European Commission

Disclosure, inducements, and suitability rules for retail investors study

Final report

FISMA

Title of the document

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Contents

1. Executive summary

Financial markets, within and beyond the EU internal market, are characterised by their complexity, with the risk that decisions made by consumers do not necessarily serve their real needs when entering these complex market as (potential) private buyers – but rather benefit the suppliers or intermediaries involved in the sale of financial products. The diversity of the products and the way they are presented makes it challenging for many consumers to perform a thorough and rational screening of information and make an informed decision process by weighing up the (absolute and relative) risks and costs of different investment offers against their (potential) returns.

There is therefore a risk that (new) investment decisions are being driven by factors other than rational choice. EU legislation in the area of retail investor protection aims to address, at least partly, challenges stemming from the information asymmetry and lack of product transparency. It aims to make the supply of financial products more easily "navigable" for consumers through pre-contractual disclosure and also to ensure that advisors act in the client's best interests and are able to offer impartial advice on the basis of a clear assessment of the client's needs, objectives and financial situation. It aims to prevent conflicts of interest and ensure sure that potential conflicts of interest are disclosed.

In this context, the European Commission commissioned a study to feed into the development of the retail investment strategy announced for 2022, which is one of the actions planned under the Capital Markets Union's Action Plan[1]. The aim of the Retail Investment Strategy is to respond to new challenges in the market, such as the increasing digitalisation of investment advice and the use of digital distribution channels. The objectives of the Retail Investment Strategy as defined in the CMU Action Plan are expected to ensure that retail investors in the EU:

- benefit from adequate protection;
- are offered bias-free advice and fair treatment;
- have access to open markets with a variety of competitive and cost-efficient financial services and products; and
- are provided with transparent, comparable and understandable information about products.

The CMU Action Plan also defines 16 action areas. Action area 8 – building retail investors' trust in capital markets – covers issues at the core of this study, notably inducements and disclosure.

1.1. Study approach and methodology

The methodology for this assignment was designed so as to capture the whole process of retail investor decision-making, from searching for information, reviewing information documents to undergoing a suitability assessment/ demands and need test and receiving advice. The objective was the study and analysis of the investment environment the investors are in, with an analysis of the product costs, current practices in advice and product provision. This was then supported by legal research and further analysis.

This research was then analysed under the light of the Better regulation criteria to understand whether the current legal framework on disclosure, advice, inducements and suitability assessments is relevant, coherent, effective, efficient and has added value for consumer protection.

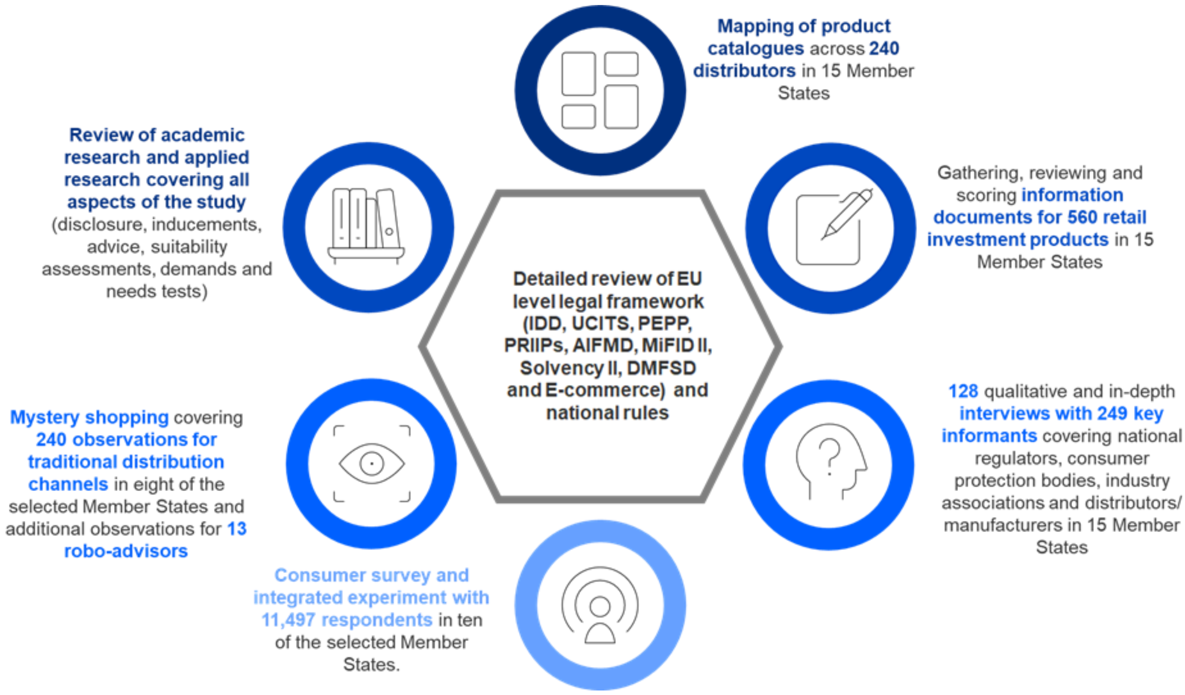
To reach those goals, the methodology covered a detailed review and assessment of the legal framework at EU and national levels; it also assessed the practical implementation

[1] Capital markets union 2020 action plan

of rules by reviewing and scoring a sample of information documents, undertaking a mystery shopping and carrying out a consumer survey with an integrated behavioural experiment. These were complemented by a series of key informant interviews with stakeholders representing different parties (regulatory authorities, consumer protection associations, industry representatives and distributors/ manufacturers). The figure below provides a snapshot of the sources of data for this study.

The primary data collection focused on 15 EU Member States (Austria, Czechia, Germany, Greece, Spain, Finland, France, Ireland, Italy, Latvia, Luxembourg, the Netherlands, Poland, Romania and Sweden). These were selected as to cover a wide range of situations regarding levels of take-up of retail investment products, market characteristics and geographical diversity.

Figure.1 – Main sources of data



Source: Consortium.

1.2. Main trends in the supply and distribution of retail investment products

European household financial assets have more than doubled over the last 20 years[2]. The main driving forces behind this development are cash and deposits holdings (33%) together with investments in insurance and pension products (35%). The composition of household financial assets varies considerably across EU Member States. While some countries (e.g. Greece, Luxembourg and Poland) have very large holdings of financial assets in currency and deposits, others (e.g. Ireland and the Netherlands) have much higher proportions invested in insurance products and pension funds. In Czechia, Finland, Latvia and Sweden households invest just over one-third of their assets in shares, compared with between 10% and 24% in the remaining countries. The 15 countries covered in the study can be grouped as follows according to the proportion of household financial assets by type of asset:

- low levels of investment: 45% or higher share of financial assets are in currency or deposits (CZ, EL, LU and PL);

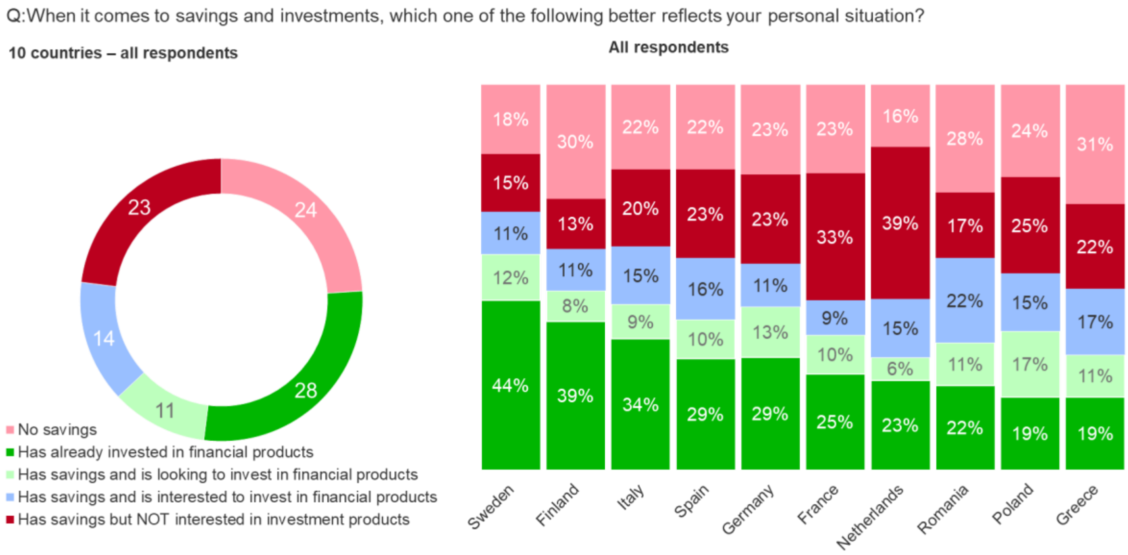
[2] Eurostat (2021). See more on the results in section 4.2

- investments primarily in insurance and pension products: 35% or higher share of financial assets are invested in these types of products, while the share invested in other types is low (DE, IE, NL);
- mixed investment: there is a mix of investments in shares, pensions and insurance products and possibly investment funds (AT, ES, FI, FR, IT, LV, RO and SE).

This diversity between countries is also apparent when comparing the share of persons who hold retail investment products and when looking at the types of products acquired.

When looking at the population of banked citizens in the 10 countries covered by the consumer survey, the study found that just over a quarter (28%) of them have already invested in financial products, while another quarter of respondents were actively looking to invest (11%) or interested in investing their savings (14%). These two segments are people who have currently no experience in investing but have funds to invest and are interested in making that step. These are the people for whom the legal framework covered in this study is highly relevant. On the other hand, despite having savings, nearly a quarter of respondents were not interested in making financial investments (23%). For this segment, measures other than disclosure or advice would be needed if the policy intention is to make investments more attractive to them as those only reach the population who is already looking into investments. The remaining respondents were citizens who at the time of the survey did not have savings. The share of retail investors in the population was highest in Sweden and lowest in Poland and Greece among the countries covered. The Netherlands and France have a high share of people with savings but who are not interested in investing.

