

European Commission Consultation on the retail investment strategy ----- French AFPDB position paper

On the occasion of the European Commission Consultation on the retail investment strategy, the French association of retail structured product manufacturers (AFPDB) would like to share its views with the Commission.

The AFPDB's contribution to the consultation focuses on questions and topics targeted at experts which get specific importance to the structured products industry:

- General questions (section 1)
- Financial literacy (section 2)
- Disclosure requirements (section 4)
- Core objectives of the PRIIPs regulation (section 5)
- Reviewing the framework for investor categorisation (section 7)
- Inducements and quality of advice (section 8)
- Addressing the complexity of products (section 9)
- Sustainable investing (section 12)

This AFPDB position paper provides additional information to the online questionnaire.

Consultation document:

https://ec.europa.eu/info/files/2021-retail-investment-strategy-consultation-document_en

AFPDB Reply

1 – GENERAL QUESTIONS

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

Yes.

The regulatory framework for retail investment, including notably PRIIPs, MIFID II, and Prospectus Regulation 3, ensures an excellent standard of protection to investors. It creates notably transparency of the key features of an investment (under the KID, a simple 3-page document), while product governance requirements ensure that the investors buying the products should be proposed products adapted to their needs, their risk profile, and their knowledge.

However, the KID of structured products (notably autocallables) will suffer changes, and a deterioration brought by the new RTS.

To make the regulatory more user-friendly, a lot more regulatory stability is needed in the EU. We therefore do not welcome any major changes the level 1 PRIIPS review.

With respect to cost transparency, MiFID II costs transparency (ex-ante/ex-post) has gone extremely far and the EU now is at a suitable level of disclosures.

Yet in addition to MIFID and PRIIPS, Prospectus Regulation 3 is another layer of information to be read by investors. In a sense the high level of disclosure or too high number of documents might hamper readability towards investors.

While aimed at protecting retail investors, some rules may require specific procedures to be followed (e.g. the need to use investment advice and complete a suitability assessment) or may limit investment by retail investors (e.g. by warning against purchase of certain investment products or even completely prohibiting access).

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

Yes they are justified

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 existing EU regulation?

No.

For the French structured product market, MiFID II product governance regime is a major improvement and has generally achieved its objectives. This is why AFPBD recommends no major change to the Target Market rules, the cost and charges disclosure, or the distributor feedback process in the future review of MIFID.

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 by retail investors of products?		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			

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?

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

AFPBD Financial literacy is key to improve financial education of retail investors. This takes time and should be taught at school from the middle-school / secondary school.

AFPBD also thinks to make more efficient disclosure requirements, such as relying solely on KID scenarios and refrain from doing other scenarios analysis, like we have seen in the UK market with the FCA TRSP, which has confused distributors and investors.

2 – FINANCIAL LITERACY

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

Reinforce financial education on basic products (bonds, debt, equity) from secondary school

4 – DISCLOSURE REQUIREMENTS

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
The nature and functioning of the product					X
The costs associated with the product			X		
The expected returns under different market conditions					X
The risks associated with the product					X

Question 4.2 PRIIPS: Is the pre-contractual information provided to retail investors for each of the elements below sufficiently reliable so as to help them take retail investment decisions?

a) Please assess the level of understandability

b) Please assess the level of reliability

	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	AFPBD wishes to say Adequate to keep regulatory stability and avoid a PRIIPs V3
Information about the type, objectives and functioning of the product	4	5	Adequate	
Information on the risk-profile of the product, and the summary risk indicator	5	5	Adequate	SRI is overall well understood and not to be changed. The number of products for which the SRI does not work well is extremely limited
Information about product performance	4	4	Adequate	On structured product scenarios KID, no issues observed they work well, except for the PRIIPs V2 autocall scenarios (CMNV problem)
Information on cost and charges	3	4	Adequate	
Information on sustainability-aspects of the product	NA	NA	NA	

The presentation of expected returns in PRIIPs KID is now well understood by distributors and retail investors. For regulatory and legal stability purposes, no substantial changes should be done. With that in mind, AFPDB regrets that draft amended PRIIPs RTS (RTS V2) changed performance methodologies for autocallable products in a way that it will be less understandable for retail investors.

