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FOR REGULAR USE

17 May 2024

Key messages regarding the Retail investment strategy – updated version of the position paper from 9 April 2024

EFSA is a collaboration between trade associations representing the interests of investment firms in Europe.

EFSA strongly believes in the policy objective of CMU II to build retail investors' engagement and trust in the capital markets. However, it is important to keep in mind that retail markets in Europe today have different level of maturity. In order for investment firms to be able to serve retail clients' needs in all of Europe, it is therefore important that the regulatory framework does not unduly restrict retail clients' access to different types of investment services (e.g., advisory and execution) and different types of investment products. Moreover, it is important to ensure that disclosures to retail clients are simple and easy to understand and that the level of information to be collected from such clients in the advisory process is proportionate. In fact, one of our key concerns is the increasing complexity of the regulatory framework which does not only create operational risks for investment firms but also creates barriers of entry to retail clients.

EFSA associations closely follow the ongoing discussions regarding Retail Investment Strategy (RIS). To our understanding, the discussions in Council are moving forward rather quickly. Based on the Belgian Presidency's compromise proposals dated 13 May 2024 which will be discussed on 21 and 22 May 2024 (below referred to as the "Presidency Compromise"), we have updated our key messages below:

Partial ban on inducements for execution services

EFSA opposes the Commission's proposal for a partial ban on execution services as it is our strong view that this would limit product offerings to retail clients and increase costs. Also, it would negatively affect the competitiveness of independent and smaller asset managers/investment firms to the benefit of larger institutions with in-house products. It is important to note that not all retail clients will be willing or able to pay directly for value added services. In addition, since there is no common interpretation across Member States about which payments to be included in the concept of "inducement" or "third party

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payment," imposing a ban for execution services could also have a number of serious unexpected consequences, e.g. for primary market transactions in bonds, with a negative effect on the real economy as a result.[1]

New inducement test

EFSA agrees that the existing "quality enhancement- test" is not fit for purpose in its current form and that there is a lack of supervisory convergence within the EU. As regards the new inducement test in the Presidency Compromise, we consider that some steps have been taken in the right direction. However, it is important to continue discussions in order to ensure that this new inducement test is actually an improvement compared to the existing quality enhancement-regime and that it works from an operational perspective without introducing a ban "though the back door". In particular we read criterion d) on the reclaiming mechanism as providing clients with an overall moral hazard. For situations where the interest of clients has been harmed, such reclaiming mechanism should be limited to cases where such harm results from an infringement of applicable requirements.

Value for Money

EFSA opposes all forms of benchmarks which we consider to be a form of price regulation. We find the proposals as put forward by the Commission and currently discussed in Council to be complex and we struggle to understand how this is going to work from an operational perspective, in particular taking different types of PRIIP- products into account (e.g., investment funds, bonds, structured products and derivatives). EFSA would be in favour of an internal model that is based on the existing product governance regime, combined with strong internal governance requirements. A supervisory benchmark that is made public will in our opinion have the same effects as price regulation and must therefore be avoided. We also consider the reporting requirement regarding costs and performance to the supervisory authority to be unproportionate.

Best interest test

Taking into consideration that the best interest test was intended as a replacement for the quality enhancement-test and a new inducement test is proposed, EFSA sees little need for this proposal. In fact, in our view this test will only add another layer of rules to an already complex framework and provide little additional protection for clients. If kept the criteria c ("additional features) should be deleted.

Appropriateness and suitability

EFSA supports the proposals in the Presidency Compromise to delete the previously proposed criteria on ability to bear losses and on risk tolerance from the appropriateness assessment. We agree that adding such criteria would make the distinction between suitability and appropriateness more difficult. EFSA also finds the compromise proposed regarding the portfolio diversification to be a positive step in the right direction. However, we consider that the scope of the

[1] See article 41 delegated regulation to MiFID II which provides that a placing fee/underwriting fee is an inducement in relation to end-clients that receive investment services and ESMA technical advice: https://www.esma.europa.eu/sites/default/files/library/esma35-43-2126_technical_advice_on_inducements_and_costs_and_charges_disclosures.pdf

"suitability light" should apply regardless of if the investment firm claims to be independent or not and also include portfolio management. This is important for competition reasons and considering that the protection of the retail client should be the same regardless of the type of advice/investment service i.e., portfolio management.

Cost & Charges

EFSA is genuinely concerned with the complexity of the disclosure regime. We would like to emphasize that one of the key objectives with RIS was to tackle the problems with information overload faced by retail clients. Evidence shows that retail clients are interested in price and total costs, not detailed breakdowns, or methods of calculation.[2] It would also be welcome with closer alignment between PRIIPs/MiFID II, as previously suggested by ESMA[3]. Against this backdrop, the new requirement regarding an annual report on both portfolio and instrument level is unproportionate.

Professional clients (opt-up)

Retail clients is a wide concept which includes also sophisticated retail investors and SME-companies, and it is therefore important to review the opt-up criteria. In some markets the "transaction" criteria are difficult to apply e.g., for corporate bonds which do not trade very often.

PRIIPs scope

EFSA supports a review of the PRIIPs scope ensuring that it is only applicable to packaged products that are used for investment purposes. For example, PRIIPs requirements are currently applicable to hedging derivatives used to mitigate risks for SME corporates, which is not consistent with the intended objective to provide information for investment products only. The application of PRIIPs to simple bonds unduly restricts clients access to these products which is negative for the capital market as a whole. Considering the new requirements regarding "product at a glance" and sustainability information, keeping the three-page limit will be challenging.

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[2] https://op.europa.eu/en/publication-detail/-/publication/5d189b3c-120a-11ed-8fa0-01aa75ed71a1/language-en

[3] https://www.esma.europa.eu/press-news/esma-news/esma-makes-recommendations-improve-investor-protection