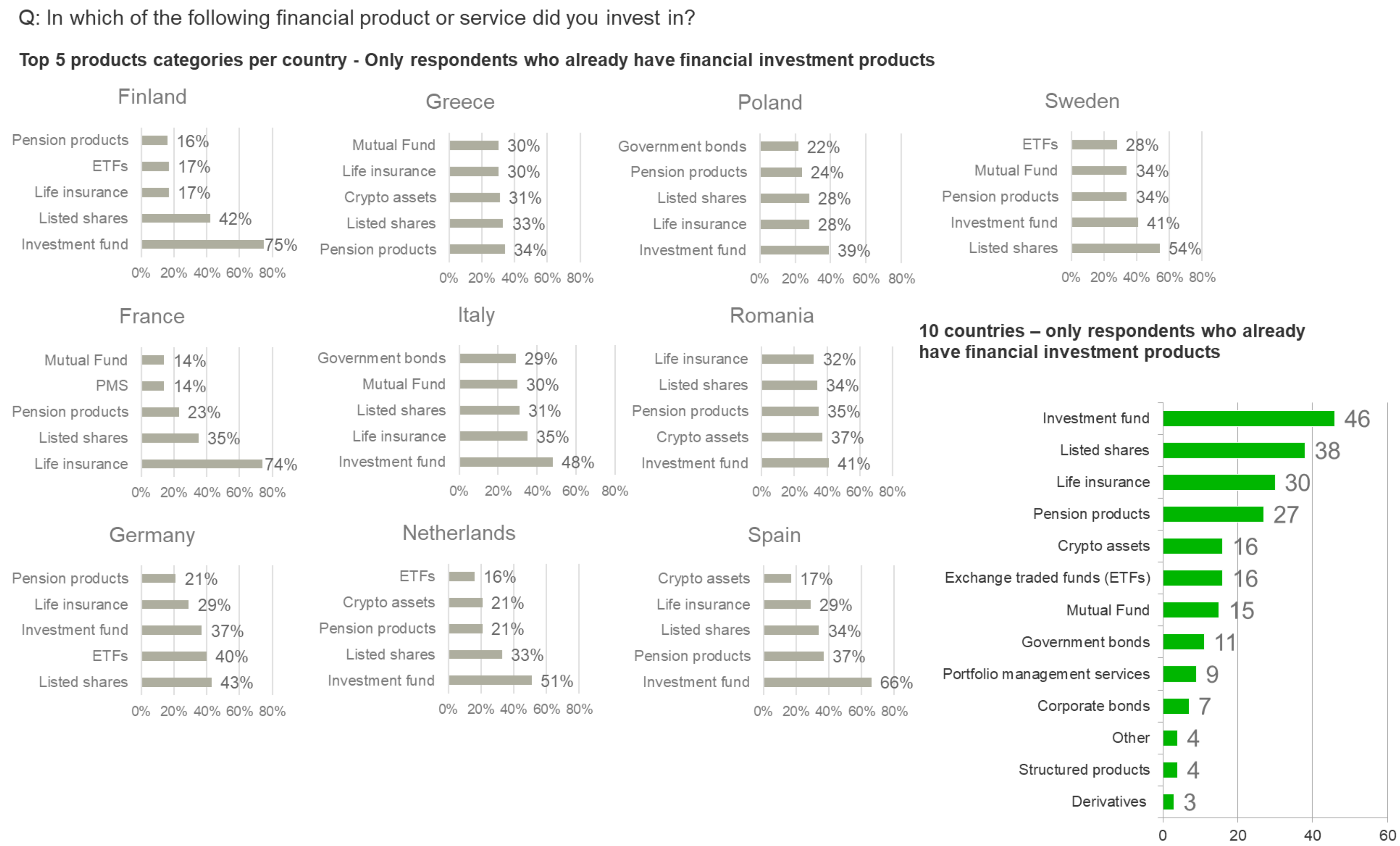
Figure.2 - Share of consumers who have or are interested in getting financial investment products



Source: Consortium based on the consumer survey.

Across the 10 countries covered most respondents who have already invested stated that they held investment funds (46%). Another 38% said they held listed shares, 30% life insurance and 27% pension products. It is noteworthy that crypto-assets were the fifth most frequently mentioned type of products. Some 16% of respondents with investments stated that they held crypto-assets, i.e. the same share as for ETFs. The proportion is even as high as 37% of investors in Romania and 31% in Greece. In both cases these are countries with a rather low proportion of investors, but where the investors who do have financial products tend to have a mixed portfolio without one predominant product type. The two countries with a high proportion of investors (FI and SE) tend to have a high proportion of investors who hold listed shares or investment funds.

Figure.3 – The types of investment products held by persons who state that they have at least one investment product



Source: Consortium based on the consumer survey.

The main drivers of the demand for retail investment products in the previous period were:

- low interest rates have encouraged consumers seeking higher returns on their savings to invest in capital markets;
- focus on products with lower costs to investors, which are increasingly present on the market and are attractive to investors because of their simplicity and have gained traction in several countries (Finland, the Netherlands and Poland);
- growing supply of products labelled as sustainable which also attracts new profiles of investors; and finally
- a boom in the demand for crypto-assets in particular among the younger and risk-seeking segments.

Figure.4 – Main drivers of growing demand for retail investment products

Source: Consortium.

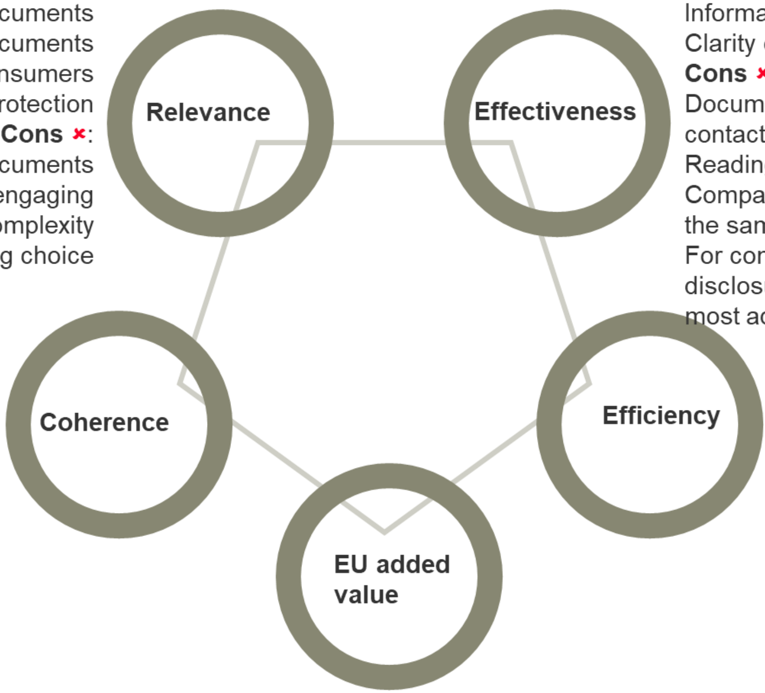
In terms of distribution, the breadth of retail investment products offered by a given type of distributor varies. Banks and insurance companies tend to offer retail investment products from multiple product categories. Smaller distributors, such as traditional/online brokers and fund supermarkets, generally specialise in distributing retail investment products from one or few categories. For example, traditional/online brokers are highly likely to offer securities, structured products and derivatives, but rarely distribute insurance products. Fund supermarkets tend to specialise even further and, in the countries studied, offered solely investment funds.

Still looking at distribution, some retail investment products are more widely available than others. Investment funds are distributed by nearly every type of distributor, whereas securities are mostly offered by banks, traditional/online brokers and trading platforms. When looking at securities, shares are more likely to be offered than bonds, especially in the case of trading platforms. Insurance products are rarely offered by distributors other than insurance companies and banks.

1.3. Disclosure

Disclosure requirements are laid down in a large and multi-layered set of legal measures at EU level. Retail investors are required to be provided with a Key Information Document (KID) or a Key Investor Information Document (KIID) and in some cases also a Prospectus depending on the product category. Additionally, depending on the products and/or services offered and the applicable legislation, further pre-contractual information documents may be required. The legal frameworks covered in the study report a number of requirements for these types of documents with the intention of ensuring that the documents are transparent, comparable and ultimately enable prospective investors to make a more informed choice.

Figure.5 – Main findings about disclosure



Relevance

Pros ✓:
People do search and compare products before deciding → need comparable documents
Items covered in disclosure documents are the ones that matter for consumers
Focus on consumer protection

Cons ×:
Rules do not focus on making documents engaging
Disclosure does not overcome complexity
Not focused on encouraging choice

Effectiveness

Pros ✓:
Availability of information documents is good for those who search
Information presented is compliant
Clarity of information is good

Cons ×:
Documents are not systematically handed out during first contact
Reading of the document is encouraged in half the cases
Comparability across product categories is lower than for the same type of products
For complex products that people are not familiar with disclosure documents do not make it easier to identify the most advantageous product

Coherence

Pros ✓:
The requirements for format, readability, clarity, conciseness, language use and comprehensive coverage are coherent
Risk calculation methods are coherence and consistent

Cons ×:
There is a legal gap in the understanding of “in good time” which poses practical challenges for timing of disclosure
There are differences in the emphasis on digital vs paper disclosure between the legal frameworks and stronger focus on digital disclosure overall would make the legal framework more future proof.
Coherence of cost disclosure is lagging behind and renders comparison of product costs more complicated

Efficiency

Pros ✓:
The estimated administrative costs per client are less than €1 for investment funds and around €5 for pension products and life insurance. The estimated administrative costs per net asset are below 0.01%.
Considering the benefits to clients the rules about disclosure can be considered as cost-effective.

Cons ×:
n/a

EU added value

Pros ✓:
Focus on cross-border standardisation
Allows consistent consumer protection in the EU

Cons ×:
Limitations regarding relevance and effectiveness also mean that the EU added value is somewhat diminished

Source: Consortium.

1.3.1. Relevance

This study shows that **disclosure is a necessary but insufficient means to support retail investors in making their choice**. It meets some investors' needs and addresses some behavioural biases affecting the decisions of prospective investors because these documents aim to make their choices more rational. However, there are other behavioural biases which, in turn, inversely affect the effectiveness of disclosure.

Disclosure aims to **improve the comparability and intelligibility of products** through information documents. The former assumes that people interested in investing search for and compare multiple products. The consumer survey showed that 76% of those who hold at least one investment products do make comparisons before making their choice: 40% compared products of the same type while another 36% compared different types of products.

The types of content that the legal framework requires disclosure documents to include (products description, risk, past and expected future performance, costs, holding period) are also **highly relevant for consumer choice** and consumer protection through product understanding. These are the information categories that most prospective investors are interested in when making their choice. They are also categories that are essential to understand not only the potential gains but also the risks associated with a given investment.

However, there are **also limits on what the current disclosure framework can achieve**. First, in terms of key success factors for ensuring effective disclosure. Some factors are not sufficiently addressed in the legal framework or its application. In particular, the templates reviewed as part of this study are not "engaging". Engagement is a precondition for understanding and subsequent decision-making. While the current legal framework emphasises accessibility and availability, it does not provide for the information documents to be engaging for users so as to capture their attention. Although the standardisation covers some items that improve understanding (using common reference points for comparison such as standardised risk indicators), it does not overcome the complexity of the terminology or that of costs. This complexity, even when presented in a standardised manner, does inhibit understanding. There is limited focus on the environment and context in which the disclosure is to be used which would encourage consumers to use the information in the disclosed documents to take action. There is also limited focus on reducing the inconvenience involved in searches or comparisons.

Finally, the legal framework for disclosure documents seems to respond to **multiple policy challenges**. Depending on the underpinning challenge, the relevance of disclosure as a solution to the problem will differ. Disclosure can be expected to be more or less relevant:

- Given the transparency that disclosure documents provide, disclosure is conducive to the objective of consumer protection. It provides evidence that can be used in the event of any litigation.
- There is mixed evidence about the usefulness of disclosure documents to support optimal choice of people already engaged in selecting a financial investment product, considering the limitations discussed above. However, for those investors who are interested, engaged and financially literate, these documents do provide a tool that allows them to make comparisons.
- There is no evidence that disclosure could encourage those consumers who are not considering financial investments to choose this form of investment over other means of safeguarding and making their savings work for them. For this segment the current formats of key information documents which are dense, long and complex could in fact have the opposite effect.

1.3.2. Coherence

Overall, the requirements for format, readability, clarity, conciseness, language use and comprehensive coverage are coherent between the different legal frameworks.

All the legal frameworks require that pre-contractual information should be **disclosed "in good time"** before the retail investor is bound by any contract or offer relating to the product or service, with only PEPP, MiFID II and PRIIPs further specifying at which point in the consumer journey this disclosure occurs. Only PEPP includes specific timing conditions in the case of information provided online. The effectiveness analysis shows that practices differ between distributors that provide disclosure documents early in the process (during the first contact) whilst, in another half of the cases, disclosure documents are not provided at this point. These different practices can be seen as compliant with the "in good time" requirement but, in practice, disclosure at the time of the contract signature is likely to be too late to allow consumers sufficient time to use this document to inform their choice. There is therefore a certain gap in the definition of "in good time" which would ensure that KIDs and KIIDs are used as the main resource for the consumer's decision-making. This is also highlighted in recent case law.

All pieces of EU legislation include the option to **communicate the pre-contractual information through various means**, i.e. on paper, on a durable medium other than paper under certain conditions, and on a website under certain conditions. PEPP places great emphasis on the digital environment, something only taken up (partially) in MiFID II – where disclosure on paper is only available if so requested by the potential retail client; otherwise, the pre-contractual information must be offered in an electronic format. From a legal point of view, an inconsistency has been created where one information document is provided to the retail investor in paper format while another one is available only online. For example, in the case of face-to-face purchases, PRIIPs KIDs are – according to the regulation - provided in paper form by default, although they often are in digital form for online sales. On the other hand, the MiFID II pre-contractual information is provided electronically (unless requested otherwise). This does not facilitate a comparison of the services related to various products. Generally, it would be advisable, also with regard to the means of communication, to **future proof the relevant legal provisions** and place greater emphasis on the digital environment.

