

FESE Response to Commission Consultation on a Retail Investment Strategy for Europe

Brussels, 3rd August 2021

Section 1. General questions on the overall functioning of the regulatory framework

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

- Yes
- No
- Don't know / no opinion / not applicable

Please explain your answer to question 1.1 and provide examples:

5000 character(s) maximum including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

FESE would like to note first that trading venues do not interact directly with retail clients as they access markets through financial intermediaries. Historically, European capital markets were dominated by institutional investors with the retail segment being significantly less active. This trend was observed during MiFID I, with MiFID II, and has persisted since. In comparison with the US and Asia, where retail participation is higher, Europe and the EU are at a big disadvantage. For instance, a survey in 2016 found that over half of the US households invested in the stock market[1], while a similar survey in the EU in 2017 showed that an average of 43% of households invest in any type of financial product[2].

Europe needs to empower retail investors by making investment practices simple, less costly, transparent, and by taking steps to prevent conflicts of interest. To do that, FESE supports simple and accessible investment products for retail clients. Policymakers should focus on how to benefit investors, rather than the intermediaries, to ensure that retail investors get a good deal from European public capital markets.

Regarding market structure and investors, FESE proposes a simplified market structure with transparency for trades below large sizes, which introduces higher minimum quoting sizes, minimum fill rates and authorisation requirements for SIs, and which ensures the quality and robustness of price formation, and scrutinises best execution and bans payments for order flow (PFOF) practices. If implemented, this proposal would reduce market fragmentation and increase liquidity and transparency, allowing more investors to better interact and access markets, in particular retail investors. All investors stand to benefit from fairer prices and rules, as it would increase access, protection and choice, as well as an enhanced level playing field.

In order to strengthen the EU retail investor protection framework and protect retail investors, FESE suggests a revision of the best execution regime, aimed at ensuring that retail investors always get the best possible terms for the execution of their orders. In the response to Q8.7, we detail possible measures that should be taken in the medium and longer-term. Among these, and following recent developments, FESE suggests banning the

practice of PFOF as part of the upcoming review of MiFID II/MiFIR, as it raises several conflicts of interest incompatible with the existing MiFID rules.

[1] <https://www.pewresearch.org/fact-tank/2020/03/25/more-than-half-of-u-s-households-have-some-investment-in-the-stock-market/>

[2] https://ec.europa.eu/info/sites/default/files/180425-retail-investment-products-distribution-systems_en.pdf

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

- Yes, they are justified
- No, they unduly hinder retail investor participation
- Don't know / no opinion / not applicable

Please explain your answer to question 1.2:

5000 character(s) maximum including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

MiFID II/MiFIR was established with the objective of making “financial markets in the EU more robust and transparent”, by creating a “legal framework that better regulates trading activities on financial markets and enhances investor protection.” Thanks to the share trading obligation and broader reporting obligations, more transparency was brought to equity markets and the range of execution venues expanded. The MiFID II/MiFIR framework has delivered greater choice. FESE considers the Capital Markets Union (CMU) a key factor towards mobilising and strengthening EU public capital markets. Indeed, a more integrated capital market would allow better access to securities markets, with investors facing fewer barriers when investing in other EU countries. EU households would be able to increase the returns on their savings with a greater choice of assets to invest in. Consumers have much to gain from a true Single Market in financial services - working towards the removal of all remaining substantial barriers to integration should therefore remain a priority.

FESE supports the three main strands of work identified by the European Commission in its Consumer Financial Services Action Plan (2017), including increasing consumer trust and empowering consumers when buying services at home or from other Member States. Nevertheless, several obstacles hinder the creation of this form of pan-European personal pension product (PEPP) and/or other direct products both at EU and Member State level, such as divergent taxation rules, legislative barriers and legal requirements across Member States. As an overarching goal, end-users should get access to direct investments and financial incentives should be promoted to enable long-term direct investments. Investors need a choice of well-regulated instruments, diverse ways of accessing the markets, and transparent options in a cost-effective manner. The CMU must look after the savings of households and integrate retail investors into capital markets. Too often citizens are only offered expensive packaged products by intermediaries rather than direct investments without management fees. To incentivise active retail participation and financial planning, simple, cost-efficient products like listed shares, bonds and low-cost index funds must be easily accessible across the EU. In addition, a focus on increasing sustainable returns will further increase investor engagement. Promoting well-regulated financial instruments such as equities, bonds and ETFs as simple, affordable, liquid, and transparent long-term investment tools should be at the core of CMU's objective to raise investor participation.

When assessing the impact of MiFID, we observe a growth in dark trading and a consequent weakening of the basis of price formation and transparency. End-investors must have easy access to high quality market data for the entire market. Whether their trades are routed through Regulated Markets or through “dark” venues they must be able to verify execution quality of each transaction to ensure they truly received best execution. An end-of-day

post-trade Consolidated Tape that covers 100% of all transactions could benefit investors and the entire market by enabling ex-post best execution analysis.

Policymakers and regulators must reflect on the most appropriate market structure. Transparent, orderly, and non-discriminatory markets are key for the proper functioning of capital markets and for investors. In FESE's view, a streamlined approach to market structure is required based on a simple and essential premise: trading below large sizes should contribute to the price formation process which benefits all types of investors and assists retail investor participation.

Question 1.3 Are there any retail investment products that retail investors are prevented from buying in the EU due to constraints linked to existing EU regulation?

- Yes
 No
 Don't know / no opinion / not applicable

Please explain your answer to question 1.3:

5000 character(s) maximum including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Implementation of key CMU actions fosters retail investments in capital markets, in particular small and mid-caps. There are remaining regulatory obstacles against direct retail investments in listed instruments such as shares, bonds, and low-cost ETFs, which should be removed. For instance, retail investors' access to classic corporate or bank bonds is increasingly limited because of regulation, although corporate bonds with no other embedded derivative than a make-whole clause are considered as "safe and simple products that are eligible for retail clients", as is stated in recital 4 of the recently adopted MiFID II amendments, part of the Capital Markets Recovery Package (the so-called MiFID II "quick fix"). This is due to the inclusion of classic bonds in the PRIIPs Regulation and the increasing number of bond issues availing of the wholesale bond regime for qualified investors with reduced requirements under the Prospectus Regulation. The same applies to provisions for product governance defined in the "Guidelines on MiFID II product governance requirements" which further reduce retail investors' possibilities to invest in classic bonds. Consequently, these bonds cannot be accessed by retail investors unless the issuer of the bond publishes a Key Information Document (KID). However, this is not realistic as the issuers of these corporate bonds are:

- Non-European firms which do not explicitly market their bonds to European retailers and therefore do not publish a KID in Europe
- European firms which do not want to take the risk associated with the publication of a KID. The industry standard is that issuers sell their bonds to their bank consortium and have no further interest in the reselling of these bonds by the banks in particular to retailers. A review of the pension legislation, both at national (2nd and 3rd pillars) and EU levels (e.g. PEPP proposal and pension funds rules) is necessary to foster access of pension savers to these products. Employee share ownership should be promoted to foster an equity culture in Europe. Financial incentives, e.g. tax breaks, should be promoted to enable long-term direct investment.

The German regulator Bafin also noted in a recent report that since the introduction of the KID requirement, there has been a significant decline in trading of corporate bonds in the German market.[1] A true CMU needs to empower citizens to invest across borders without friction and at a low cost. Long-term investors and pension savers will benefit from the implementation of key CMU actions fostering retail investments in capital markets, particularly in small and mid-caps.

Another issue that limits the tradability of corporate bonds is the MiFID II provision to determine a target market in order to distribute bonds and other assets to retail investors. We think the legislator should extend the relief for simple investment products introduced

in the MiFID II “quick fix” - which is currently limited to bonds with a make whole clause - to all bonds without an embedded derivative.

[1] See BaFin Journal, April 2021, p. 32ff.

https://www.bafin.de/DE/PublikationenDaten/BaFinJournal/AlleAusgaben/bafinjournal_alle_no_de.html

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

	1 (strongly disagree)	2 (disagree)	3 (neutral)	4 (rather agree)	5 (strongly agree)	Don't know - No opinion - not applicable
Lack of understanding by retail investors of products?				X		
Lack of understanding of products by advisers?						
Lack of trust in products?				X		
High entry or management costs?						
Lack of access to reliable independent advice?				X		
Lack of access to redress?		X				
Concerns about the risks of investing?						
Uncertainties about the expected returns?						
Lack of available information about products in other EU Member States?						
Other						

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

5000 character(s) maximum including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

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

	1 (strongly disagree)	2 (disagree)	3 (neutral)	4 (rather agree)	5 (strongly agree)	Don't know - No opinion - not applicable
Sufficiently accessible		X				
Understandable for retail investors						
Easy for retail investors to compare with other products						
Offered at competitively priced conditions						
Offered alongside a sufficient range of competitive products						
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?

Please select as many answers as you like

- financial literacy
- digital innovation
- disclosure requirements
- suitability and appropriateness assessment
- reviewing the framework for investor categorisation
- inducements and quality of advice
- addressing the complexity of products
- redress

- product intervention powers
- sustainable investing
- other

Please specify to what other area(s) you refer in your answer to question 1.6:

5000 character(s) maximum including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Please explain your answer to question 1.6:

5000 character(s) maximum including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

There are remaining obstacles against direct retail investments in listed instruments such as shares, bonds, and low-cost ETFs, which should be removed. Employee shares ownership should be promoted to foster an equity culture in Europe. A true CMU needs to empower citizens to realise direct investment opportunities into securities across borders without friction and at low cost. Long term investors and pension savers will benefit by ensuring that the early and successful implementation of key CMU actions fosters retail investments in capital markets, in particular small and mid-caps. Another area includes access of pension savers to invest directly into low-cost, long-term instruments such as equities, bonds and low-cost equity index funds.

Section 2. Financial literacy

Question 2.1 Please indicate whether you agree with the following statement: Increased financial literacy will help retail investors to:

	1 (strongly disagree)	2 (disagree)	3 (neutral)	4 (rather agree)	5 (strongly agree)	Don't know - No opinion - not applicable
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:

5000 character(s) maximum including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Financial literacy rates vary widely across the EU and are particularly low in the Central, Eastern and South-eastern Europe (CESEE) countries. Such low levels of financial education are a great impediment to a successful CMU. On a domestic level, citizens who lack basic financial concepts are not well equipped to make informed financial choices regarding saving, investing, and borrowing. The promotion of public capital markets must go hand in hand with measures to sustain confidence in markets. Efforts should focus on improving financial literacy to facilitate access to direct investments.

Financial literacy should be a core item in the agenda of Member States. Some have already implemented dedicated national bodies in charge of promoting financial education and literacy. In Italy, for instance, the “Comitato EduFin” (Comitato per la programmazione e il coordinamento delle attività di educazione finanziaria - Ministero dell'Economia e delle Finanze (mef.gov.it)) was established with that purpose. Increased co-operation at the EU level between competent authorities is welcomed, providing continuity to educational initiatives, e.g. the EU Investor Week and other global initiatives. FESE also welcomes the launch of the joint European Commission / OECD-INFE project to develop a financial competence framework in the EU.[1]

In this regard, we would suggest to:

- Elaborate EU-wide and/or EU-funded national educational campaigns promoting financial literacy and equity culture. Also, public-private cooperation should be encouraged.
- Consider new technologies that could enhance investors' participation (e.g. by allowing for an ease and useful disclosure of issuers' information). This would enhance the availability of EU data and research by standardising and improving data collection, to enable both companies and investors to understand comparative costs and benefits of different services provided by capital market participants.

Another aspect that could become relevant in the future is retail investors' behaviour with regard to financial advice. A survey by Finra (2021) showed that all investors rely on a variety of information sources. Experienced investors conducted more frequently their own personal research before making financial decisions, compared with new investors who tended to rely more on the advice of friends and family, rather than professionals. Similarly, the ESG Integration Forum (2020) discussed the finding that investors are increasingly conducting their own ESG research, following the trend of increasingly relying more heavily on raw data while making financial decisions, while using the information provided by the sell-side, such as provided by rating firms, only as one information source among many.

While the measures listed above to improve financial literacy are longer-term in nature, there is also potential for shorter-term improvements. Many investors complain about an overload of information. Too many documents, some of which are difficult to understand, quickly overwhelm private investors and deter them from investing. Legislators should limit the information overload and instead bundle and make available the most important information in an easily comprehensible way. This would ensure that people with a lower level of financial literacy could also understand the information given to them.