Regarding the presentation of the risks, the SRI of the KID is sufficiently comprehensible for retail investors and as the ESMA report of April 2021 shows, it is differentiating between products. Therefore AFPDB wishes to keep the SRI unchanged.

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

As far as AFPDB's members may judge on their respective markets (retail investment structured products, exchange traded products) the language used for precontractual documentation for retail investors is sufficiently understandable.

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?

As mandated by Article 13.1 of the 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. We believe this is the appropriate stage.

However, as allowed by Article 13.3 of PRIIPs Regulation there is also a possibility to provide the KID after conclusion of the transaction, without undue delay, under certain conditions. This provision notably allows to avoid a possible detriment to frequent and experienced investors. When they repeatedly transact the same instruments, whose execution prices could be sensitive to latency, this provision rightly ensures that best execution is prioritised over the transmission of a duplicate product information.

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

Yes

We consider that the PRIIPs KID allows a clear comparison between different investment products.

We favorably welcome the upcoming inclusion of investment funds in the scope of PRIIPS.

As expressed in our reply to question 4.2, we have concerns regarding the amended version of the current PRIIPs RTS. We fear that it will 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.

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

AFPDB fully supports the objective of a cross-sectoral comparability among investment products. In our view this comparability should not aim at mapping each single component of the product but rather at helping investors understanding the overall product payoff and its main risks.

In light of the differences that will always persist among the various product types (e.g. tax treatment, legal status...) we consider that this objective of comparability must be duly balanced by a corresponding attention paid to the understandability of the KID.

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

Yes

PRIIPS and MIF2 apply different methodologies. The MiFID one appears more understandable by retail clients, especially for costs.

PRIIPs KIDs could adopt a Total Expense Ratio (TER) approach, which then enables the addition of service costs. The current PRIIPs methodology (Reduction in Yield or RiY) leads to inconsistencies which are confusing for retail investors.

We approve the harmonization of PRIIPS and MiFID2 cost presentation regimes that the amended PRIIPS RTS should bring. However we are concerned with the approach of autocallable products. The envisaged cost presentation for these products is not align with the principle of comparability and non-annualisation of costs impact below 1 year. We are also preoccupied with the inconsistencies with the MiFID2 regime that it would create.

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

Yes

There are currently two ratings for the product risk level. UCITS use the SRRRI while PRIIPS packaged products use the SRI indicator. This discrepancy should be corrected in the near future with the inclusion of UCITS in PRIIPS.

We further note that in situations where both PRIIPs and MiFID II regimes apply, financial institutions tend to use the PRIIPs SRI to comply with MiFID II. This is notably the approach used in the EMT (European MiFID Template - drafted by FinDaTex) in order to define target markets (which is a MiFID II requirement).

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

Yes

MIFID II requires information on product returns, not in a same prescriptive way than PRIIPs scenario does, but most often, this raises some redundancies. A way to improve the regime is that where PRIIPs applies, all information about product scenarios and performance is provided through the KID and the MIFID article 50 (10) should be disregarded.

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		
Guaranteed returns		X	
Capital protection			X
Forward-looking performance expectation			X
Risk			X
Ease with which the product can be converted into cash		X	

No other type of information is needed than the one above, which is already in the KID and fulfils these primary goal. It is crucial to keep the document concise, with a maximum of 3 pages, and prescriptive with no deviations across Member States.

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

Yes

We consider the current regime is sufficiently strong to ensure clear explanations of costs and cost impact for retail investors. There is no need to add new requirements.

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?

It is essential to maintain the current PRIIPs rule which provides for a maximum length of 3 pages to keep the document concise, and readable in a reasonable amount of time.

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

We do not support a different approach for complex products.

Disclosure documents and others marketing materials are already subject to the requirement of being clear, balanced and not misleading.