There are two reasons for this emphasis on digital formats:

- a web-based, interactive format allows different layers of information, thereby ensuring the salience of the most important items and minimising information overload; and
- it also reflects the growing role of digital platforms and robo-advisors as distribution channels.

The **requirements regarding the introductory section** of the pre-contractual disclosure documents are broadly coherent, with the exception of the explanatory statement in the UCITS KIID, which refers neither to understanding the "costs, potential gains and losses" nor comparability with other products. Only PRIIPs requires a "comprehension alert" for products that are potentially harder to understand for the average retail investor. However, the UCITS KIID will be phased out for retail investors and replaced with the PRIIPs KID on 1 January 2023.

Some **overlapping information requirements** are present in EU legislation related to the sale of IBIPs (also underlined by EIOPA). EIOPA suggests addressing this issue of duplication (overlapping information requirements) by proposing, in certain cases, the non-application of DMFSD for IBIPs sold online or the non-application of Solvency II for IBIPs.

The **methodologies for calculating risks in the PEPP KID and the PRIIPs KID are largely consistent and coherent**. Variations can be explained by the difference in nature of the product risks (e.g. potential negative value, linearity of the risks, average maturity, etc.).

Some concerns were expressed during interviews regarding the comparability of performance disclosure in the PRIIPs KID for its application in the insurance sector. Interviewees expressed a concern that the KID requirements were developed for investment funds and are ill-adapted to insurance products. Some interviewees mentioned that there are certain elements which are specific to insurance-based investment products (biometric risk) that do not find an appropriate placeholder in the KID. Another example given by interviewees was that the KIID for mutual funds informs clients on the fund's past performance, while the KID for insurance products informs the client about the expected performance. However, the UCITS KIID will be phased out for retail investors and replaced with the PRIIPs KID on 1 January 2023.

The regular (at least annual) review of KIDs and KIIDs provided for under PEPP, PRIIPs and UCITS is regulated in a coherent manner.

The study shows that the **comparability of costs across products has not (yet) been achieved** and retail consumers are facing uncertainties. Existing issues mostly relate to technical aspects, such as differences in the reference period, different methodologies, etc. and to reconciling the overall costs with the breakdown of the costs. This was highlighted not only in the interviews but also in the review of information documents as part of effectiveness analysis. Practical incoherencies have also been mentioned in ESMA's Technical Advice.

1.3.3. Effectiveness

The analysis of effectiveness of disclosure focused on outputs (availability of information documents and the extent to which these are provided to clients, their compliance and the extent to which clients are encouraged to read them), results (clarity and comparability of information documents) and impacts on consumer decision-making.

Information documents are generally **available and accessible** when a consumer searches for them. For the vast majority of products covered in the mapping of information documents accessing the information documents through a web-based search was not challenging. That means that if retail investors are looking for such documents they will usually find them easily. However, the use of information documents when giving information to consumers varies. They are **not systematically provided to potential clients at a very early stage** of their search trajectory. Only 54% of mystery shoppers received a key information document or were referred to one online when they were simulating the first contact with an advisor. It is possible that these advisors might have provided the document at a later stage which would however be too late to inform the decision-making. Furthermore, a substantial proportion of the shoppers were provided with other documents, which might actually contribute to information overload.

The vast majority of information **documents reviewed were compliant and complete** in terms of items covered. They were also for the most part up-to-date. There is however a notable difference in the completeness of information documents for investment products (generally good) and that of insurance and pension products. When comparing information documents against a standard set of categories, pension and insurance investment products have many more gaps than the investment products reviewed. This could however be due to the fact that for these products' disclosure is typically personalised and hence provided during advice sessions.

Whilst the distributors interviewed state that they encourage consumers to read the documents and also require them to sign an acknowledgement that they have read the documents, in practice **only around half of the information documents reviewed contain nudges for reading**. Similarly, only around half of the mystery shoppers who received an information document were verbally encouraged to read it. Furthermore, the review of information documents shows that they are rarely engaging and that their layout is frequently very dense and therefore not reader-friendly. Other studies reveal similar limitations of disclosure.

In terms of results, the country researchers who screened the information documents tend to consider that the **information in them is clearly presented**. It is accurately labelled and correctly structured. Information about costs is the one that tends to be considered as the least clear, because it is most likely to contain inconsistencies as well as complex terminology. **Clarity however is not equivalent to usefulness for comparison or comprehension purposes**. The comparability of information documents was rated lower than the clarity of the information provided. In particular across product categories the information documents were rarely considered as comparable. Comparability within the same product type is in general rather good. Insurance and pension products were scored lower in terms of clarity and comparability than other types of products reviewed across all categories of items.

Finally in terms of impacts, the **behavioural experiment confirms the mixed findings of other studies**. The experiment found that for insurance product and UCITS, the disclosure documents similar to status quo were effective in supporting optimal choice. However, this is not the case for structured notes and Portfolio Management Services (PMS). For the latter two categories, fewer respondents chose the optimal products than if they had made the choice at random. The same pattern was found when testing the effectiveness of different alternative disclosure formats. While for UCITS and pension products some disclosure formats proved more effective than the status quo, this did not hold for PMS and structured notes. The complexity of these products outweighs the potential benefits of the disclosure document meaning that the document does not help the consumer make the right choice. Even when controlling for a number of other variables, the product category is the most impactful variable in terms of explaining the differences in results observed. Another factor that counts is the consumer's financial literacy. Overall, the findings confirm that even when the documents differ only on one variable (costs) it is still complicated for consumers to decide which product would be the most financially advantageous for them. The simplified one-page document has not succeeded in overcoming the complexity of this decision-making in the case of complex products with which people are not familiar with.

1.3.4. Efficiency

The **cost-effectiveness of requirements regarding disclosure through information documents is high**. The study estimated that the total ongoing costs for all three main product categories (investment funds, pension products and insurance products) are approximately 570 million euro per year. When estimating the cost per client we arrive at a unit cost of €3.86. The estimated cost represents approximately 0.0017% of the net asset value. These costs were estimated based on assumptions linked to the following tasks:

- Preparation of non-personalised pre-contractual information documents; and the regulatory cost for UCITS/AIF.
- Preparation of personalised pre-contractual information documents where these are required (individually recording client data, completing template, verifying, printing for personalised KIDs).
- Making information documents available to retail investors before closing the agreement.
- Preparation of periodic/updated (personalised) information documents.
- Making updated information documents available, responding to questions.

The costs are lower for investment funds where pre-contractual disclosure documents are not personalised than for pension and insurance products where pre-contractual disclosure is personalised. However, the personalisation of disclosure does bring additional benefits to clients which go beyond the generic non-personalised disclosure.

It needs to be emphasised that the costs calculated in this study are gross administrative costs. Not all of these costs can be considered as an administrative burden since ideally an efficient company would have information documents with content similar to KIDs, explain them to clients, send out annual reports on performance etc., even in the absence of the regulations within the scope of this study.

1.3.5. EU added value

The EU added value for the legal framework regarding disclosure stems primarily from the **standardisation of key information documents across all EU countries**. The information documents across the EU countries covered are highly standardised and adopt the same content categories across the legal requirements. Harmonisation of the risk indicator as well as other content categories makes products more comparable across borders which could not be achieved through action at the level of individual Member States. This creates transparency on the market and enhances consumer protection through detailed and clear disclosure.

In the absence of an EU legal framework it is likely that countries would have adopted diverging disclosure requirements. The fragmentation of disclosure requirements would lead to differences in the level of consumer protection. It would also imply that manufacturers and distributors operating in multiple countries and selling products in multiple countries would have to comply with different sets of rules which would increase the costs of producing and updating disclosure documentation.

Furthermore, in the absence of a common EU legal disclosure framework, retail investors across the EU would suffer from **differences in their level of protection**. Inconsistent national frameworks for disclosure would mean that in some countries consumers would benefit from better tools and templates for disclosure, thereby simplifying comparisons and decision-making, while in other countries the practices in place would be in place.

However, the EU added value of the legal framework is also **negatively affected by the fact that the current disclosure regimes** do not systematically make it easier for prospective investors to identify the most advantageous product as described under effectiveness. The fact that disclosure does not overcome barriers driven by product complexity lowers the overall effectiveness of the legal framework and subsequently also its EU added value.

1.4. Inducements and advice

Professional advice is a key factor in influencing the decision-making of retail investors. However, investment advice is also marked by **strong information asymmetries** between advisors and potential investors which put consumers in a vulnerable situation. This vulnerability can be further exacerbated by the inducement and remuneration mechanisms between product manufacturers and advisors which can result in product mis-selling. The EU legal frameworks covered by this section therefore aim to improve investor protection through rules on advice and inducements. The legal frameworks concerning inducements in the context of investment advice[3] covered in this chapter aim to:

- Minimise advisor conflicts of interest so as to ensure the advice delivered to prospective clients is in the consumer's best interests;
- Inform the prospective client whether the advice given is independent or non-independent and whether the advisor receives an inducement for the sale of a given product so that consumers are aware of the relationship between the product manufacturer and the distributor and take it into account when making their investment decision;

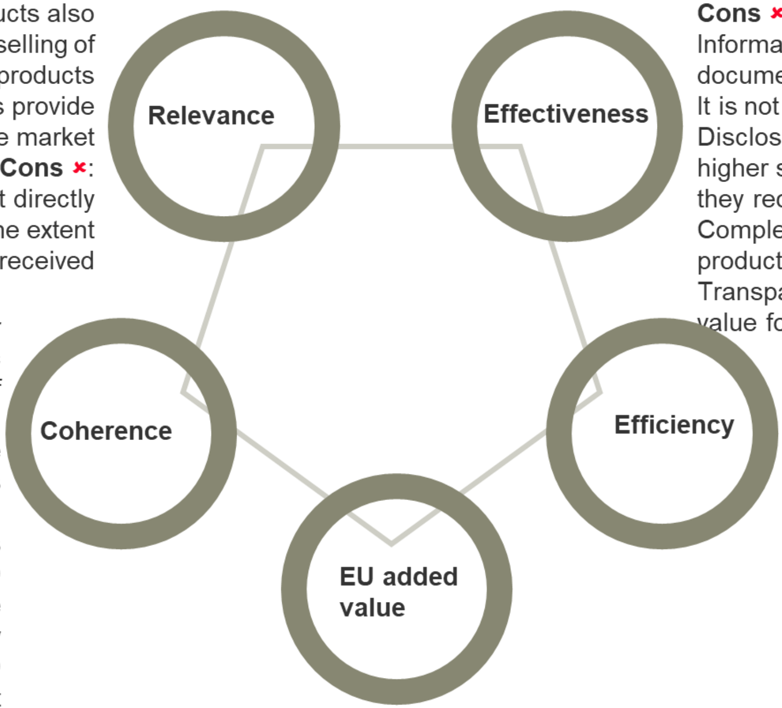
[3] This chapter focuses on the inducements in the context of investment advice. For a detailed discussion on the advice provision of advice to the clients, please consult Chapter 7 "Suitability assessments, demands and needs tests".

- More generally improve the quality of advice, ensure that advisors meet minimum requirements in terms of knowledge and competence and more generally reinforce the duty of care of retail financial product distributors, as well as to make sure that the client is well informed and understands the advice.

