

ANACOFI RESPONSE TO - PUBLIC CONSULTATION ON THE REVIEW OF THE MIFID II/MIFIR REGULATORY FRAMEWORK

The French Association of Financial Advisers, ANACOFI, representing all the regulated professions of independent and non independent advisors and intermediaries, has been asked to give its opinion on points developed in the following consultation paper on “The review of the MiFID II/MiFIR regulatory framework”.

The EU established a comprehensive set of rules on investment services and activities with the aim of promoting financial markets that are fair, transparent, efficient and integrated. The first comprehensive set of rules adopted by the EU ([MiFID I - Directive 2004/39/EC](#).) helped to increase the competitiveness of financial markets by creating a single market for investment services and activities. In the wake of the financial crisis, shortcomings were exposed. MiFID II and MiFIR, in application since 3 January 2018, reinforce the rules applicable to securities markets to increase transparency and foster competition. They also strengthen the protection of investors by introducing requirements on the organisation and conduct of actors in these markets.

After two years, the main goal of a MiFID II/MiFIR targeted review is to increase the transparency of European public markets and, linked thereto, their attractiveness for investors. The Commission aims to ensure that European Union’s share and bond markets work for the people and businesses alike. All companies, both small and large, need access to the capital markets. The regulatory regime for financial markets and financial services needs to be fit for the new digital era and financial markets need to work to the benefit of everyone, especially retail clients.

PUBLIC CONSULTATION ON THE REVIEW OF THE MIFID II / MIFIR REGULATORY FRAMEWORK

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

Question 1. To what extent are you satisfied with your overall experience with the implementation of the MiFID II/MiFIR framework?

- 2-Unsatisfied

Question 1.1 Please explain your answer to question 1 and specify in which areas would you consider the opportunity (or need) for improvements:

We have obtained many useful clarifications and consider that the consumer has instead gained what the advisors that we represent can only approve. But we are quite disappointed about the effects on professionals and the market. Transparency is ensured and both professionals and consumers seem to be satisfied with it. However, the text creates far too much bureaucracy for companies in the sector and manages to make it almost impossible for the smallest ones to apply certain rules, even though there is a constant threat economic models, which would destroy them. In practice, at a time when we are now being asked to respond to an evaluation about MiFID, whole sections of the text are inapplicable either because the digital tools are not yet available or because national laws or regulations are still in their infancy.

The cumbersome procedures leads to the fact that consumers sometimes reject what follows (volume of document, cumbersome of documents to be forcibly validated by a customer), leads to prohibit the taking of risk even when the consumer wishes it (because for example he has no right to say it but we must determine if he has the right and we are then put in responsibility), while companies are obliged to draw up documents to explain every detail of their day-to-day operations, which are sometimes obvious or have become responsible for disseminating information they do not receive, are trying as best they can to deliver information that would please an authority's auditor rather than the client.

In summary, the logic and the broad rules are satisfactory, but the deadlines for implementation, the detail and the huge volume of associated texts that are constantly coming out represent major black spots and are even produced in a way that cannot be humanly assimilated under good conditions.

This consultation, launched to analyze the rendering of a text, barely applied, whose practice we are still in the process of discovering and in the midst of a global crisis, is a reflection of what poses a problem. It would be a good idea not to disrupt the actors for a while and to let them manage what they have to manage by helping them to apply it.

Otherwise jobs will be destroyed, investors will not be forthcoming and confidence in the EU and its institutions will be seriously damaged.

Question 2. Please specify to what extent you agree with the statements below regarding the overall experience with the implementation of the MiFID II / MiFIR framework?

	1 (disagreeing)	2 (rather not agree)	3 (neutral)	4 (rather agree)	5 (fully agree)	N. A.
The EU intervention has been successful in achieving or progressing towards its MiFID II /MiFIR objectives (fair, transparent, efficient and integrated markets).	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
The MiFID II/MiFIR costs and benefits are balanced (in particular regarding the regulatory burden).	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
The different components of the framework operate well together to achieve the MiFID II/MiFIR objectives.	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
The MiFID II/MiFIR objectives correspond with the needs and problems in EU financial markets.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
The MiFID II/MiFIR has provided EU added value.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>

Question 2.1 Please provide qualitative elements to explain your answers to question 2

In France, MiFid and IDD have helped to improve the perception of conflicts of interest and to deploy satisfactory procedures, especially since the 2008 Mediation Directive provides easier access to solutions that both professionals and consumers consider effective and reasonable. It makes it possible to settle disputes and to have access to analyses and proposals for solutions that are independent of the two types of players.

We also see that products available from all over the EU but which can access the national market are more understandable and regulated.

As regards the costs directly generated by MiFID, on the other hand, the situation is very negative for companies, whereas the same text tends to lower prices. In France, where a small company used to manage compliance through the work of a manager, at best with the help of qualified administrative staff, in addition to other tasks including those related to the production of the service expected by the client, they now have to invest massively in very expensive Regtechs and/or external services which represent 1 to 5% of turnover depending on the offer selected. The internal constitution of the team has also changed, reducing the proportion of Consultants addressing the client in relation to the administrative staff, which is growing strongly even though the margins per unit of turnover are decreasing.

Question 3. Do you see impediments to the effective implementation of MiFID II/MiFIR arising from national legislation or existing market practices?

- 3- Neutral

Question 3.1 Please explain your answer to question 3 :

There are inevitably local regulations that slow down or limit the effect of MiFid, such as general Consumer Codes (all areas) or need and specific national financing schemes. But overall, it seems to us that in its broad lines the text is not impacted. It's application details which will inevitably sometimes collide with national texts.

Question 4. Do you believe that MiFID II/MiFIR has increased pre- and post- trade transparency for financial instruments in the EU?

- 5-Totally

Question 4.1 Please explain your answer to question 4:

There's no doubt about it and that's a good thing.

The difficulty comes from the multiplicity of moments in the relationship when these elements must be indicated and the detail that must be given, sometimes at times when we do not have them and without being able to give ceilings (ex ante) that were most often sufficient for consumers.

Question 5. Do you believe that MiFID II/MiFIR has levelled the playing field between different categories of execution venues such as, in particular, trading venues and investment firms operating as systematic internalisers?

- Don't know / no opinion / not relevant

Question 5.1 Please explain your answer to question 5:

Question 6. Have you identified barriers that would prevent investors from accessing the widest possible range of financial instruments meeting their investment needs?

- 4- Partially

Question 6.1 If you have identified such barriers, please explain what they would be:

The automatic qualification of certain products as complex or the constraints which are imposed when a customer is a non-professional represent identified barriers.

The approach to consumer of the risk aversion and its consequences are also a major barrier.

Question 6.1 Please explain your answer to question 6:

CF Previous answer.

