

Comments

Call for evidence on the European Commission mandate on certain aspects relating to retail investor protection

German Banking Industry Committee
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The **German Banking Industry Committee** is the joint committee operated by the central associations of the German banking industry. These associations are the Bundesverband der Deutschen Volksbanken und Raiffeisenbanken (BVR), for the cooperative banks, the Bundesverband deutscher Banken (BdB), for the private commercial banks, the Bundesverband Öffentlicher Banken Deutschlands (VÖB), for the public-sector banks, the Deutscher Sparkassen- und Giroverband (DSGV), for the savings banks finance group, and the Verband deutscher Pfandbriefbanken (vdp), for the Pfandbrief banks. Collectively, they represent more than 1,700 banks.

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2.1 Overview

Q1: Please insert here any general observations or comments that you would like to make on this call for evidence, including any relevant information on you/your organisation and why the topics covered by this call for evidence are relevant for you/your organisation.

The Retail Investment Strategy offers the opportunity to improve some of the weaknesses of the current securities law requirements. We consider it an important initiative and thank you for the opportunity to comment on the issues raised on behalf of the German banks and savings banks. First of all, we would like to mention the most important points raised in the consultation paper which, in our view, absolutely must be addressed in the implementation of the Retail Investment Strategy (the points are further elaborated on in the individual questions):

- Despite the facilitations of the MiFID quick fix, investors continue to receive too much information (information overload), which repeatedly leads to investor complaints. For this reason, unnecessary information must be eliminated.
- In practice, the information resulting from different requirements is sometimes contradictory (this is most obvious in the case of the differing product costs under MiFID II and PRIIPs; however, there are also contradictions due to the differing definitions of sustainability in MiFID II and SFDR). The requirements in this respect must be harmonised.
- The priority of electronic information introduced with the MiFID quick fix (Art. 24 (5a) MiFID II) must necessarily be transferred to other information obligations under securities law (such as, in particular, the PRIIPs Regulation, but also the Prospectus Regulation), so that clients receive the relevant information in a uniform format.
- We reject the possibility, discussed under the umbrella term "open finance", that third parties be allowed to view client securities account data. As ESMA rightly points out, third party access to client securities accounts entails the risk of fraudulent acts or misuse of sensitive client data. At the same time, unlike access to payment accounts, we cannot see any benefits for investors in accessing client securities accounts and ESMA has not identified any benefits in the consultation paper either.

2.2 Disclosures

Q2: Are there any specific aspects of the existing MiFID II disclosure requirements which might confuse or hamper clients' decision-making or comparability between products? Are there also aspects of the MiFID II requirements that could be amended to facilitate comparability across firms and products while being drafted in a technology neutral way? Please provide details.

From the point of view of the German banks and savings banks, there are several aspects of the existing information requirements that urgently need to be improved:

1. Harmonisation of information requirements

When selling securities, distributors must comply with various information requirements (e.g. MiFID II, PRIIPs Regulation but also more recent requirements such as the SFDR). In practice, it causes major problems that these regulations are not harmonised; these discrepancies are not comprehensible, especially for clients. This relates in particular to the following points:

- In the MiFID cost information, different product costs are often shown for the same product than in the key investor information documents (KIDs) according to the PRIIPs Regulation (according to MiFID II product costs without inducements and according to PRIIPs with inducements, see in more detail under question 4.). The different costs, which are communicated to clients together in the advisory process or before the order, cause massive confusion among clients and reduce the information content of the information provided for by law. This should be avoided by not requiring product costs to be disclosed in the key information documents for all PRIIPs that are also financial instruments under MiFID II (so that clients receive ex ante cost information). This will avoid redundant or even divergent information in the two key information documents.
- The currently necessary pre-contractual information obligations resulting from the (EU) requirements would have to be examined for overlaps and contradictions and adjusted accordingly.
- Sustainability is defined differently under MiFID II than under the SFDR. This means that a product can be sustainable under the SFDR, but not under MiFID II. This discrepancy will also be reflected in future client information under MiFID II (especially the suitability statement) and SFDR (e.g. the periodic disclosures). Here, the legislator must commit to a uniform definition of sustainability that underlies all relevant regulations.
- With the MiFID quick fix, the EU legislator has abandoned the priority of providing information in paper form, so that information regulated by MiFID II will in principle be provided electronically unless the retail investor explicitly requests that it be provided in paper form. This regulation is very welcome and should be extended to all securities-related information obligations (i.e. e.g. PRIIPs Regulation, Prospectus Regulation, SFDR, etc.) so that clients receive all securities-related information via the same communication channel. Otherwise, the problem is that they will receive, for example, the MiFID ex ante cost information electronically, while the PRIIPs KID will have to be printed out for them. This will also lead to confusion for the client. The requirements of the MiFID quick fix should therefore be quickly extended to the other information obligations under securities law.

These discrepancies need to be harmonised.

2. Abolition of unnecessary information requirements

Many clients continue to complain about the large amount of information that banks and savings banks have to provide to them on the basis of the legal requirements.

The upcoming revision of MiFID II should be used to remove unnecessary information obligations for all investor groups. This includes in particular the following obligations:

- The quarterly reporting according to Art. 63 MiFID II-DVO should be omitted, as clients have the possibility to query the securities account balance online at any time or to ask the depositary bank for an up-to-date list.
- The requirement to also provide information on costs when selling or recommending selling also has no added value for clients and should also be dropped. The costs are mostly irrelevant when deciding to sell a security. However, the obligation to provide ex ante cost information leads to considerable time delays, which causes annoyance among quite a few clients.

- For products (e.g. bonds and shares) without product costs, ex-ante cost information requirements can be waived.
- The loss threshold reporting according to Art. 62 MiFID II-DVO can lead to a large amount of information for leveraged products in volatile markets, which annoys the clients. Here, the current loss thresholds of 10 percent, which trigger an information obligation, should be increased to 20 percent. This should affect both the reporting obligation for portfolio management accounts under Art. 62(1) and the reporting obligation for regular securities accounts under para. 2.
- There should be regulatory relief for securities savings plans:
 - Key information documents in accordance with the PRIIPs Regulation should only be provided to the client once when the contract is concluded.
 - The possibility of securities settlement for savings plans (collective settlement) should also be extended to savings plans beyond investment funds.
 - In the case of savings plans, it should be possible to waive the quarterly reporting requirement pursuant to Article 63 (1) of the MiFID II Regulation.
- The reports on the quality of execution (best execution reports) according to RTS 27 (DVO (EU) 2017/575) and RTS 28 (DVO (EU) 2017/576) should be abolished. The reports to be posted and kept available on the website of banks and savings banks are demonstrably not used by clients and do not become the basis for an (informed) investment decision. The preparation of these reports causes disproportionate expenses.