Figure.6 – Summary of key findings on inducements and advice

Pros ✓:
Existence of mis-selling cases supports need for rules about advice
High complexity of certain products also justifies rules that condition the selling of complex products
Disclosure of inducements does provide transparency for the market
Cons ✗:
Disclosure of inducements is not directly relevant for consumers' choice and the extent to which they question or not advice received

Pros ✓:
Overall products recommended to mystery shoppers were aligned with their level of wealth and investment objectives
Cons ✗:
Information on inducements is hard to locate in information documents
It is not systematically given during client conversations
Disclosure of inducements and warnings do not result in a higher share of consumers reconsidering the bad advice they receive
Completeness of information provided to customers about products during advice interviews varies greatly
Transparency of inducements did not (yet) result in better value for money for investors



Pros ✓:
The legal frameworks use similar definition/concepts, presence of specific tests, conduct of business and conflict of interests rules. Both IDD and MiFID II contain requirements regarding the disclosure of inducements
Cons ✗:
MiFID II regime prohibits inducements unless conditions are fulfilled while IDD allows inducements. In practice inducements remain relatively widespread also under MiFID
Information to be disclosed about inducements varies and is not easily identifiable for pension and insurance products
Differences between the legal frameworks at EU level and those at national level – in particular for quality enhancement tests

Pros ✓:
Administrative burden associated with the costs of training of advisors primarily is reasonable compared to consumer benefits. The estimated cost per client is € 0.678 and it represents 0.0003% of the value of assets managed
Cons ✗:
The fact that inducement costs are associated with higher product costs being charged to clients suggest that clients are not necessarily benefiting from the optimal products in terms of the costs charged to them

Pros ✓:
Focus on cross-border standardisation – diminishes burden on businesses (distributors)
Allows consistent consumer protection in the EU
Cons ✗:
Limitations regarding effectiveness also mean that the EU added value is somewhat diminished

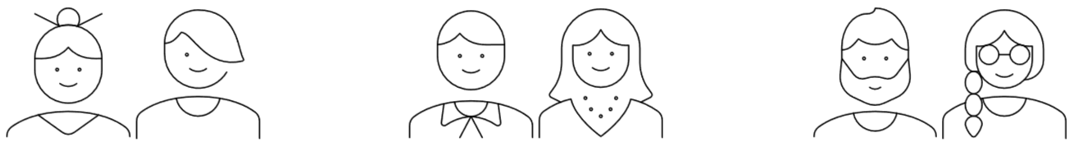
Source: Consortium.

1.4.1. Professional advice as part of the consumer journey

As part of this assignment, we undertook a segmentation of consumers surveyed according to a number of characteristics which are likely to make them more or less vulnerable when faced with inadequate advice. Five consumer segments were identified, two of which were mentioned above: struggling consumers (people with no savings) and those not interested in investments (people with savings but no interest in financial products). Disinterested consumers are much more likely than the other segments to believe that making a choice of investment product is complicated and not to have confidence in their own ability to do so. The other three segments of consumers who are considering investing or have made investments are shown in the figure below, followed by a chart which shows the size of each of the segments in the population of the 10 countries covered by the survey.

These segments show that the **consumer needs and expectations vis-à-vis professional advisors differ**. Experienced and confident investors are much more likely to make their own decisions, possibly using digital tools allowing comparison or robo-advisors. In contrast, vulnerable potential investors are likely to seek and follow advice as they do not trust their own decision-making capacity.

Figure.7 – Three segments of (potential) investors



Vulnerable (potential) investors

Consumers who either have already invested in financial products or are interested/ considering doing so. Low/ medium confidence in making financial investment decisions on their own. They also tend to have a low to medium level of financial literacy. Medium trust in advice.

Cautious (potential) investors

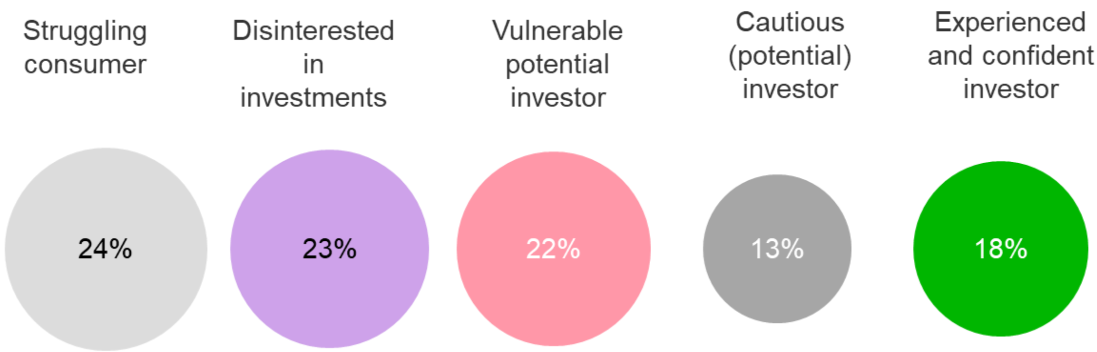
Consumers who either have already invested in financial products or are interested/ considering doing so. They have medium confidence in making investment decisions on their own. Medium to high level of financial literacy and the same when it comes to trust in advisors

Experienced and confident investors

Consumers who typically have invested in financial products. Have high confidence in making investment decisions. High level of financial literacy. Mixed trust in advice but this is mitigated by their own proficiency

Source: Consortium based on the consumer survey analysis.

Figure.8 – Share of each segment in the population of 10 countries covered



Source: Consortium based on the consumer survey analysis.

When it comes to **sources of advice** for those who have made investments or actively sought to invest:

- Professional advice is only one type of advice people receive.
- Many people receive informal investment advice (28% of respondents), with family, friends or peers representing an important source of influence on their investment decisions.
- However, people also make investments in financial products without seeking advice (23% of investors invested without receiving advice).

Another notable fact shown in the survey data is the **role of digital advice** or digital tools that guide consumers in their choice. Some 14% of respondents stated having received digital advice or used a digital tool. In other words. While digital advice remains in the minority it is not negligible, as today more than 1 in 10 investors/ aspiring investors use it.

Independent advisors are a source of professional advice for more than a quarter of respondents in the study (28%). On the other hand, 45% of respondents got their advice through distributors that are not seen by them as independent.

1.4.2. Relevance

The existence of cases of the **mis-selling** of financial investment products prior to the introduction of MiFID II, but also in the more recent period, supports the need for clear rules to ensure that advice given to consumers is in their best interest rather than being driven by the financial interests of advisors or other market players. Because of the asymmetry of information between advisors and retail clients which can be detrimental to the client, and also in view of the importance of maintaining a high level of trust in advice, it is strongly recommended that the regulatory authorities should review practices that could lead to inappropriate advice. **Consumer trust in advice** and more generally in the financial markets is correlated with willingness to invest. Thus, trust is one of the factors that boosts the market participation of retail investors. However, trust is also associated with a higher likelihood that consumers will follow the advice that they are given. The higher the level of consumer trust, the more likely consumers are not to question the advice they receive and to follow it. This further reinforces the need to ensure that the advice is adequate. Considering that an important aim of the Commission’s planned Retail Investment Strategy will be to increase consumer participation in financial markets, building consumer trust is a prerequisite. For the trust to be sustained, the quality of advice is important.

The rules about which products can be sold on an **execution-only** basis and thus without suitability assessments and without advice aim to ensure that only consumers who have the capacity to make an informed choice about complex products, as well as sufficient ability to bear losses, are recommended complex products and only when suitable. There is a general consensus among the stakeholders interviewed about the relevance of this distinction. The survey data also shows that indeed complex products such as derivatives and structured products are the least understood by consumers. At the same time, the data shows that these products represent only a very small share of household assets, and that only a very small proportion of consumers have invested in them. While the market continues to develop more complex products, there is agreement that only products whose risk can be easily understood should be available through execution-only.

Finally, an important aspect of the rules examined concerns the **disclosure of inducements** to clients. These rules ensure that by being informed about inducements consumers would be made aware of the advisor’s potential gains from the sale of a given product and thus contribute to a better-informed choice. This however is to some extent open to question, as most consumers do not understand the concept of inducements (only 36% of respondents chose the correct statement about the meaning of inducements). They are also primarily concerned with the overall product costs and not the costs of selling the product (inducements) that are being passed on to them. Disclosure of inducements does not appear to make a substantial contribution to a consumer's informed choice, as discussed under effectiveness. That however does not mean that this disclosure is entirely relevant. Instead of its effects on the consumers' choice (which are minimal), disclosure of inducements is relevant to improve the market because:

- the transparency can increase competition between the manufacturers and distributors and should ultimately lead to lower prices; and
- it constitutes a basis which allows consumers to seek redress if they feel that the advice they received was inappropriate.

1.4.3. Coherence

The "provision-per-provision" assessment of the coherence of legal frameworks shows that, there is a **significant "alignment" between the IDD and MiFID II rules on inducements**. These use similar definition/concepts, presence of specific tests, conduct of business and conflict of interest rules. Both IDD and MiFID II contain requirements regarding the disclosure of inducements and, in both cases, clear information on inducements has to be disclosed prior to providing the service as well as on a yearly basis during the provision of the service. In this regard the legal frameworks are largely coherent. Overall, the MiFID II and IDD regimes are consistent in applying comparable rules to prevent conflicts of interest in the context of continuous organisational rules and administrative arrangements.

Nevertheless, **differences between the regimes persist**:

- The MiFID II regime in principle prohibits inducements, because inducements are seen as not fulfilling an obligation to act honestly, fairly, and professionally in accordance with the client's best interests. Thus, inducements are allowed under MiFID II rules as an exception. The IDD regime in principle allows inducements to be received as long as they do not jeopardise an obligation to act honestly, fairly, and professionally in accordance with the client's best interests. IDD is a minimum harmonisation directive, which means that Member States may impose stricter requirements on acceptance of inducements. Therefore, the inducements regime under IDD is "laxer"[4], because (i) inducements are allowed and (ii) IDD is a minimum harmonisation framework. In practice however inducements were identified in approximately 40% of information documents for investment funds (falling under MiFID II). This means that the regime intended as an exception under MiFID II remains relatively wide-spread in practice.
- The IDD conduct of business rules are minimum harmonisation rules, whereas the MiFID II conduct of business rules are maximum harmonisation rules. Thus, national implementation rules of the IDD conduct of business rules may deviate even more from those of another Member State.
- Differences exist regarding what information about inducements needs to be disclosed to clients and in how much detail. In practice there is no information about inducements in information documents for the insurance and pension products reviewed.

Furthermore, as it follows from the comparison of the MiFID II and IDD definitions, **MiFID II framework makes an explicit and well-defined distinction between retail and professional investors, which IDD does not.**

Both MiFID II and IDD allow Member States to impose additional requirements. There are indeed some differences between the legal frameworks at EU level and those at national level. One clear case is the fact that while all other Member States follow MiFID II and IDD

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[4] This term was first used in Colaert V. "Draft: MiFID II in relation to other investor protection regulation: picking up the crumbs of a piecemeal approach" (2016), KU Leuven, p.27.

rules regarding when inducements are and are not allowed, the Netherlands has prohibited inducements. There are also different interpretations between Member States as regards the quality enhancement criteria, as also noted in ESMA's Technical Advice to the Commission on the impact of the inducements and costs and charges disclosure requirements under MiFID II[5].

1.4.4. Effectiveness

In connection with the effectiveness of rules on inducements and advice we have assessed the outputs (the extent to which the rules in question are implemented in practice), results (how these rules affected the market and distribution) and impacts (the extent to which these rules result in appropriate advice and allow consumers to make optimal choice).

In terms of outputs the study found that the legal provisions regarding the **disclosure of inducements are not being fully implemented**:

- The information documents analysed rarely contain explicit information about inducements. In order to identify information about inducements it is necessary to search in other types of documents and even there this information is not provided in a clear and direct manner.
- Inducements are also frequently not disclosed during client conversations as found during the mystery shopping observations.

When it comes to the implementation of rules **about advisor qualifications** and training, the stakeholders in general report that changes made by distributors are aligned with the EU requirements. Similarly, they also report that changes have been made to remuneration practices implementing the EU level provisions.