Section 2. Specific questions on the existing regulatory framework

The EU has a competitive trading environment but investors and their intermediaries often lack a consolidated view of where financial instruments are traded, how much is traded and at what price. Except for the largest or most sophisticated market players (who can purchase consolidated data pertaining to the different execution venues from data vendors or build their own aggregated view of the market), investors have no overall picture of a fragmented trading landscape: while the trading often used to be concentrated on one national exchange, notably in equities, investors can now choose between multiple competing trading venues, which results in a more fragmented and hence more complex trading landscape. At the same time, fragmentation per se should not be discarded as it is inherent to the introduction of alternative trading systems (MTFs, OTFs) which has led to a significant increase in competition between trading venues with positive effects on trading costs and increased execution quality. This section seeks stakeholders' feedback on how to improve investors' visibility in the current trading environment via the establishment of a consolidated tape.

In order to optimise the trading experience, a single price comparison tool consolidating trading data across the EU - referred to as the consolidated tape ('CT') - would help brokers to locate liquidity at the best price available in the European markets, and increase investors' capacity to evaluate the quality of their broker's performance in executing an order. A European CT could also be one major step towards "democratising" access to "market data" so that all investors can see what the best price is to buy or sell a particular share. A CT may not only prove useful for equities but also for exchange-traded funds (ETFs), bond or other non-equity instruments. Practical experience with a consolidated tape is already available in the United States, where a consolidated tape has been mandated for shares (consolidating pre- and post-trade data) and bonds (post-trade data).

A European CT could, for a reasonable fee, provide a real-time feed of information, not only for transactions that have taken place (post-trade information), but also for orders resting in the public markets (pre-trade information). MiFID II /MiFIR already provides for a consolidated tape framework for equity and non-equity instruments but no consolidated tape has yet emerged, for various reasons that are explored in this consultation. On 5 December 2019 [ESMA submitted to the Commission a report on the development in prices for pre- and post-trade data and on the consolidated tape for equity instruments](#). This report included recommendations relating to the provision of market data and the establishment of a post-trade consolidated tape for equities. In the following sections the Commission, taking into account the conclusions from ESMA, welcomes views on how a European CT should be designed: what information it should consolidate (e.g. pre- and/or post-trade transparency), what financial instruments should be included (e.g. shares, bonds, derivatives), what characteristics should be retained for its optimal functioning (e.g. funding, governance, technical specifications). Finally, the last subsection analyses possible amendments to certain MiFID II/MiFIR provisions (share trading obligation and transparency requirements) with a possible link to the CT.

¹ The review clauses in Article 90 paragraphs (1)(g) and (2) of MiFID II and Article 52 paragraphs (1), (2), (3), (5) and (7) of MiFIR are covered by this section.

PART ONE: PRIORITY AREAS FOR REVIEW

The issues in PART ONE are identified by the Commission services as priority areas for the review based on the experience gathered in the two years of implementation of MiFID II/MiFIR. Many of them are listed in the review clauses of MiFID II and MiFIR which means that the Commission needs input to assess the merit of amending the provisions to make them more effective and operational. When applicable, references are made to the applicable review clause.

Other topics not listed in the review clauses stem from the many contributions received from stakeholders, including public authorities, on possible shortcomings of the existing framework. A number of questions in subsection II on investor protection in particular fall in the latter category

I- THE ESTABLISHMENT OF AN EU CONSOLIDATED TAPE

1 Current state of play

This section discusses the absence of a CT under the current MiFID II/MiFIR framework, the issues of availability of market data for market participants and the use cases for setting up a CT.

1.1. Reasons why a consolidated tape has not emerged

Article 65 of MiFID II provides for a framework for a post-trade CT in equity and non-equity instruments further detailed in regulatory technical standards. The framework specifies key functioning features that a potential CT should adhere to, such as the content of the information that a CT should consolidate as well as its organisational and governance arrangements.

Since no CT provider has emerged so far, there is a lack of practical experience with the CT framework under MiFID II /MiFIR. Several reasons have been put forward to explain the absence of a CT.

Question 7. What are in your view the reasons why an EU consolidated tape has not yet emerged?

	1 (disagreeing)	2 (rather not agree)	3 (neutral)	4 (rather agree)	5 (fully agree)	N. A.
Lack of financial incentives for the running a CT	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
Overly strict regulatory requirements for providing a CT	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
Competition by non-regulated entities such as data vendors	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>

Lack of sufficient data quality, in particular for OTC transactions and transactions on systematic internalisers	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
Other	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

Please specify what are the other reasons why an EU consolidated tape has not yet emerged?

Because market actors whose customers didn't feel the need for it.

Question 7.1 Please explain your answers to question 7:

We only hear about this subject from regulators, from consumer associations who claim on this subject that none of the consumers we advise "never" talk about it and from a few actors who have an interest in it. So, we will not comment on this, but we are not particularly opposed to the establishment of such a system.

Question 8. Should an EU consolidated tape be mandated under a new dedicated legal framework, what parts of the current consolidated tape framework (Article 65 of MiFID II and the relevant technical standards (Regulation (EU) 2017/571)) would you consider appropriate to incorporate in the future consolidated tape framework?

No opinion

II- INVESTOR PROTECTION

Investor protection rules should strike the right balance between boosting participation in capital markets and ensuring that the interests of investors are safeguarded at all times during the investment process. Maintaining a high level of transparency is one important element to enhance the trust of investors into the financial market.

In December 2019, the [Council conclusions on the Deepening of the Capital Markets Union](#) invited the Commission to consider introducing new categories of clients and optimising requirements for simple financial instruments where this is proportionate and justified, as well as ensuring that the information available to investors is not excessive or overlapping in quantity and content.

Based on, but not limited to, the review requirements laid down in Article 90 of MiFID II, this consultation therefore aims at getting a more precise picture of the challenges that different categories of investors are confronted with when purchasing financial instruments in the EU, in order to evaluate where adjustments would be needed.

² The review clause in Article 90 paragraph (1)(h) of MiFID II is covered by this section.

Question 31. Please specify to what extent you agree with the statements below regarding the experience with the implementation of the investor protection rules?

	1 (disagreeing)	2 (rather not agree)	3 (neutral)	4 (rather agree)	5 (fully agree)	N. A.
The EU intervention has been successful in achieving or progressing towards more investor protection.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
The MiFID II/MiFIR costs and benefits are balanced (in particular regarding the regulatory burden).	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
The different components of the framework operate well together to achieve more investor protection.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
More investor protection corresponds with the needs and problems in EU financial markets.	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

The investor protection rules in MiFID II/MiFIR have provided EU added value.	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
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Question 31.1 Please provide both quantitative and qualitative elements to explain your answer and provide to the extent possible an estimation of the benefits and costs. Where possible, please provide figures broken down by categories such as IT, organizational arrangements, HR etc.