3. Extension of the exemption for professional clients to the disclosure of benefits

The MiFID II quick fix created an exemption for transactions with professional clients, according to which they do not require MiFID II cost information outside of investment advice and asset management. The background to the rule is the correct recognition that professional clients do not require additional information. The rule should also be extended to the disclosure of inducements in the upcoming revision of MiFID II. Since the institutions regularly inform the clients about costs and inducements with the ex ante cost information, the obligation to disclose inducements means that professional clients will continue to receive the ex ante cost information even for many advice-free orders and the legislative intention to "de-bureaucratise" advice-free orders will largely fizzle out.

Q3: Are there specific aspects of existing MiFID II disclosure requirements that may cause information overload for clients or the provision of overly complex information? Please provide details.

Many clients continue to complain about the large amount of information that banks and savings banks have to provide them on the basis of legal requirements. This is confirmed by a study conducted by the Ruhr University of Bochum, which came to the following conclusions, among others:

The study clearly reveals, however, that the additional material provided in advance of a transaction contains a high risk of drowning clients in information. In other words, most clients do not benefit:

- Almost all banks (91.5%) said that **pertinent information got lost** in the bulk of material provided.
- Also, 77.3% of clients said that more comprehensive information did not help them in better understanding the contents discussed. Instead, 62.3% felt **overwhelmed by the sheer quantity of information** presented to them.

In particular, clients with **especially large securities portfolios** or high trading activity felt that the new mandatory documents were **very annoying**:

- 85.7% of those clients most active in trading said that the suitability statement made no or little sense (retail clients: 64.9%).
- Only 42.7% of clients see any benefit in being provided with ex-ante cost disclosures. The most active investors (those with more than 48 transactions per year) are those that feel most disturbed by ex-ante cost disclosures being (in part, repeatedly) presented to them (78.1%).
- In line with these results, a clear wish for a waiver option is present across all client segments: 71.4% as regards the suitability statement, 62.7 % regarding ex-ante cost disclosures, 49.3% regarding the KID, and 50.1% regarding the record of the order.

The upcoming revision of MiFID II should be used to remove unnecessary information obligations for all investor groups. This includes in particular the following obligations:

- The quarterly reporting according to Art. 63 MiFID II-DVO should be omitted, as clients have the possibility to query the securities account balance online at any time or to ask the depositary bank for an up-to-date list.
- The requirement to also provide information on costs when selling or recommending selling also has no added value for clients and should also be dropped. The costs are mostly irrelevant when deciding to sell a security. However, the obligation to provide ex ante cost information leads to considerable time delays, which causes annoyance among quite a few clients.
- For products (e.g. bonds and shares) without product costs, ex-ante cost information requirements can be waived.
- The loss threshold reporting according to Art. 62 MiFID II-DVO can lead to a large amount of information for leveraged products in volatile markets, which annoys the clients. Here, the current loss thresholds of 10 percent, which trigger an information obligation, should be increased to 20 percent. This should affect both the reporting obligation for asset management securities accounts under Art. 62(1) and the reporting obligation for regular security accounts under para. 2.
- There should be regulatory relief for securities savings plans:
 - Key investor documents in accordance with the PRIIPs Regulation should only be provided to the client once when the contract is concluded.
 - The possibility of securities settlement for savings plans (collective settlement) should also be extended to savings plans beyond investment funds.

- In the case of savings plans, it should be possible to waive the quarterly reporting requirement pursuant to Article 63 (1) of the MiFID II Regulation.

Q4: On the topic of disclosures, are there material differences, inconsistencies or overlaps between MIFID II and other consumer protection legislation that are detrimental to investors? Please provide details.

There are numerous discrepancies between the requirements, which causes difficulty for both clients and providers (e. g. different product costs under MiFID and PRIIPs, the provision of electronic information under the MiFID quick fix and paper-based information under PRIIPs; differing definitions of sustainability under MiFID and the Disclosure Regulation). These requirements must be harmonised.

Product costs are calculated differently under MiFID II and the PRIIPs regime, which causes major practical problems. Among other things, this is the case with respect to inducements. While product costs under the PRIIPs Regulation have to include inducements, they would have to be part of the service costs under MiFID, so MiFID II product costs have to be disclosed without inducements.

This means clients are being given different information about the product costs for one and the same product (if it is both a PRIIP and a financial instrument within the meaning of MiFID II), even if both information sheets base their calculations on the same investment amount of €10,000. In an example provided by a large German bank, the same product was shown to have product costs of €246.28 or 1.38% p.a. based on an investment of €10,000 when calculated under the PRIIPs Regulation, and product costs of €111.27 or 0.56% p.a. based on the same investment amount but calculated in accordance with MiFID II.

This discrepancy, which has to be explained to investors and which they find difficult to understand, results from a lack of consistency in the rules governing the calculation of costs.

As regards the relationship between the PRIIPs Regulation and its Delegated Regulation on the one hand and MiFID II on the other, the presentation of costs in the KID should be abolished if the product in question is a financial instrument within the meaning of MIFID II. This would avoid discrepancies while nevertheless informing the client about costs according to the MiFID II requirements.

The definition of sustainable products used in MiFID II differs from that of the SFDR, which can lead to discrepancies between the suitability statement and the information provided under the SFDR. It is already foreseeable that the differing definitions of sustainability will lead to confusion among investors. The different definitions need to be harmonized.

Q5: What do you consider to be the vital information that a retail investor should receive before buying a financial instrument? Please provide details.

The client needs simple and well-structured product information. The very extensive information requirements should be dispensed with (e.g. sales prospectus, simplified sales prospectus). Instead of creating new information documents to replace the old ones, more and more information documents have been created which have to be read side by side by the client. In many cases, the abundance of information means that many clients do not read the information at all.