In terms of results in the market, the interviewees report that the **EU rules have triggered varying changes as regards distribution channels and product catalogues.** Large distributors or manufacturers have been able to accommodate the regulatory changes more easily while small or medium-sized intermediaries have been confronted with more drastic changes. This also applies to distributors in larger versus smaller capital markets in terms of compliance with the new rules. Moreover, the evidence collected by ESMA [6] does not show a clear-cut trend. While some distributors have reported that their product offering has not changed, others have reported a rationalisation of their product catalogue and partners.

The introduction of **MiFID II rules on advice does not appear to have triggered a shift towards more independent advice** or increased the market share of independent advice. Except in the Netherlands where independent advice has a strong market share, in other countries the trend remains towards largely non-independent advice. In other countries independent advice remains relatively confidential and tends to focus on private or high net worth individuals.

As noted above, inducements are not always transparently presented in information documents. However, an analysis of those documents that contain this information shows that **the value of inducements in the market is significant**. If the manufacturer of an investment fund charges an indirect distribution fee, the inducement is 0.8% on average per annum. On average, inducements for the products in the sample are equivalent to about 40% of the ongoing costs charged to retail investors (or one-third of total costs). The application of inducements is reflected in higher costs for retail investors. Nearly all the inducements seem to be passed on to retail investors, noting that the products on which inducements are paid are – on average - about 35% more expensive than those

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[5] ESMA's Technical Advice to the Commission on the impact of the inducements and costs and charges disclosure requirements under MiFID II – Final Report, available at: https://www.esma.europa.eu/sites/default/files/library/esma35-43-2126_technical_advice_on_inducements_and_costs_and_charges_disclosures.pdf

[6] ESMA (2020). Technical Advice to the Commission on the impact of the inducements and costs and charges disclosure requirements under MiFID 2, 1 April 1. Available at: https://www.esma.europa.eu/press-news/esma-news/esma-advises-european-commission-inducements-and-costs-and-charges-disclosures

investment products on which no inducements are paid. In other words the rules implemented under MiFID II have not (yet) resulted in a market where consumers receive better value for money thanks to lower inducements.

Looking at the impact of rules about the disclosure of inducements, as tested through the **behavioural experiment**, the study found that:

- The financial advice about products received which includes a statement about inducements is only marginally likely to influence the consideration given by consumers to the products and their information documents. When consumers received advice (good or bad) which included a product recommendation and a warning about inducements, they were in fact slightly less likely to go back and review the product information documents than they were in the other scenarios tested. The mention of inducements does not appear to make consumers more cautious about the advice received.
- People tend to follow the advice they receive even when the advice is bad and they do so despite the different types of warnings tested. The probability of respondents deciding on the optimal product was significantly lower in the group that received bad advice (as some followed the bad advice), and significantly higher in the group that received good advice.
- Vulnerable consumers and women are in particular more likely to choose in line with the advice they receive despite the more or less visible warning about inducements.
- Finally, when comparing three different forms of disclosure about inducements, we note that the effects of the different forms are not very significant. The format which provides a salient disclosure of inducements, but without reassuring the consumer about the fact that the institution has to have conflict of interest rules, performs the best in terms of the likelihood of consumers rejecting inappropriate advice. However, this analysis shows that the potential gains from changing disclosure warnings are likely to be minimal.

The study also looked at the effects of the legal regime on the advice that consumers receive. We examined the extent to which the advice encompasses all the key product features and the extent to which it is aligned with consumer needs as assessed through mystery shopping. We found that in terms of the **completeness of the information provided during the advice interview, there were gaps across all areas** (risks, past performance, potential gains, etc.). Many advisors only covered some of the key product features. When looking at the products that were recommended to mystery shoppers, we see that overall these were aligned with their level of wealth and their investment objectives. There were only a small number of clearly misaligned offers.

Finally the study also summarised evidence about the effects of the inducement ban in the Netherlands and the UK. The most notable effects are:

- The product costs in these markets have declined, thus providing better value for money for clients;
- There has been a shift towards more execution-only products, in line with a decline in access to advice;
- However, there is no negative trend in terms of levels of retail investment.

1.4.5. Efficiency

The **cost-effectiveness of rules regarding advice is considered as positive**. The relevant ongoing costs of the provisions studied under this strand of the study include the following:

- Ongoing training of advisors (duty of care, management of conflicts of interest, rules on advice and inducements, disclosure requirements);

- Collecting regular statements from advisors, including on mandatory training, the absence of conflicts of interest;
- Keeping robo-advisors compliant with regulations (following regulatory changes, adjusting terms and conditions, algorithms)

The study estimates that the ongoing costs per client are approximately €0.68 and that they represent 0.0003% of the value of assets managed. Compared with the benefits that clients get from personalised advice and advice that covers all product features this cost appears reasonable. However, the issues that can negatively affect the cost-effectiveness of these rules are:

- The fact that advice does not systematically cover all the essential product features as shown by the mystery shopping data;
- The fact that the inducements represent a cost that is passed on to the client and results in higher product costs for clients compared with products that are sold without inducements.

1.4.6. EU added value

EU added value in relation to advice and inducements primarily originates from the **harmonised set of ground rules** with regard to the (i) management of conflicts of interest; (ii) stipulations on which products can be sold through execution-only services and which products have to be accompanied by advice; (iii) rules on when inducements are permitted and when banned and associated tests; as well as (iv) requirement for the disclosure of the independent or non-independent status of the advice and disclosure of inducements.

If legal provisions at EU level were not in place, **national legislation and connected guidance would likely diverge**. Member States with more emphasis on retail consumer protection would implement stricter rules, while others with a stronger focus on sectoral competitiveness would relax the rules. Regulatory divergence would be unlikely to affect basic principles – such as the duty of care and the obligation to detect and manage conflicts of interest – but the detailed provisions could vary in substantial ways.

In the absence of a European legal framework rules would not converge solely through the actions of EU Member States. Should national approaches diverge further, leading to different scope of advice subject to the law, fair competition on the **Single Market for retail financial products could be harmed**.

Concerning the impacts on businesses, legal fragmentation would lead, on one hand, to higher transaction costs for businesses conducting cross-border operations and likely non-compliance in some cases with the associated legal risk. On the other hand, more lenient legal requirements in certain Member States could hamper free and fair competition on the Internal Market.

1.5. Suitability assessments, demands and needs tests

The assessment of investor profiles is a key component in consumer protection in the realm of retail investment. In contrast to institutional investors, retail investors are non-professional investors who trade less frequently and are therefore less experienced. Retail investors are thus more prone to mis-selling. It is also worth noting that the average level of financial literacy in the EU is relatively low (although differences exist between the Member States), hence highlighting the need for EU rules on the protection of retail investors.[7].

Subsequently a “demands and needs” test is mandatory under IDD for all insurance products, including IBIPs, whether or not advice is provided. Similarly, under the PEPP Regulation, PEPP distributors or providers must, for all sales, specify the retirement-

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[7] The 2020 OECD survey on financial literacy covered 13 EU countries. Their average scores ranged between 10.3 and 14.7 out of the maximum score of 21. OECD (2020) *International Survey of Adult Financial Literacy*

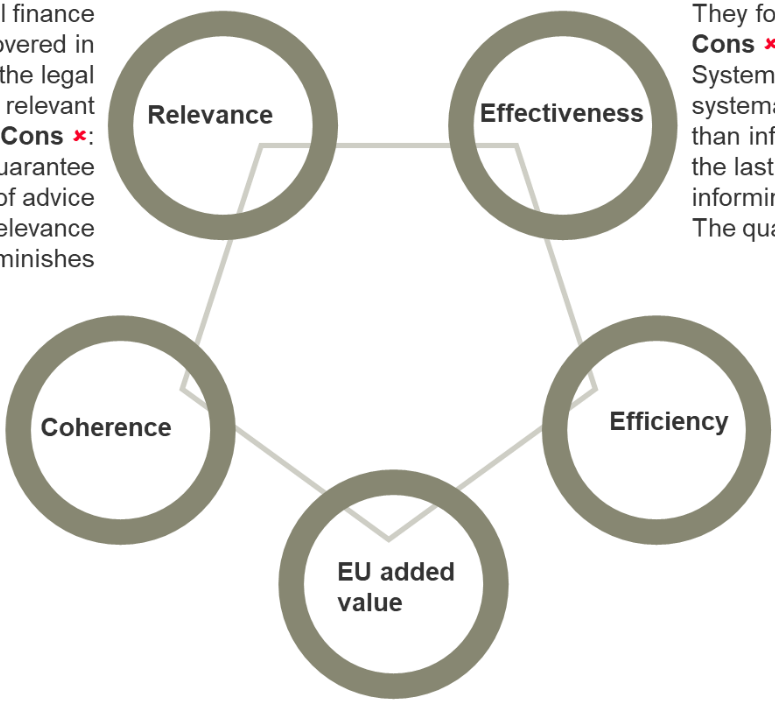
related demands and needs of the prospective PEPP. The result of the demand and needs tests should always be a list of several products which are objectively in line with the client's demands and needs, not a personalised recommendation.

The suitability assessment aims to ensure retails investors are not recommended financial products or services that are not suitable to their (i) level of knowledge and experience in the relevant field, (ii) financial capacity, and (iii) investment objectives. To increase investor protection in cases of "non-advised" sales, an appropriateness assessment is carried out. However, this was not analysed in-depth in the study.

Figure.9 – Summary of key findings about suitability assessments, demands and needs tests

Pros ✓:
Duty of care and with that understanding of advisor's customer is a core principle of consumer protection in retail finance
Items about the customer to be covered in the screening as defined by the legal framework are relevant
Cons ×:
Good quality questioning does not guarantee quality of advice
When the screening is done late its relevance diminishes

Pros ✓:
Investors recall undergoing screening (be it suitability assessment or demands and needs test)
They found the process as well as output useful
Cons ×:
Systematic screening of customer's profiles is not systematically done in the initial stage of contact. Rather than informing the advice it is relatively frequently done at the last stage prior to contract signature and thus not informing product recommendations or choice
The quality of screening and of questioning varies greatly



Pros ✓:
the standards on the application of the suitability and the appropriateness assessment are largely identical
Though there are some differences in national legal frameworks these do not result in inconsistencies
Cons ×:
Only minor

Pros ✓:
Estimated cost per screening is maximum €30. The cost per client holding investment assets is maximum €2.22 for all categories of products and 0.001% of net assets managed.
The overall cost-effectiveness is positive
Cons ×:
Cost-effectiveness is only positive if advice provided is tailored and of quality. If clients undergo excessive screening in the phase when searching for products the costs per client increase rapidly as each screening adds maximum €30.

Pros ✓:
Focus on cross-border standardisation – diminishes burden on businesses (distributors)
Allows consistent consumer protection in the EU
Cons ×:
Limitations regarding effectiveness also mean that the EU added value is somewhat diminished

Source: Consortium

1.5.1. Relevance

The overall intention of the policy framework (i.e. reducing mis-selling) **remains highly relevant**. When looking at the overall alignment between the policy objectives and the specific interventions (suitability assessments, demands and needs tests), the principle that the advisor needs to have sufficient information about the client prior to issuing advice is highly relevant to the objective of avoiding cases of mis-selling and protecting consumers. The principle of "duty of care" of distributors towards consumers is embedded in the rules about demands and needs tests and suitability assessments. This is recognised as a core principle for consumer protection in financial markets.

The current legal framework aims to encourage more **rational decision-making based on considerations of costs, benefits and risks on the side of the investor**. In particular, the performance of the demands and needs test and the suitability aims to incentivise advisors to make recommendations that are in the consumer's best interests and avoid the negative effects of the inherent information asymmetry in this market. The survey shows that consumers consider choosing an investment product as rather complex. This supports the need for receiving tailored advice which is aligned with the situation of each specific client. The majority of consumers (64%) surveyed in this study that have invested in financial products or are considering doing so and received advice considered the suitability assessment process as useful for their own choice.

The items that the legal framework recommends being covered as part of the screening process are **relevant for advisors to understand the objectives and situation of their clients**.