Quantitative elements for question 31.1:

	Estimate (in €)
Benefits	<p>If we're talking about the economic benefits to the company. There are none other than the increase in volumes invested, and therefore a growth in the share intermediated by non-manufacturers, which has led to an increase in turnover of around 5% over one year but for a margin that is shrinking (since MiFID1).</p>
Costs	<p>Professional insurance for a very small company (0 to 110 000€ turnover): 1500€/year; Basic software: 7000€; Association and Authorities: 1500€/year; Training: 500 to 2000€/year/person; Compliance company: 1500 to 7000€/year; Documentation : 1000 to 2000€; Compliant website: 2500€ + cost of staff time if 50 customers (level which seems mini for standard viable companies): 30000€ + management and updating of internal procedures compliance (1 week full time/year): 5 to 10 000€. In total: between €50,000 and €6,3500, i.e. more than 50% of turnover.</p> <p>The larger the companies are, the more constraints they have, but the more they can benefit from threshold effects and have connected tools and services, thus reducing the proportion of working time needed in relation to the total time available. There is a direct relationship between the number of customers or products offered and the workload.</p> <p>For information, today in France an adviser / intermediary (independent or not but not producing products) has on average as a client someone who will invest by him between 10 and 12000€ per year on financial products or savings life insurance (Unit Linked insurance). He accepts clients towards this initial investment level and will reach €126,000 of intermediated and monitored outstanding per client on average, after more or less 12 years. These clients have financial or insurance assets for a total of €455,000.</p> <p>In other words, the commission or fees will pay for a follow-up of 3 times the intermediated sums. In these conditions the commission system is more efficient and leads to advising smaller financial clients.</p>

Qualitative elements for question 31.1:



It is very clear that MiFID as seen by the client and the adviser represents an "explosion" of heaviness, which has done a disservice to the image of this text, good on another note.

We have ended up with documents that are so voluminous that clients do not read or understand them, forcing us to provide synthetic documents imagined (sometimes badly) in other texts, in addition to the documents required by MiFID. Sometimes even the national supervisory authority is not very good at explaining to us how to do this, and while we were initially afraid that these documents would generate conflicts between client and adviser, we find that often the client simply does not look at them.

On the other hand, a client who claims to be willing to take a risk and does not see himself or herself in the image of the fearful or incompetent that emerges from long formal questionnaires may react badly. Worse still when he discovers that products with a little risk are banned when he wants them and our Governments want him to invest in them. He may also misunderstand that he is qualified as "unprofessional" but that this means that he is forbidden to access products that he may have discovered in the press or on the web and that he can buy on non- European platforms. The adviser will sometimes misunderstand this as well.

The professional, for his part, is fully responsible when he is dealing with adults who have reached the age of majority and when his government tells him that he needs more investments in securities. As the EU is responsible for this state of affairs, its image is very severely damaged.

The response to humans by telling them that with a robot they will solve the problem is on the one hand partly wrong and on the other hand, hit on citizens who are simply trying to work or invest (especially after the Covid Crisis19) and pay their taxes to finance those who impose it, is catastrophic for the EU.

One thing we all agreed on: transparency. The benefit is obvious and major, including for the professional who is no longer considered as a thief of the money he earns.

Question 32. Which MiFID II/MiFIR requirements should be amended in order to ensure that simple investment products are more easily accessible to retail clients?

	Yes	No	N.A.
Product and governance requirements	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Costs and charges requirements	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Conduct requirements	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Other	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

1- Easier access to simple and transparent products

The CMU is striving to improve the funding of the EU economy and to foster retail investments into capital markets. The Commission is therefore trying to improve the direct access to simple investment products (e.g. certain plain-vanilla bonds, index ETFs and UCITS funds). On the other hand, adequate protection has to be provided to retail investors as regards all products, but in particular complex products.

Please specify which other MiFID II/MiFIR requirements should be amended:

Question 32.1 Please explain your answer to question 32:

Intermediaries or councils must redefine the Target Market when it has already been defined by the producer. This creates major difficulties and is not understood at all.

If this constraint is appropriate for complex products or for analyzing whether a category of product such as shares/bonds, etc. is suitable, having to redefine to whom a standard product such as a UCITS or FIA should be recommended is very complicated to do and to get the non-producer of the product to accept it, and makes little sense. The work of the adviser or intermediary should be the adequacy and, as in IDD, the analysis of the target market should only be imposed on the intermediary or adviser if he considers that the target market is wrong or if he participated in the creation of the product.

There is also the problem of the prohibition on being able to offer products to non-professional clients and on not being able to identify a client as a professional without being an ISP (investment service provider).

Question 33. Do you agree that the MiFID II/MiFIR requirements provide adequate protection for retail investors regarding complex products?

- 5- Fully agree

Question 33.1 If your answer to question 33 is on the negative side, please indicate in the text box which amendments you would like to see introduced to ensure that retail investors receive adequate protection when purchasing products considered as complex under MiFID II/MiFIR:

Question 33.1 Please explain your answer to question 33:

MiFid supplemented by national doctrines effectively prohibit the offering of most complex products and place full liability on advisers for the others, which necessarily leads to consumer protection. The question is more a question of why certain products wanted by European or national authorities do exist, since they are practically unproposable.

2- Relevance and accessibility of adequate information

Information should be short, simple, comparable, and thereby easy to understand for investors. One challenge that has been raised with the Commission are the diverging requirements on the information documents across sectors. One aspect is the usefulness of information documents received by professional clients and eligible counterparties ('ECPs') before making a transaction ('ex-ante cost disclosure'). Currently, the ex-ante cost information on execution services apply to retail, professional and eligible clients alike. With regard to wholesale transactions a wide range of stakeholders consider certain information requirements a mere administrative burden as they claim to be aware of the current market and pricing conditions.

Question 34. Should all clients, namely retail, professional clients per se and on request and ECPs be allowed to opt-out unilaterally from ex-ante cost information obligations, and if so, under which conditions?

	Yes	No	N. A.
Professional clients and ECPs should be exempted without specific conditions.	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
Only ECPs should be able to opt-out unilaterally.	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
Professional clients and ECPs should be able to opt-out if specific conditions are met.	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
All client categories should be able to opt out if specific conditions are met.	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
Other	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

Please specify what is your other view on whether all clients, namely retail, professional clients per se and on request and ECPs should be allowed to opt- out unilaterally from ex-ante cost information obligations?

Question 34.1 Please explain your answer to question 34 and in particular the conditions that should apply:

Ex ante communication is a good rule.

The insurmountable difficulty, and what creates tension in other cases, comes from the fact that it is imposed to give a real level before the operation. However, sometimes the advice is not fully followed or the exact costs are not known exactly. It would be simpler to impose either a precise communication or a ceiling, which is enough for the client to understand and make up his mind. Moreover, in this case, he can only have a pleasant surprise, so he cannot suffer any damage.

Another aspect is the need of paper-based information. This relates also to the Commission's **Green Deal**, the **Sustainable Finance Agenda** and the consideration that more and more people use online tools to access financial markets. Currently, MiFID II/MiFIR requires all information to be provided in a “durable medium”, which includes electronic formats (e.g. e-mail) but also paper-based information.

Question 35. Would you generally support a phase-out of paper based information?

- 2- Rather not support

Question 35.1 Please explain your answer to question 35:

We are in favour of a logic of reducing paper use, but not of an obligation to operate without paper. There are still customers who are not adapting to digital; there are cases where paper makes it possible to go faster; there are cases in which when the digital system malfunctions, paper is the simplest of solutions. So, you have to accept both formats: paper and digital. But to push the digital revolution, the constraints must be eased: simple, common formats and ways of operating must be specified and accepted throughout the EU.