The cost information is particularly dominant in the multitude of information provided to the client. As a result, the client loses focus for the essentials. Cost information should therefore be removed from the product information (e.g. PRIIPs KID) in order to avoid duplication of information.

In general, it is to be welcomed that the question refers to the purchase of financial instruments. This is in line with our understanding that clients generally do not require information when selling financial instruments. The current obligation to provide ex ante cost information also for sales should therefore be dropped (see already above under Q 2 and Q 3.).

When purchasing financial instruments, clients should above all be informed about the product and the costs involved in the purchase. These aspects are covered by the ex ante cost information, so that no further information is required.

However, the existing deficiencies in the information required by law (this concerns the PRIIPs KID) and the discrepancies between the different information requirements (see in detail under Q4.) must be harmonised.

Q6: Which are the practical lessons emerged from behavioural finance that should be taken into account by the Commission and/or ESMA when designing regulatory requirements on disclosures? Please provide details and practical examples.

From our point of view, it is crucial that clients only receive the essential information and that an "information overload" is avoided. If clients are "flooded" with information, there is a risk that they will not read the information that is essential to them. This is not in the client's interest.

A study by the Ruhr University in Bochum, based on client surveys, has shown that many clients are of the opinion that they receive too much information as a result of the new requirements from MiFID II and the PRIIP Regulation and are unable to separate the important from the unimportant:

The study clearly reveals, however, that the additional material provided in advance of a transaction contains a high risk of drowning clients in information. In other words, most clients do not benefit:

- Almost all banks (91.5%) said that **pertinent information got lost** in the bulk of material provided.
- Also, 77.3% of clients said that more comprehensive information did not help them in better understanding the contents discussed. Instead, 62.3% felt **overwhelmed by the sheer quantity of information** presented to them.

In particular, clients with **especially large securities portfolios** or high trading activity felt that the new mandatory documents were **very annoying**:

- 85.7% of those clients most active in trading said that the **suitability statement** made no or little sense (retail clients: 64.9%).
- Only 42.7% of clients see any benefit in being provided with **ex-ante cost disclosures**. The most active investors (those with more than 48 transactions per year) are those that feel most disturbed by ex-ante cost disclosures being (in part, repeatedly) presented to them (78.1%).

- In line with these results, a clear **wish for a waiver option** is present across all client segments: 71.4% as regards the suitability statement, 62.7 % regarding ex-ante cost disclosures, 49.3% regarding the KID, and 50.1% regarding the record of the order.

Q7: Are there any challenges not adequately addressed by MIFID II on the topic of disclosures that impede clients from receiving adequate information on investment products and services before investing? Please provide details.

Apart from the problem already mentioned several times (see in particular our answer to Q 6) that clients currently receive too much information and that this information often is not harmonised, we would like to draw attention to the important point that information obligations across all requirements are to be limited to retail clients:

- MiFID II contains requirements for the provision of information to professional clients. As in the PRIIPs Regulation, the information requirements should be limited to retail clients, as only these require supplementary information.
- The UCITS Directive is intended to introduce the (de facto) obligation to provide professional clients with a PRIIPs KID when acquiring a fund. This should be reversed so that the basic decision of the PRIIPs Regulation remains that the KID is only directed at retail clients.

In addition, the legislator should refrain from further extending the information requirements in the revision of MiFID II. This would not be in the client's interest (see our detailed response to Q6).

Q8: In case of positive answer to one or more of the above questions, are there specific changes that should be made to the MiFID II disclosure rules to remedy the identified shortcomings? Please provide details.

We see a need for adjustment in the following points (see already above under Q 2):

1. Harmonisation of information requirements

- For all PRIIPs that are also financial instruments under MiFID II, so that clients receive ex ante cost information according to MiFID II, manufacturers should not have to display product costs in the key investor documents. In this way, redundant or even divergent information in the two key information documents will be avoided.
- The legislator must commit to a uniform definition of sustainability that underlies all relevant regulations (this currently concerns MiFID II and the SFDR in particular).
- The requirements of the MiFID quick fix on the electronic provision of information should quickly be extended to the other information obligations under securities law.

2. Abolition of unnecessary information requirements

The upcoming revision of MiFID II should be used to remove unnecessary information obligations for all client categories. This includes in particular the following obligations:

- The quarterly reporting according to Art. 63 MiFID II-DVO should be omitted, as clients have the possibility to query the securities account balance online at any time or to ask the depositary bank for an up-to-date list.
- The requirement to also provide information on costs when selling or recommending selling also has no added value for clients and should also be dropped. The costs are mostly irrelevant when deciding to sell a security. However, the obligation to provide ex ante cost information leads to considerable time delays, which causes annoyance among quite a few clients.
- For products (e.g. bonds and shares) without product costs, ex-ante cost information requirements can be waived.
- The loss threshold reporting according to Art. 62 MiFID II-DVO can lead to a large amount of information for leveraged products in volatile markets, which annoys the clients. Here, the current loss thresholds of 10 percent, which trigger an information obligation, should be increased to 20 percent. This should affect both the reporting obligation for asset management securities accounts under Art. 62(1) and the reporting obligation for regular securities accounts under para. 2.
- There should be regulatory relief for securities savings plans:
 - Key investor documents in accordance with the PRIIPs Regulation should only be provided to the client once when the contract is concluded.
 - The possibility of securities settlement for savings plans (collective settlement) should also be extended to savings plans beyond investment funds.
 - In the case of savings plans, it should be possible to waive the quarterly reporting requirement pursuant to Article 63 (1) of the MiFID II Regulation.

3. Extension of exemption for professional clients the disclosure of benefits

The exemption from cost disclosure for transactions with professional clients and eligible counterparties in Art. 29 a MiFID II should also be extended to the disclosure of inducements in the forthcoming revision of MiFID II.

Q9: On the topic of disclosures on sustainability risks and factors, do you see any critical issue emerging from the overlap of MiFID II with the Sustainable Finance Disclosure Regulation (SFDR)³¹ and other legislation covering ESG matters?

For the success of the Sustainable Finance Agenda, it is essential that regulations are developed "from a single mould" that are coordinated and interlocked. Furthermore, sufficient implementation deadlines are crucial. There are several critical issues emerging from the overlap of MiFID II with the SFDR and other legislation covering ESG matters we would like to highlight.