The study also underlined the fact that the screening process is **not relevant when the questioning process is taken in isolation**. On the contrary the relevance of the screening process stems from the use of the results of screening for the formulation of advice. If this relationship is only formal and the screening process is undertaken as a routine check without feeding into the product recommendation, then the relevance of the suitability assessments/demands and needs tests is strongly diminished.

However, as discussed under effectiveness, **practices vary**. The fact that in practice the screening is sometimes very superficial or is only carried out at the time of the contract signature negatively affects the relevance of these rules. These practices negatively affect the objectives of preventing mis-selling but also influencing retail investment decisions so as to help consumers make more optimal decisions. Furthermore, the quality of the suitability assessment process alone does not yet guarantee that suitable products are recommended. The questioning process may be of high quality, but nevertheless result in inadequate advice and vice versa. Therefore, to ensure the relevance (and effectiveness) of suitability assessments and demands and needs tests it is important for these to be:

a) undertaken sufficiently early in the process so as to allow retail investors to form their choice based on the results; and
b) used by the advisor for the actual selection of products that are recommended to the client.

1.5.2. Coherence

EU legal requirements for the demands and needs tests and the assessment of suitability and appropriateness **are coherent**. In particular, the standards set forth in IDD and MiFID II on the application of the suitability and the appropriateness assessment are largely identical. Although some minor potential inconsistencies and gaps have been identified through the legal analysis of the EU requirements for the suitability and appropriateness assessment, these mainly relate to reporting obligations (e.g., the suitability statement) and recording obligations, and are therefore unlikely to have impacts on the financial decisions of retail investors.

Additionally, regarding the coherence at national level, **differences exist between the Member States** since demands and needs and suitability and appropriateness requirements are provided by EU legal instruments of different nature. IDD is a minimum harmonisation directive which implies that the Member States are given some leeway, whereas MiFID II aims at maximum harmonisation and the PEPP is a regulation. However, national-level interviews did not reveal major concerns.

There are some **differences between IDD and MiFID II regarding the treatment of non-complex products**. IDD allows Member States to derogate from the obligations on appropriateness where no advice is given in relation to IBIPs, while under MiFID II firms are allowed to provide non-advised services with respect to non-complex investment products without the need to conduct an appropriateness assessment, provided a warning is given.

The option given to Member States to make advice obligatory for certain types of insurance products (under IDD Level 3 rules) could create potential inconsistencies between insurance products across the EU. However no specific inconsistencies were found in practice.

Although sectoral differences may exist at EU level between IDD, the PEPP Regulation, and MiFID II, they are not related to the legal requirements themselves, but rather to the fact that they are different regimes applicable to different products and types of distributors and providers with potential overlaps in their scope of application.

1.5.3. Effectiveness

The main observations regarding the effectiveness of the client profile screening processes with a view to assessing which products are most suitable for them are:

- **Suitability assessments are being implemented** and the majority of consumers who received advice about investment products recall being asked questions about their profile. The majority of the also recall receiving a suitability assessment report.
- However, the **depth and timing of the screening process vary greatly**. The legal framework only states that the suitability assessment needs to be done "when providing advice", while advice needs to be given "in good time before the provision of services". There are no legal provisions stipulating that the suitability assessment needs to take place before the advice is given. The mystery shopping exercise for this study, stakeholder interviews and national studies show that there are clear instances where the suitability assessment is carried out at the very last stage, shortly before the contract signature. In our mystery shopping several clients were explicitly told that this would only be done later at contractual stage. Such late phasing of the suitability assessment means that in these instances the objective of using information about the client to provide advice is not fulfilled.
- With regard to the **depth of information covered** before a product is recommended, this also **varies greatly**. An important share of conversations that resulted in product suggestions covered only minimal or hardly any information about clients. Investor knowledge appears to be the least systematically covered. However, many conversations also did not address the question of family status (which is linked to the client's capacity to bear losses) or more generally the client's wealth and assets. The reports of supervisory authorities also show that the quality and depth of questioning of suitability assessments vary. Robo-advisors use a range of questions but overall they do tend to cover all essential areas through at least one but often multiple questions.
- Practices regarding **whether and how the suitability assessment is actually linked to the provision of advice and recommendation clearly vary considerably**. Both good and bad practices co-exist as noted during our mystery shopping exercise, and confirmed by the national research of supervisory authorities. The quality of the suitability assessment questioning does not as such guarantee good advice. There is a need for distributors to better implement

mechanisms that ensure more systematic use of the suitability assessment before recommending products to clients. Supervision could play a role in enforcing these requirements. However, this study did not look into the existence and use of supervisory mechanisms. We did nevertheless note that some supervisory authorities have better evidence than others about market practices regarding suitability assessments in their country.

1.5.4. Efficiency

The **time needed for a face-to-face screening procedure**, i.e. carrying out the interviews (this normally goes hand-in-hand with recording the answers), for client engagement, collecting and archiving signatures is the **most significant cost factor of the client screening rules**. Demands and needs tests and suitability assessments were considered together as one screening process as part of the efficiency assessment.

The estimated range of costs for screening processes per net assets managed is between 0.0006% and 0.0015%, €0.7 to 5.4 per client. The maximum cost per screening is around €30 on average. The cost calculated per screening is the maximum cost. In the absence of data about the share of purchases made by robo-advisors and the share of execution-only purchases, we have assumed that all screenings were carried out using an advisor driven process (rather than an automated self-administered process using robo-advisors) and that the products sold were accompanied by advice and were not execution-only (or sold through robo-advisors). Thus, the actual costs per screening are likely to be lower.

The ongoing costs related to conducting and processing the assessments cover the following main activities:

- Carrying out face-to-face screening interviews with the investor (explanations, responses to questions may be involved);
- Recording the answers;
- Presenting the assessment to the client, responding to questions;
- Collecting and archiving signatures;
- Ongoing training of (new) advisors.

The issues that could hinder cost-effectiveness of the screening process are:

- As shown in the effectiveness section, the screening alone is not sufficient to provide good quality advice, and therefore, to be cost-effective this process relies on the high quality of the result; and
- Excessive searching among providers on the client side, since if clients undergo multiple advisor-led screenings with different distributors before choosing the right product the costs per screening go up.

On the other hand, the drivers of cost-effectiveness are:

- The use of self-administered online processes rather than advisor-driven ones; and
- The growing trend towards cheaper and often execution-only products, which means that there are fewer screenings undertaken per product sold.

1.5.5. EU added value

The main EU added value of the relevant pieces of EU legislation lies in the **harmonisation of obligations for investor profile screening and recommending suitable products**. In the absence of EU legislation, it stands to reason that the national approaches would diverge – i.e. even further – and the ensuing legal fragmentation would lead to uneven levels of consumer protection across the EU, to a weaker functioning of the internal market (notably the cross-border provision of financial services involving investment advice). This would also harm fair competition within the EU.

1.6. Transversal conclusions

In addition to the findings summarised above for each of the pillars of legal framework analysed and each of the evaluation criteria, the study also underlined a number of transversal findings about the retail investor's consumer journey and experiences as well as about the market characteristics observed.

1 There are important differences between persons in terms of their interest in financial investment products and their self-confidence in making financial investment decisions. Perception of one's own efficacy, financial literacy as well as the perception of complexity of these products are strong drivers of attitudes towards financial investments. Different segments of consumers will have very different capacities and predispositions to engage with disclosure documents or statements but also advisors. While confident (potential) investors are at ease in making their own choices of products (potentially without advice), other segments are more reliant on advice but also vulnerable towards advice that is not in their best interest.

2 The EU legal framework was initially designed as a consumer protection framework. There is a tension between the multifaceted objectives the legal framework aims to fit. On one hand the templates and requirements aim for transparency, standardisation and comparability so as to make the market more transparent and allow persons to make a well informed rational choice between products. On the other hand, there is also an ambition for disclosure documents/ advice services to be engaging and encouraging investment and at the same time supporting optimal choice. The first set of objectives result in high volume of disclosure information which is in turn associated with overload and negatively affects attention paid to disclosure and subsequently the choices made.

3 Handing out information documents as well as undertaking suitability assessments/ demands and needs tests is required but the legal framework does not define at which stage of the journey. This results in inconsistencies in practice whereby some distributors do comply with these requirements already at the very first contact with potential customers whilst others delay them until the last moment. When these steps are undertaken late in the consumer journey, they are no longer supporting consumer's choice. They are merely documenting and confirming a choice that has already been made.

4

Disclosure doesn't overcome product complexity. Both experimental modules in this study showed that the characteristics of the product had strongest influence on the extent to which consumers succeeded in making the right choice. For simpler products different types of disclosure had an effect on the likelihood to make the correct choice and it was possible to see which formats were more supportive of decision-making. However, for complex products that respondents were not familiar with the effects of disclosure were not significant. Financial literacy of the respondent is a key mediating factor. The more financially literate they are the more useful the disclosure is for supporting an accurate choice.

5

Despite EU level rules on advice and inducements there isn't an increase in use and access to independent advice in the majority of countries analysed. Most professional advice that people receive is through non-independent distributors. However, digital advice or suggestions received digitally through comparators are also increasingly important. Suggestions from advisors are important drivers of people's decisions to invest :23% of investors decided to invest because it was suggested to them by their bank/ broker and 10% because their app/ bank makes it attractive. However, the most important driver is by far low interest rates which 53% of respondents cited as a reason for investing. In the context of growing inflation and possible increases in interest rates this is however likely to change.

6

There also isn't evidence of declining use of inducements except in the Netherlands which applies a ban. Though MiFID II only allows inducements in case a quality enhancement test is passed and hence aims to make inducements an exception rather than a rule, an important share of investment funds analysed clearly applied inducements (40%). For many other products the information wasn't clearly disclosed so it is possible that the use of inducements was even higher than what was measured in this study.

7

The study found the following main challenges in the practical implementation of the legal frameworks analysed:

- Insufficient compliance with existing rules when it comes to: disclosure of inducements in information documents and in customer conversations when delivering advice, the same applies to disclosure of potential conflicts of interest
- Inconsistency in cost disclosure in information documents which hampers comparability but also makes the assessment of overall costs to the consumer complex. Inconsistency in rules regarding the emphasis put on digital, interactive and layered disclosure that is engaging (PEPP) versus static, comprehensive and often paper provision of disclosure documents (PRIIPs).
- Inconsistency in practices regarding:
  - When information documents are provided to customers;
  - At what stage of the journey suitability assessments are undertaken;
  - What items are covered in suitability assessments, demands and needs tests: the depth and breadth of questioning varies greatly not only for traditional distribution channels but also robo-advisors

8

On a positive note the study showed that:

- Availability of information documents is good and for the majority of products these are easy to find. Information documents are less easy to collect for some non-complex products notably simple shares or bonds. While this can be seen as non-compliance in practice there is no shortage of easily available digital information on these products.
- Compliance of information shown in information documents is also strong.
- Comparability of most information items is also strong except as stated above for costs disclosure. The standardisation of the risk indicator is highly relevant as it constitutes a common anchor for consumers comparing products.
- The advice that mystery shoppers as part of the study received was aligned with their profiles and objectives and can therefore be considered as being of good quality. Even though it does not mean that the products being recommended represent optimal solutions in terms of value for money.

2. Introduction

2.1. Rationale for policy actions in the area of retail investor protection

Across the EU, many citizens abstain from investing. All the more, without any legislation on their protection, those consumers that do invest would risk making investments that do not necessarily serve their needs to their full potential.

Those consumers are also confronted by a market that complexifies their choice in multiple ways:

- The products are complex by design, at least in part to offer returns on investment and diversification options;
- Which is linked to the second point, the offer of product is very vast and includes products very different from one another, making it difficult for one consumer to grasp and research all the products at their disposal;
- Yet, the information on these is asymmetrical as the advisors have more information and understanding of the product than the consumers. The way the products are presented further impedes the consumers' capacity to shop around before making their decision.

This environment fosters a heavy dependency on financial advisors or persons giving informal advice (peers/family), if not an overall less propensity to invest.

