Non-paper

France, Czech Republic

Retail Investment Strategy - Simplification proposals

The current texts of the RIS which are on the table on the Parliament and the Council side risk moving away from its initial objective, i.e. to boost the participation of retail investors in financial markets. We are committed to defending a major simplification of the text to return to its original objective.

This proposal is in line with the Commission's overall simplification agenda. It appears that the current text of the RIS, due to its complexity, generates unreasonable costs that penalize regulated entities, increase burden for supervisory authorities actors and harm their competitiveness of retail investment services and IBIPs providers while not bringing any benefit for retail investors Moreover, the current framework already offers a solid level of protection to retail investors. The RIS should not harm the main principles of behavioral economy and make it more difficult to invest in European companies, on our financial markets and contravene the strengthening of the CMU, especially when other investments with less clear value such as crypto assets are more easily accessible.

This non-paper proposes simplifications that could feed into the European Commission's work. Three workstreams have been identified:

- *Simplify the customer journey and avoid adding new obstacles that could drive customers away from financial markets;*
- *Avoid price regulation while ensure the adequate pricing of products and a clear breakdown of the costs for the clients by the industry through a clarified value-for-money mechanism, while avoiding increasing the regulatory burdens;*
- *Maintain the progress made in the text on transparency, financial literacy and cross border supervision, while avoiding creating new burdens for customers.*

All the simplification proposals cover both investment services covered by MiFID2 and IBIPs by IDD. This non-paper focuses on the current text of the RIS without prejudice of a broader approach of simplification.

1) Simplifying the customer journey

Although there might be room to a more in-depth review of the steps taken by a retail investor willing to invest in European capital markets, we limit our proposals to the additions made by the RIS, due to the announced timeline.

Proposal 1: Don't discourage retail participants from investing

Appropriateness test (for non-advised sales)

With the RIS, the appropriateness test has been enriched to add to the existing questionnaire (customer skills and experiences) new questions on (i) customers' ability to bear losses and (ii) their risk tolerance.

We propose to remove the test requirement of obtaining information on the client's loss bearing capacity and risk tolerance. The benefit of a heavier test seems to be limited and we believe that these add-ons would make the distinction between selling with advice (suitability test) and without advice (appropriateness test) more confusing.

Suitability test ***[Aligned with EP which removed the saving capacity requirement]***

The Commission proposes to enrich the suitability test by adding a diversification clause, which would require advisors to check that the recommended product is suitable for the client's diversification needs, considering their portfolio.

We propose to remove this additional clause. It could be deemed as having little added value given that the test already requires indication of the investor's investment needs and savings capacity.

Simplified advise regime

The Commission suggests the introduction of a simplified advice regime, by reducing the content of the suitability test offered to firms providing independent investment advice: if the firm restricts its advice to diversified, non-complex and low-cost instruments, then it can be exempted from asking the customer about his knowledge and experience, as well as his existing assets. The Council extends this regime to non-independent advisors.

This should be treated carefully as we do not want to accelerate the moves towards low-cost products, potentially giving an edge to products invested outside EU and manufactured by non-EU actors — a concern shared by the industry and the supervisors.

We propose to maintain it but to focus on accessible and long-term investments.

Proposal 2: Reduce the administrative burden on advisors

Best interest test

The text introduces three new requirements for financial companies' advisors:
1. provide advice based on analysis of an appropriate range of financial instruments;
2. among products suited to customer's needs and with similar characteristics, to recommend to the customer those instruments offering the best cost-efficiency ratio;
3. among products suited to customer's needs, to avoid recommending any product with unnecessary additional features (not necessary to achieve the

customer's objectives) and which would be more expensive than the same product without such features.

Even if the burden is not on the client himself, this still generates costs for the industry and weighs on the overall onboarding process, with benefits estimated to be very limited to the retail investor in the end *(Annex : Presentation of the customers journey in the RIS framework).*

The current version of the test is thus not acceptable and should be deeply reviewed. We therefore propose the removal of the entire test and to the very least the removal of criterion n°3 "no additional feature" and keep the notion of "most cost-efficient" for criterion n°2, which should also include a product performance component.