We consider that these principles should apply equally to all products. We note that an intrinsic product complexity may not always translate into a lower product understandability. Furthermore, we observe that complexity is both a subjective and an evolutive concept. As an example hybrid UCITS funds that rely on a master-feeder structure and a subdivided in a number of sub-classes of shares are legally considered as non-complex products, despite their objective complex legal and operational structure. The same remark could be made for mainstream equity indices that underly many financial products. Their rulebooks comprise dozens of pages that often remain out of reach for retail investors.

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

In electronic format by default, but on paper upon request

We think that a phase-out of paper-based information is relevant here.

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

Somewhat important

Question 4.14 How can access, readability and intelligibility of precontractual retail disclosure documents be improved in order to better help retail investors make investment decisions?

AFPBD view is that there is no need to improve the accessibility, readability and intelligibility of pre-contractual disclosure documents, that the current regime works broadly well.

Regarding the question of KID formats and use data extraction tools, AFPDB doubts of the benefit of specifying a certain further KID format or the use of a prescribed IT tool. The exchange of data contained in the KIDs between manufacturers and distributors is already working well with existing platforms where KIDs are published and raw data based on EPT and EMT templates of FinDatEx.

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

	Not at all important	Rather not important	Neutral	Somewhat important	Very important
There are clear rules to prescribe presentation formats (e.g. readable font size, use of designs/colours, etc.)?				X	
Certain key information (e.g. fees, charges, payment of inducements, information relative to performance, etc.) is displayed in ways which highlight the prominence?				X	
Format of the information is adapted to use on different kinds of device (for example through use of layering)?			X		

Appropriately labeled and relevant hyperlinks are used to provide access to supplementary information?		X			
Use of hyperlinks is limited (e.g. one click only – no cascade of links)?			X		
Contracts cannot be concluded until the consumer has scrolled to the end of the document?		X			

5 – CORE OBJECTIVES OF THE PRIIPs REGULATION

Question 5.1 Has the PRIIPs Regulation met the following core objectives:

	Yes / No
Improving the level of understanding that retail investors have of retail investment products	Yes
Improving the ability of retail investors to compare different retail investment products, both within and among different product types	Yes
Reducing the frequency of mis-selling of retail investment products and the number of complaints	Yes
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	Don't know. We believe that this function is rather jointly fulfilled by product governance and financial advice.

AFPDB considers that PRIIPs KIDs duly improved the product understanding by retail investors. As expressed previously the objectives of understandability and comparability shall be duly balanced.

Experience shows that the adoption and implementation of level 2 rules may be sensitive. In the past, our industry has alerted on the issue of leveraged products. For the near future with the draft amended RTS we are preoccupied with the treatment of autocallable products.

Though it is a useful improvement of investor protection, the PRIIPS KID may not act alone in the objective of mis-selling reduction. Its action must be exerted in synergy with a duly applied product governance, as required by MIFID2 and IDD.

Question 5.2 Are retail investors easily able to find and access PRIIPs KIDs and PEPP KIDs?

Yes

These documents are duly provided and/or made available before each transaction.

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

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

AFPDB does not favor the idea of an EU-wide database that would aim at allowing for the comparison between different types of investment products accessible across the EU.

There are plenty reliable aggregators and product comparators on the market that efficiently help investors.

We note that for exchange traded products whose manufacturing and distribution cycle is extremely short, the implementation of centralized database could entail administrative latency that may be detrimental to investors.

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)?

No

We consider that the PRIIPs KIDs provide an adequate and reliable information.

However, as expressed in our reply to questions 4.2 and 5.1, targeted simplification could be beneficial. This would notably include a replacement of the Reduction in Yield by a Total Expenditure Ratio (TER).

Also, as also mentioned in the same reply to question 4.2, we are concerned with the amended version of the current PRIIPs RTS (PRIIPs RTS V2) which introduces an inadequate methodology for autocallable products (both in terms of performance scenarios and cost tables).