[1] https://ec.europa.eu/info/events/finance-210426-eu-financial-competence-framework_en

Section 3. Digital innovation

Question 3.1 What might be the benefits or potential risks of an open finance approach (i.e. similar to that developed in the field of payment services which allowed greater access by third party providers to customer payment account information) in the field of retail investments (e.g. enabling more competition, tailored advice, data privacy, etc.)?

Please explain your answer

5000 character(s) maximum including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

FESE supports the European data strategy proposed by the Commission and advocates for a harmonised approach to speed up the use and investment in technologies and data, so avoiding lagging behind other jurisdictions (namely the US and China).

However, we would like to emphasise that the payment services sector is very different to the financial services sector, in terms of the services and products that are provided. For example, financial services aim at enabling investments in a product where a future return is expected, whereas payment services primarily aim at establishing a transaction between a sender and receiver of a product. Therefore, FESE would like to express caution that an ‘open finance’ approach, similar to that made in the field of payment services, may be directly and equally applied in the field of retail investments.

In respect to retail investments, our understanding of the open finance concept could provide a considerable number of opportunities for both traditional financial institutions and FinTechs and IT companies. On the one hand, traditional financial institutions have strong customer relationships and are in control of the customer data, but very often lack digital competencies in data evaluation by new methods like machine learning, deep learning artificial intelligence (AI), and cloud computing. On the other hand, IT companies and FinTechs own such competencies but lack customer data to develop promising business models. Opening access to customer data (either voluntarily or by measures like the revised Payment Services Directive (PSD2) obliging the companies to provide access to these data through standardised Application Programme Interfaces (APIs) makes sense to create a win-win situation for both incumbents and new entrants. FinTechs can make use of bank account data (e.g. creditworthiness) in order to create offers adapted to the individual needs of the customers (e.g. loans). Customers can profit from the bundling of bank accounts and receiving fast, tailored services without the need to submit many documents. Incumbent financial players can make use of third-party services to also distribute their own products.

In addition, the development of such new business cooperation requires trust on both sides, and this trust is lacking at the moment. Incumbents are afraid of losing their close connection to customers, and customers are uncomfortable with providing access to their financial data to third parties. Opening data to third parties also includes considerable risks for customers. The EU approach is to establish trusted data intermediaries taking care of the customer data and providing access only to trusted entities. It is important that data intermediaries are regulated in order to ensure investor protection and to prevent misuse of customer data as well as data leakage. High IT security standards and protection against cyber-attacks are also key. Furthermore, the original data holders, if they have invested in structuring the data and/or improving the data quality, should be fairly compensated by the companies making use of (and money from) this data.

Data should not be considered as a public good.

Question 3.2 What new tools or services might be enabled through open finance or other technological innovation (e.g. digital identity) in the financial sector?

Please explain your answer

5000 character(s) maximum including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

FinTech can help to expand access to financial services for consumers, investors, and companies bringing greater choice and more user-friendly services, often at lower prices. New financial technologies can help individuals as well as SMEs, including start-up and scale-up companies, to access alternative funding sources to support their cash flow and risk capital needs.

Automation and standardisation have changed the way customers interact with market infrastructure providers, leading to an explosion in data volumes. Technological developments in relation to data analytics, Field Programmable Gate Array (FPGA), mobile technology, cloud computing, machine learning, AI and blockchain are opening new possibilities to the services exchanges use and provide to customers.

In particular, automation and standardisation could also provide distributors of financial products with digital support in the fulfilment of their tax obligations towards retail customers, especially for those asset classes where fiscal incentives have been introduced (e.g. “PIR” and “PIR Alternativi” in Italy”).

Finally, to enable customers to use different offers in a more decentralised financial ecosystem, a digital identity is key. Customers should be able to conclude contracts with companies offering tailored products and services. Also, the possibility to switch quickly between providers offering better prices should be safeguarded. Lengthy identification processes hamper new business models and competition. Approaches like electronic Identification, Authentication and trust Services (eIDAs), making national identification schemes interoperable at the borders, and concepts of self-sovereign identities (SSI) are key enablers to make open finance and decentralised finance work.

Question 3.3 Should the information available in various pre-contractual disclosure documents be machine-readable?

- Yes
 No
 Don't know / no opinion / not applicable

Please explain your answer to question 3.3:

5000 character(s) maximum including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

We recommend the incremental introduction of standardised, digitalised, and machine-readable reporting formats for fulfilling investors' needs. In this regard, we support industry-led initiatives directed at defining standardised formats for machine-readable reporting, in order to ensure a harmonised approach also from a technical perspective.

Question 3.4 Given the increasing use of digital media, would you consider that having different rules on marketing and advertising of investment products constitutes an obstacle for retail investors to access investment products in other EU markets?

- Yes
 No
 Don't know / no opinion / not applicable

Please explain your answer to question 3.4:

5000 character(s) maximum including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Question 3.5 Might there be a need for stricter enforcement of rules on online advertising to protect against possible mis-selling of retail investment products?

- Yes
- No
- Don't know / no opinion / not applicable

Please explain your answer to question 3.5:

5000 character(s) maximum including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

An improvement of enforcement rules applicable to online advertising can avoid mis-selling of complex financial products usually not traded on regulated markets nor collateralised, including Contracts For Difference (CFDs) and binary options.

Question 3.6 Would you see a need for further EU coordination /harmonisation of national rules on online advertising and marketing of investment products?

- Yes
- No
- Don't know / no opinion / not applicable

Please explain your answer to question 3.6, including which rules would require particular attention:

5000 character(s) maximum including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Following ESMA's statement regarding the case of GameStop, FESE supports clear rules and supervisory practices in particular with reference to Over The Counter (OTC) retail products sold to private investors.

Question 3.7 How important is the role played by social media platforms in influencing retail investment behaviour (e.g. in facilitating communication between retail investors, but also increasing herding behaviour among investors or for large financial players to collect data on interest in certain stocks or financial products)?

- Not at all important
- Rather not important
- Neutral
- Somewhat important
- Very important
- Don't know / no opinion / not applicable

Please explain your answer to question 3.7:

5000 character(s) maximum including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

The GameStop/AMC short squeeze in the US at the beginning of 2021, which was largely driven by retail investors acting based on information shared on social media, has shown that these types of platforms more frequently play a role in driving investment decisions of retail customers. Although such behaviour also existed in the past where people were influenced by legacy media (e.g., newspapers), the speed of sharing information has considerably grown in recent years. ESMA issued a statement, urging retail investors "to be careful when taking investment decisions based exclusively on information from social media and other unregulated online platforms (...). A key step for any investor before making an investment decision is to gather investment information from reliable sources

(...).” While the new appetite of retail investors for stock market investing is an important and positive trend to be strongly supported, it is important to strike the balance. To ensure long-term participation of retail investors alongside professional investors, a high degree of confidence in financial markets and the confidence to continue investing in financial instruments, it is vital to offer the retail investors the proper trading environment.

Question 3.8 Social media platforms may be used as a vehicle by some users to help disseminate investment related information and may also pose risks for retail investment, e.g. if retail investors rely on unverified information or on information not appropriate to their individual situation. How high do you consider this risk?

- Not at all significant
- Not so significant
- Neutral
- Somewhat significant
- Very significant
- Don't know / no opinion / not applicable

Question 3.9 Do the rules need to be reinforced at EU level with respect to dissemination of investment related information via social media platforms?

- Yes
- No
- Don't know / no opinion / not applicable

Please explain your answer to question 3.9:

5000 character(s) maximum including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

FESE supports ESMA's action in warning investors about the risks of relying solely on social media information for investment decisions. In addition, they raised awareness of certain regulatory requirements in order to avoid market abuse. This includes the dissemination of investment recommendations through any media and online platforms, as these platforms are subject to several regulatory requirements. We support ESMA's positive stand on the increased retail investors' participation in the market but also its efforts in monitoring and scrutinising the developments around retail trading platforms' business models.

Social and mirror trading should be carefully monitored by regulators as it could create market integrity issues as well as significant losses for private investors following such trading practices. It should be ensured that social media platforms that offer market access as well as online brokers provide full transparency concerning risk-checks, investor profiling, disclosure of costs and any agreement in place so as to offer no-fee trading. This includes PFOF, routing of orders, etc. The same rules and enforcement of these rules applicable to other providers should be applied to them.

Question 3.10 Do you consider that retail investors are adequately protected when purchasing retail investments on-line, or do the current EU rules need to be updated?

- Yes, consumers are adequately protected
- No, the rules need to be updated
- Don't know / no opinion / not applicable

Please explain your answer to question 3.10:

5000 character(s) maximum including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

FESE supports Better Finance’s position on the case of online brokerage and the case of GameStop earlier this year. This development was largely driven by internet-savvy retail investors using online brokerage platforms providing commission-free securities. While at first glance, these online brokers may seem to provide cheap brokerage services, their business model could be based on the PFOF mechanism and constitute a conflict of interest between their duties to their clients and to third parties. In many instances, orders are routed to platforms or dark pools, where there is no transparency and the “market maker” can use this pre-retail trade info to trade on its own account and/or to derive a profit from the spread and share it in one way or another with the broker. This leads to consumer detriment, poorer execution prices, as well as sometimes to the orders not being executed at all, and it affects the price discovery and formation process. This can be detrimental in the long-term for EU equity trading.

In addition, ESMA has already highlighted the lack of transparency related to the marketing and distribution of OTC retail products including CFDs and binary options. In this regard, suitability assessment and client categorisation methodologies used by online platforms should be carefully assessed. This is to ensure that ESMA indications and warnings - according to which CFDs providers should de-incentivise their retail clients to ask with ease-of-use the status of professional clients - are applied (ref. Statement of ESMA on the Application of Product Intervention Measures under Article 40 and 42 of Regulation EU 600/2014 by CFD providers).

Question 3.11 When products are offered online (e.g. on comparison websites, apps, online brokers, etc.) how important is it that lower risk or not overly complex products appear first on listings?

- Not at all important
- Rather not important
- Neutral
- Somewhat important
- Very important
- Don’t know / no opinion / not applicable

Please explain your answer to question 3.11:

5000 character(s) maximum including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Section 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:

	1 (strongly disagree)	2 (disagree)	3 (neutral)	4 (rather agree)	5 (strongly agree)	Don't know - No opinion - not applicable
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	

Please explain your answer to question 4.1:

5000 character(s) maximum including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

In our opinion, the level of pre-contractual disclosure relating to listed products is sufficient (e.g. Prospectus Directive and MiFID). Therefore, we believe that providing Key Information Documents (KIDs) for the offer of classic bonds, which implies the repayment of the nominal value, is unnecessary.

Question 4.2 Please assess the different elements for each of the following pieces of legislation:

Question 4.2.1 PRIIPs Key Information Document

Question 4.2.1 a) PRIIPs: Is the pre-contractual information provided to retail investors for each of the elements below sufficiently understandable and reliable so as to help them take retail investment decisions? Please assess the level of understandability:

	1 (very low)	2 (rather low)	3 (neutral)	4 (rather high)	5 (very high)	Don't know - No opinion - not applicable
PRIIPs Key Information Document (as a whole)		X				
Information about the type, objectives and			X			

	1 (very low)	2 (rather low)	3 (neutral)	4 (rather high)	5 (very high)	Don't know - No opinion - not applicable
functioning of the product						
Information on the risk-profile of the product, and the summary risk indicator			X			
Information about product performance	X					
Information on cost and charges	X					
Information on sustainability aspects of the product			X			

Question 4.2.1 b) 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? Please assess the level of reliability:

	1 (very low)	2 (rather low)	3 (neutral)	4 (rather high)	5 (very high)	Don't know - No opinion - not applicable
PRIIPS Key Information Document (as a whole)						X
Information about the type, objectives and functioning of the product						X
Information on the risk-profile of the product, and the summary risk indicator						X
Information about product performance						X
Information on cost and charges						X
Information on sustainability aspects of the product						X

Question 4.2.1 c) PRIIPS: Is the amount of information provided for each of the elements below insufficient, adequate, or excessive?