Question 36. How could a phase-out of paper-based information be implemented?

	Yes	No	N. A.
General phase-out within the next 5 years	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
General phase out within the next 10 years	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
For retail clients, an explicit opt-out of the client shall be required.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
For retail clients, a general phase out shall apply only if the retail client did not expressly require paper based information	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
Other	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

Please specify in which other way could a phase-out of paper-based information be implemented?

It would be possible to provide that the normal format is the digital one sent to a mailbox that the customer declares to be the one to send to.

In this case, the solution is simple for the sender and it is easy to see if he refuses or if he has no solution to receive the document. In this case the documents would be provided on paper.

In addition, the e-mail would indicate that the investor can receive the documents in paper format on request, which would be unlikely since the investor would have the document in the e-mail and could therefore print it out.

Question 36.1 Please explain your answer to question 36 and indicate the timing for such phase-out, the cost savings potentially generated within your firm and whether operational conditions should be attached to it:

The solution we propose (see above) could be implemented very quickly because all professionals are nowadays equipped with the means to send in digital.

Keeping the paper in case of rejection allows for a buffer period before everyone adjusts. This could therefore be done within 2 to 5 years.

Question 37. Would you support the development of an EU-wide database (e. g. administered by ESMA) allowing for the comparison between different types of investment products accessible across the EU?

- 4- Rather not support.

Question 37.1 Please explain your answer to question 37

Some investors live between several Member States or invest elsewhere. Others are simply intellectually interested. But the information that will allow them to see the gaps is not easily accessible or even, when it is found, not certified.

So there is no reason not to do it, it can be a service to some citizens and perhaps, on top of that, generate a little competition and thus lower costs marginally.

	1 (irrelevant)	2 (rather not relevant)	3 (neutral)	4 (rather relevant)	5 (fully relevant)	N. A.
All transferable securities	X	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
All products that have a PRIIPs KID/ UICIS KIID	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	X <input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Only PRIIPs	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Other	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

Please specify what other products should be prioritised?

No other

Question 38.1 Please explain your answer to question 38:

UCITS and other PRIIPS are the most common products by nature in addition to being composite, so focusing on these offerings is more than sufficient.

Question 39. Do you agree that ESMA would be well placed to develop such a tool?

- 5 - Fully agree

Question 39.1 Please explain your answer to question 39:

It seems normal that an EU-wide database should be maintained by the European Authority.

3- Client profiling and classification

MiFID II/MiFIR currently differentiates between retail clients, professional clients and eligible counterparties. In line with the procedure and conditions laid down in the Annex of MiFID II, retail clients can already “opt-up” to be treated as professional clients. Some stakeholders indicated that the creation of an additional client category (‘semi-professional investors’) might be necessary in order to encourage the participations of wealthy or knowledgeable investors in the capital market. In addition, other concepts related to this classification of investors can be found in the draft Crowdfunding Regulation which further developed the concept of sophisticated investors⁵.The CMU-Next_group suggested a new category of experienced

.....
High Net Worth (“HNW”) investors with tailor made investor protection rules⁶. —

⁵ According to the draft of the Crowdfunding Regulation (to be finalised in technical trilogues) a sophisticated investor has either personal gross income of at least EUR 60 000 per fiscal year or a financial instrument portfolio, defined as including cash deposits and financial assets, that exceeds EUR 100 000.

⁶ According to the CMU-NEXT group “HNW investors” could be defined as those that have sufficient experience and financial means to understand the risk attached to a more proportionate investor protection regime.

Question 40. Do you consider that MiFID II/MiFIR can be overly protective for retail clients who have sufficient experience with financial markets and who could find themselves constrained by existing client classification rules?

- 5 - Fully agree

Question 40.1 Please explain your answer to question 40:

It is obvious to all advisors that we meet clients who cannot be considered as professionals in the sense of MiFid, but who are also clients without culture or means and fully claim it.

They simply do not understand that we cannot even talk to them about certain products, any more than we can offer them.

They may even end up lying in order to gain access to certain solutions, thus endangering those who distribute or will be swindled by people often without any authorization, or even invest outside the EU.

Question 41. With regards to professional clients on request, should the threshold for the client's instrument portfolio of EUR 500 000 (See Annex II of MiFID II) be lowered?

- 5 - Fully agree

Question 41.1 Please explain your answer to question 41:

Generally speaking, the professional client system as it stands is inadequate both in terms of criteria and in terms of how and by whom a person can qualify as a professional or not.

Question 42. Would you see benefits in the creation of a new category of semi-professionals clients that would be subject to lighter rules?

- 3- Neutral

Question 42.1 Please explain your answer to question 42

It would seem easier to us to correct the definition and determination of what a professional client is. However, if this type of amendment is not obtained, this solution would be better than nothing.

Question 43. What investor protection rules should be mitigated or adjusted for semi-professionals clients?

	1 (irrelevant)	2 (rather not relevant)	3 (neutral)	4 (rather relevant)	5 (fully relevant)	N. A.
Suitability or appropriateness test	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Information provided on costs and charges	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
Product governance	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Other	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

Please specify what other investor protection rules should be mitigated or adjusted for semi-professionals clients?

It must be possible for professionals governed by MIFid to define them as belonging to this category, including in a similar regime, and not exclusively by non-GSP ISPs.

Question 43.1 Please explain your answer to question 43:

Any producer, intermediary, independent consultant or not, would naturally owe them a certain degree of information, so in the absence of a detailed recommendation on adequacy, an obligation to alert them if the solution seems really unsuitable to the professional seems necessary.

There is no reason to provide them with degraded information concerning the fees and remuneration of professionals.

On the other hand, with regard to product governance, the notion of target market is meaningless if we consider a category of clients "capable" of understanding and following at least in part by themselves and/or "willing" for certain investments with a superior acceptance capacity.

Question 44. How would your answer to question 43 change your current operations, both in terms of time and resources allocated to the distribution process?

Please specify which changes are one-off and which changes are recurrent:

We would have an immediate effect on Product Governance, which should allow for less complexity and therefore fewer man / days and less bureaucracy.

But it is more on the aspects of long-term monitoring and support and on the ability to propose and highlight certain solutions that the gain would be significant.

It is therefore rather difficult to quantify this gain because it depends on the size and clientele of the companies. It is clear that the larger the customer base and the larger the assets, the greater the gain. Macroeconomically, the "societal" gain would be quite obvious because of both the mechanics of cost reduction for professionals and the ability to mobilize capital for productive and long-term investments.

Question 45. What should be the applicable criteria to classify a client as a semi-professional client?