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

AFPDB has observed some discrepancies in the implementation of PRIIPs for structured products in the Member States.

As an example in Belgium the FSMA may require KIDs that exceed three pages. In Germany the BAFIB has its own interpretation of weblinks.

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

No

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

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.

For exchange traded products such as securitized derivatives (e.g. warrants, turbos) that are crucial for hedging strategies it is important not to lose sight of the product volumes (issuers generally issue several hundreds of thousands of products per year) and of their KID lifecycles (daily updates).

Question 5.9 - Should distributors and/or manufacturers of Multiple Option Products be required to provide retail investors with a single, tailor-made, KID, reflecting the preferred underlying portfolio of each investor? What should happen in the case of ex-post switching of the underlying investment options?

No

We do not support the generation of a single tailor-made KID. It would be very difficult to implement for MOPs offering multiple underlying "units". It could indirectly "open architecture" product design that currently allows investors to invest in a wide range of investment options (units) that are manufactured by different entities (e.g. life insurance contract allowing investment in UCITS from distinct asset managers or structured products issued by a large spectrum of banks).

At present, the information requirement concerning the underlying options is already addressed in the ESA

Q&A on PRIIPS (JC 2017 49 4 April 2019. See pages 31 to 33) which does mention the need for providing an information which is "specific" to each option.

In practice, investors already have information on the price range of the various options.

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

No

AFPDB believes that this solution would amount to an additional layer of information that could adversely affect the readability of the information. This would also result in a significant record-keeping cost for all players.

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?

No

As is currently required by PRIIPs, situations such as changes in the risk category of the risk indicator or changes of moderate scenarios by more than 5% or any other material change in the product characteristics should continue to trigger an update of PRIIPs KIDs.

7 – REVIEWING THE FRAMEWORK FOR INVESTOR CATEGORISATION

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

8 – INDUCEMENTS AND QUALITY OF ADVICE

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	
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		X			

Introducing a ban on all forms of inducements for every retail investment product across the Union	X				
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We consider that the regulatory framework already provides the appropriate level of investor protection

MIFID2 enhanced the rules applying to inducements and also strengthened the provisions applying to conflicts of interests. Pursuant to the rules applying to investment advice, advisors must already

- i. apply a suitability test guaranteeing that the products they recommend do matched the expressed objectives of their clients,
- ii. justify any perceived commissions or other form of inducements do enhance the quality of the provided service.

Also, these rules now operate in synergy with product governance requirements that mandate that the product generation and distribution be driven by the identified client needs of a specific target market.

We are therefore opposed to an inducement ban.

As concerns independent investment advice, it is useful to remember that this option already exists as an alternative in jurisdictions that allow inducements.

A ban of inducements would not automatically boost the development of independent advice (the latter has difficulty finding a sustainable business model in all jurisdictions included those that banned inducements).

On the contrary, as the example of the UK and the Netherlands show, mass retail clients (financial assets <100K€) would be very affected in their ability to get access to financial advice.

Independent advice is already offered 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. In discussions on inducements and on solutions to mitigate the effects of a ban, this element of scarcity of actual robo-advice solutions should not be forgotten.

Question 8.2 If all forms of inducement were banned for every retail investment product across the Union: a) what impacts would this have on the availability of advice for retail investors? Please explain your answer:

As explained in reply to question 8.1, a total ban on inducements would lead to drastic advice gap. It may also negatively affect the diversity of the product offering and lead to a higher cost of advice service. Here, it must be observed that presentations of the situation in jurisdictions that have banned inducements are generally limited to a mere comparison of product prices. They often taking into account the Total Cost of Ownership (TCO) that does include the added cost of advice when procured separately from the product itself.

Therefore, when considering reforms of the inducement regulations that could potentially concern all European citizens, it is crucial to take into account the financial wealth distribution in Europe. Indeed, not all countries would be affected the same way.