1. Different approaches

Banks and savings banks face the great challenge of communicating a uniform understanding of a sustainable product to the client with regard to investment funds, shares, bonds and certificates, and to ask the client about his sustainability preferences. Therefore, inconsistent specifications on what is considered

a sustainable financial product confuse product manufacturers and clients alike and counteract the goal of creating transparency and orientation in the offer and distribution of sustainable investments. There are already very heterogeneous and complex requirements for sustainable products:

- Art. 8 and 9 SFDR: Two categories for sustainable financial products (i.e. also funds).
- Art. 2 No. 7 amended MiFID II Delegated Regulation (EU) 2017/565: Three categories of sustainable financial instruments (mostly) deviating from the SFDR - these will have the greatest practical relevance for manufacturers and distributing banks/savings banks.

What counts as a sustainable product is inconsistently regulated in the various EU rules (SFDR, MiFID II Delegated Regulation, Taxonomy). For example, the future query of the investor's sustainability preferences under MiFID II places different requirements on sustainable products than the SFDR. In opposition to MiFID II Delegated Regulation, SFDR and Taxonomy Regulation do not provide for a certain minimum proportion of (environmentally) sustainable investments either in Art. 8 and 9, Art. 2 (17) or Art. 2 (1) Taxonomy Regulation. The definitions should be harmonized.

Due to the new regulations on the query of sustainability preferences and excessive demands on the client (e.g. on determining a minimum proportion of the financial instrument or principal adverse sustainability impacts), we have great doubts that a client can assess the quality of the sustainability of the product against the background of its individual sustainability preference. In the further work at European level, overweighting of sustainability needs within the whole advisory process must be avoided, so that investment advice on sustainability can still be implemented in the day-to-day advisory business and does not overburden the client (more in detail subsequent 3.).

2. Lack of data availability on ESG data

Due to the obligation of MiFID manufacturers to provide the required ESG data via the target market, it can be assumed that the required data will be available to distributors. However, the bar for expectations in terms of reporting on the Taxonomy should be set very low. Even though there is a clear interest among manufacturers to invest in line with the Taxonomy criteria, investment strategies based on the Taxonomy are still not operational on a broader scale. This is mainly due to the early stage of the development of technical criteria that cover only a few sectors and are not relevant to the broader economy. Moreover, given the late publication of the delegated acts with technical criteria for environmentally sustainable economic activities contributing to either climate change mitigation or adaptation, it should be clear that even those companies covered by technical criteria will not be able to report reliable data on Taxonomy alignment of their activities until end 2021 or shortly afterwards. This means that by 1 January 2022 manufactures (e.g. fund manager) will lack the necessary data basis for assessing their holdings against the EU Taxonomy, yet alone to commit to certain minimum shares of Taxonomy-aligned investments. The Delegated Regulation under Art. 8 of Taxonomy Regulation accounts for this challenge by requiring only generic disclosures in relation to the EU Taxonomy by 1 January 2022 for non-financial undertakings. If adopted accordingly, specific KPIs on the proportion of Taxonomy-aligned activities in companies would be available even later, i.e. only from the beginning of 2023. It should be clear that before that date hardly any SFDR-financial product will be able to assess the likely share of Taxonomy-aligned investments in order to make firm commitments as regards their minimum proportion to clients. This also means that from 2 August 2022 (time of entry into force of the new provisions on sustainability preferences under MiFID II) there will be hardly any product that offer clients a minimum proportion of investments in line with the EU Taxonomy according to Art. 2 (7)(a) of MiFID II Delegated Regulation. Due to

the announced postponement of the SFDR RTS to 1 January 2023, it is also to be feared that manufacturers falling within the scope of the SFDR will not yet be able to make firm commitments on minimum shares of Taxonomy-aligned investments or sustainable investments by 2 August 2022.

Apart from that, a corresponding obligation to provide the required ESG data via the target market is missing for companies in the real economy. It is therefore to be feared that the relevant ESG data will be lacking for shares and corporate bonds.

3. Excessive requirements and interpretations

The respective regulations of the Sustainable Finance Agenda (including Taxonomy Regulation, SFDR, MiFID II) do not sufficiently take into account the size and further specificities of the individual financial market participants. In the case of the SFDR in particular, we see the problem that the one-size-fits-all principle of the regulation does not do justice to the special features and differences of financial market participants and the differences of their financial products. Particular legal challenges currently arise from the fact that the Level 2 regulation on the disclosure obligations (RTS) will not be available in time and has been further postponed recently (applicable from 1 January 2023). This further adds to the implementing burden for financial market participants.

Furthermore, a lot of resources have to be used for the collection of data and reporting obligations (e.g. the PAI-Statement) - resources that the financial market participants could use for sustainable action. These aspects should be given even greater consideration in the context of future sustainable finance regulations and their respective impact assessments.

In any case, in the further steps at European level (including interpretations of MiFID II), unnecessary, non-practical requirements or interpretations should be avoided, in particular in order to enable clients to receive advice based on their sustainability preferences that is easy to understand and not too time-consuming. The product governance requirements should also be interpreted in a practical manner, i.e. unnecessary hurdles for manufacturers and distributors and in relation to each other should be avoided. Last but not least, the shortcomings described above should also be taken into account appropriately. This would also be in the client's interest (see also our answers to Q22).

Q10: Are there any other aspects of the MiFID II disclosure requirements and their interactions with other investor protection legislations that you think could be improved or where any specific action from the Commission and/or ESMA is needed?

Although it does not relate to inconsistencies per se, it is worth mentioning here that the legal requirements on the calculation of performance scenarios are faulty in numerous respects and could lead to misleading content in the PRIIPs KIDs. Irrespective of this, it is not possible for retail investors to understand how the scenarios are calculated. The relevant requirements must be fundamentally reviewed as a matter of some urgency.

As retail investors receive both, MiFID ex ante and the PRIIPs KID, when purchasing a PRIIP that is also a financial instrument, any shortcomings in the PRIIPs KIDs will reduce the quality of the entire package of information (even if the ex ante do not lack of shortcomings).

Q11: Do you have any empirical data or insights based on actual consumers usage and engagement with existing MiFID II disclosure that you would like to share? This can be based on e.g., consumer research, randomized controlled trials and/or website analytics.