As a consequence, (new) investment decisions are at risk of being driven by factors other than rational choice. They can be guided by marketing efforts, or recommendations by one or more trusted persons (intermediaries, sales staff, family and friends, and more recently social media influencers), who ideally have the interest of the citizens in mind and have the expertise to recommend the investment products that address their needs in the best possible way. The EU legislation in the area of retail investor protection aims to address, at least partly, challenges stemming from the information asymmetry due to the lack of product transparency. It aims to make the supply of financial products more easily "navigable" for consumers through pre-contractual disclosure, as well as to ensure that advisors act in the client's best interests and are able to offer impartial advice.

2.1.1. Stakeholder voices calling for changes in the area of retail investor protection

Due to overall low investment rates of European citizens and wide differences across countries and socio-demographic segments, there is an agreement that more efforts to promote retail investments are needed. The High-Level Forum on the CMU identified in its interim report (2020)[8] a need to foster adequate conditions for seamless access to investment products that will help citizens achieve their financial objectives. Therefore, beyond the quantitative amounts of savings invested, the CMU should also promote more inclusion of all segments of the publics in the investment sphere.

Consumer organisations have also called for further improved transparency and comparability of retail savings/investment products[9]. Financial products with similar characteristics and risks are expected to be treated in the same way when it comes to disclosure requirements, conflict of interest rules in their promotion and sale, and the supervisor's product intervention powers.

To respond to multiple demands as well as new challenges in the market, such as the increasing digitalisation of investment advice and use of digital distribution channels, the European Commission adopted in 2020 the Capital Markets Union (CMU) Action Plan[10]. In

[8] https://ec.europa.eu/info/files/200220-cmu-high-level-forum-interim-report_en

[9] See for example BEUC's the work of BEUC in this area https://www.beuc.eu/financial-services or that of better finance https://betterfinance.eu/

[10] https://eur-lex.europa.eu/resource.html?uri=cellar:61042990-fe46-11ea-b44f-01aa75ed71a1.0001.02/DOC_1&format=PDF

this plan, the European Commission announced the preparation of its Retail Investment Strategy. The objectives of the Retail Investment Strategy as defined at that time were to ensure that retail investors in the EU:

- Benefit from adequate protection;
- Are offered bias-free advice and fair treatment;
- Have access to open markets with a variety of competitive and cost-efficient financial services and products; and,
- Are provided with transparent, comparable and understandable information about products.

The CMU Action Plan also defined 16 action areas. The action area eight on "building retail investors' trust in capital markets" covers issues at the core of this study, notably inducements and disclosure.

2.1.2. Consumer protection as part of the EU legal framework in the area of retail finance

Consumer protection is one of the competences of the EU and is an important subject-matter for laws within the Single Market.[11] There is a complex set of legal rules (see legal analysis in chapters 5 to 7 for details), which govern at EU level retail investor protection. To date, investor protection materialises itself through (a) requiring various types of pre-contractual information and ensuring that the consumer's consent is freely given and (b) the provision of corrective mechanisms as part of the contractual relationship. Such protection flows from the asymmetry of information in disfavour of the consumers compared to the investment providers.[12]

Initially, the Single Market for financial services and instruments was established for professionals and issuers. While only few legal instruments originally covered activities with clients, EU and international bodies have progressively focused on the protection of clients and investors.[13] The "consumer of financial products" notion, compared to the 'investor' one, implies that the increased supervision of financial products is necessary.[14] For investment services, retail clients are protected through an enhanced set of rules, compared with professional clients, especially through information obligations.

Financial regulation traditionally follows the structure of the financial sector, with a division between banking, insurance and investment firms, as well as product and services laws.[15] However, the diverging regulatory and supervisory treatment of these sectors is increasingly at odds with the market and consumers' reality and has created areas where market inefficiencies could exist. Indeed, the financial industry is continuously developing new ways of intermediation as well as new financial products and services cutting across silos.

The new products and services are not always easy to classify, which could result in gaps and inefficiencies in current EU and national regulatory frameworks. For retail investors, it may moreover be confusing if different standards are applicable to very similar situations. Unjustified differences between banking, investment services and insurance legislation, which do not correspond to differences in economic characteristics of the institution, product or service create grounds for regulatory arbitrage, allowing market participants to use gaps and inconsistencies at the cost of retail investors and other market participants.

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[11] Articles 4, 12, 144 and 169 of the TFEU.
[12] Weinberger M.D. "'Scope of Protection: Is there a ground for a Single Criterion?"?' in "'European Financial Regulation, Levelling the Cross-Sectoral Playing Field" p 'p.287-288
[13] Bonneau, T, "'Régulation bancaire et financière européenne et internationale", Bruylant, 2012, p. 254
[14] EU law addresses the differences between the "regular" consumer and the "financial" consumer through different ways of legislating in the various fields of financial sector. See Weinberger M.D. "'Scope of Protection: Is there a ground for a Single Criterion?' in 'European Financial Regulation, Levelling the Cross-Sectoral Playing Field" p 'p.293
[15] Colaert V., "European banking, securities and insurance law: cutting through sectoral lines?" (2015), Common Market Law review at 1579-1583

2.2. Study objectives

Against this background, the European Commission (DG FISMA) commissioned this study to feed into the development of the retail investment strategy. The general objective of this study can be described as assessing the current consumer protection framework offered by the European legal framework on disclosure, advice and suitability tests. This is done by looking at consumer behaviour, prevalent market practices and legal analysis.

More specifically, the study had the following main objectives:

a) *Identify potential redundancies, inconsistencies, overlaps and gaps in the regulatory disclosure, suitability assessment and inducements-related rules in scope, using a mapping of the relevant rules as a basis;*

   The areas of disclosure, inducement and suitability needs are regulated by a high number of legal provisions with multiple cross-references as well as subordinate levels of legal texts. Furthermore, a number of EU-level legal provisions allow for additional measures at national level. The complexity of the legal framework means there are multiple opportunities for inconsistencies which would have negative implications not only from the perspective of legal certainty but also for the functioning of the markets and on the consumers.

   The legal enquiry at core of this study was designed to assess the extent to which the legal framework at EU level showed such incoherencies.

b) *Provide empirical evidence on the practical implementation of all the rules in scope, especially with regard to the availability, clarity, comparability, level/degree of digitalisation and understandability of information provided to retail investors in relation to the different categories of products described during their investment decision-making process, as well as their effect on consumer choices;*

   The study was also designed to assess the effectiveness of the legal framework by identifying the extent to which it is fully implemented in practice and whether the implementation leads to the initially expected results. This study objective focused specifically on pre-contractual disclosure documents. It required the collection of a sample of such pre-contractual documents for a diversity of products and their subsequent assessment.

c) *Assess the quality and access to financial independent and non-independent advice, and the effect of existing inducement-related rules (including under MiFID II and IDD), such as their impact on the provision of investment advice and the functioning of the internal market on cross-border investment advice (e.g. with respect to the provision of advice);*

   The effectiveness of the legal framework, which aims to ensure impartial advice, was also at the core of the study. The study was in particular aimed at assessing the extent to which the current rules about inducements effectively result in the full disclosure of inducements, in the client's understanding of the disclosure and whether as a result clients do receive unbiased advice.

   This included analysing whether the differences in the legal frameworks for inducements can be seen as detrimental to retail investors and assessing the current state of play regarding the disclosure of inducements and advice on third-party products.

   Linked to advice, the study also analysed the implementation of existing rules on suitability assessments and the extent to which these cover all information needed to provide tailored advice to clients.

d) *Assess the effect that existing rules in scope, their implementation, and prevailing market practices have on the ability of retail investors to understand risks, costs, and potential returns, and to compare and choose among the available products those that are suitable for them, based on scientifically rigorous consumer testing,* *and including by examining the interplay between information disclosed, information collected from the investor (e.g. suitability assessment), and any advice provided;*

The purpose of the existing provisions that aim to improve consumer protection in the field of retail finance is to strengthen understanding of products, including understanding of related risks, costs, returns and product comparison. The logic behind these clauses assumes that by standardising what has to be disclosed, simplifying and limiting the total amount of information to be given, and by harmonising to an extent the formats in which the information is presented, consumers will develop a better understanding of products and make better choices.

To this end, the study analysed in practice how the rules currently in place, regarding notably disclosure and advice, affect consumer decision-making.

e) *Provide evidence in support of the legal review obligations specified in Article 33 of the PRIIPs Regulation, such as on the practical application of the Regulation, a possible extension of its scope, the treatment of certain pension products, and the operation of the so-called comprehension alert. This should be done by gathering (or copying) output that is relevant to the PRIIPs review (e.g. under task B) into a separate section.*

Finally, the study provides evidence-based recommendations about: the extent to which there is a need to revise the PRIIPs regulation (is the current practice problematic/resulting in suboptimal choices among consumers due to a lack of comparability, low level of understanding, etc.); and which practices yield the most optimal results and should therefore be developed as part of a PRIIPs review.

2.3. Structure of the report

To respond to this objective, the team in charge of the assignment developed a tailored mixed method approach which is presented in detail in chapter 3 of this report.

The remainder of the report is structured as follows:

Chapter 4 Mapping of the provision and distribution of retail finance products

This chapter presents recent distribution trends for retail investment products in the 15 Member States covered.

Chapter 5 Disclosure

This chapter is structured according to the better regulation guidelines evaluation criteria and therefore covers the relevance, coherence, effectiveness, efficiency and EU added value of disclosure related provisions.

Chapter 6 Inducements and advice

The chapter presents the study’s findings about the relevance, coherence, effectiveness, efficiency and EU added value of provisions regarding advice and inducements.

Chapter 7 Suitability assessments, demands and needs tests

This chapter presents the analysis of the relevance, coherence, effectiveness, efficiency and EU added value of provisions regarding suitability assessments, demands and needs tests.

Chapter 8 Conclusions

The core report is accompanied by a set of annexes which cover:

Annex 1 Bibliography

Annex 2	Detailed methodology and scope of the study
Annex 3	Traditional distribution channels mystery shopping analysis This annex presents the findings from this data collection activity (only) on disclosure, advice, inducements and suitability assessment.
Annex 4	Robo-advisor mystery shopping This annex presents the findings from this data collection activity (only) on disclosure, advice, inducements and suitability assessment.
Annex 5	Mapping of investment products This annex presents the detailed findings of the mapping of distributors' catalogues and investments products.
Annex 6	Product information documents scoring results This annex presents separately the detailed results of the scoring exercise.
Annex 7	Qualitative analysis of the stakeholder interviews This annex presents the qualitative analysis of the stakeholder interviews and findings, independently from other data collection conclusions.
Annex 8	Behavioural experiment treatments This annex presents the visuals and documents used for the study's behavioural experiment treatments
Annex 9	Data collection tools This annex includes all the questionnaires and guidance used to conduct the mystery shopping activities, the behavioural experiment, the country desk research, product mapping and scoring and the discussion guides for the stakeholder interviews.
Annex 10	Analysis of the behavioural experiment findings This annex presents the conclusions of the behavioural experiment.
Annex 11	Behavioural experiment metadata

3. Methodology

The mixed methods approach described below was designed to respond to the complex requirements of this assignment covering all three areas that are regulated in the different legal frameworks intended to protect retail investors, i.e. (a) disclosure, (b) inducements and advice, (c) suitability assessments, and demands and needs tests. For each of these areas the study analysed the legal framework, current practices and the effects on consumers. This was carried out against a detailed mapping of retail investment product distribution. The study covered four main tasks and the associated sub-tasks – see figure below. The remainder of this section gives a summary overview of each of the data collection methods, namely, the legal research, non-legal country desk research (including mapping of product distribution and product scoring), stakeholder interviews, mystery shopping, and the survey-based behavioural experiment.

The methods section is complemented by a set of annexes:

- Annex 2 – Detailed methodology describes more fully the methodology set out in this section.
- Annex 8 - Behavioural experiment treatments.
- Annex 9 - Data collection instruments includes the topic guides for the interviews, the survey questionnaire, and the mystery shopping questionnaires.