	1 (irrelevant)	2 (rather not relevant)	3 (neutral)	4 (rather relevant)	5 (fully relevant)	N. A.
Semi-professional clients should possess a minimum investable portfolio of a certain amount (please specify and justify below).	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
Semi-professional clients should be identified by a stricter financial knowledge test.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
Semi-professional clients should have experience working in the financial sector or in fields that involve financial expertise.	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Semi-professional clients should be subject to a one-off in-depth suitability test that would not need to be repeated at the time of the investment.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>

Other	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	X	<input type="radio"/>
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Please specify what other criteria should be the one applicable to classify a client as a semi-professional client:

The missing criterion is which seems more interesting than whether the client is working or has experience in the Finance professions is, as with semi-professionals in other fields, experience of what is going to be proposed or envisaged by the client. It is therefore necessary to look at its assets, has its risk profile defined by a questionnaire and at what it has already carried out as transactions.

Question 45.1 Please explain your answer to question 45 and in particular the minimum amount that a retail client should hold and any other applicable criteria you would find relevant to delineate between retail and semi-professional investors:

The minimum level of 100K€ seems reasonable if we consider only what he could invest. If, on the other hand, it is the totality of his assets which is a chosen criterion, then it should be lowered to the level of the average assets of a citizen in the richest EU countries, i.e. between 300 and 400K€. Under these conditions, it could make sense to say that the criterion of assets held is in fact: 300K€ of financial assets or in Life Insurance of the IBIPS type. The knowledge test: it is necessary but it is always necessary.

Finally, the initial but not necessarily regular suitability test seems logical enough, since the client/investor would in this case be a person capable of monitoring himself, but it must be clear in the initial document provided by the professional that there will be no regular review of the test by the professional, unless requested by the client.

4- Product Oversight, Governance and Inducements

The product oversight and governance requirements shall ensure that products are manufactured and distributed to meet the clients' needs. Before any product is sold, the target market for that product needs to be identified. Product manufacturers and distributors should thus be well aware of all product features and the clients for which they are suited. To do so, distributors should use the information obtained from manufacturers as well as the information which they have on their own clients to identify the actual (positive and negative) target market and their distribution strategy.

There is a debate around the efficiency of these requirements. Some stakeholders criticise that the necessary information was not available for all products (e.g. funds). Others even argue that this approach adds little benefit to the suitability assessment undertaken at individual level. Similar doubts are mentioned with regards to the review of the target market, in particular for products that don't change their payment profile. Concerns are raised that the current application of the product governance rules might result in a further reduction of the products offered.

Question 46. Do you consider that the product governance requirements prevent retail clients from accessing products that would in principle be appropriate or suitable for them?

- 5 - Fully agree

Question 46.1 Please explain your answer to question 46:

Most of the distribution of products is carried out by producers who simply distribute their products in the majority of cases, which oversimplifies the difficulty of ensuring cost transparency, dealing with conflicts of interest and reprocessing and re-analyzing target markets. In fact, we are seeing that producer groups that had extended their complementary "open architecture" offer have tightened it.

Marginally, some customers go and pick up their products themselves.

With the digital platforms in simple execution they could do this quite well and find a wide offer for which the platform had no other responsibility than the client/producer connection. Here again the MIFid 2 rule complicated the situation.

However, apart from the direct supply from the producer, the market that weighs and ensures a significant volume is the one held by intermediaries.

Here again, re-analyzing the target markets for UCITS or FIA-type products generates a complexity that massively reduces supply and is not understood by the vast majority of professionals, for whom both the initial analysis and the monitoring of funds over time, which should evolve mechanically due to investor arbitrage, quickly becomes a nightmare.

Digital platforms and intermediaries respond better but in a standardized manner and in return cannot provide complete support.

Question 47. Should the product governance rules under MiFID II/MiFIR be simplified?

	Yes	No	N. A.
It should only apply to products to which retail clients can have access (i.e. not for non-equities securities that are only eligible for qualified investors or that have a minimum denomination of EUR 100.000).	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
It should apply only to complex products.	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Other changes should be envisaged – please specify below.	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Simplification means that MiFID II/MiFIR product governance rules should be extended to other products.	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Overall the measures are appropriately calibrated, the main problems lie in the actual implementation.	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
The regime is adequately calibrated and overall, correctly applied.	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>

Question 47.1 Please explain your answer to question 47:

The problem arises on "mainstream" funds such as authorised UCITS or FIAs and on the territory. For other products, it is normal to impose an analysis and monitoring under Product Governance, since they have not necessarily been subject to such an analysis, nor, therefore, to validation or registration by an authority.

Question 48. In your view, should an investment firm continue to be allowed to sell a product to a negative target market if the client insists?

- Yes
- Yes, but in that case the firm should provide a written explanation that the client was duly informed but wished to acquire the product nevertheless.
- No
- Don't know / no opinion / not relevant

Question 48.1 Please explain your answer to question 48:

The customer is in all member countries a responsible adult, citizen by right, responsible for his actions. He does not violate any fundamental law when he decides to invest or buy something legal that he wishes to have. If he decides to buy a car that can run at 250km/h when he does not like speed, or to be more up to date, a blue bicycle when he only likes white and does not know how to use it well, who is going to forbid him? At best, consumer protection laws prohibit giving up a protective right. But a right is not an obligation not to do if the asset is legal.

On the other hand, it is imperative that the professional must clearly indicate to him that he does not consider this to be a solution for him and tell him whether or not he will follow up on the investment in this case, as it can be difficult to advise a client in the long term who we consider to have made a mistake.

Question 49. Do you believe that the current rules on inducements are adequately calibrated to ensure that investment firms act in the best interest of their clients?

- 5 - Fully agree

Question 49.1 Please explain your answer to question 49:

We represent a professional organisation that brings on board 50% of French financial advisors and intermediaries, independent and non-independent within the meaning of MiFid. We also have a particular function since we have been given the mission by the national authority to control them on site and on a piecemeal basis. This is the case each year for 500 companies. What we find is that the system based on transparency imposed by MiFID, which we had already largely anticipated, works perfectly to such an extent that there are virtually no incidents either before the national ombudsman or before the courts.

So to create a problem from scratch when there is no claim and when the system of independent advice also creates a problem is a rather surprising legal quirk.

Moreover, examples of countries where this would have improved the situation show a massive destruction of businesses and a collapse in the number of citizens supported or at best, reduced access to few savings and investment solutions.

We also note that two European consumer associations heavily criticize "undue payments". They both represent 3 French consumer associations, of which only 1 has taken a stand against undue payments and 1 other is fighting against the level of bank charges. We recall here for the record that there are 15 approved consumer associations in France that are involved in representing savers and investors. The two European associations that do so most vehemently are represented in France by one association, which is itself made up of other associations.

Among these associations, which are often shareholders' associations, there are mainly two entities focused on savers. One is made up of mainly non-independent certified advisers, while the other is made up of an association of savers in insurance-type "retirement" products, each offering a "unique" choice to its members, or even better, a product distributed mostly by

"insurance brokers" (i.e., IDD and EIOPA) who are paid by way of an agreement with the savers' association. We are therefore very surprised by the criticism!?

If we remain on the situation concerning the distribution of financial products, the National Finance Ombudsman who has just produced his report shows that, for a country of 60 million inhabitants, since the entry into force of MIFid2, the number of consumer actions has fallen by 9.9%.

In total, only 451 decisions were made.