These new requirements were designed to increase transparency and investor protection, an effort that is to be applauded. However, some of the new requirements have created a 'flood of information', which clients are no longer able to overview. Furthermore, order execution processes have been unnecessarily prolonged, as shown by an academic study commissioned by the German Banking Industry Committee and conducted at Ruhr-Universität Bochum.

1. Flood of information

The objective of the new provisions was to better protect clients, through comprehensive information provided in a harmonised manner. The study clearly reveals, however, that the additional material provided in advance of a transaction contains a high risk of drowning clients in information. In other words, most clients do not benefit:

- Almost all banks (91.5%) said that **pertinent information got lost** in the bulk of material provided.
- Also, 77.3% of clients said that more comprehensive information did not help them in better understanding the contents discussed. Instead, 62.3% felt **overwhelmed by the sheer quantity of information** presented to them.

In particular, clients with **especially large securities portfolios** or high trading activity felt that the new mandatory documents were **very annoying**:

- 85.7% of those clients most active in trading said that the **suitability statement** made no or little sense (retail clients: 64.9%).
- Only 42.7% of clients see any benefit in being provided with **ex-ante cost disclosures**. The most active investors (those with more than 48 transactions per year) are those that feel most disturbed by ex-ante cost disclosures being (in part, repeatedly) presented to them (78.1%).
- In line with these results, a clear **wish for a waiver option** is present across all client segments: 71.4% as regards the suitability statement, 62.7 % regarding ex-ante cost disclosures, 49.3% regarding the KID, and 50.1% regarding the record of the order.

Harmonising information does not help the fact that clients are flooded with information. Quite the contrary: it **contains further non-benefits in the form of advice becoming less flexible and less individual**.

- 70.7% of clients said that a greater degree of harmonisation did not help them to identify relevant information faster. Instead, harmonisation efforts had reduced the individuality of advisory services (according to 83.7% of institutions).
- Against this background, almost all banks are being confronted with a higher need to explain the new processes and documents to clients (98.7%).
- At the same time, 64.6% of clients said they got lost quicker in the flood of information, and had to ask their adviser questions more often.

2. Longer ordering processes

Providing clients with mandatory documents (product information, cost disclosure) prolongs both advisory and execution-only business. This is one of the reasons that most clients are dissatisfied with the new provisions.

The study has clearly shown the degree of extra work for banks and the dissatisfaction of clients with the situation. **Direct interactions between banks and clients** take significantly **more time**, and this is reflected in the **allocation of personnel resources**:

- Direct interactions between banks and clients now take 22.8% **longer** in the **retail segment**, and 21.9% longer in the **corporate segment**. In **private banking**, the average interaction is even 27.8% longer.
- 83.6% of clients said that **discussions with their adviser** now took (significantly) more time. At the same time, 69.1% of clients feel that the **effort involved in placing an order is (rather) inappropriate**.

As already mentioned several times, superfluous information should be reduced (cf. our response to Q2).

2.3 Digital disclosures

Q12: Do you observe a particular group or groups of consumers to be more willing and able to access financial products and services through digital means, and are therefore disproportionately likely to rely on digital disclosures? Please share any evidence that you may have, also in form of data.

In view of increasing digitalisation and the widespread use of laptops, smartphones, etc., it is a general trend that many clients also conclude securities transactions online. This applies more strongly to younger clients than to older ones.

Q13: Which technical solutions for digital disclosures (e.g., solutions outlined in paragraph 27 or additional techniques) can work best for consumers in a digital - and in particular smartphone - age? Please provide details on solutions adopted and explain how these have proven an effective way to provide information that is clear and not misleading.

Especially with regard to mobile devices, it is important to ensure that information is not too long, as clients will not be able to read it. With mobile devices, it is therefore particularly important that there is no information overload.

Q14: Would it be useful to integrate any of the approaches set out in paragraph 27 above in the MIFID II framework? If so, please explain which ones and why.

In our view, the following approaches make sense:

- **Retrievability of information:** When information is communicated via websites, clients should be given guidance on where to find the information in question. However, this requirement is already inherent in current law, see Art. 3(2)(c) MiFID II Delegated Regulation: "the client must be notified electronically of the address of the website, and the place on the website where the information may be accessed".
- **Obligation to provide the possibility to save information:** In principle, a client should have the possibility to save the information provided to him - in our view, this is possible both in the case of the durable medium pursuant to Art. 3 (1) MiFID II-Delegated Regulation and in the case of the provision of information via a website (Art. 3 (2) MiFID II-Delegated Regulation).
- **Presentation and format:** A requirement in this respect is contained, for example, in Article 4(5) of the PRIIPs Regulation.
- **Limiting of security risks for clients:** We consider such information to be very important in order to counteract the danger of phishing. In our opinion, however, the appropriate objective of this recommendation contradicts the considerations regarding Open finance, see 2.4.3).

In contrast, we consider the following approaches to be counterproductive, so they should not be pursued:

- **Easy navigability of information:** The information requirements should be limited to essential information and avoid information overload. If this approach is followed stringently, there is no need for separate references to important aspects.
- **Versioning:** Retention of client information should be the responsibility of the clients. Clients should decide whether or not to retain the documents (for which the information should be storable, see above). The storage should not be "outsourced" to the sales offices under any circumstances, as this leads to enormously high costs in mass business (archiving costs and, in particular, the possibility of finding the information again).
- **Use of different means:** It must be possible to determine the communication channels with the clients in principle for the entire business relationship (e.g. client receives an electronic mailbox or wants information in paper form) or, if necessary, discussed in individual cases (e.g. transmission of ex ante to the client's current e-mail address). On this basis, the client can decide whether the institution's offer to communicate with him is suitable for him. Institutions should not be obliged to offer further communication channels as this would lead to additional costs.
- **Monitoring effectiveness:** If the institutions prepare information themselves (because they are legally obliged to do so, e.g. in the case of MiFID cost information, or on a voluntary basis), they will ensure that clients understand it out of self-interest (avoidance of complaints in the context of the securities regulatory audit and the threat of fines in the event of infringements, avoidance of civil liability risks). If individual contents trigger queries or even misunderstandings, the presentation will be adjusted. We do not consider a supervisory obligation to actively test this to be necessary for the reasons stated above. In practice, clients have problems understanding PRIIPs KIDs in particular, the content of which is prescribed by law.