2) Reducing the industry's cost bias without risking an excessive burden

Proposal 3: Ensure an effective value-for-money mechanism ***[closer to the EP, with a different and simpler spin on the benchmark: national-based or European-based, depending on the product]***

Value-for-money

Across the different versions of the text, the VFM device is structured into **two legs**:

1) The first leg requires actors to independently verify that costs are justified and proportionate to the characteristics of the product, the service provided and the objectives and needs of the target market, in order to benchmark their products against their peer group. The producer (*peer-group analysis of costs and historical performance*) and the distributor (*peer-group analysis of service costs*) must be made accountable.

2) The second leg - the benchmark - is a tool for national supervisors, created by ESMA and EIOPA, to enable them to monitor the VFM assessment processes (leg 1) of the actors under their supervision.

While maintaining the first leg does not raise heavy issues, as long as supervised entities retain sufficient flexibility in peer group application, the second is subject to debate concerning the construction and use of benchmarks. While we can agree that building benchmarks is a complex exercise, as rightly pointed out by European supervisors, simply eliminating them would not address the issue of cost bias.

In order to refocus the RIS on its objective of limiting product cost bias, we suggest a more flexible mechanism based on:

1) A few cross-cutting guidelines (made by ESAs) for any comparison (granularity of methodology, product differentiation, breakdown between producer and distributor, accounting of various costs);

2) A two-part system, as in the current texts:

- reinforced obligations for the industry in its product governance (maintaining peer grouping);
- express support for enhancing comparability. The creation of common, public repositories centralizing key product information and enabling comparability for the retail investors should be explored, possibly linked to ESAP. It should primarily help retail investors make informed decisions, while also providing a potential basis for dialogue between supervisors and the industry. These tools should be constructed with the clear objective of not increasing reporting obligations for the industry and avoiding any form of price regulation.
  This could be done on a national or European basis, depending on the type of product (and whether it is sold on a national or cross-border market).

3) Clarification and strengthening of the role of supervisors in both systems, within the framework of their existing missions in order to use national supervisory benchmarks where suitable, notably to be able to audit the peer grouping, and to engage with the industry if a product data raises questions on the public repository.

Proposal 4: Partial or complete removal of the inducement test

Inducement test

In response to the Commission's proposal to ban inducements, the Council has introduced a strengthening of the prevention of conflicts of interest through:

1) Compliance with 4 general principles to be observed when paying or receiving inducements (no inducement, proportionality, equal treatment, customer benefit)
2) A retrocession test with 7 criteria to be met, including two additional mechanisms: the quality enhancement test (which is similar to the best-interest test, but at industrial level) and the restitution clause, which provides a mechanism for the restitution of improperly collected retrocessions).

We propose an in-depth review of this new test, which creates an important administrative burden.

If the inducement test is not removed entirely, at least duplicative and superfluous principles/criteria, which create more complexity, should be removed as such:

- In MiFID, we suggest the removal of overarching principle (d); the removal of additional criteria from the Quality-enhancement test (QET) and the claw-back clause.
- In the IDD, we suggest the removal of overarching principles (c) and amend (b) and (d) in order avoid undue complexity. Also, we suggest the removal of the inducement test criteria b), e), and f) as well as the requirement to keep record of all inducements.

3) Supporting the text's breakthroughs without making them unnecessarily cumbersome

Proposal 5: Don't make the KID any heavier, but secure its improvement

The following current proposals of the text **should be avoided:**

- The creation of a "sustainability section" to provide information on sustainability does not seem relevant to us, as this information already exists elsewhere, and the current SFDR review should not be pre-empted;
- Adding a dashboard would make the KID even longer, and would be a summary of a summary, because the KID is supposed to be a useful summary document for the customer;
- Maintaining the comprehension alert, which alerts customers to complex products but is now included in all KIDs, and is therefore neither discriminating nor informative for customers.