While independent and non-independent intermediaries represent more than 10% of the market, they account for 2% of cases. Cost issues represent ... 18 files for the whole country! While 60% of problems are related to "poor execution".

To put it very bluntly: the subject of remuneration and undue payments is brought to the European level because of 18 cases out of tens of millions and even though in 59% of the cases the professionals are given reasons.

Apart from playing a dangerous game that could lead to the destruction of businesses, jobs and a collapse of the mass of accompanied citizens, we do not see what we would be playing, other than an unhealthy and harmful political game.

Question 50. Would you see merits in establishing an outright ban on inducements to improve access to independent investment advice?

- 1- Disagree

Question 50.1 Please explain your answer to question 50:

See answer Q°49.

MIFid 2 has clearly allowed 2 forms of advice and ensured transparency.

It works perfectly and we have absolutely no factual evidence to the contrary.

Criticism also comes either from entities that are badly placed to criticise, or from representative entities of countries in which those who were of a different opinion have been "destroyed" and therefore no longer have the possibility to speak, even if one would try to forget that the trigger for the debate is ... outside the EU and ... that its IFAs are allowed to receive commissions in other countries!? Moreover, some independent analyses show, despite everything, new difficulties in these countries which define success not in terms of what could have been, but in comparison with what they had and by showing exclusively the good sides of the system in place. They come to say that the companies in place have even seen their turnover increase, which is very good news for the survivors, but would it not be forgetting that the issue is in fact whether or not the advice to the population as a whole has progressed? Clearly, however, the advice has focused on the wealthiest.

We had found a balanced solution with Mifid 2 after 10 years of fighting and debate. We are just now learning how to work with the new system. It would be very difficult for Europe to play to reopen such a tense game at this time.

Today MIFid2 gives all states the freedom to go further. In the absence of major problems, this is very sufficient.

Question 51. Would you see merit in setting-up a certification requirement for staff providing investment advice and other relevant information?

- 5 - Fully agree

Question 51.1 Please explain your answer to question 51:

This is already the case in France and the system is working well.

This has been and remains far more effective than banning remuneration schemes. The start of the decline in incidents is clearly correlated with the beginning of the phase of increasing professional competence in our country.

As long as the minimum skills are assured and also their updating, the accountability of professionals who often have discovered rules is extremely effective, all the more so as it will prohibit them from any defense in case of attack by the client, the authority or the judges. More simply, the quality of professionals is the main element of a system that is itself intended to be qualitative.

Question 52. Would you see merit in setting out an EU-wide framework for such a certification based on an exam?

- 4- Rather agree

Question 52.1 Please explain your answer to question 52:

The difficulty when it comes to certifying professionals in several countries is due to the differences in local regulations and cultures, but also in Europe, language and therefore sometimes philosophical or conceptual concepts.

However, we are very much in favour of a framework comprising areas of competence and a sort of "blueprint" by themes. Naturally for those already in place, a grandfather clause should be the rule to avoid any abrupt break-up.

5- Communication distance

Question 53. To reduce execution delays, should it be stipulated that in case of distant communication (phone in particular) the cost information can also be provided after the transaction is executed?

- 5 - Fully agree

Question 53.1 Please explain your answer to question 53:

We understand how this may be a concern, but if we consider a situation involving a certain degree of urgency and an exchange by telephone, for reasons of practicality and waste of time, it seems to us that this constraint is excessive.

On the other hand, the cost should be provided within a very short period of time after execution and be subject to claim if necessary.

On the other hand, our opinion is different if it is an online order. The platform and the tool behind it can easily show the cost before the order is placed.

Question 54. Are taping and record-keeping requirements necessary tools to reduce the risk of products mis-selling over the phone?

- 3- Neutral

Question 54.1 Please explain your answer to question 54:

We're not sure about that. What is required is the keeping of a record of the advice or recommendation and client acceptance. Whether it is a telephone recording or any other form of solution such as a summary of the exchange sent to the client and kept by the company, in any case the objective can be achieved.

6- Reporting on best execution

Question 55. Do you believe that the best execution reports are of sufficiently good quality to provide investors with useful information on the quality of execution of their transactions?

- Don't know / no opinion / not relevant

Question 55.1 Please explain your answer to question 55:

The professionals we represent are not in charge of these aspects. We are therefore not legitimate to express an opinion.

Question 56. What could be done to improve the quality of the best execution reports issued by investment firms?

	1 (irrelevant)	2 (rather not relevant)	3 (neutral)	4 (rather relevant)	5 (fully relevant)	N. A.
Comprehensiveness	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	X
Format of the data	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	X
Quality of data	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	X
Other	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	X

Please specify what else could be done to improve the quality of the best execution reports issued by investment firms:

The professionals we represent are not in charge of these aspects. We are therefore not legitimate to express an opinion.

Question 56.1 Please explain your answer to question 56:

The professionals we represent are not in charge of these aspects. We are therefore not legitimate to express an opinion.

Question 57. Do you believe there is the right balance in terms of costs between generating these best execution reports and the benefits for investors?

- Don't know / no opinion / not relevant

Question 57.1 Please explain your answer to question 57:

The professionals that we represent are not in charge of these aspects. We are therefore not legitimate to express an opinion.

Question 58. What is your overall assessment of the effect of unbundling on the quantity, quality and pricing of research?

Although our professionals are only minor users of financial research, we, like others, have noted that this has led to a major weakening of European research and the hegemony of poor-quality automated research and US research. It does not seem to us that Europe has come out of this with a better image, either economically or in terms of its independence.

For the rest, we will let more directly concerned organizations respond in more detail on this part.

However, we have proposed one avenue to our national authorities: to allow certain specifically certified advisers to become producers of analyses that can be assimilated to research for SMEs (SME).

- **Increase the production of research on SMEs**

1.1 EU Rules on research

The absence of a harmonised definition of the notion of “research” has led to confusion amongst market participants. In addition, Article 13 of delegated Directive 2017/593 introduced rules on inducement in relation to research. Market participants argue that this has led to an overall decline of research coverage, in particular on SMEs. Several options could be tested: one option would be to revise the scope of Article 13 by authorising bundling exclusively for providers of SME research. Alternatively, independent research providers (not providing any execution services to clients) could be allowed to provide research to investment firms without these firms being subject to the rules of Article 13 for this research.

Furthermore, several market participants argue that providers price research below costs. If the actual costs incurred to produce research do not match the price at which the research is sold, it may have a negative impact on the research ecosystem. Some argue that pricing of research should be subject to the rules on reasonable commercial basis.

Finally, several market participants also pointed out that rules on free trial periods of research services are not sufficiently clear ([ESMA also drafted a Q&A on trial periods](#)).

1.1 Alternative ways of financing SMEs research

Alternative ways of financing research could help foster more SME research coverage. Operators of regulated markets and SME growth markets could be encouraged to set up programs to finance research on SMEs whose financial instruments are admitted on their markets. Another option would be to fund, at least partially, SME research with public money.

1.2 Promote access to research on SMEs and increase quality of research

The lack of access to SME research deprives issuers from visibility and financing opportunities. However, access to SME research can be improved by creating a EU-wide SME research database.