Q15: Should the relevant MIFID II requirements on information to clients be adapted in light of the increased use of digital disclosures? If so, please explain how and why.

Under the MiFID quick fix, the legislator introduced the very welcome requirement in Article 24(5)(a) of MiFID for all information to be provided in electronic format by default and for information to be provided on paper only if explicitly requested by the retail client. Retail clients are to be switched over to this format, meaning that they will receive future communications electronically, unless they provide notification that they wish to receive paper-based communications within eight weeks.

This effective and sensible provision, which takes into account the growing digital transformation as well as the EU's sustainability efforts, should also be introduced in the other client information regulations (such as the PRIIPs Regulation and the IDD). This would also bring an end to the situation which is barely comprehensible to clients, whereby they receive certain information that falls under MiFID II (e.g. ex ante disclosures or the suitability statement) in electronic form, while other information (e.g. the PRIIPs-KIDs) is provided on paper (with all three of these documents provided simultaneously during the advice process or order placement).

Q16: Do you see the general need for additional tools for regulators in order to supervise digital disclosures and advertising behind 'pay-walls', semi-closed forums, social media groups, information provided by third parties (i.e., FINfluencers), etc? Please explain and outline the adaptations that you would propose.

To the extent that problems are seen in the above-mentioned areas with regard to investor protection, these should be investigated further and measures examined. We do not have any further information on this.

2.4 Digital tools and channels**Q17: To financial firms: Do you observe increased interest from retail investors to receive investment advice through semi-automated means, e.g., robo-advice? If yes, what automated advice tools are most popular? Please share any available statistics, data, or other evidence on the size of the market for automated advice.**

The demand for so-called Robo-advice is steadily increasing, which is already evident from the fact that most providers offer corresponding solutions.

It is important to many clients that they have both options: Advice from a personal advisor and robo advice. This is because German investors still prefer personal interaction when it comes to investment advice. Automated forms of advice such as robo advice are therefore merely a supplement to the existing personal forms of advice.

Q18: Do you consider there are barriers preventing firms from offering/developing automated financial advice tools in the securities sectors? If so, which barriers?

The provider of financial services has to comply with all regulatory requirements applicable to the service provided, irrespective of the means of communication. However, we see imbalances in the application of these standards on the European level. The different approaches of national competent authorities within the EU hinder establishing a level playing field across the EU.

Furthermore, the provisions and interpretations are disproportionate for both human and robo advice. Therefore, competition between different business models is almost impossible now and clients cannot really choose between different providers because the approaches become more and more similar. Furthermore, it becomes more and more difficult to offer investment advice to all clients, although the vast majority wish investment advice. Hence, it would be in the interest of clients and intermediaries for provisions and interpretations to become less complex and detailed on the whole.

Q19: Do you consider there are barriers for (potential) clients to start investing via semi-automated means like robo-advice caused by the current legal framework? If so, please explain and outline what you consider to be a good solution to overcome these barriers.

We do not see any particular barriers to robo advice, but we do see general barriers to offering investment advice to all clients due to the increasingly complex and detailed requirements and interpretations for or of investment advice (see our response to Q18 for more detail).

Q20: In case of the existence of the above-mentioned barriers, do you have evidence of the impact that they have on potential clients who are interested in semi-automated means? For instance, do they invest via more traditional concepts or do they not invest at all?

The longer the advisory process takes, the more likely it is that clients will be less interested in taking investment advice. The increasingly complex and detailed requirements and interpretations therefore also entail the risk that clients will not use investment advice or will use it less. Hence, it would be in the interest of clients for provisions and interpretations concerning investment advice to become less complex and detailed on the whole.

Q21: Do you consider the potential risks and opportunities to investors set out above to be accurate? If not, please explain why and set out any additional risk and opportunities for investors.

No further comments.

Q22: Do you consider that the existing MiFID regulatory framework continues to be appropriate with regard to robo-advisers or do you believe that changes should be added to the framework? If so, please explain which ones and why.

For reasons why it would be in the client's interest if the regulations and interpretations on investment advice were less complex and detailed, we refer to our response to Q18 to Q20. First of all, particular care should be taken not to further increase the complexity and level of detail through new requirements

and interpretations. An initial touchstone in this respect would be, for example, the planned interpretations of the new sustainability requirements (MiFID II Delegated Regulation and Delegated Directive). Unnecessary interpretations that are not in line with practical requirements should be avoided in order to enable clients to receive advice based on their sustainability preferences that is easy for them to understand and does not take up too much time. Before new regulations or interpretations are introduced, they should be tested for their practicability for retail clients by a neutral body. The product governance requirements should also be interpreted in a practical manner, i.e. unnecessary hurdles for manufacturers and distributors and in relation to each other should be avoided.

2.4.2 Online brokers (lessons from the GameStop case)

Provision of services through online platforms

Q23: Do you think that any changes should be made to MiFID II (e.g., suitability or appropriateness requirements) to adequately protect inexperienced investors accessing financial markets through execution only and brokerage services via online platforms? If so, please explain which ones and why.

No. In the German market, execution-only services only come in to play in special cases (e.g. money market). In other words: German banks and savings banks always carry out an appropriateness assessment even for online brokerage.

In addition, the requirements applicable to branch-based services must also be met by providers of online brokerage services. Alongside the appropriateness assessment, clients must also be provided with the same information (e.g. PRIIPs and ex ante disclosures) as they would in a branch. Online brokerage clients are therefore also able to obtain objective information on the relevant product that is prepared on the basis of regulatory requirements. In our view, there is no need for additional arrangements.

If ESMA or NCAs have concerns regarding these providers' compliance with regulatory requirements, a regular audit should be conducted. Moreover, if such audits were carried out by the NCAs themselves or third parties they engage for this purpose, the NCAs would not be reliant on speculation about the business model and its implementation in practice. Regular audits by the NCAs in all EU Member States would also help to achieve a level playing field among all market participants.

Q24: Do you observe business models at online brokers which pose an inherent conflict of interest with retail investors (e.g., do online brokers make profits from the losses of their clients)? If so, please elaborate.

No, we are not aware of such models.

Q25: Some online brokers offer a wide and, at times, highly complex range of products. Do you consider that these online brokers offer these products in the best interest of clients? Please elaborate and please share data if possible.