It is important to keep in mind that KID is intended to be a standardized general pre-contractual product information (leaflet), not personalized information (which is also to be standardized). We need to take in mind principles of behavioral economy here and ensure that the retail investor is able to grasp and understand it quickly and easily. Therefore:

- The KID as an accessible **interactive digital tool for investors could be a nice-to-have**, with drop-down menus (layering) to simplify reading;

- Information on **past performances** can replace future/prospective performance scenarios - thus returning to the KID UCITS format (before PRIIPS) - leaving ESAs the choice of flexibility on one or the other depending on the types of products targeted (to be defined at level 2).

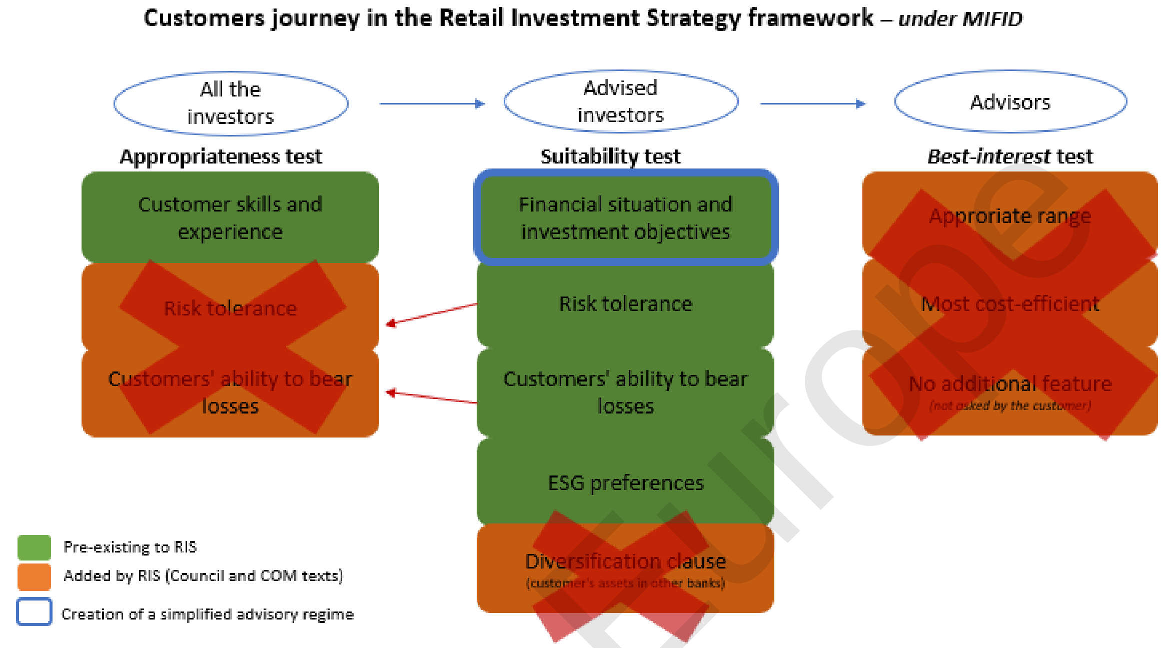
Proposal 6: Avoid cumbersome financial education policies

While we are in favor of the various progresses, notably the MiFID2 modification to oblige investment firms to require their advisors to validate their professional training through certification or any other equivalent form, this should remain optional and at the discretion of the Member State.

Financial education policies should be improved to reinforce the the presence of retail investors, not only through school-based training, but also through the initiatives of various organizations/associations and the designation of a competent national authority. The EP suggests the creation of a European platform for the exchange of best practices. However, there seems to be no need to create new platforms or institutions to share best practices.

On that proposal, some details need to be refined but the idea is to provide a clear direction on the way we want to move forward on the text

Annex: Presentation of the customers journey in the RIS framework



The suggestions remain the same for DDA