The creation of an EU database compiling research on SMEs would ensure the widest possible access to research material. Via this public EU-wide database, anyone could access and download research on SMEs for free. Such a tool would allow investors to access research in a more efficient manner and at a lower cost, while improving SMEs visibility.

COMMODITY MARKETS- NO OPINION

As part of the effort to foster more **commodity derivatives trading denominated in euros**, rules on pre-trade transparency and on position limits could be recalibrated (to establish for instance higher levels of open interest before the limit is triggered) to facilitate nascent euro-denominated commodity derivatives contracts. For example, Level 1 could contain a specific requirement that a nascent market must benefit from more relaxed (higher) limits before a position has to be closed. Another option would be to allow for trades negotiated over the counter (i.e. not on a trading venue) to be brought to an electronic exchange in order to gradually familiarise commodity traders with the beneficial features of “on venue” electronic trading.

ESMA has already conducted a consultation on position limits and position management. The report will be presented to the Commission at the end of Q1 2020. From a previous ESMA call for evidence, the commodity markets regime seems to have not had an impact on market abuse regulation, orderly pricing or settlement conditions. ESMA stresses that the associated position reporting data, combined with other data sources such as transaction reporting allows competent authorities to better identify, and sanction, market manipulation. Furthermore, the Commission has identified in its [Staff Working Document on strengthening the International Role of the Euro](#) that “There is potential to further increase the share of euro-denominated transactions in energy commodities, in particular in the sector of natural gas”.

The most significant topic seems the current position limit regime for illiquid and nascent commodity markets. The position limit regime is thought to work well for liquid markets. However, illiquid and nascent markets are not sufficiently accommodated. ESMA also questioned whether there should be a position limit exemption for financial counterparties under mandatory liquidity provision obligations. ESMA would also like to foster convergence in the implementation of position management controls.

Another aspect mentioned in the Commission consultation on the international role of the euro is a more finely calibrated system of pre-trade transparency applicable to commodity derivatives. Such a system would lead to a swifter transition of these markets from the currently prevalent OTC trading to electronic platforms.

⁷ The review clause in Article 90 paragraph (1)(f) of MiFID II is covered by this section.

PART TWO: AREAS IDENTIFIED AS NON-PRIORITY FOR THE REVIEW

This section seeks to gather evidence from market participants on areas for which the Commission does not identify at this stage any need to review the legislation currently in place. Therefore, PART TWO does not contain policy options. However, should sufficient evidence demonstrate the need to introduce certain adjustments, the Commission may decide to put forward proposals also on the topics listed below. As in the first section, certain questions are directly linked to the review clauses in MiFID II/MiFIR while others are questions raised independently of the mandatory review clause.

V DERIVATIVES TRADING OBLIGATION – NO OPINION

Based on the G20 commitment, MiFIR article 28 introduced the move of trading in standardised OTC derivative contracts to be traded on exchanges or electronic trading platforms. The trading obligation established for those derivatives (DTO) should allow for efficient competition between eligible trading venues. ESMA has determined two classes of derivatives (IRS and CDS) subject to the DTO. These classes are a subset of the EMIR clearing obligation.

The Commission invites market participants to share any issues relevant with regard to the functioning of the DTO regime, the scope of the obligation and the access to the relevant trading venues for DTO products.

⁸ The review clause in Article 52 paragraph (6) of MiFIR is covered by this section.

VI MULTILATERAL SYSTEMS

According to MiFID II/MiFIR, a 'multilateral system' means any system or facility in which multiple third-party buying and selling trading interests in financial instruments are able to interact in the system. MiFID II/MiFIR also requires all multilateral systems in financial instruments to operate as a regulated trading venue - being either a regulated market or a multilateral trading facility (MTF) or an organised trading facility (OTF) - bringing together multiple third-party buying and selling interests in a way that results in a contract.

Some trading venues express concerns due to emerging trends which allow alternative type of electronic platforms to offer very similar functionality to a multilateral system for the matching of multiple buying and selling interests. These electronic platforms are not authorised as regulated trading venues, hence they do not have to comply with the associated regulatory requirements, notably in terms of reporting obligations or business rules to manage clients' relationships. The main argument advanced against regulation of these electronic systems is that they match trading interests on a bilateral basis and not via a multilateral system. However, according to traditional trading venues, this alternative electronic protocol may cause competitive distortions, effectively creating a level playing field distortion against the regulated trading venues which are bound by MIFID II/MiFIR provisions. There is a debate whether MiFID II /MiFIR should therefore take a more functional approach and define the operation of a trading facility in broader terms than the current definition of trading venues or multilateral system as to encompass these systems and ensure fair treatment for market players.

Question 81. Do you consider that the concept of multilateral system under MiFID II/MiFIR is uniformly understood (at EU or at national level) and ensures a level playing field between the different categories of market players?

- 3- Neutral

Question 81.1 If your response to question 81 is rather positive, please also indicate if, in your opinion, the current definition of multilateral system is adequately reflecting the actual functioning of the market:

It is becoming increasingly clear that different types of actors are offering or seeking to offer services which, at least as far as rendering for the user is concerned, are MS services.

Moreover, it is notable that the emergence of certain alternative, non-MS actors is sometimes done with the full support of national authorities because these "platforms" or "Tech" appear capable of achieving a macroeconomic objective deemed necessary, more simply than by using the form of the MS.

In general, moreover, the development of this type of offer is even highly appreciated by the European authorities.

In our view, therefore, both the MS framework and the alternative options need to be rethought.

Question 81.1 If your response to question 81 is rather negative, please

indicate which amendments you would suggest and why:

Question 81.1 Please explain your answer to question 81:

The concept of MS seems to us to be well understood by professionals and authorities, less by users/investors who do not differentiate between a MS and another form of platform or Fintech and only see the purpose of the service delivered or proposed.

VII Double Volume Cap- No Opinion

MiFID II/MiFIR introduced a Double Volume Cap ('DVC') to curb "dark" trading by limiting, per platform and at EU level, the use of certain waivers from pre-trade transparency. Some stakeholders have criticized the DVC as a too complex process failing to reduce off-exchange trading in the EU. For instance, according to a 2019 Oxera study, the equity market share of systematic internalisers has risen to 25% since application of the DVC while the share of on venue trading is declining. For example, the market share of CAC40 shares trading on the primary stock exchange (Euronext) fell from 75% in 2009 to 62% in 2018 and Oslo Børs's market share of trading on OBX-listed shares dropped from 95% in 2009 to 62% in 2018. The proportion of public order book trading on the primary exchange in major equity indices has declined to between 30% and 45% of overall on-venue trading. The Commission services are seeking stakeholder's views on their experience with the DVC and its impact on the transparency in sharetrading.

⁹ The review clauses in Article 52 paragraphs (1), (2) and (3) of MiFIR are covered by this section.