In the German market, many providers strive to offer their clients the purchase of as many products as possible. For self-deciders, this has the great advantage that they can choose from a very wide range of products and also invest in "exotic niches", for example (e.g. with a small portion of the money invested).

For clients, the broad availability of products is an important quality feature of the respective securities account model. For a client who has studied a product intensively and wants to purchase it as a self-decider, it is very frustrating if he or she is then unable to order it. Particularly in the case of bonds with a make-whole clause, which are regarded as PRIIPs by the supervisory authorities, this repeatedly leads to strong expressions of displeasure from clients who try (in vain) to order these products.

In this respect, we assume that online brokers who provide their clients with a wide range of instruments to purchase as self-deciders are acting in the best interests of their clients.

Q26: One of the elements that increased the impact on retail investors in the GameStop case was the widespread use of margin trading. Do you consider that the current regular framework sufficiently protects retail investors against the risks of margin trading, especially the ones that cannot bear the risks? Please elaborate.

We are not aware of shortcomings.

Q27: Online brokers, as well as other online investment services, are thinking of new innovative ways to interact and engage with retail investors. For instance, with "social trading" or concepts that contain elements of execution only, advice, and individual portfolio management. Do you consider the current regulatory framework (and the types of investment services) to be sufficient for current and future innovative concepts? Please elaborate.

In our view, the current forms of distribution, which allow in particular a coexistence of investments with professional support (commission-based and fee-based investment advice or asset management) and the self-directed business, are sufficient to provide a high-quality range of investment services.

However, the currently possible forms of distribution should not be restricted under any circumstances. If problems arise with individual providers, these should be addressed by the competent supervisory authorities. The requirements under MiFID II provide for a wide range of measures.

Q28: Are you familiar with the practices of payment for order flow (PFOF)? If yes, please share any information that you consider might be of relevance in the context of this call for evidence.

We are familiar with the principle of PFOF. The core is the reimbursement to brokers for their forwarding of client orders. In our view, this is permissible as long as it is within the MiFID II rules (please see also our answer to Q30).

Q29: Have you observed the practice of payment for order flow (PFOF) in your market, either from local and/or from cross border market participants? How widespread is this practice? Please provide more details on the PFOF structures observed.

We are aware of the application of the business model, which is otherwise permissible in principle, in the German market. In our view, ESMA has addressed all important questions in its respective statement.

Q30: Do you consider that there are further aspects, in addition to the investor protection concerns outlined in the ESMA statement with regards to PFOF, that the Commission and/or ESMA should consider and address? If so, please explain which ones and if you think that these concerns can be adequately addressed within the current regulatory framework or do you see a need for legislative changes (or other measures) to address them

Apart from the issues of conflicts of interest, which have already been adequately addressed, we do not see any other issues that need to be regulated. MiFID II already offers a broad toolkit of regulatory measures in this respect which, in our view, need to be enforced in case of any potential compliance shortcomings before any new regulatory measures will be introduced. Taking into account the principle of proportionality, a general ban on certain practices should always be ultima ratio. Therefore, we suggest analyzing the situation in detail and gathering further evidence in order to decide on an appropriate measure on this basis.

Q31: Have you observed the existence of "zero-commission brokers" in your market? Please also provide, if available, some basic data (e.g., number of firms observed, size of such firms and the growth of their activities).

To our knowledge, brokers of this kind have been established in Germany just recently. These essentially use new technologies - e.g. restriction to use via app. We do not have any further data or figures.

Q32: Do you have any information on "zero-commission brokers" business models, e.g., their main sources of revenue and the incidence of PFOF on their revenue? If so, please provide a description.

Q33: Do you see any specific concern connected to "zero commission brokers", in addition to the investor protection concerns set out in the ESMA statement that the Commission and/or ESMA should consider and address? Please explain and please also share any information that you consider might be of relevance in the context of this call for evidence. Please also explain if you consider that the existing regulatory framework is sufficient to address the concerns listed in the ESMA statement regarding zero-commission brokers or do you believe changes should be introduced in the relevant MiFID II requirements.

Apart from the already sufficiently addressed regulatory issue of "payment for order flow", we do not see any further regulatory concerns.

Q34: Online brokers seem to increasingly use gamification techniques when interacting with clients. This phenomenon creates both risks and potential benefits for clients. Have you observed good or bad practices with regards to the use of gamification? Please explain for which of those a change in the regulatory framework can be necessary. Do you think that the Commission and/or ESMA should take any specific action to address this phenomenon?

We are aware of such practices. For example, a shower of confetti on American trading apps after an order has been completed. Such forms of encouragement and reward can lead to repeating the underlying action. This can encourage addictive behavior. A ban should, however, take into account that the borderline to merely improved "usability" is fluid. Many institutions are also working more with visual elements than in the past in order to communicate with clients in the visual language they are accustomed to from social networks.

Q35: The increased digitalisation of investment services, also brings the possibility to provide investment services across other Member States with little extra effort. This is evidenced by the rapid expansion of online brokers across Europe. Do you observe issues connected to this increased cross-border provision of services? Please elaborate.

As we understand it, one of the aims of the EU internal market is for suppliers to offer their products or services across borders. We do not see this as disadvantageous. If there are problems here, these must be addressed by the competent supervisory authorities.

Role of social media

Q36: Do you observe an increasing reliance of retail clients on information shared on social media (including any information shared by influencers) to base their investment decisions? Please explain and, if possible, provide details and examples. Do those improve or hamper the decision-making process for clients?

As demonstrated by experience in other areas of daily life, it is to be expected that social media platforms will become an increasingly important source of investor information. As a result, the risk of investors receiving inadequate or misleading information is likely to grow. In our view, this risk should be countered by the efforts to significantly improve the economic and financial education provided to the public.

It should be noted that investors already have access to comprehensive information, which is prepared by manufacturers or distributors on the basis of legal requirements to help investors make their investment decisions (PRIIPs KIDs, prospectuses, ex ante cost disclosures, etc.). Investors can use these objective documents to find out about the relevant product as well as other important aspects, such as the costs incurred, and then compare this information against social media reports, for example. Furthermore, investment firms already voluntarily make a wide variety of supporting information available in order to promote financial education. Most banks and savings banks also offer investment advisory services, providing clients with investment recommendations tailored to their preferences.