	1 (insufficient)	2 (adequate)	3 (excessive)	Don't know - No opinion - not applicable
PRIIPS Key Information Document (as a whole)				X
Information about the type, objectives and functioning of the product				X
Information on the risk-profile of the product, and the summary risk indicator				X
Information about product performance				X
Information on cost and charges				X
Information on sustainability aspects of the product				X

Please explain your answer to question 4.2.1:

5000 character(s) maximum including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

FESE endorses Better Finance's (BF) position on the need to include a reference in the PRIIPs KID to the product's past performance and actual costs and to eliminate the misleading and unclear information in the KID from the cost, risk, and performance sections.

FESE supports BF's opinion that future results cannot be accurately predicted, irrespective of the method applied. While there are several advantages of the new form (e.g. better capturing the actual performance between the favourable and unfavourable scenarios), it estimates the returns of the underlying portfolio, and not of the PRIIP. It also generalises across PRIIPs, which requires supplementary explanations and reduces comparability. Within their response to the European Supervisory Agency's JCP on amendments to the PRIIPs KID, BF proposes to replace the stochastic model of estimating returns with illustrative scenarios, where it would be shortly explained to the individual saver what could happen with the investment at a certain period of time and under certain market conditions (favourable, unfavourable, moderate).

With regards to past performance, FESE also supports BF's consideration of it as a pivotal element for making an informed investment decision. While past performance is not a reliable indicator of future results, it does show whether the asset manager achieved its stated investment objectives in the past.

With the introduction of the PRIIPs Regulation, legislators introduced a coordinated set of transparency rules for products offered to retail investors. This is to ensure that investors

can understand and compare the products they are offered. While we appreciate the rationale of this approach in relation to packaged products, the same framework is less easily applied to regulated markets which, regarded as “manufacturers” of ETDs under PRIIPs, are required to provide KIDs.

FESE believes ETDs should not be in the scope of PRIIPs. Unlike “packaged products” (in the traditional sense of the term), listed derivatives are not issued by exchanges. Exchanges do not become a counterparty to the retail investor (or anyone else for that matter) committing to any pay-outs. Indeed, exchanges have no relation with end investors as trading in the products occurs between members, i.e. MiFID licensed investment firms. This is why exchanges are unable to complete a KID according to the proposed set of rules.

Regulators have rightly addressed this by allowing for a tailored “standard KID” for ETDs. This has successfully addressed the issues with the current framework, but we believe a recalibration of the scope of the PRIIPs Regulation would be beneficial to its goals.

In addition, it has been our experience that the PRIIPs Regulation has also led to a decline in retail investments in corporate bonds. Simple classes of bonds with make-whole call provisions are often classified as PRIIPs. The MiFID II target market definition further narrows the available range. The consequent decline in trading volumes in corporate bonds has also had an impact on the overall market liquidity. We would therefore welcome a review by co-legislators and regulators on the unintended consequences of PRIIPs, with action to mitigate them, in order to enable direct investments by retail investors in bonds.

Question 4.2.2 Insurance Product Information Document

Question 4.2.2 a) IDD: Is the pre-contractual information provided to retail investors for each of the elements below sufficiently understandable and reliable so as to help them take retail investment decisions? Please assess the level of understandability:

	1 (very low)	2 (rather low)	3 (neutral)	4 (rather high)	5 (very high)	Don't know - No opinion - not applicable
Insurance Product Information Document (as a whole)						
Information about the insurance distributor and its services						
Information on the insurance product (conditions, coverage, etc.)						
Information on cost and charges						

Question 4.2.2 b) IDD: 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? Please assess the level of reliability:

	1 (very low)	2 (rather low)	3 (neutral)	4 (rather high)	5 (very high)	Don't know - No opinion - not applicable
Insurance Product Information Document (as a whole)						
Information about the insurance distributor and its services						
Information on the insurance product (conditions, coverage, etc.)						
Information on cost and charges						

Question 4.2.2 c) IDD: Is the amount of information provided for each of the elements below insufficient, adequate, or excessive?

	1 (insufficient)	2 (adequate)	3 (excessive)	Don't know - No opinion - not applicable
Insurance Product Information Document (as a whole)				
Information about the insurance distributor and its services				
Information on the insurance product (conditions, coverage, etc.)				
Information on cost and charges				

Please explain your answer to question 4.2.2:

5000 character(s) maximum including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

--

Question 4.2.3 PEPP Key Information Document

Question 4.2.3 a) PEPP: Is the pre-contractual information provided to retail investors for each of the elements below sufficiently understandable and reliable

so as to help them take retail investment decisions? Please assess the level of understandability:

	1 (very low)	2 (rather low)	3 (neutral)	4 (rather high)	5 (very high)	Don't know - No opinion - not applicable
PEPP Key Information Document (as a whole)						
Information about the PEPP provider and its services						
Information about the safeguarding of investments						
Information on cost and charges						
Information on the pay-out phase						

Question 4.2.3 b) PEPP: 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? Please assess the level of reliability:

	1 (very low)	2 (rather low)	3 (neutral)	4 (rather high)	5 (very high)	Don't know - No opinion - not applicable
PEPP Key Information Document (as a whole)						
Information about the PEPP provider and its services						
Information about the safeguarding of investments						
Information on cost and charges						
Information on the pay-out phase						

Question 4.2.3 c) PEPP: Is the amount of information provided for each of the elements below insufficient, adequate, or excessive?

	1 (insufficient)	2 (adequate)	3 (excessive)	Don't know - No opinion - not applicable
PEPP Key Information Document (as a whole)				
Information about the PEPP provider and its services				
Information about the safeguarding of investments				
Information on cost and charges				
Information on the pay-out phase				

Please explain your answer to question 4.2.3:

5000 character(s) maximum including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Question 4.3 Do you consider that the language used in pre-contractual documentation made available to retail investors is at an acceptable level of understandability, in particular in terms of avoiding the use of jargon and sector specific terminology?

- Yes
- No
- Don't know / no opinion / not applicable

Please explain your answer to question 4.3:

5000 character(s) maximum including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Question 4.4 At what stage of the retail investor decision making process should the Key Information Document (PRIIPs KID, PEPP KID, Insurance Product Information Document) be provided to the retail investor? Please explain your answer:

5000 character(s) maximum including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

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

- Yes
- No
- Don't know / no opinion / not applicable

Please explain your answer to question 4.5:

5000 character(s) maximum including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Question 4.6 Should pre-contractual documentation for retail investments enable as far as possible a clear comparison between different investment products, including those offered by different financial entities (for example, with one product originating from the insurance sector and another from the investment funds sectors)?

- Yes
 No
 Don't know / no opinion / not applicable

Please explain your answer to question 4.6:

5000 character(s) maximum including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

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
 No
 Don't know / no opinion / not applicable

Please explain your answer to question 4.7 a), and indicate which information documents are concerned:

5000 character(s) maximum including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Question 4.7 b) 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 risk information is calculated and presented?

- Yes
 No
 Don't know / no opinion / not applicable

Please explain your answer to question 4.7 b), and indicate which information documents are concerned:

5000 character(s) maximum including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Question 4.7 c) 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 performance information is calculated and presented?

- Yes
 No
 Don't know / no opinion / not applicable

Please explain your answer to question 4.7 c), and indicate which information documents are concerned:

5000 character(s) maximum including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

FESE endorses Better Finance's position that the PRIIPs KID future performance information stands in contrast to some MIFID II rules concerning information disclosure, especially considering the aspect that future performance information based on past performance is to be accompanied by a warning that it is not a reliable indicator.

Question 4.7 d) 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 other elements?

- Yes
- No
- Don't know / no opinion / not applicable

Please explain your answer to question 4.7 d), specifying what those elements are and indicating which information documents are concerned:

5000 character(s) maximum including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

We emphasise the potential conflict between the PRIIPs Regulation and MiFID II with regard to the role of a neutral regulated market. FESE believes that compliance with some PRIIPs requirements, in particular the 'target audience' and 'recommended holding period' requirements, could cause conflicts with separate regulatory obligations under MiFID II. More specifically, FESE is concerned that some of these requirements could compromise the neutral role of exchanges under different regulatory frameworks. For instance, some requirements under MiFID II are geared towards investment firms. In particular, Articles 24 and 25 of MiFID II include specific obligations for investment firms regarding investment advice, including the suitability and appropriateness assessment. In addition, Article 16 of MiFID II also mandates that investment firms manufacturing financial instruments are responsible for identifying the 'target market' for these financial instruments. In such a position, a retail firm would need to be in direct contact from investment idea to end result, and in order to guarantee that, retailers need a constant exchange with distributors/investment firms which is not the role of a marketplace in the financial system.

In addition, the increased regulatory requirements have resulted in decreasing the opportunity for retail investors to invest directly in corporate bonds. This is opposed to the EU's objective of creating a CMU. Rather than barriers to investments being dismantled, new ones are being created. Thus, the new rules hinder retail investors from planning independently for retirement by including corporate bonds in their portfolios in light of increasing life expectancy and demographic changes. Retail investors' savings are hence not being mobilised to finance the economy.

In its characterisation of the situation, the joint committee^[1] of the European Supervisory Authorities confirmed FESE members' assessment. In practice, even simple classes of bonds with make-whole call provisions are often classified as PRIIPs. Furthermore, since the new rules entered into force, trading volumes in corporate bonds have declined significantly with an impact on the overall market liquidity ^[2]. We highly welcome that, as part of the MiFID "quick fix", bonds with a make whole clause were excluded from the MiFID II target market definition. However, we urge the co-legislators to expand this approach to other bonds as well.

FESE would like to call for a united effort by legislators and regulators at both European and national levels to acknowledge the burdensome situation built up around PRIIPs Regulation and act in order to enable direct investments by retail investors in bonds once again.

[1] https://www.esma.europa.eu/sites/default/files/library/jc-2019-64_priips_kid_supervisory_statement_bonds.pdf

[2] See for the German market BaFin Journal, April 2021, p. 32ff.
https://www.bafin.de/DE/PublikationenDaten/BaFinJournal/AlleAusgaben/bafinjournal_alle_nod_e.html

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

	1 (not relevant)	2 (relevant, but not crucial)	3 (essential)	Don't know - No opinion - not applicable
Product objectives / main product features				
Costs				
Past performance				
Guaranteed returns				
Capital protection				
Forward-looking performance expectation				
Risk				
Ease with which the product can be converted into cash				
Other				

Please specify to what other type(s) of product information you refer in your answer to question 4.8:

5000 character(s) maximum including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

--

Please explain your answer to question 4.8:

5000 character(s) maximum including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

--

Question 4.9 Do you consider that the current regime is sufficiently strong to ensure costs and cost impact transparency for retail investors? In particular, would an annual ex post information on costs be useful for retail investors in all cases?

- Yes
- No
- Don't know / no opinion / not applicable

Please explain your answer to question 4.9:

5000 character(s) maximum including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

--

Question 4.10 What should be the maximum length of the PRIIPs Key Information Document, or a similar pre-contractual disclosure document, in terms of number of words?

Please explain your answer:

5000 character(s) maximum including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

--

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

Please explain your answer:

5000 character(s) maximum including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Policy makers need to consider both the complexity of the instrument being issued and the nature of the investor. There is a need to balance investor protection with a potentially negative impact on issuers due to increased costs and administrative burdens.

With the introduction of the PRIIPs Regulation, legislators introduced a coordinated set of transparency rules for products offered to retail investors. This is to ensure that investors can understand and compare the products they are offered. While we appreciate the rationale of this approach in relation to packaged products, the same framework is less easily applied to regulated markets which, regarded as “manufacturers” of ETDs under PRIIPs, are required to provide KIDs.

FESE believes ETDs should not be in the scope of PRIIPs. Unlike “packaged products” (in the traditional sense of the term), listed derivatives are not issued by exchanges. Exchanges do not become a counterparty to the retail investor (or anyone else for that matter) committing to any pay-outs. Indeed, exchanges have no relation with end investors as trading in the products occurs between members, i.e. MiFID licensed investment firms. This is why exchanges are unable to complete a KID according to the proposed set of rules.

Regulators have rightly addressed this by allowing for a tailored “standard KID” for ETDs. This has successfully addressed the issues with the current framework, but we believe a recalibration of the scope of the PRIIPs Regulation would be beneficial to its goals.