VIII Non-discriminatory access – No opinion

MiFIR introduces an open access regime to trade and clear financial instruments on a non-discriminatory and transparent basis. The key purpose of MiFIR open access provisions is to facilitate competition among trading venues and central counterparties and prevent any discriminatory treatments. It aims at creating more choice for investors, lowering costs for trade execution, clearing margins and data fees. Open access might therefore bring opportunities for new entrants in the market to compete with traditional providers. Furthermore, it could potentially help fostering financial innovation, developing alternative business models which could allow cost efficiency gains in trading and clearing operational processes compared to the current situation.

MiFIR open access provisions provide safeguards to preserve financial stability without adversely affecting systemic risk. The relevant competent authority of a trading venue or a central counterparty shall grant open access requests only under specific conditions, notably that open access would not threaten the smooth and orderly functioning of the markets. MiFIR open access rules also added multiple temporary transitions periods and opt-outs (Article 35 and 36 of MiFIR) for an exemption from the application of access rights, with the majority of opt-outs ending on 3 July 2020.

The Commission will have to submit to the European Parliament and to the Council reports on the application and impact of certain open access provisions. With this in mind, the Commission would like to gather feedback from market stakeholders which could be useful for the preparation of the reports.

¹⁰ The review clauses Article 52 paragraphs (9), (10) and (11) of MiFIR are covered by this section.

IX - Digitalisation and new technologies

Technology neutrality is one of the guiding principles of the Commission's policies and one of the key objectives of the [Commission's Fintech Action Plan](#). A technology-neutral approach means that legislation should not mandate market participants to use a particular type of technology. It is therefore crucial to address obstacles or identify gaps in existing EU laws which could prevent the take-up of financial innovation or leave certain of the risks brought by these innovations unaddressed.

Furthermore, it is evident that digitalisation and new technologies are transforming the financial industry across sectors, impacting the way financial services are produced and delivered, with possible emergence of new business models. The digital transformation can bring huge benefits for the investors as well as efficiencies for industry. To promote digital finance in the EU while properly addressing the new risks it may bring, the Commission is considering proposing a new Digital Finance strategy building on the work done in the context of the FinTech action plan and on horizontal public consultations. The Commission recently published [two public consultations focusing on crypto assets and operational resilience in the financial sector](#), and may consult later this year on further topics in the context of the future Digital Finance strategy.

In that context, and to avoid overlapping, this consultation will only focus on targeted aspects, which are not covered by these horizontal consultations. The Commission will of course take into consideration any relevant input received in the horizontal consultations in its future policy work on the MiFID II/MiFIR framework.

Question 86. Where do you see the main developments in your sector: use of new technologies to provide or deliver services, emergence of new business models, more decentralised value chain services delivery involving more cooperation between traditional regulated entities and new entrants or other? Please explain your answer:

There are in fact probably 2 main areas: technological platforms of all kinds allowing quick access to a product or service; tools to support the human being in charge of the mission or task.

If we consider management and action in the markets, other models are possible. Once programmed, robots can replace humans and cause inhuman movements.

But in the field of consulting and intermediation, it is rather a mix between the advice wanted by the customer as human, accompanied by technology and an increasingly digital subscription that is spreading and satisfying the consumer. Consulting and intermediation through digital platforms only satisfy a fraction of the financially educated population, but not necessarily the richest or most "technical". These solutions also face perfectly human brakes: who is going to tell a robot that he doesn't live with only one other companion? How will the digital platform respond to a psychological distress resulting from the death of a relative that leads to the need for prior advice necessary for the investment action? Etc ...

However, the evolution is rapid and we see that it is taking place under rather good conditions. Each type of player is finding its marks and access to technology is becoming easier and easier. We note, however, that there is a non-neutral brake: the fact that the technologies are very diverse from one type of service to another and from one Member State to another. The solutions found to this type of difficulty are not very effective to date, even if they are gradually being developed.

Question 87. Do you think there are particular elements in the existing framework which are not in accordance with the principle of technology neutrality and which should be addressed?

Overall, we consider the regulations in place to be satisfactory.

However, we note two topics that should be looked at more closely: communication by digital actors in order to attract customers, which seems more flexible than for so-called "traditional" actors (who are less and less so) and the ability for a customer to modify his answers as much as he wants to get the product he wants, whereas a human adviser could have told him that if he gives 3 different answers to the same question in a few minutes, it is because he lied at least twice, so the product is probably not adequate. The human could and in some cases "should" have stopped the client and could have initiated an exchange to get the real answer.

Question 88. Where do you think digitalisation and new technologies would bring most benefits in the trading lifecycle (ranging from the issuance to secondary trading)?

Please explain your answer:

Very clearly it appears that it is in the information, subscription and help with "factual" monitoring that technology brings a lot.

Today, it can also help analyze behavior, address aspects of compliance and enable more efficient archiving.

Question 89. Do you consider that digitalisation and new technologies will significantly impact the role of EU trading venues in the future (5/10 years times)?

- 4- Rather agree

Question 89.1 Please explain your answer to question 89

It represents progress in several areas. So obviously there is every reason to believe so.

Question 90. Do you believe that certain product governance and distribution provisions of the MiFID II/MiFIR framework should be adapted to better suit digital and online offers of investment services and products?

- 4 - Rather agree

Question 90.1 Please explain your answer to question 90:

The treatment of target markets mainly by intermediaries and possibly the communication of fees need to be reviewed. The rest is more a matter of PRIIPS reform.

Question 91. Do you believe that certain provisions on investment services (such as investment advice) should be adapted to better suit delivering of services through robo-advice or other digital technologies?

- 2- Rather not

Question 91.1 Please explain your answer to question 91:

Digital is rather ill-adapted to a treatment of advice in technically or humanly complex cases and it will remain so, unless we also standardize what a human can be and reduce the offer. For all the cases that digital can logically handle, both the current regulations and the available technology are sufficient, except to weaken the less digital players a little stupidly, since they are in the process of digitizing themselves, without a break, therefore by doing so in a fairly fluid manner. We would simply run the risk of generating a crisis in order to accelerate a process that has begun and is not creating a problem at the moment. Moreover, a crisis of the Covid19 will certainly be a natural accelerator.

X - FOREIGN EXCHANGE (FX) – NO OPINION

Spot FX contract are not financial instruments under MiFID II/MiFIR. Some stakeholders and competent authorities raised concerns as regards the regulatory gap and requested the Commission to analyse if policy action would be needed.

Section 3. Additional comments

You are kindly invited to make additional comments on this consultation if you consider that some areas have not been covered above. Please, where possible, include examples and evidence.

The alert in case of a product drop out of more than 10% is poorly thought out.

Activities such as corporate finance, which are listed but not necessarily regulated, are in fact simply unregulated and, let's say it, uncontrolled, not even with regard to what the Directive or associated texts impose, even though these activities are vital to our economies. Perhaps we should reconsider the case of these activities.

Question 94. Have you detected any issues beyond those raised in previous sections that would merit further consideration in the context of the review of MiFID II/MiFIR framework, in particular as regards to the objective of investor protection, financial stability and market integrity? Please explain your answer:

Refer to the previous answer.

Should you wish to provide additional information (e.g. a position paper, report) or raise specific points not covered by the questionnaire, you can upload your additional document(s) here: