMENDMENTS TO PRIIPS

a. New sustainability disclosures in the KID

AMAFI considers that the **required ESG information cannot fit within the 3 pages constraint and that such threshold should be reviewed.**

Moreover, it is not acceptable that **the ESG criteria to be mentioned in the KID are not the same as the ones to be assessed under the MiFID suitability requirements**. This inconsistency between the regulatory requirements may cause retail investors to misunderstand the information they are provided with and may create undue difficulty and complexity in the distribution process.

b. New section on 'Product at a glance'

AMAFI is concerned about the feasibility of such requirement which would add to the KID a dashboard with summarised information on the product by creating a new section named 'Product at a glance': Experience shows that concentrating all important information on a specific product in a 3-page document has already been a major challenge since the entry into force of PRIIPS Regulation. **Gathering all important information in such a tight space without misleading clients seems an unachievable goal. Therefore, to us, such requirement should be deleted.**

Moreover, such a major change to PRIIPs should not be put forward without any proper cost-benefit analysis and consumer testing, which does not seem to be the case. In fact, the European Commission's impact assessment does not show that the current format is considered inadequate by clients and does not include an assessment of the change proposed.

c. Digitalisation of KIDs, layering, and personalised information (new Article 14)

AMAFI has difficulties to react on the drafting proposal on digitalisation of KIDs since the proposal is not totally clear: in particular, the trigger for the provision of the digital interactive information is unclear regarding who will make the call (the end client? the distributor?).

If the capacity to ask for such digitalised interactive format was left to clients, all IFs would have to develop extremely costly comparison / interactive layering tools without any expected clear benefit for the end clients in the absence of a cost-benefit analysis on this issue.

Therefore, **we would strongly recommend a thorough consumer testing** being carried on (1) the layering of information and (2) the personalisation of information to make sure that the expected benefits compared to the current provision of information in a concise 3 pages document are proportionate to the expected costs of such measures.

In this respect, it should be noted that the requirement to be able to provide personalised information seems to go against the principle of KID simplification adopted via the latest RTS amendments[20].

As for the layering of information, we understand such layering would consist of reordering the different sections of the KID, which does not seem to make much sense for a 3 pages document sufficiently short to read.

On a more general note, AMAFI would like to draw the European commission's attention on the necessary consistency between the different legal texts aiming to foster the provision of digitalised services : MiFID, PRIIPs, Open Finance Package (and more specifically FIDA Directive) and ESAP. To AMAFI, an extreme attention should be devoted to harmonizing as much as possible the formats required under those texts to avoid unnecessary and extremely burdensome works to reconcile different data sets.

d. Precisions on the scope of the PRIIPs Regulation

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

To avoid abiding to PRIIPs requirements, issuers of plain vanilla bonds exclude retail investors from their prospectus via a selling or/and transfer restriction. When defining their target markets, the manufacturers (i.e. the Ifs members of the bond syndicate) shall have to take into account the restrictions in the prospectus, while in many cases there is no particular feature related to the product justifying the exclusion of retail investors from the relevant target market.

Such an approach would penalize distributors wishing to sell such products to retail clients. Indeed, they would face extra risks and extra administrative burdens because in such a case they will be distributing such bonds outside of the positive target market or in the negative target market as defined by the issuer in the prospectus. In addition, considering the uncertainty of the PRIIPs perimeter and that, consequently, certain products are qualified as PRIIPs even if they are vanilla products, a further obstacle to the distribution to retail clients may be the absence of a KID. Therefore, distributors do not generally make these bonds available to retail investors, thereby restricting investors' access to these simple products.

For these reasons, all plain vanilla bonds should be excluded from the scope of PRIIP.

[20] For instance Article 14(3) requires the ESAs to prescribe "the conditions for personalising the information to allow investors to simulate costs over a holding period" whereas the cost table simplification imposed by ESAs under the amended RTS dated 07.09.2021, amounted to reduce the number of columns from 3 to 2 columns for product of less than 10 years.

e. Entry into force and application

The proposed timeline is 18 months after the date of entry into force of the regulation. We consider that at least a **18 months implementation timeline, after level 2 is adopted, would be more appropriate given the highly complex changes that could be required.**