In addition, it has been our experience that the PRIIPs Regulation has also led to a decline in retail investments in corporate bonds. Simple classes of bonds with make-whole call provisions are often classified as PRIIPs. The MiFID II target market definition further narrows the available range. The consequent decline in trading volumes in corporate bonds has also had an impact on the overall market liquidity. We would therefore welcome a review by co-legislators and regulators on the unintended consequences of PRIIPs, with action to mitigate them, in order to enable direct investments by retail investors in bonds.

Another example could represent the issuance and distribution of securitised derivatives, including turbos, which is comprehensively regulated, inter alia through prospectus law, MiFID II/MiFIR and the PRIIPs Regulation. The prospectus contains a comprehensive description of all product features, the issuer, and the risks associated with the issuer and product. This provides investors with an adequate, legally required level of information for securitised derivatives, thereby guaranteeing investor protection. The prior approval of the prospectus by the national competent supervisory authority ensures compliance with the provisions of prospectus law. This requirement to prepare and approve a prospectus clearly distinguishes securitised derivatives products from CFDs. As CFDs are not securities, there is no requirement to draw up a prospectus.

Securitised derivatives are part of a bank’s standard range of products, and their design is very transparent for retail investors due to the provisions on the target market and cost transparency. Furthermore, there is a suitability test that clients need to pass to be able to trade these products, regardless of whether they are self-advised or not. Trading venues fulfil pre- and post-trade transparency requirements, have implemented strict trading rules and an independent market surveillance system. This differs from the non-standardised pricing and settlement of CFDs, as highlighted by ESMA in its Q&As from November 2019[1]. In addition, there is a common European standard on investor protection for securitised derivatives - this allows investors to understand the terms of

the products. We see that turbos' investors are well informed. We acknowledge that turbos trades are usually executed without investment advice but believe that this is because the average turbos' investor does not rely on investment advice but takes his/her own, well thought out, trading decisions.

In many European countries, national regulators have been very strict for many years about all marketing and educational material created and published by securitised derivatives issuers. Some NCAs require issuers to first obtain explicit approval before any document can be published; others have provided guidelines that issuers must respect. These measures ensure that issuers provide enough risk warning and not only focus exclusively on the benefits of securities derivatives but also draw investors' attention to the risks of such financial instruments. For these reasons, we strongly oppose the proposed product intervention measures in the turbo market by the Dutch AFM.

[1] See <https://www.esma.europa.eu/file/48574/download?token=cVvWYFsq>

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

- On paper by default?
- In electronic format by default, but on paper upon request?
- In electronic format only?
- Don't know / no opinion / not applicable

Please explain your answer to question 4.12:

5000 character(s) maximum including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

FESE believes that digitalisation is key to enabling broad and efficient use of information. From a report users' perspective, there might be obstacles to obtaining data, which should be addressed to make it easier to sort through. At the same time, there should be no disproportionate burden on report preparers. Companies should not be forced to publish in costly digital formats where such an obligation is not required by the relevant reporting legislation. We recommend the incremental introduction of standardised, digitalised, and machine-readable reporting formats for fulfilling investors' needs in respect to finding and comparing data available across the EU.

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

- Not at all important
- Rather not important
- Neutral
- Somewhat important
- Very important
- Don't know / no opinion / not applicable

Please explain your answer to question 4.13:

5000 character(s) maximum including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

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?

Please explain your answer:

5000 character(s) maximum including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

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

	1 (not at all important)	2 (rather not important)	3 (neutral)	4 (somewhat important)	5 (very important)	Don't know - No opinion - not applicable
There are clear rules to describe presentation formats (e.g. readable font size, use of designs/ colours, etc.)?						
Certain key information (e.g. fees, charges, payment of inducements, information relative to performance, etc.) is displayed in ways which highlight the prominence?						
Format of the information is adapted to use on different kinds of device (for example through use of layering)?						
Appropriately labelled and relevant hyperlinks are used to provide access to supplementary information.						
Use of hyperlinks is limited (e.g. one click only -						

	1 (not at all important)	2 (rather not important)	3 (neutral)	4 (somewhat important)	5 (very important)	Don't know - No opinion - not applicable
no cascade of links)						
Contracts cannot be concluded until the consumer has scrolled to the end of the document						
Other?						

Please specify to what other important element you refer in your answer to question 4.15:

5000 character(s) maximum including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Please explain your answer to question 4.15:

5000 character(s) maximum including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Section 5. The PRIIPs Regulation

Core objectives of the PRIIPs Regulation

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

a) Improving the level of understanding that retail investors have of retail investment products:

- Yes
 No
 Don't know / no opinion / not applicable

Please explain your answer to question 5.1 a):

5000 character(s) maximum including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

b) Improving the ability of retail investors to compare different retail investment products, both within and among different product types:

- Yes
 No
 Don't know / no opinion / not applicable

Please explain your answer to question 5.1 b):

5000 character(s) maximum including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

c) Reducing the frequency of mis-selling of retail investment products and the number of complaints:

- Yes
 No
 Don't know / no opinion / not applicable

Please explain your answer to question 5.1 c):

5000 character(s) maximum including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

d) 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:

- Yes
 No
 Don't know / no opinion / not applicable

Please explain your answer to question 5.1 d):

5000 character(s) maximum including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Bonds and derivatives markets with deep pools of high-quality liquidity are a crucial component of healthy ecosystems as well as an important contributor to competitive, transparent, and stable EU financial markets. Ensuring transparency in these markets

requires tailored and flexible rules that balance the need for enhanced transparency whilst recognising the specificities and nuanced working of such markets.

Under the current regulation, long delays and the possibility to publish selected data points of one single transaction in bonds over a certain period is not only overly complex but it also prevents usable transparency to the public. This is to the disadvantage of EU investors, as proper transparency data in bonds could also enable passive investment in bonds for the benefit of investors and issuers alike.

These aspects stand in opposition to the EU's objective of creating a CMU. Rather than barriers to investments being dismantled, new ones are being created. Thus, the new rules hinder retail investors from planning independently for retirement by including corporate bonds in their portfolios in light of increasing life expectancy and demographic changes. Retail investors' savings are hence not being mobilised to finance the economy.

In its characterisation of the situation, the joint committee^[1] of the European Supervisory Authorities (ESAs) confirmed FESE members' assessment. In practice, even simple classes of bonds with make-whole call provisions are often classified as PRIIPs. We believe that the PRIIPs Regulation should not apply to the offer of corporate bonds. The increased regulatory requirements have diminished the level of liquidity in the bond market and introduced obstacles for retail investors wanting to invest directly in corporate bonds. This is the reason why we believe that providing Key Information Documents (KIDs) is unnecessary in relation to the offer of classic bonds, which implies the repayment of the nominal value (please see the answer to Question 4.1).

The available range is further restricted by the MiFID II target market definition. Furthermore, since the new rules entered into force, trading volumes in corporate bonds have declined significantly with an impact on the overall market liquidity ^[2]. We highly welcome that in the course of the MiFID "quick fix" bonds with make whole clause were excluded from the MIFID II target market definition. However, we urge the co-legislators to expand this approach to other bonds as well.

We would also suggest revising the definition of complex products to ensure that classic bonds do not fall within such a definition. By classic bonds we mean those products which imply the full reimbursement of the nominal amount. Please also refer to the answer to Question 6.9 containing suggestions aimed at improving the target market determination process.

[1] https://www.esma.europa.eu/sites/default/files/library/jc-2019-64_priips_kid_supervisory_statement_bonds.pdf

[2] See for the German market BaFin Journal, April 2021, p. 32ff.

https://www.bafin.de/DE/PublikationenDaten/BaFinJournal/AlleAusgaben/bafinjournal_alle_nod_e.html.

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

Please explain your answer to question 5.2:

5000 character(s) maximum including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

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

	Yes	No	Don't know - No opinion - Not applicable
Requiring PRIIPs, KIDs, and EPP KIDs to be uploaded to a searchable EU wide database			
Requiring PRIIPs, KIDs and PEPP KIDs to be made available in a dedicated section on manufacturer and distributor websites			
Other			

Please specify to what other improvement(s) you refer in your answer to question 5.2.1:

5000 character(s) maximum including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Please explain your answer to question 5.2.1:

5000 character(s) maximum including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

The PRIIPs KID

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

- Yes
 No
 Don't know / no opinion / not applicable

Please explain your answer to question 5.3:

5000 character(s) maximum including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

With the introduction of the PRIIPs Regulation, legislators introduced a coordinated set of transparency rules for products offered to retail investors. This is to ensure that investors can understand and compare the products they are offered. While we appreciate the rationale of this approach in relation to packaged products, the same framework is less easily applied to regulated markets which, regarded as “manufacturers” of ETDs under PRIIPs, are required to provide KIDs.

FESE believes ETDs should not be in the scope of PRIIPs. Unlike “packaged products” (in the traditional sense of the term), listed derivatives are not issued by exchanges. Exchanges do not become a counterparty to the retail investor (or anyone else for that matter) committing to any pay-outs. Indeed, exchanges have no relation with end investors as trading in the products occurs between members, i.e. MiFID licensed investment firms. This is why exchanges are unable to complete a KID according to the proposed set of rules.

Regulators have rightly addressed this by allowing for a tailored “standard KID” for ETDs. This has successfully addressed the issues with the current framework, but we believe a recalibration of the scope of the PRIIPs Regulation would be beneficial to its goals.

In addition, it has been our experience that the PRIIPs Regulation has also led to a decline in retail investments in corporate bonds. Simple classes of bonds with make-whole call

provisions are often classified as PRIIPs. The MiFID II target market definition further narrows the available range. The consequent decline in trading volumes in corporate bonds has also had an impact on the overall market liquidity. We would therefore welcome a review by co-legislators and regulators on the unintended consequences of PRIIPs, with action to mitigate them, in order to enable direct investments by retail investors in bonds.

Therefore, FESE supports Better Finance’s proposals to simplify the KID:

- Eliminating future performance forecasts from the PRIIPs KID.
- Eliminating the *Reduction-in-future-Yield* as a measurement of costs, which are considered to be not comprehensive and unreliable.
- Expanding the material scope of PRIIPs to include personal pension products (PPPs) and ensure harmonisation of the PRIIPs KID with that of the PEPP KID.
- Eliminating the double reporting burden for securities issuers and removing the confusion for individual investors, in particular for issuers of corporate bonds to the retail sector; the summary prospectus is considered enough.
- Simplifying the estimation of implicit transaction costs (market movements) in order to avoid “negative” cost disclosures to individual investors.
- In addition, the KID would benefit from more guidance and a clear methodology provided by regulators in order to clarify core concepts, such as cost calculation or the summary of the risk indicator. Such clearer guidance could improve the comparability of the KID, as if those that are subject to own concepts for calculations developed by the issuers themselves, discrepancies that might hinder comparability may arise.

Implementation and supervision of the PRIIPs Regulation

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

- Yes
- No
- Don’t know / no opinion / not applicable

Please explain your answer to question 5.4:

5000 character(s) maximum including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

One example would be if an issuer does not classify a bond as PRIIP or non-PRIIP, then it is the distributor who needs to make the decision, which could be ambiguous.

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

- Yes
- No
- Don’t know / no opinion / not applicable

Please explain your answer to question 5.5:

5000 character(s) maximum including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

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

Question 5.6 a) A single PRIIPs KID (cost in € per individual product)
 €

Please explain your answer to question 5.6 a):

5000 character(s) maximum including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Question 5.6 b) A single PEPP KID (cost in € per individual product)
 €

Please explain your answer to question 5.6 b):

5000 character(s) maximum including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Question 5.6 c) A single Insurance Product Information Document (cost in € per individual product)
 €

Please explain your answer to question 5.6 c):

5000 character(s) maximum including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Question 5.7 What is in your experience as a product manufacturer the cost of updating:**Question 5.7 a) A single PRIIPs KID (cost in € per individual product)**
 €

Please explain your answer to question 5.7 a):

5000 character(s) maximum including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Question 5.7 b) A single PEPP KID (cost in € per individual product)
 €

Please explain your answer to question 5.7 b):

5000 character(s) maximum including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Question 5.7 c) A single Insurance Product Information Document (cost in € per individual product)
 €

Please explain your answer to question 5.7 c):

5000 character(s) maximum including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Question 5.8 Which factors of preparing, maintaining, and distributing the KID are the most costly?*Please select as many answers as you like*

- Collecting product data/inputs
- Performing the necessary calculations
- Updating IT systems

- Quality and content check
- Outsourcing costs
- Other

Please specify to what other factor(s) you refer in your answer to question 5.8:

5000 character(s) maximum including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Please explain your answer to question 5.8:

5000 character(s) maximum including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Multiple-Option Products

Question 5.9 Should distributors and/or manufacturers of Multiple Option Products be required to provide retail investors with a single, tailor-made, KID, reflecting the preferred underlying portfolio of each investor?

What should happen in the case of ex-post switching of the underlying investment options?

- Yes
- No
- Don't know / no opinion / not applicable

Please explain your answer to question 5.9:

5000 character(s) maximum including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Scope

Question 5.10 Should the scope of the PRIIPs Regulation include the following products?

a) Pension products which, under national law, are recognised as having the primary purpose of providing the investor with an income in retirement and which entitle the investor to certain benefits:

- Yes
- No
- Don't know / no opinion / not applicable

Please explain why the scope of the PRIIPs Regulation should include these pension products:

5000 character(s) maximum including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Please explain your answer to question 5.10 a):

5000 character(s) maximum including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

With MiFID II/MiFIR and the PRIIPs Regulation, legislators intended to strengthen the regulatory framework to increase transparency, better protect investors, and rebuild their confidence in financial markets following the global financial crisis in 2008.

Fostering retail investors' participation in capital markets is a key objective of the EU Capital Markets Union (CMU); however, in some instances, various provisions included in

the above regulations have created unintended consequences. This is the case, for example, in corporate bonds markets where the requirements have become so onerous it has become a lot less attractive to make corporate bonds available to retail. This, ultimately, means retail investors can no longer access a lot of these instruments - a situation that recent figures from Bafin for the German market confirmed [1]. Furthermore, since the new rules entered into force, trading volumes in corporate bonds have declined significantly with an impact on the overall market liquidity.

The increased regulatory requirements have resulted in decreasing the opportunity for retail investors to invest directly in corporate bonds. This runs contrary to the EU's objective of creating a CMU. Rather than barriers to investments being dismantled, new ones are being created. Thus, the new rules hinder retail investors from planning independently for retirement by including corporate bonds in their portfolios in light of increasing life expectancy and demographic changes. Retail investors' savings are hence not being mobilised to finance the economy.

[1] See BaFin Journal, April 2021, p. 32ff.

https://www.bafin.de/DE/PublikationenDaten/BaFinJournal/AlleAusgaben/bafinjournal_alle_nod_e.html.

b) Individual pension products for which a financial contribution from the employer is required by national law and where the employer or the employee has no choice as to the pension product or provider:

- Yes
- No
- Don't know / no opinion / not applicable

Please explain why the scope of the PRIIPs Regulation should include these individual pension products:

5000 character(s) maximum including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

N/A

Please explain your answer to question 5.10 b):

5000 character(s) maximum including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

With MiFID II/MiFIR and the PRIIPs Regulation, legislators intended to strengthen the regulatory framework to increase transparency, better protect investors, and rebuild their confidence in financial markets following the global financial crisis in 2008.

Fostering retail investors' participation in capital markets is a key objective of the EU Capital Markets Union (CMU); however, in some instances, various provisions included in the above regulations have created unintended consequences. This is the case, for example, in corporate bonds markets where the requirements have become so onerous it has become a lot less attractive to make corporate bonds available to retail. This, ultimately, means retail investors can no longer access a lot of these instruments - a situation that recent figures from Bafin for the German market confirmed [1]. Furthermore, since the new rules entered into force, trading volumes in corporate bonds have declined significantly with an impact on the overall market liquidity.

The increased regulatory requirements have resulted in decreasing the opportunity for retail investors to invest directly in corporate bonds. This runs contrary to the EU's objective of creating a CMU. Rather than barriers to investments being dismantled, new ones are being created. Thus, the new rules hinder retail investors from planning independently for retirement by including corporate bonds in their portfolios in light of increasing life expectancy and demographic changes. Retail investors' savings are hence not being mobilised to finance the economy.

[1] See BaFin Journal, April 2021, p. 32ff.
https://www.bafin.de/DE/PublikationenDaten/BaFinJournal/AlleAusgaben/bafinjournal_alle_node.html.

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

- Yes
 No
 Don't know / no opinion / not applicable

Please explain your answer to question 5.11:

5000 character(s) maximum including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

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.

Question 5.12.1 Should the review and update occur more regularly?

- Yes
 No
 Don't know / no opinion / not applicable

Question 5.12.2 Should this depend on the characteristics of the PRIIPs?

- Yes
 No
 Don't know / no opinion / not applicable

Question 5.12.3 What should trigger the update of PRIIP KIDs?

5000 character(s) maximum including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Please explain your answer to question 5.12:

5000 character(s) maximum including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Section 6. Suitability and appropriateness assessment

Question 6.1 To what extent do you agree that the suitability assessment conducted by an investment firm or by a seller of insurance-based investment products serves retail investor needs and is effective in ensuring that they are not offered unsuitable products?

- Strongly disagree
- Disagree
- Neutral
- Agree
- Strongly agree
- Don't know / no opinion / not applicable

Please explain your answer to question 6.1:

5000 character(s) maximum including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Taking the example of securitised derivatives, they are part of a bank's standard range of products, and their design is very transparent for retail investors due to the provisions on the target market and cost transparency. The suitability test that clients need to pass to be able to trade these products, regardless of whether they are self-advised or not, is considered effective. Trading venues fulfil pre- and post-trade transparency requirements, as well as having implemented strict trading rules and an independent market surveillance system. This differs from the non-standardised pricing and settlement of CFDs, as highlighted by ESMA in its Q&A from November 2018[1]. In addition, there is a common European standard on investor protection for securitised derivatives - this allows investors to understand the terms of the products.

[1] <https://www.esma.europa.eu/file/48574/download?token=cVvWYFsq>

Question 6.2 Can you identify any problems with the suitability assessment?

- Yes
- No
- Don't know / no opinion / not applicable

Please explain your answer to question 6.2. Please explain how these problems might they be addressed:

5000 character(s) maximum including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Question 6.3 Are the rules on suitability assessments sufficiently adapted to the increasing use of online platforms or brokers when they are providing advice?

- Yes
- No
- Don't know / no opinion / not applicable

Please explain your answer to question 6.3:

5000 character(s) maximum including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Question 6.4 To what extent do you agree that the appropriateness test serves retail investor needs and is effective in ensuring that they do not purchase products they are not able to understand or that are too risky for their client profile?

- Strongly disagree
- Disagree
- Neutral
- Agree
- Strongly agree
- Don't know / no opinion / not applicable

Please explain your answer to question 6.4:

5000 character(s) maximum including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

The appropriateness test relates to retail investors who wish to acquire an asset on his/her initiative, irrespective of the advice or recommendations of the advisor. The appropriateness test ensures that the investor has the necessary knowledge and experience to understand the risks associated with the offered or desired product, or the investment service. If the investment service or product purchase is considered inappropriate, following the assessment of the investor's knowledge or experience conducted by the respective broker or bank, they draw the investor's attention to this by issuing an appropriate risk warning.

Question 6.5 Can you identify any problems with the test and if so, how might they be addressed (e.g. is the appropriateness test adequate in view of the risk of investors purchasing products that may not be appropriate for them)?

- Yes
- No
- Don't know / no opinion / not applicable

Please explain your answer to question 6.5:

5000 character(s) maximum including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

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

- Yes
- No
- Don't know / no opinion / not applicable

Please explain your answer to question 6.6:

5000 character(s) maximum including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Whilst MiFID II requires investment firms to assess both the suitability and appropriateness when providing certain investment services, Article 21 of Regulation (EU) 2020/1503 requires crowdfunding service providers only to assess whether and which crowdfunding services offered are appropriate for prospective non-sophisticated investors. In our opinion, consideration should be given to whether the MiFID II rules on suitability and appropriateness assessment should be revised and whether the simplified regime, where appropriate, should be aligned across crowdfunding service providers and investment

firms. The aim would be to enhance retail investors' access to the market and ensure a level playing field for products and activities having a similar risk profile.

Question 6.7 Do you consider that providing a warning about the fact that a product is inappropriate is sufficient protection for retail investors?

- Yes
- No
- Don't know / no opinion / not applicable

Please explain your answer to question 6.7:

5000 character(s) maximum including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Question 6.8 Do you agree that no appropriateness test should be required in such situations?

- Yes
- No
- Don't know / no opinion / not applicable

Please explain your answer to question 6.8:

5000 character(s) maximum including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Question 6.9 Does the target market determination process (at the level of both manufacturers and distributors) need to be improved or clarified?

- Yes
- No
- Don't know / no opinion / not applicable

Please explain your answer to question 6.9:

5000 character(s) maximum including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

The product governance obligations under MiFID II for the product life cycle put several requirements on investment firms that manufacture financial instruments for sale to end clients ("manufacturer") and on investment firms offering products to end clients ("distributors"). Some requirements have introduced a significant administrative burden on manufacturers and distributors alike without ensuring a higher level of investor protection. There are Level 3 measures that offer certain exemptions for the non-advised client business and these rules should be taken into account in the MiFID II / MiFIR Level 1 Review.

The concrete differentiation between a positive and a negative target market leads to practical difficulties in implementation, since some criteria that refer to a negative target market cannot be used as a counterargument to a positive. The requirement to define a negative target market should potentially be reconsidered.

Moreover, new provisions for product governance (Guidelines on MiFID II product governance requirements) extend the requirements for issuers and retail banks. Issuers must define a target market for every product. Retail banks must consider the target

market for every buy order by comparing the target market data with the customer characteristics. These provisions may further reduce retail investors' access to classic bonds. This also applies in cases where the bond issue lacks attributes that may not be suited for retail investors. However, recent changes within the MiFID II "quick fix" to exempt corporate bonds with a make whole clause from the MiFID II target market provision are very welcome and should be extended to all corporate bonds.

Retail investors' access to classic corporate or bank bonds is increasingly limited due to regulation. This is due to the inclusion of classic bonds in the PRIIPs regulation and the increasing number of bond issues availing of the wholesale bond regime for qualified investors with reduced requirements under the Prospectus Regulation. This also applies to new provisions for product governance defined in the "Guidelines on MiFID II product governance requirements" which further reduce retail investors' opportunities to invest in classic bonds.

These guidelines for product governance require issuers to define a target market for every product, including classic bonds, and retail banks to consider the target market for every buy order by comparing the target market with the individual customer's characteristics.

There is an increasing trend towards issuers of classic bonds defining the target market of their bond issuances as "institutional", irrespective of whether the bonds are suited for retail investors or not. In this case, retail investors are not able to invest in these bonds as retail banks are not allowed to provide for retail investors to buy these bonds. The reasons why issuers choose to do this may vary (e.g. to reduce the risk of being sued by retail investors). However, regulators should ensure that the target market definition is not adversely used by issuers to prohibit retail investors from investing in products like classic bonds that otherwise suit them. Certain categories of bonds, such as sustainable bonds, should also be included in the definition of "classic bonds".

Demands and needs test (specific to the Insurance Distribution Directive (IDD))

Question 6.10 To what extent do you agree that, in its current form, the demands and needs test is effective in avoiding mis-selling of insurance products and in ensuring that products distributed correspond to the individual situation of the customer?

- Strongly disagree
- Disagree
- Neutral
- Agree
- Strongly agree
- Don't know / no opinion / not applicable

Please explain your answer to question 6.10:

5000 character(s) maximum including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Question 6.11 Can you identify any problems with the demands and needs test, in particular its application in combination with the suitability assessment in the case of insurance-based investment products?

- Yes
- No

Don't know / no opinion / not applicable

Please specify what problems you identify and explain your answer to question 6.11:

5000 character(s) maximum including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Please explain your answer to question 6.11:

5000 character(s) maximum including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Question 6.12 Are more detailed rules needed in EU law regarding the demands and needs test to make sure that it is applied in the same manner throughout the internal market?

- Yes
 No
 Don't know / no opinion / not applicable

Please explain your answer to question 6.12:

5000 character(s) maximum including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Question 6.13.1 Is the demands and needs test sufficiently adapted to the online distribution of insurance products?

- Yes
 No
 Don't know / no opinion / not applicable

Question 6.13.2 Are procedural improvements or additional rules or guidance needed to ensure the correct and efficient application of the test in cases of online distribution?

- Yes
 No
 Don't know / no opinion / not applicable

Please explain your answer to question 6.13:

5000 character(s) maximum including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Section 7. Suitability and appropriateness assessment

Question 7.1 What would you consider the most appropriate approach for ensuring more appropriate client categorisation?

	Yes	No	Don't know - No opinion - Not applicable
Introduction of an additional client category (semi-professional) of investors	X		
Adjusting the definition of professional investors on request	X		
No changes to client categorisation (other measures, i.e. increase product access and lower information requirements for all retail investors)		X	

Please explain your answer to question 7.1:

5000 character(s) maximum including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

We would support the introduction of an additional client category (semi-professional) of investors if the inclusion of such a new category leads to an increase of accessibility to financial instruments currently out of reach for non-professional investors.

This proposal would apply to a newly created category of investors that have sufficient experience and financial means to understand the risks. Such a definition should not be linked to a specific profession but rather experience, knowledge and risk profile.

In our opinion, the creation of such an additional category of clients would enhance investors' participation in the markets, ultimately supporting the growth of the European economy, with particular reference to SMEs and market infrastructures. The introduction of this new category could facilitate investors' access to a variety of alternative kinds of investments (either liquid or illiquid) in addition to shares, such as Alternative Investment Funds (AIFs), fixed income securities (e.g. corporate bonds), real estate, and securitisations instruments, provided that it is accompanied by appropriate investor protection rules.

With specific reference to the AIFs, the creation of this additional client category might be appropriate to encourage the investment in the AIF asset class also by experienced high net worth investors with a tailor-made investor protection regime. To this end, further legislative clarification could be provided in MiFID II regarding the investor classification in order for the Alternative Investment Fund Managers Directive (AIFMD) to cross-refer to the client categories as defined in the MiFID II.

We also highlight that the diverging definitions of semi-professional investors across the EU may disincentivise promoters of AIFs from cross-border marketing to knowledgeable and high-net-worth retail and semi-professional investors. To obtain legal certainty and a level playing field, we suggest harmonising the different approaches used in the different pieces of legislation such as European venture capital funds (EuVECA), European social entrepreneurship funds (EuSEF), and European long-term investment funds (ELTIF) regulations.

Another aspect to consider when discussing the accessibility of retail investors to financial instruments is the amount of information available. The existing information requirements and the related number of information documents provided may overwhelm retail investors, which might hinder striking the balance between ensuring retail investors' protection and facilitating their participation in the market. Thus, it could be assessed

whether information requirements could be simplified to reach this balance, in parallel with a revision of the investor categories.

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

a) The client has carried out transactions, in significant size, on the relevant market at an average frequency of 10 per quarter over the previous four quarters.

- No change
- 30 transactions on financial instruments over the last 12 months, on the relevant market
- 10 transactions on financial instruments over the last 12 months, on the relevant market
- Other criteria to measure a client's experience
- Don't know / no opinion / not applicable

Please specify to what other criteria to measure a client's experience you refer in your answer to question 7.2 a):

5000 character(s) maximum including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

The number of transactions is an unrelated indicator to assess the level of professionalism. Other criteria could be used instead.

Please explain your answer to question 7.2 a):

5000 character(s) maximum including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

b) The size of the client's financial instrument portfolio, defined as including cash deposits and financial instruments exceeds EUR 500,000.

- No change
- Exceeds EUR 250,000
- Exceeds EUR 100,000
- Exceeds EUR 100,000 and a minimum annual income of EUR 100,000
- Other criteria to measure a client's capacity to bear loss
- Don't know / no opinion / not applicable

Please specify to what other criteria to measure a client's capacity to bear loss you refer in your answer to question 7.2 b):

5000 character(s) maximum including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Please explain your answer to question 7.2 b):

5000 character(s) maximum including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

c) The client works or has worked in the financial sector for at least one year in a professional position, which requires knowledge of the transactions or services envisaged.

- No change
- Extend definition to include relevant experience beyond the financial sector (e.g. in a finance department of a company)

- Adjust the reference to the term ‘transactions’ in the criteria to instead refer to ‘financial instruments’
- Other criteria to measure a client’s financial knowledge
- Don’t know / no opinion / not applicable

Please specify to what other criteria to measure a client’s financial knowledge you refer in your answer to question 7.2 c):

5000 character(s) maximum including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Please explain your answer to question 7.2 c):

5000 character(s) maximum including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

d) Clients need to qualify for 2 out of the existing 3 criteria to qualify as professional investors. Should there be an additional fourth criterion, and if so, which one?

- No change
- Relevant certified education or training that allows to understand financial instruments, markets and their related risks
- An academic degree in the area of finance/business/economics
- Experience as an executive or board member of a company of a significant size
- Experience as a business angel (i.e. evidenced by membership of a business angel association)
- Other criteria to assess a client’s ability to make informed investment decisions
- Don’t know / no opinion / not applicable

Please specify to what other criteria to assess a client’s ability to make informed investment decisions you refer in your answer to question 7.2 d):

5000 character(s) maximum including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Please explain your answer to question 7.2 d):

5000 character(s) maximum including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Companies below the thresholds currently set out in MiFID II (2 of 3: turnover of €40 mln, balance sheet of €20 mln and own funds of €2 mln) would also qualify as retail investors.

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

- No change
- Reduce thresholds by half
- Other criteria to allow companies to qualify as professional clients
- Don’t know / no opinion / not applicable

Please specify to what other criteria to allow companies to qualify as professional clients you refer in your answer to question 7.3:

5000 character(s) maximum including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Please explain your answer to question 7.3:

5000 character(s) maximum including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Section 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?

	1 (not at all effective)	2 (rather not effective)	3 (neutral)	4 (somewhat effective)	5 (very effective)	Don't know - no opinion - not applicable
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		X				

	1 (not at all effective)	2 (rather not effective)	3 (neutral)	4 (somewhat effective)	5 (very effective)	Don't know - no opinion - not applicable
ed against similar products available on the market in terms of overall cost and expected performan ce						
Introduc ing specific record- keeping and reporting requireme nts for distributor s of retail investmen t products to provide a breakdow n of products distribute d, thus allowing for supervisor y scrutiny and better enforceme nt of the		X				

	1 (not at all effective)	2 (rather not effective)	3 (neutral)	4 (somewhat effective)	5 (very effective)	Don't know - no opinion - not applicable
existing rules on inducemen ts						
Introduc ing a ban on all forms of inducemen ts for every retail investmen t product across the Union					X	

Please explain your answer to question 8.1:

5000 character(s) maximum including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

MiFID II Article 27(2) prohibits the granting of remuneration to firms to route orders to particular venues where such measures would infringe the MiFID requirements on conflicts of interest and inducements. In our view, PFOF models, in both their direct and indirect forms are akin to an inducement leading to a conflict of interest and as such should not have been able to emerge under the current framework. In reality, PFOF has become more and more widespread over the last years and has recently gained significant attention following the GameStop short squeeze in the US and related developments like the growth of discount brokerages. For this reason, FESE welcomes the European Commission's consultation on the retail investor strategy as there is a real need to reflect on how to protect further retail investors against receiving biased advice due to potential conflicts of interest.

A PFOF arrangement is one in which a broker systematically routes its retail order flow to a single market maker, an SI or other execution venue in return for a payment. In the final development stage, brokers limit the choice of venues for retail investors to only those that offer PFOF (pay-to-play models), e.g. zero-commission brokers. Whilst PFOF may imply lower explicit trading costs, this does not mean that investors are obtaining the best possible execution quality. Similar issues also apply to other models that implement solutions which allow liquidity providers to give quotes that can be filled only against retail order flow.

PFOF models, in both their direct and indirect forms are detrimental for the investor as it may increase bid-ask spreads, distort competition, and make the price formation process less transparent and efficient. Although the broker is obliged to act in the best interest of its clients, it has an economic incentive to direct order flow to the execution venue that offers the highest payment to the broker. While some platforms may offer commission-

free trading, they do not always provide best execution and may cost more to retail investors, in terms of the execution price for their order. Furthermore, as brokers are incentivised to route orders to the bidder offering the highest payment rather than to the venue offering the best execution, there may be price deterioration. Retail brokers may even limit the choice of venues for retail investors to only those that offer PFOF. PFOF leads to an environment where there is no longer competition on transparent prices but only on market makers and execution venues directly or indirectly paying for getting order flow. Hence, PFOF has a clear connection with competition and transparency issues.

Transparent trading plays a central role in price formation as a well-functioning market is where information is easily available. But trading in dark venues reduces the information available for the price formation process and the depth of limit order books, which can have adverse selection risks and result in higher spreads. By intercepting retail order flow, SIs and other execution venues face no competition and deprive the main market of liquidity with uninformed orders being diverted from transparent venues, increasing spreads. Furthermore, since retail brokers actively steer retail order flow, competition for retail orders is no longer based on the (transparent) best execution price but on payment by a market maker to the retail broker. Consequently, the best execution duty of the broker gets compromised. This conflict of interest is systematic in the retail market (especially for shares, ETFs and securitised derivatives) and FESE believes that it is currently not appropriately addressed. Whilst in some Member States PFOF is banned, such as in the Netherlands, other Member States are less strict. This creates regulatory arbitrage opportunities in the EU. We welcome the focus by ESMA on ensuring supervisory convergence in this area, as ESMA should focus on ensuring that legislation is implemented as intended by the legislator in all EU Member States. In this context, convergence tools could be used to a greater extent and more effectively to promote supervisory convergence. In addition, we support including this topic in the agenda of the MiFID/MiFIR review to ensure a harmonised approach with respect to banning any PFOF practice.

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:

5000 character(s) maximum including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

N/A

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

5000 character(s) maximum including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

If some specific forms of inducements were banned, specifically PFOF, it could lead to further comparability between broker services.

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

5000 character(s) maximum including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

This would depend on the type of inducement banned. If specific types of inducements were banned, i.e. PFOF, it could have a positive effect on the way orders are executed through a higher degree of transparency and fewer conflicts of interest, leading to higher retail flow competition.

d) what impacts would this have on how much retail investors would invest in financial instruments? Please explain your answer:

5000 character(s) maximum including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Europe needs to empower retail investors by making investment practices simple, transparent, and overall less costly, as well as by taking steps to prevent conflicts of interest. In order to do that, FESE supports simple, cheap, and accessible investment products for retail clients. Policymakers should focus on how to benefit investors, rather than the intermediaries, to ensure that retail investors get a good deal from European public capital markets.

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	Don't know - No opinion - Not applicable
In the case of investment products distributed under the MiFID II framework?			
In the case of insurance-based investment products distributed under the IDD framework?			
In case of the inducements paid to providers of online platforms/comparison websites?		X	

Please explain your answer to question 8.3:

5000 character(s) maximum including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

FESE has observed that PFOF has become more and more popular over the last few years and has successfully resulted in directing order flow from retail brokers to certain platforms. With the GameStop case in the United States, the debate over this practice has been heating up in the European Union, too, sparking interest in the economic motivation behind PFOF practices and revealing the lack of transparency around the magnitude and publication of these payments made.

FESE is concerned that a broker has an incentive to direct order flow to an execution venue that offers it (the highest) payment, although the broker is supposed to act in the best interests of its clients. However, the duty of the broker to act in the best interests of its clients could be compromised as PFOF prevents clients from getting best execution. MiFID II states that a broker shall not receive any payment for routing client orders to an execution venue which would infringe the requirements on conflicts of interest and the broker has to identify and to prevent or manage these kinds of conflicts of interest. However, FESE believes that there is a per se conflict of interest between the broker and its client and that the identification and management of this conflict of interest is inadequate.

Furthermore, FESE shares the concerns expressed by Better Finance in its recent report, stressing that PFOF schemes have a detrimental effect on markets; they lead to hidden costs and worse prices for end investors, hinder competition between market makers and trading venues (pay to play models), cause negative selection of order flow and most worryingly create an inherent conflict of interest between the broker and its client. This has also led to concerns on the part of authorities in some Member States, resulting in a ban of inducements at national level in the Netherlands and the United Kingdom when it was still part of the EU.