When comparing jurisdictions (see Eurostat Q4, 2020 data comparing financial wealth per capita), it is useful to remember that the Netherlands are at the very top of the list of EU countries for financial wealth per capita (with a national average which is twice as high as the EU average) an advice gap was observed nevertheless.

In other jurisdictions with much lower financial wealth per capita, the impact on the access of mass retail investors to advice may be expected to be much more severe. Also within each country the consequences for investors would also differ, depending on their own financial wealth.

As an example, for France (Insee statistics, 2018), the average financial assets (including deposits) of households is 56 200€, with 50% of households having less than 11 100 €. Even the highest decile among French households has less than 62 K€ (i.e. much lower than the average portfolio value which is required to gain access to (and be able to afford) financial advice in the countries that have applied a commission ban).

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

There is a high risk that investment advice solutions proposed to mass retail investors would be restricted to robo-advice.

Though these applications are frequently presented as a valid substitute to traditional advice, they are often limited to a mere ETF price comparison service. Portfolio allocation is either simply not considered or presented in a generic manner without taking into account the actual existing assets of investors.

In such cases, as recommendations are not really personalized to incorporate the specific needs and objectives of clients, their qualification as being "investment advice" could be challenged.

Finally, it should also be observed that while the term "robo-advice" is increasingly used by online platforms whose actual technological offer is limited to the mere digitalization of several steps of the client data gathering process (e.g. online investor questionnaires) or to the development of an easily searchable online product catalogue.

Such service offers should not be confused with the elaboration of full-fledged AI analytical tools allowing both the assessment of the investor situation and the proposal of a suitable asset allocation. Only the latter solutions – which are not numerous - should be called "robo-advisors".

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

In light of the limited financial literacy of mass retail investors, there is a risk that their investment may tend to be excessively aligned, benchmarked and affected with a strong pro-cyclicality due to their dependence on a limited number of automated solutions recommending the same investments. Also, for a significant share of mass retail investors that are traditionally risk-averse, there is a risk that portfolios be insufficiently diversified, which may very penalizing for long-term return in a low or negative interest rate environment.

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
In the case of investment products distributed under the MiFID II framework?	Yes

In the case of insurance-based investment products distributed under the IDD framework?	Yes
In the case of inducements paid to providers of online platforms/comparison websites?	Yes

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

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

We believe that aligning the MiFID2 and IDD inducement regimes would be opportune for investor protection. We also note that in several jurisdictions, a very significant amount of financial products whose manufacturers are regulated by MIFID2 rules are ultimately distributed under the IDD regime (e.g. structured products sold under an life insurance wrapper).

Question 8.5 How should inducements be regulated?

	Yes / No
Ensuring transparency of inducements for clients	Yes
Ensuring transparency of inducements for clients, including an obligation to disclose the amount of inducement paid	Yes
Allowing inducements only under certain conditions, e.g. if they serve the improvement of quality	Yes
Obliging distributors to assess the investment products they recommend against similar products available on the market	No
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	No
Introducing a ban on all forms of inducements for every retail investment product across the Union	No

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

No

If you do see a need for legislative changes, please detail the changes you would consider relevant:

We do not see the need for a legislative change, as we believe that the issues that result from PFOF situations may be addressed within the current legislative and regulatory framework.

We noted the ESMA statement of July, 13, 2021. As for PFOFs, we would agree with ESMA that the ultimate test regarding their compliance with MIFID2 test is whether they “are able to demonstrate that they consistently achieved the best possible result for retail clients when executing their orders”. We consider that the monitoring of this compliance may be exerted as part of the routine supervisory powers of the NCAs – notably as concerns compliance with conflict of interests rules, best-execution and disclosure obligations and does not require addition rulemaking.

As for Zero Commission Brokerage (ZCB), which was also mentioned, separately, in the ESMA statement we would first caution against a confusion of this specific situation with PFOFs. We further note that while ZCB may occur in the context of PFOF situations, it may also very often be happening outside of PFOF arrangements. We also observe that, unlike PFOFs that primarily benefit the executing brokers that receives the payment from the execution venue, ZCB benefits the end-clients and are therefore a clear case of quality-enhancement as regards the provided investment service. Finally we note that ZCB arrangements may also be implemented with an adequate level of cost-transparency, both on the service and product, and with an appropriate implementation of product governance and marketing strategy allowing a proper communication and the avoidance of mis-selling.

