

Call for advice to the European Insurance and Occupational Pensions Authority (EIOPA) regarding certain aspects relating to retail investor protection

1. Context

In the September 2020 new Capital Markets Union Action Plan, the European Commission announced its intention to publish a strategy for retail investments in Europe in the first half of 2022. Our aim will be to seek to ensure that retail investors can take full advantage of capital markets and that rules are coherent across legal instruments. An individual investor should benefit from: (i) adequate protection, (ii) bias-free advice and fair treatment, (iii) open markets with a variety of competitive and cost-efficient financial services and products, and (iv) transparent, comparable and understandable product information. EU legislation should be forward-looking and should reflect ongoing developments in digitalisation and sustainability, as well as the increasing need for retirement savings.

As part of our evidence gathering, the Commission launched in May 2021 an extensive three month [public consultation](#) on a wide array of aspects related to retail investor protection. Last year, the Commission also launched an [extensive study](#), focusing on the different disclosure regimes, the extent to which advice given to prospective investors is useful and impartial and the impact of inducements paid to intermediaries. It will involve extensive consumer testing, to ensure that any future changes to the rules will be conceived from the perspective of what is useful and necessary for consumers. The study is due to be finalised in October 2021.

The Commission is aware that EIOPA has already carried out, or is in the process of carrying out, a substantial amount of work in areas related to retail investor protection, including:

- Regular monitoring activities, via the Consumer Trends and Cost and Past Performance Reports, as well as internal analysis relating to market monitoring activities;
- Questions and Answers under the IDD to support supervisory convergence;
- Thematic Review on consumer protection issues in the unit-linked market due to business interlinkages between providers of asset management services and insurance undertakings, followed by publication of an Opinion to national competent authorities;
- Publication of EIOPA's approach to the supervision of product oversight and governance requirements;
- Public consultation on framework to address value for money risk in the European unit-linked market;
- Engagement in supervisory co-operation platforms, which have mostly covered issues relating to insurance-based investment products;
- Work on product intervention, including on an Opinion on the proposed product intervention of the KNF under the PRIIPs Regulation.

The Commission also notes that EIOPA has also carried out a number of supervisory activities which have concretely looked at retail investor protection issues and the challenges in applying existing rules in practice to prevent consumer detriment.

Finally, the Commission also notes the ongoing work by the Joint Committee with respect to the new PRIIPs Regulatory Technical Standards. We would like to stress that by issuing this call, the Commission would not wish to put into question the continuation of that important work.

2. Scope of the request to EIOPA

With this Call for Advice, and with a view to assisting the Commission in the preparation of legislative proposals implementing aspects of the retail investment strategy, the Commission invites EIOPA to provide advice on a number of focused areas:

- Addressing and enhancing investor engagement with disclosures: identification of any significant overlaps, gaps, redundancies and inconsistencies across investor protection-related legislation that might have a detrimental effect on retail investors (i.e. which might confuse or hamper decision-making or comparability), in addition to those already identified and addressed by the recent PRIIPs level 2 work, how the different legal frameworks fit together and options as to how to remedy any identified shortcomings. We would especially appreciate to receive a supervisor's perspective on these issues, and in particular how and whether the current rules help retail investors to take well-informed investment decisions. In addition it would be helpful to understand what might be considered the vital information that a retail investor should receive. We would also invite EIOPA to reflect on how the rules work from a retail investor perspective – including on whether they have fully attained the objective of ensuring that consumers can make informed choices and adequately reflect behavioural insights, avoid information overload and overly complex information, and the specific challenges for different types of products (e.g. multi-option products). Conversely, are there areas where investors may not receive adequate and accurate, streamlined and clear information and in an appropriately standardised form, before investing, and are there any potential blind spots?
- Drawing out the benefits of digital disclosures: an assessment of how regulatory disclosures and communications can work best for consumers in a digital, and in particular a smartphone age, and proposed options as to how existing rules might be adapted, such as allowing layered information.
- Assessing the risks and opportunities presented by new digital tools & channels: an assessment of both risks and opportunities with respect to retail investing, stemming from both the increasing availability of digital tools and the increasing levels of direct investor participation via online platforms. This assessment would, in addition,

explore whether and how far value chains should be ‘opened’ up by the sharing of specific investor data amongst insurance and non-insurance firms, and how far new markets for services, such as advice via platforms, might be expected to develop, bearing in mind, on the one hand, the need to protect investor rights, but also to bring down cost and allow for innovation in products and services.

- Tackling damaging conflicts of interest in the sales process: an analysis of the considerations and ramifications that the Commission should be mindful of as regards the impact of the payment/receipt of inducements on retail distribution under IDD, including the role of product manufacturers in selecting appropriate distribution channels and remuneration models. This analysis should consider the impact of differences that exist between the IDD and MIFID II. In particular, the Commission seeks EIOPA’s analysis as regards the structure of distribution models in different Member States, also taking into account any recent reform experience in the Member States. Without the need for making a recommendation for a specific solution, it should provide advice on the practical and technical implications that the Commission should consider in its assessment of whether to maintain existing rules on inducements or whether to address them through alternative regulatory levers, further restrictions or an outright ban.
- Promoting an affordable and efficient sales process: an analysis, based on available data, of the practical functioning of the current rules on the assessment of the “demands and needs” and “suitability” tests in the IDD, including possible dysfunctions that might result in overly burdensome and time-consuming procedures and recognising the necessary linkages between the needs of the identified target market for the product and the preferences of the individual customer. The Commission would also invite EIOPA to consider ways of simplifying and streamlining these assessments, in particular in the context of digitalisation.
- Assessing the impact of complexity in the retail investment product market: analysis of potential measures to facilitate the access of retail investors to simpler, cost-efficient, insurance-based investment products.

The Commission notes that the subject matter of this request for advice is confined to the distribution of insurance-based investment products in line with the subject matter of the Commission’s retail investment strategy.

3. Procedure

The technical advice of EIOPA will be a key input to the Commission’s work to develop a strategy for retail investments and to make appropriate adjustments to the legislative framework. The technical advice received on the basis of this mandate will not prejudice the Commission's final decision in any way. In accordance with the established practice, the

Commission may consult other experts or seek other inputs. The European Parliament and the Council will be informed about this request, which will be available on the website of the Directorate-General for Financial Stability, Financial Services and Capital Markets Union once it has been transmitted to EIOPA.

In parallel to this call for advice, the Commission services have sent a call for advice to ESMA on similar but not identical aspects regarding the protection of retail investors. EIOPA is invited to coordinate closely with ESMA with respect to the elements that are common to both calls for advice.

It should be noted that unlike the request for advice to ESMA, this request also covers a number of the issues, in particular related to inducements and the suitability test, a difference justified by the fact that ESMA has already examined these issues recently. In an effort to ensure consistency, EIOPA is invited to complement that work within the remit of its competence.

4. Final Considerations

The Commission requests EIOPA to deliver the report to the Commission services by 30 April 2022.

The Commission invites EIOPA to consult as widely as possible within the available timeframe. In case the short timeframe available to prepare this advice places constraints on this exercise and restricts the ability of EIOPA to allow the full length of time normally allocated for the consultation of stakeholders and to explore in depth the issues set out in this call, then EIOPA should highlight these limitations in its final report.