Therefore, FESE supports the European Commission and ESMA in giving closer examination to PFOF and assessing whether PFOF is compatible with MiFID II obligations of best execution and conflicts of interest. In this context, we also welcome the recent statement by ESMA concluding that PFOF would lead to conflicts of interest and calling on the industry and national competent authorities to thoroughly assess compliance with MiFID II provisions in this regard.[1] In this context, convergence tools could be used to a greater extent and more effectively to promote supervisory convergence. In addition, we support including this topic in the agenda of the MiFID/MiFIR review to ensure a harmonised approach with respect to banning any PFOF practice.

[1] https://www.esma.europa.eu/sites/default/files/library/esma35-43-2749_esma_public_statement_pfof_and_zero-commission_brokers.pdf

Question 8.4 Should the rules on the payment of inducements paid to distributors of products sold to retail investors be aligned across MiFID and IDD?

- Yes
- No
- Don't know / no opinion / not applicable

Please explain your answer to question 8.4:

5000 character(s) maximum including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Question 8.5 How should inducements be regulated?

Please select as many answers as you like

- Ensuring transparency of inducements for clients
- Ensuring transparency of inducements for clients, including an obligation to disclose the amount of inducement paid
- Allowing inducements only under certain conditions, e.g. if they serve the improvement of quality
- Obliging distributors to assess the investment products they recommend against similar products available on the market
- 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
- Introducing a ban on all forms of inducements for every retail investment product across the Union

Please explain your answer to question 8.5:

5000 character(s) maximum including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Some online trading platforms' marketing communications are unclear in relation to the costs of services and/or products. Retail investors' attention is often drawn to the offer of no or very little direct costs, without an adequate representation of the total costs, which remain undisclosed. In our opinion retail investors should be able to fully understand and assess the total cost of the service/product offered. Therefore, we believe that an indication of the total cost of the service/product offered or at least the existence of a fee should be clearly disclosed in every marketing communication.

If regulators conclude that they have no means of proper oversight of these market practices, FESE recommends a policy change to bring supervisors and the public into a

position where they have access to information through stricter rules on broker information disclosures and publication. However, should the recent conclusion by ESMA be confirmed by the Commission that PFOF is not compatible with MiFID II provisions of conflicts of interest, regulators should explore the possibility to change MiFID II/MiFIR and ban PFOF across the EU. Thus, FESE supports the ban of specific forms of inducements, in particular PFOF. The underlying aim of a ban of inducements should be to incentivise the trading of any retail investment product across the Union.

As part of this, FESE would also encourage policymakers to consider whether a targeted amendment to Article 27(2) would be helpful to address the concerns raised by PFOF models in the EU: “2. *An investment firm shall not receive any remuneration, discount or non-monetary benefit for routing client orders to a particular trading venue or execution venue as this would infringe the requirements on conflicts of interest or inducements set out in paragraph 1 of this Article and Article 16(3) and Articles 23 and 24*”.

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

- Yes
 No
 Don't know / no opinion / not applicable

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

5000 character(s) maximum including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Whilst MiFID II/MiFIR put in place some safeguards against conflicts of interest and poor execution practices as outlined above, a review of PFOF, in both its direct and indirect forms should be undertaken with a view to ensuring that best execution is achieved, and conflicts of interest are prevented. Indeed, PFOF schemes provide for potential conflicts of interest due to payment of inducements and possible breach of the obligations surrounding best execution of clients' orders.

In fact, FESE believes that there is a per se conflict of interest between the broker and its client and that the identification and management of this conflict of interest is inadequate. Hence, FESE recommends a change of the Level 1 text as part of the upcoming review of MiFID II/MiFIR to clearly prohibit PFOF.

As such a review will take some years until the application of policy changes, complementary actions could be considered in the medium term: based on the regulatory scrutiny, ESMA might want to consider using its strengthened tools of supervisory convergence. In this context, we welcome ESMA's recent statement calling on the industry and national competent authorities to thoroughly assess compliance with MiFID II provisions. The sharing of supervisory practices across national competent authorities would help ensure a common understanding of PFOF practices and enhance investor protection. If needed, according to the current legislation, national competent authorities have the discretion to prohibit PFOF where they find that MiFID II rules on conflict of interests and inducements are not met. In fact, this has already been done in the UK when it was still part of the EU, and in the Netherlands.

Please explain your answer to question 8.6:

5000 character(s) maximum including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Payment for order flow (PFOF) is a common practice in Europe. While some platforms may offer commission-free trading, they do not always provide best execution and may cost more to retail investors, as they can lose out in terms beyond the execution price for their order. Furthermore, as brokers are incentivised to route orders to the bidder offering the highest payment rather than to the venue offering the best execution, there may be price deterioration. Retail brokers may even limit the choice of venues for retail investors to only those that offer PFOF. When choosing an execution provider, retail investors are thus best served by finding a broker that will execute their orders on the venue that offers the best execution conditions for the client, taking also into account transaction costs, the natural liquidity present on the venue, and the overall quality of execution.

PFOF also raises several conflicts of interest:

- Brokers may seek to maximise PFOF revenue at the expense of best execution given the incentive to direct order flow to the execution venue that offers the highest payment.
- The income the SI or other execution venues receive increases with spreads, which may increase with internalisation and lower transparent trading.
- Market makers may have an informational advantage stemming from an advanced understanding of order flow.

Consequently, the MiFID II requirements on conflicts of interest and inducements may be incompatible with PFOF. Concretely, according to Article 23 of MiFID II, investment firms must take all appropriate steps to prevent or manage conflicts of interest and establish a policy that sets out the measures taken to ensure this. Article 24 of MiFID II establishes the obligation of investment firms to act honestly, fairly, and professionally in accordance with the interests of clients and provide information that is not misleading to clients. As per the Article, inducements must be justified by a higher level of service; must not benefit the firm without tangible benefit to the client; and for ongoing inducements, there must be ongoing benefits to the client. In addition, firms must disclose and keep records of those inducements. However, the obligation of the broker to act in the best interests of its client may hereby be compromised where PFOF prevents clients from getting best execution.

In contrast to PFOF, the EU needs a market architecture that works for everyone, provides efficient price formation, fair competition and interaction among market participants, and delivers best execution. Trading venues are well suited to deliver on all those aspects for two fundamental reasons. First, transparent markets with deep pools of liquidity are a crucial component of price formation and best execution, as well as an important contributor to market resilience. Second, trading venues efficiently balance greater investor participation with investor protection and confidence. Investors are treated in a non-discriminatory and transparent way.

In order to strengthen the EU retail investor protection framework and protect retail investors, we also suggest a review of the best execution regime, aimed at ensuring that retail investors always get the best possible terms for the execution of their orders.

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

- Yes
- No
- Don't know / no opinion / not applicable

Please explain your answer to question 8.7:

5000 character(s) maximum including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Whilst PFOF may imply lower explicit trading costs, this does not mean that investors are obtaining the best possible execution quality. The best execution regime under Article 27

of MiFID II establishes that investment firms executing (or arranging for the execution of) trades on behalf of clients must take all reasonable steps to obtain the best possible result for their clients. These steps include, amongst others, considering the price, fees, speed, and probability of execution of the order, explaining execution policies in detail, and disclosing the top execution venues used and the quality of execution. Any remuneration, discount, or non-monetary benefit for routing client orders to a particular venue that would infringe the requirements on conflicts of interest or inducements is banned. Investment firms are also obliged to inform and obtain the consent of clients for executing orders on SIs or over-the-counter (OTC) as trading below IS should in essence contribute to the price formation process.

As a result, while some platforms may offer commission-free trading, they do not always provide best execution, which may cost more to retail investors, as they can lose out beyond the execution price for their order. Furthermore, as brokers are incentivised to route orders to the bidder offering the highest payment rather than to the venue offering the best execution, there may be price deterioration. Retail brokers may even limit the choice of venues for retail investors to only those that offer PFOF. PFOF leads to an environment where there is no longer competition on transparent prices but only on market makers and execution venues paying for getting order flow. Consequently, the best execution duty of the broker gets compromised. When choosing an execution provider, retail investors are thus best served by finding a broker that will execute their orders on the venue that offers the best execution conditions for the client, taking also into account transaction costs, the natural liquidity present on the venue, and the overall quality of execution.

Whilst FESE believes that there is a per se conflict of interest between the broker and its client and hence recommends a change of the Level 1 text as part of the upcoming review of MiFID II/MiFIR to clearly prohibit PFOF, such a review will take some years until the application of policy changes. Therefore, in addition, complementary actions could be considered in the medium term: the supervisory convergence tools of ESMA could be used to a greater extent and more effectively to promote supervisory convergence, in particular in areas such as investor protection. As a concrete illustration of how supervisory convergence would support policy objectives, transparency around current market practices in PFOF arrangements across Member States is needed. ESMA may take a stronger role here in enhancing and harmonising supervisory practices as regards compliance with best execution and disclosure requirements and the management of potential conflicts of interests between brokers and their clients. Such mechanisms are an important part of delivering supervisory convergence, especially where the goal is high levels of EU regulatory harmonisation and where significant differences are still experienced today.

Question 8.8 Would you see merit in developing a voluntary pan-EU label for financial advisors to promote high-level common standards across the EU?

- Yes
- No
- Don't know / no opinion / not applicable

Please explain your answer to question 8.8 and indicate what would be the main advantages and disadvantages:

5000 character(s) maximum including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

If you would see merit in developing that voluntary pan-EU label, what would you consider the essential characteristics of such a label and how should it be similar to or different from those that already exist in the market?

5000 character(s) maximum including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

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

- Yes
- No
- Don't know / no opinion / not applicable

Please explain your answer to question 8.9:

5000 character(s) maximum including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Robo-advisors are a positive development as long as they reduce costs, enhance transparency, increase accuracy, speed and the information available to retail clients to make better investment choices, and are designed in an unbiased way.

FESE supports the need to supervise automated advice platforms to ensure their algorithms are designed to adequately respond to clients' risk profiles and needs. From an investor protection point of view and in line with the approach 'same activity, same risk, same rules', it should not make a difference whether the clients are advised by a robo- or a human advisor. If a company uses robo-advisors, the company needs to ensure that investor protection rules are respected. FESE supports Better Finance's position on the need to better supervise automated advice platforms to ensure their algorithms are designed to adequately respond to clients' risk profiles and needs.

Question 8.10 The use of robo-advisors, while increasing, has not taken off as might have been expected and remains limited in the EU.

What do you consider to be the main reason for this?

- Lack of awareness about the existence of robo-advisors
- Greater trust in human advice
- Other
- Don't know / no opinion / not applicable

Please specify to what other reason(s) you refer in your answer to question 8.10:

5000 character(s) maximum including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Please explain your answer to question 8.10:

5000 character(s) maximum including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

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

- Yes
- No
- Don't know / no opinion / not applicable

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

5000 character(s) maximum including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Please explain your answer to question 8.11:

5000 character(s) maximum including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Section 9. Addressing the complexity of products

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

- Yes
 No
 Don't know / no opinion / not applicable

Please explain your answer to question 9.1:

5000 character(s) maximum including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Promoting well-regulated financial instruments such as equities, bonds, and ETFs as a simple, affordable, liquid, and transparent long-term investment tool should be at the core of CMU's objective to raise investor participation. Investors need a choice of well-regulated instruments, diverse ways of accessing the markets, and transparency in a cost-effective manner. For example, ETFs are simple and cheap products but are rarely advised to customers. The case of Sweden, where citizens have easy access to simple investment options for their pensions through a state-run body.

Furthermore, retail investors' access to classic corporate or bank bonds is increasingly limited because of regulation. This development is seen even though corporate bonds that have no other embedded derivative than a make-whole clause are being considered as "safe and simple products that are eligible for retail clients" (see recital 4 of the recently adopted MiFID II amendments, part of the Capital Markets Recovery Package, the so-called MiFID II "quick fix"). This is due to the inclusion of classic bonds in the PRIIPs Regulation and the increasing number of bond issues availing of the wholesale bond regime for qualified investors with reduced requirements under the Prospectus Regulation. The same applies to provisions for product governance defined in the "Guidelines on MiFID II product governance requirements", which further reduce retail investors' opportunities to invest in classic bonds. Consequently, these bonds cannot be accessed by retail investors unless the issuer of the bond publishes a KID. We believe that the current privilege for bonds with a make-whole clause that was introduced by the MiFID II "quick fix" should be extended to all simple bonds without embedded derivatives.