When promotional campaigns such as ZCB are conducted with all the above described safeguards (order execution quality, cost-transparency and appropriate target market, and marketing communication) we see no reason to prohibit them.

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?

As detailed in answer to question 8.6, we would see value in imposing more transparency in PFOF schemes related to conflicts of interest when it comes to the execution of retail orders.

However a fundamental legislative change to the best execution regime would be likely to have deep consequences, including on market structure, which would have impacts well beyond the execution of retail orders.

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?

No

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

Yes

We consider that regulation should be technology neutral. It 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.

Greater trust in human advice

We share the view that robo-advice has not taken off.

The term “robo-advice” is increasingly used by online platforms whose actual technological offer is rather limited to the mere digitalization of several steps of the client data gathering process (e.g. online investor questionnaires) or to the development of an easily searchable online product catalogue.

Such service offers should not be confused with the elaboration of full-fledged AI analytical tools allowing both the assessment of the investor situation and the proposal of a suitable asset allocation. Only the latter solutions – which are not numerous - should be called “robo-advisors

In discussions on inducements and on solutions to mitigate the effects of a ban, this element of scarcity of actual robo-advice solutions should not be forgotten.

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

No

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

NA (no to previous answer)

9 – ADRESSING THE COMPLEXITY OF PRODUCTS

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

No

Furthermore, three observations may be made:

- Complexity remains a relative and subjective notion, which is evolutive and difficult to measure precisely. In France, the French AMF has applied a rating system that counts the specific product features (“mechanisms”) and sets out a complexity model (based on four criteria among which the maximum of three mechanisms) defining what is suitable for distribution to retail investors. This regime is periodically updated to account for product evolution.
- Complexity is distinct from intelligibility. A product may encompass a certain level of complexity (e.g. rulebooks of the main equity indices generally comprise dozens of pages, including rules for inclusion within the index and weighting, but also the treatment of exceptional situations such as trading suspensions for the underlying assets) without hampering the overall understanding of investors of their use and their outcomes in key scenarios.
- Complexity may be positive and useful to investors. This is notably the case when it involves protective features such as a capital protection or a risk reduction mechanism. It is also the case in sustainable finance when it involves filters allowing investors to screen the desired underlying assets with conditions linked to their ESG rating.

Finally complexity shall not be correlated with the risks of a product. A product may be complex but not risky from an investor standpoint depending on its features, these are two different concepts.

Question 9.2 If further measures were to be taken by the EU to address the complexity of products:
a) Should they aim to reinforce or adapt execution of orders rules to better suit digital and online purchases of complex products by retail investors?

	Yes / No
Reinforce or adapt execution of orders rules to better suit digital and online purchases of complex products by retail investors	No
Make more explicit the rules which prohibit excess complexity of products that are sold to retail investors	No
Develop a new label for simple products	No
Define and regulate simple, products (e.g. similar to PEPP)	No
Tighten the rules restricting the sale of very complex products to certain categories of investors	No
Other (please explain)	Improve financial education

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

No

The current regulatory framework already provides a satisfactory level of investor protection.

Product governance rules, set out requirements to ensure that product manufacturing is driven by the duly identified client needs and target market. Likewise the definition of the distribution strategy and the monitoring of its implementation ensure that sales remain focused on the said target market.

Furthermore, under the current regulatory framework of MIFID2, sales of complex financial instruments are already excluded from execution-only. Such sales are therefore already subject to a prior verification of knowledge and experience, as a minimum.

Also for most complex products, whose distribution is limited to advised sales, this ex-ante verification takes the form of a suitability test taking into account the investors' risk appetite, their ability to support losses, their objectives in addition to their knowledge and experience and status (i.e. retail, professional or eligible counterparty).