Q37: What are, in your opinion, the risks and benefits connected to the use of social media as part of the investment process and are there specific changes that should be introduced in the regulatory framework to address this new trend?

When investment firms operate on social media channels, they are subject to the information requirements of MiFID II. There is therefore no need for action here.

If there is evidence that companies that are not subject to MiFID and may not be otherwise regulated are creating risks through their communications that investors are making bad investments, consideration should be given to subjecting them to existing regulation.

Q38: Are you aware of the practices by which investment firms outsource marketing campaigns to online platform providers/agencies that execute social media marketing for them, and do you know how the quality of such campaign is being safeguarded?

No, we are not aware of any such cases.

Q39: Have you observed different characteristics of retail clients, such as risk profiles or trading behaviour, depending on whether the respective client group bases their investment decision on information shared on social media versus a client group that does not base their investment decision on social media information? Please elaborate.

No, we are not aware of this.

Q40: Do you have any evidence that the use of social media (including copy/mirror trading) has facilitated the spreading of misleading information about financial products and/or investment strategies? Please elaborate and share data if possible.

No, we are not aware of this.

Q41: Have you observed increased retail trading of 'meme stocks', i.e. equities that experience spikes in mentions on social media? Please share any evidence of such trading and, if possible, statistics on outcomes for retail investors trading such instruments.

No, we are not aware of this.

Risk warnings

Q42: Do you consider that the current regulatory framework concerning warnings provides adequate protection for retail investors? If not, please explain and please describe which changes to the current regulatory framework you would deem necessary and why.

Yes. If the investment service or product purchase is “inappropriate” in view of the client’s knowledge and experience, the client is made aware of this by means of an explicit warning. In our opinion, such an unambiguous and clear warning is an adequate means of protecting retail investors from making the wrong decision.

Furthermore, investors are informed in the PRIIPs KIDs and the UCITS KIID about the risks of the relevant product they consider to purchase. Both documents contain a risk indicator that helps them to easily understand the risk of the product.

We oppose protective mechanisms over and above this, such as declining orders based on negative appropriateness tests. Declining an order based on the appropriateness test would also give rise to significant risks under civil law.

2.4.3 Open finance

Q43: Do you believe that consumers would benefit from the development of an ‘open finance’ approach similarly to what is happening for open banking and the provision of consumer credit, mortgages, etc? Please explain by providing concrete examples and outline especially what you believe are the benefits for retail investors.

To our knowledge, the idea of open finance has been introduced in the area of payment services according to the PSD. It should be noted that payment transactions differ significantly from transactions with financial instruments. While payment transactions usually concern payment for a service, transactions with financial instruments involve investment decisions and the generation of returns. Given the much greater regulatory burden associated with transactions with financial instruments, it is not appropriate to transfer the requirements introduced under the PSD to transactions in financial instruments.

In addition, the experience of the ‘grey’ capital market has shown that without adequate supervision, providers can cause significant damage. There is fierce competition among investment service providers, including with regard to technological innovation, as clearly demonstrated by the recent emergence of ‘neo-brokers’, for example.

Furthermore, we do not see any benefit for the investor if a third party is able to check his securities account. In contrast to payment accounts where the knowledge that there is enough money enables the third party to initiate a credit transfer and constitute an alternative to other payments (i. e. credit card), the knowledge which instruments the client has purchased in the past does not enable the third party to recommend a certain transaction. Such a recommendation can only be given after the current preferences of the client have been explored. We could not find any benefits in ESMA’s introduction to the chapter on open finance.

Finally, we see the risks with regard to data protection and fraud ESMA has mentioned in the Consultation paper (see para 52) when granting third parties access to securities accounts. In this regard, we want to highlight that ESMA has proposed to issue a recommendation that investment firms inform their

clients when communicating via email that they will not ask the clients to provide their personal financial details online. The idea of allowing third parties to ask the client for his details runs counter this approach and could possibly increase fraud and data misuse.

Q44: What are, in your opinion, the main risks that might originate from the development of open finance? What do you see as the main risks for retail investors? Please explain and please describe how these risks could be mitigated as part of the development of an open finance framework.

As we have explained before, we see the risks with regard to data protection and fraud ESMA has mentioned in the Consultation paper (see para 52) when granting third parties access to securities accounts. In this regard, we want to highlight that ESMA has proposed a recommendation that investment firms inform their clients when communicating via email that they will not ask the clients to provide their personal financial details online. The idea of allowing third parties to ask the client for his details runs counter this approach and could possibly increase fraud and data misuse.

Apart from the risks of open finance we wonder how the investor could benefit by allowing a third party to check his securities account (see above).

Q45: Which client investor data could be shared in the context of the development of an open finance framework for investments (e.g., product information; client's balance information; client's investment history/transaction data; client's appropriateness/suitability profile)?

As we do not see any benefit to the client and ESMA didn't mention any benefits either, we are very sceptical if clients should be allowed to share any investor data (IT based).

Q46: What are the main barriers and operational challenges for the development of open finance (e.g., unwillingness of firms to share data for commercial reasons; legal barriers; technical/IT complexity; high costs for intermediaries; other)? Please explain.

First of all, sharing of investor data should only be considered if there is a benefit for the investor. As we have mentioned before, we do not see such benefits and could not find any in ESMA's Consultation paper. The lack of benefits is probably the main barrier for investors to share their data. If the legislator really intends to start an initiative in this aspect, the benefits should be identified and communicated.

Apart from that, the issue raises concerns with regard to the misuse of client data and fraud. This might also hinder clients to share their securities account data.

Q47: Do you see the need to foster data portability and the development of a portable digital identity? Please outline the main elements that a digital identity framework should be focusing on.

We do not see any benefits in the field of securities accounts.

Q48: Do you consider that regulatory intervention is necessary and useful to help the development of open finance? Please outline any specific amendments to MiFID II or any other relevant legislation.

As we do not see any benefits in the field of securities accounts, we don't think that any regulatory intervention is necessary.

Q49: What do you consider as the key conditions that would allow open finance to develop in a way that delivers the best outcomes for both financial market participants and customers? Please explain.

As we do not see any benefits in the field of securities accounts, we don't think that any regulatory intervention is necessary.