In addition, the scope of the PRIIPs Regulation should also be strictly limited to packaged investment products for which there is a greater need for retail investors' protection. The background to this is that investors cannot purchase a PRIIP if the manufacturer does not issue a KID. This currently occurs especially in the case of bonds with a make-whole clause, which in the Commission's view constitutes a PRIIP, whereas under the MiFID II "quick fix" they were exempted from the target market.

We also suggest revising the definition of complex products, to ensure that classic bonds do not fall within it. By classic bonds, we refer to those products which imply the full reimbursement of the nominal amount (i.e. regardless of the inclusion of the following: calls, step-ups, Sustainable Development Goals linked, a floating rate with a minimum and/or maximum rate). Please also refer to the answer to Question 5.1 containing suggestions aimed at revising the scope of the PRIIPs Regulation.

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
- Don't know / no opinion / not applicable

Please explain your answer to question 9.2 a):

5000 character(s) maximum including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

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

- Yes
- No
- Don't know / no opinion / not applicable

Please explain your answer to question 9.2 b):

5000 character(s) maximum including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

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

- Yes
- No
- Don't know / no opinion / not applicable

Please explain your answer to question 9.2 c):

5000 character(s) maximum including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

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

- Yes
- No
- Don't know / no opinion / not applicable

Please explain your answer to question 9.2 d):

5000 character(s) maximum including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

If simple products should be easier to acquire, those products should be exempted from the overload of informational requirements. A completely new special regime for simple products should be avoided, as this could further increase the complexity of the requirements and run counter to a coherent legal framework.

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

- Yes
- No
- Don't know / no opinion / not applicable

Please explain your answer to question 9.2 e):

5000 character(s) maximum including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

FESE believes that legislators must always take into account the different motives of investors when dealing with more complex financial products. For less experienced

investors, products that are easy to understand are certainly the right choice. But for experienced investors, the more complex products are important to pursue a certain trading strategy, e.g. to hedge the portfolio or to anticipate and profit from certain market developments. Therefore, we believe that the existing rules for complex products are sufficient and no further tightening is needed.

f) Should they have another aim?

- Yes
- No
- Don't know / no opinion / not applicable

Please specify to what other aim you refer and explain your answer to question 9.2 f):

5000 character(s) maximum including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

As an overarching goal, end-users should get access to direct investments and financial incentives should be promoted to enable long-term direct investment. Supporting long-term, cost-effective investments (specifically pension investments) is a highly effective goal because investors with a long-term outlook are crucial for well-functioning capital markets.

In line with Better Finance, we also believe that tax incentives for long-term and pension investors should be provided, while existing tax discriminations for individual investors in the EU (such as double taxation of dividends) should be eliminated. While both tax incentives and double taxation issues are within the remit of EU Member States, the CMU should promote appropriate measures in this respect.

A variety of possibilities for end-investors in the sense of equity financing and investment has to be promoted. Retail savers should have the right to invest not only through products such as PEPP but also directly in indices based on national, regional, and pan-European equities. Indices used for the benchmarking of those investments should be broad, representing both large enterprises and SMEs.

Section 10. Redress

Question 10.1 How important is it for retail investors when taking an investment decision (in particular when investing in another Member State), that they will have access to rapid and effective redress should something go wrong?

- Not at all important
- Rather not important
- Neutral
- Somewhat important
- Very important
- Don't know / no opinion / not applicable

Please explain your answer to question 10.1:

5000 character(s) maximum including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Question 10.2 According to MIFID II, investment firms must publish the details of the process to be followed when handling a complaint. Such information must be provided to the client on request or when acknowledging a complaint and the firm must enable the client to submit their complaint free of charge.

Is the MiFID II requirement sufficient to ensure an efficient and timely treatment of the clients' complaints?

- Yes
- No
- Don't know / no opinion / not applicable

Please explain your answer to question 10.2:

5000 character(s) maximum including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Question 10.3 As a retail investor, would you know where to turn in case you needed to obtain redress through an out of court (alternative dispute resolution) procedure?

- Yes
- No
- Don't know / no opinion / not applicable

Please explain your answer to question 10.3:

5000 character(s) maximum including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Question 10.4 How effective are existing out of court/alternative dispute resolution procedures at addressing consumer complaints related to retail investments/insurance based investments?

- Not at all effective

- Rather not effective
- Neutral
- Somewhat effective
- Very effective
- Don't know / no opinion / not applicable

Please explain your answer to question 10.4:

5000 character(s) maximum including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

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

Please select as many answers as you like

- Domestically?
- In a cross border context?

Please explain your answer to question 10.5:

5000 character(s) maximum including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Certain groups of consumers (e.g. the elderly, over-indebted or those with disabilities) can be particularly vulnerable and may need specific safeguards. If the process of obtaining redress is too complex and burdensome for such consumers and lacks a specially adapted process (e.g. assistance on the phone), redress may not be an effective option for them.

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

- Not accessible at all
- Rather not accessible
- Neutral
- Somewhat accessible
- Very accessible
- Don't know / no opinion / not applicable

Please explain your answer to question 10.6:

5000 character(s) maximum including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Section 11. Product intervention powers

Question 11.1 Are the European Supervisory Authorities and/or national supervisory authorities making sufficiently effective use of their existing product intervention powers?

- Yes
 No
 Don't know / no opinion / not applicable

Please explain your answer to question 11.1:

5000 character(s) maximum including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

FESE fully shares ESMA's objective of safeguarding investor protection and agrees that some product intervention measures at the European level might occasionally be necessary for specific products. For instance, FESE supports ESMA's product intervention measures on binary options and contracts for difference (CFDs). These products are not suitable for retail clients and the measures serve to promote investor protection.

Product intervention measures should be proportionate and appropriate, as is the case with ESMA's measures on the above-mentioned instruments. We, therefore, support that ESMA explicitly excluded turbos from the product intervention measures on the provision of CFDs and binary options in 2018.

Turbos are predominantly traded on regulated markets or MTFs with associated levels of trade transparency, strict trading rules and independent market surveillance. The existing regulatory environment for turbos is sufficient. Investors hedge open positions in the underlying assets by trading turbos and the characteristics of investors show that they are experienced traders who are familiar with financial products and trade frequently in other products. They know about the functionality of turbos, the use of stop losses and the functioning of underlying instruments and assets. The level of complexity is manageable; the relationship between return opportunities and risk should be known to investors.

We note that the Netherlands Authority for the Financial Markets (AFM) has recently consulted on measures to restrict the marketing, distribution or sale of turbos. FESE considers that the proposed AFM product intervention measures would be inappropriate and consider that ESMA correctly assessed turbos in 2018.

In June 2021, ESMA published an opinion on product intervention measures on turbos^[1], which assesses AFM's product intervention measures as "justified" and "appropriate". We oppose this assessment as we still support ESMA's prior assessment from 2018, indicating that turbos are different from CFDs and binary options. Furthermore, in ESMA's opinion, it appears that the German BaFin and the French AMF have highlighted in their assessments that there is no similar risk to turbos, thereby also stressing the differences between turbos and CFDs.

[1] <https://www.esma.europa.eu/press-news/esma-news/esma-issues-opinion-product-intervention-measures-turbos>

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

- Yes
 No
 Don't know / no opinion / not applicable

Please explain your answer to question 11.2:

5000 character(s) maximum including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

ESMA has the appropriate mandate and tools to pursue supervisory convergence which has recently been strengthened through the 2019 ESA Review. While some discretion by NCAs should remain, ESMA should keep focusing on ensuring that legislation is implemented as intended by the legislator. In this context, we believe that the convergence tools could be used to a greater extent and more effectively to promote supervisory convergence, in particular in areas such as investor protection.

The impact of diverging supervisory practices tends to be particularly significant in areas where there is a move towards high-levels of EU regulatory harmonisation, underpinning cross-border business and competition. As a concrete illustration of how supervisory convergence would support policy objectives, transparency around current market practices in PFOF arrangements across Member States is needed. ESMA may take a stronger role here in enhancing and harmonising supervisory practices as regards compliance with best execution and disclosure requirements and the management of potential conflicts of interests between brokers and their clients. Such mechanisms are an important part of delivering supervisory convergence, especially where the goal is high levels of EU regulatory harmonisation and where significant differences are still experienced today.

In seeking greater supervisory convergence, efforts should focus on those areas with cross-border characteristics. Enforcing supervisory convergence should mean ensuring that legislation is implemented as intended by the legislator to establish a level playing field, while identifying and recognising any situations in which there may be more than one way to achieve these objectives. Therefore, FESE wishes to strongly underline the need to recognise the importance of supervisors' understanding of local or regional cultures and habits as well as regulatory frameworks and business models which may have been developed, benefitting market players and the CMU as a whole.

Article 42 of MiFIR provides NCAs with the ability to ban the marketing, distribution, and selling of specific financial products. The divergence of national measures implemented by Member States provides clear evidence of the regulatory fragmentation and arbitrage across the EU. ESMA's mandate and tools to pursue supervisory convergence should be used to ensure that a harmonised approach is followed in setting the criteria for professional investors upon request (please see the answer to Question 7.2).

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

- Yes
- No
- Don't know / no opinion / not applicable

Please explain your answer to question 11.3:

5000 character(s) maximum including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

ESMA has the appropriate mandate and tools to pursue supervisory convergence which has recently been strengthened through the ESAs Review. Therefore, the starting point for questions around ESMA's future mandates should be around the fulfilment of current tasks. There is a difference between improving convergence on the one side and adding to ESMA's mandates on the other side.

National competent authorities have the competence, expertise, and knowledge to pursue the tasks under their regulatory and supervisory remit; due to their proximity to the national market, they even have superior local supervisory competence compared to ESMA. We generally welcome the CMU High Level Forum's proposals on strengthening

supervisory convergence under the current structure but would not support unspecified “emergency powers” and further product intervention measures.

Section 12. Sustainable investing

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

	1 (Most important)	2	3 (least important)
An investment that contributes positively to the environment and society			
An investment that reduces the harm on the environment and society (e.g. environmental pollution, child labour, etc.)			
Financial returns			

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

	1 (not at all helpful)	2 (rather not helpful)	3 (neutral)	4 (somewhat helpful)	5 (very helpful)	Don't know - no opinion - not applicable
Measurements demonstrating positive sustainability impacts of investments						
Measurements demonstrating negative or low sustainability impacts of investments						
Information on financial returns of sustainable investments compared to those of mainstream investments						
Information on the share of financial institutions' activities that are sustainable						
Require all financial products and instruments to inform about their sustainability ambition						
Obligation for financial advisers to						

	1 (not at all helpful)	2 (rather not helpful)	3 (neutral)	4 (somewhat helpful)	5 (very helpful)	Don't know - no opinion - not applicable
offer at least one financial product with minimum sustainability ambition						
All financial products offered should have a minimum of sustainability ambition						

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

	1 (not at all important)	2 (rather not important)	3 (neutral)	4 (somewhat important)	5 (very important)	Don't know - no opinion - not applicable
Poor financial advice on sustainable investment opportunities						
Lack of sustainability-related information in pre-contractual disclosure						
Lack of EU label on sustainability related information						
Lack of financial products that would meet sustainability preferences						
Financial products, although containing some sustainability ambition, focus primarily on financial performance						
Fear of greenwashing						

	1 (not at all important)	2 (rather not important)	3 (neutral)	4 (somewhat important)	5 (very important)	Don't know - no opinion - not applicable
(i.e. where the deceptive appearance is given that investment products are environmentally, socially or from a governance point of view, friendly)						
Other						

Please specify to what other factor(s) you refer in your answer to question 12.3:

5000 character(s) maximum including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Question 12.4 Do you consider that detailed guidance for financial advisers would be useful to ensure simple, adequate and sufficiently granular implementation of sustainable investment measures?

- Yes
- No
- Don't know / no opinion / not applicable

Please explain your answer to question 12.4:

5000 character(s) maximum including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

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

- Yes
- No
- Don't know / no opinion / not applicable

Please explain your answer to question 12.5:

5000 character(s) maximum including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Section 13. Other issues

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

5000 character(s) maximum including spaces and line breaks, i.e. stricter than the MS Word characters counting method.