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

No

As explained in our previous answer, there is already a differential treatment in MIFID2 for complex and non complex products, with execution-only reserved to the latter.

Furthermore, PRIIPS already set out a complexity warning for complex packaged products.

We do not see the need for a further discrimination against complex products which, as explained in our reply to question 9.1, may often be investment solutions encompassing capital protection, risk reduction mechanisms or ESG filters.

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

No

As expressed in our reply to question 9.2 b), we consider that the current regulatory framework is sufficient and that no additional rules are needed.

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

No

As expressed in our reply to question 9.2 b), we consider that the current regulatory framework is sufficient and that no additional rules are needed.

f) Should they have another aim?

No

12 – SUSTAINABLE INVESTING

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

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

Question 12. 2 What would help you most to take an informed decision as regards a sustainable investment?

(1= least important, 5 = most important)	Please indicate on a scale of 1-5)
Measurements demonstrating positive sustainability impacts of investments	3
Measurements demonstrating negative or low sustainability impacts of investments	3
Information on financial returns of sustainable investments compared to those of mainstream investments	3
Information on the share of financial institutions' activities that are sustainable	2
Require all financial products and instruments to inform about their sustainability ambition	2

Obligation for financial advisers to offer at least one financial product with minimum sustainability ambition	1
All financial products offered should have a minimum of sustainability ambition	1

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

(1= least important, 5 = most important)	Please indicate on a scale of 1-5) (1= least
Poor financial advice on sustainable investment opportunities	1
Lack of sustainability-related information in pre-contractual disclosure	1
Lack of EU label on sustainability related information	1
Lack of financial products that would meet sustainability preferences	1
Financial products, although containing some sustainability ambition, focus primarily on financial performance	1
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)	1

The offering of ESG product is still under development and we expect a significant share of the retail investments to incorporate ESG characteristics in the short and mid-term future (i.e. within 2 to 5 years).

This transition towards sustainable finance will require massive investments in both product disclosure and investor education.

As regards retail investors, their adoption of ESG products will greatly depend on the proper calibration of the product information and of the appropriateness or suitability processes that apply to them.

While it is important to ensure that retail clients have an adequate level of information to make informed choices among the various investment options that are presented to them, it is also crucial to avoid an information overload that could them from these products. This is especially true for the current review of MIFID ESG suitability requirements that should avoid being unduly complex or not sufficiently aligned with the SFDR requirements.

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

No

We certainly appreciate the value and usefulness of ESG criteria in research.

However, we also believe that making their inclusion in research mandatory would not be the appropriate answer. There are indeed many situations (e.g. research on market strategies on rates, forex or volatility indices) where the reference to such criteria.

About the AFPDB

The AFPDB (French association of the structured and listed retail investment products) represents the interests of the main issuers of structured products that distributed in France. Their product range includes both exchange traded securitised derivative products, such as warrants, turbos and certificates, and structured products (e.g. EMTN) distributed through public offering or private placements.

The main goals of the association are:

- Promoting and contributing to the development of this industry on the French and European markets;
- Representing and advocating for the industry's interests, notably with the public authorities and regulators, the regulated markets and other trading venues and the other industry associations, as the AMAFI;
- Promoting the use of common industry standards, notably as regards product typology, in cooperation with other European associations;
- Collecting, producing and keeping up-to-date statistics and studies on the French structured product market.

The AFPDB members commit to comply with the AFPDB Code of conduct and to implement the product to policy as laid out by the AFPDB (European Structured Investment Products Association) to which the AFPDB is affiliated.

The AFPDB Legal and Regulatory Committee actively contributes to the marketplace reflections on work-streams concerning the showing and distribution of structured products.

Industry workshops involving both manufacturers and distributors are periodically organized by the AFPDB. They contribute actively to industry proposals in areas such as the implementation of the main regulations, the investor education programs, the disclosure and communication of key product information to, respectively, distributors and final clients.

Information, news and publications: www.afpdb.org

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