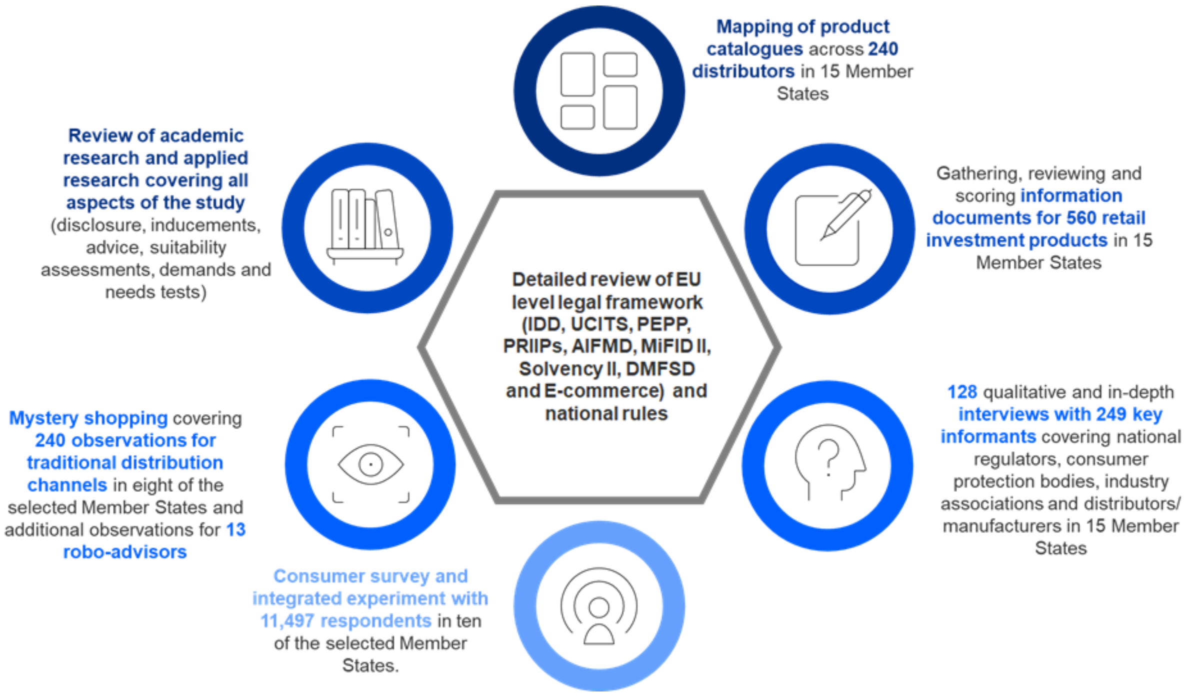
This research covered 15 Member States: Austria, Czechia, Germany, Greece, Spain, Finland, France, Ireland, Italy, Latvia, Luxembourg, the Netherlands, Poland, Romania and Sweden. Further details on the country coverage and the detailed rationale for this country selection are provided in Annex 2 – Detailed methodology.

Figure.1 - Summary overview of the tasks and sources of data

Legend: dark green = main source, light green = secondary source
Source: Consortium

The figure below provides a snapshot overview of the main sources of data used in this study. These are explained in the rest of this chapter.

Figure.2 – Main sources of data



Source: Consortium

3.1. Legal research

For the legal research, we undertook a systematic review, comparison and assessment of the legal provisions covering:

- Disclosure rules before signing the contract and during the contract.
- Suitability assessment rules as well as demands and needs tests.
- Inducements rules.

As per the Terms of Reference, the driving question for this analysis was:

What are (if any) the redundancies, inconsistencies, overlaps and gaps in the legal framework covering disclosure, suitability assessments and demands and needs tests?

The legal research was designed to identify the rules impacting distributors' practices and their effect on consumer choices. This involved a mapping of the applicable rules, their inconsistencies, redundancies, gaps and overlaps at EU level. The definition used for these last criteria is developed in Annex 2. However, given the study's focus and the volume of EU level provisions, an approach of prioritising the most impactful rules was preferred over a systematic analysis of even minor differences in the legal texts, as agreed with DG FISMA. The same approach was adopted with regard to national level rules, where the existence of prior studies on national compliance conducted for DG FISMA motivated a focus on the rules that go beyond the EU level prescribed framework.

An additional dimension of enquiry for this task pertained to the scope of the relevant legal texts. Indeed, as some legal frameworks focus on the type of distributor, others on products and others are more general, it adds complexity to the task. In addition, the legal analysis reviewed the clarity and consistent use of the main (common) terms used in the EU legal framework (see the scope section).

The main sources for this analysis are the legal review of EU-level provisions (Levels 1, 2 and 3) and of national provisions by national legal experts (Level 4 - focusing merely on whether optional provisions were chosen for implementation at national level). Those are supplemented by an analysis of their practical implications through stakeholder interviews.

Our methodology consisted of the following main steps:

1. Mapping of the rules at EU level, as set out at Level 1 measures in IDD[16], UCITS[17], PEPP[18], PRIIPs[19], AIFMD[20], Solvency II[21], MiFID II[22], as well as E-commerce23 and DMFSD24. The Level 1 instruments were supplemented with Level 2 and Level 3 measures[25]. This allowed us to take stock of any (in)consistencies across frameworks that extend to the products and how they impact consumers. Annex 2 contains an overview of the legal mapping of the different legal acts at Levels 1, 2 and 3.
2. Mapping of the scope of the EU legal instruments. First, the texts were mapped per product type and/or per distributor. This exercise was carried out in order to analyse the impact of the scope and relevant provisions of the legal framework, and to identify synergies, inconsistencies, overlaps and gaps. The results of this mapping exercise are included in the respective sections on disclosure, inducements, and demand and needs tests.
3. Mapping of the definitions. In addition, the main terms and definitions relevant for the context of this study were mapped and compared in order to identify any inconsistencies, gaps and overlaps. The mapping of the definitions is included in Annex 2.
4. Mapping of the existing rules at national level (AT, CZ, DE, EL, FI, FR, IE, IT, LV, LU, NL, PL, RO, ES and SE) which go beyond and/or further implement the EU legal requirements. These are presented in the Chapter "Inducements and investment advice".
5. Identification of any potential gaps, inconsistencies and redundancies identified in previous steps. They are presented throughout the chapters of the report.
6. Evaluation of the extent to which the potential issues identified above could hamper retail investors in taking sound investment decisions. They are presented throughout the chapters of the report.

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[16] Directive (EU) 2016/97 of the European Parliament and of the Council of 20 January 2016 on insurance distribution (recast), OJ L 26, 2.2.2016, p. 19–59.

[17] Directive 2009/65/EC of the European Parliament and of the Council of 13 July 2009 on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS), OJ L 302, 17.11.2009, p. 32–96.

[18] Regulation (EU) 2019/1238 of the European Parliament and of the Council of 20 June 2019 on a pan-European Personal Pension Product (PEPP), OJ L 198, 25.7.2019, p. 1–63.

[19] Regulation (EU) No 1286/2014 of the European Parliament and of the Council of 26 November 2014 on key information documents for packaged retail and insurance-based investment products (PRIIPs), OJ L 352, 9.12.2014, p. 1–23.

[20] Directive 2011/61/EU of the European Parliament and of the Council of 8 June 2011 on Alternative Investment Fund Managers and amending Directives 2003/41/EC and 2009/65/EC and Regulations (EC) No 1060/2009 and (EU) No 1095/2010, OJ L 174, 1.7.2011, p. 1–73.

[21] Directive 2009/138/EC of the European Parliament and of the Council of 25 November 2009 on the taking-up and pursuit of the business of Insurance and Reinsurance (Solvency II), OJ L 335, 17.12.2009, p. 1–155.

[22] Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU, OJ L 173, 12.6.2014, p. 349–496.

[23] Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market ('Directive on electronic commerce'), OJ L 178, 17.7.2000, p. 1–16.

[24] Directive 2002/65/EC of the European Parliament and of the Council of 23 September 2002 concerning the distance marketing of consumer financial services and amending Council Directive 90/619/EEC and Directives 97/7/EC and 98/27/EC, OJ L 271, 9.10.2002, p. 16–24.

[25] We note that E-commerce and DMFSD do not have Level 2 and Level 3 legislation, because these legal acts are not within the scope of the Lamfalussy process - an approach to the development of financial service industry regulations used by the European Union.

3.2. Non legal desk research at national level: mapping product catalogues and scoring information documents

In the 15 selected countries26, country researchers were asked to carry out a detailed desk research which fitted into different parts of the study. This desk research included country factsheets, mapping of product catalogues and mapping and scoring of products, as detailed in the following subsections.

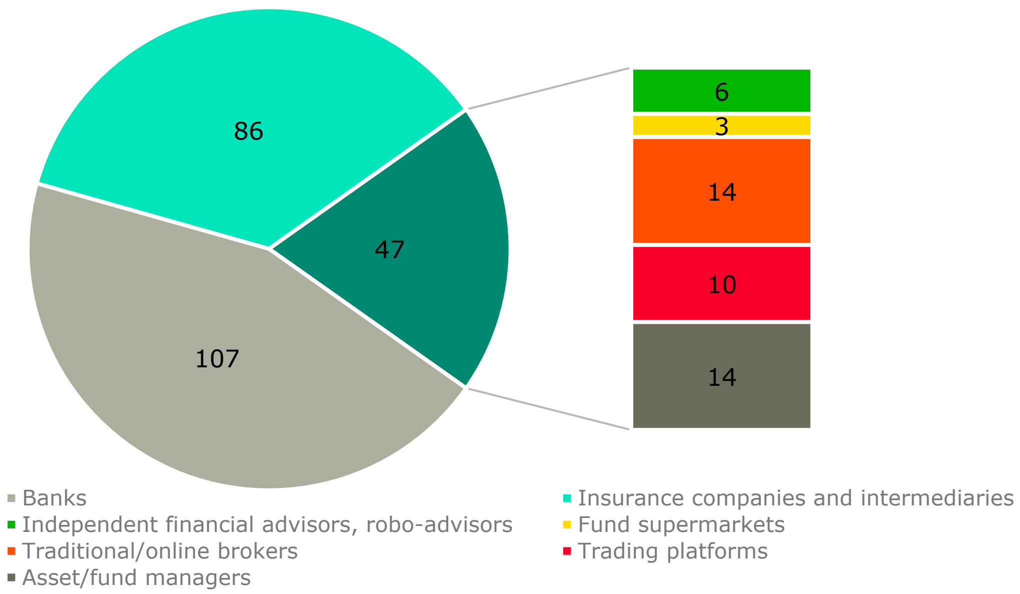
3.2.1. A country factsheet summary

The factsheets describe the product distribution and common types of advice in each country. These were informed by the desk research of the previous studies in the national language and statistics. This country research identified country differences and fed into the overall analysis of this report.

3.2.2. Mapping product catalogues in their countries

Each country researcher was asked to identify the product catalogues of at least 15 financial distributors, including the top banks/insurance companies as well as a diverse group of smaller and mid-size players (three to five of them). The catalogues of 240 distributors across the 15 countries were mapped. For each distributor, the products were classified in four product groups[27] and nine subgroups[28], as presented in the scope section of this report. The mapping of product catalogues was used in analysing the offer of products across countries and distributors.

Figure.3 - Sample of distributors covered by the product distribution mapping



Source: Consortium, based on product distribution mapping.

Product scoring exercise

The country researchers were also asked to identify and collect key information documents (KID, KIID and other related and marketing documents29) via a web search in the first place; and request them (potentially through advice) when not available otherwise. The KID/KIID documents were then assessed through a scoring grid using qualitative and quantitative elements. Accessibility of information online was one of the analytical criteria

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26 Austria, Germany, Czechia, Ireland, Greece, Spain, France, Italy, Luxembourg, Latvia, the Netherlands, Poland, Romania, Finland and, Sweden.

27 i) securities, ii) investment funds, iii) insurance and pension products, and iv) other products.

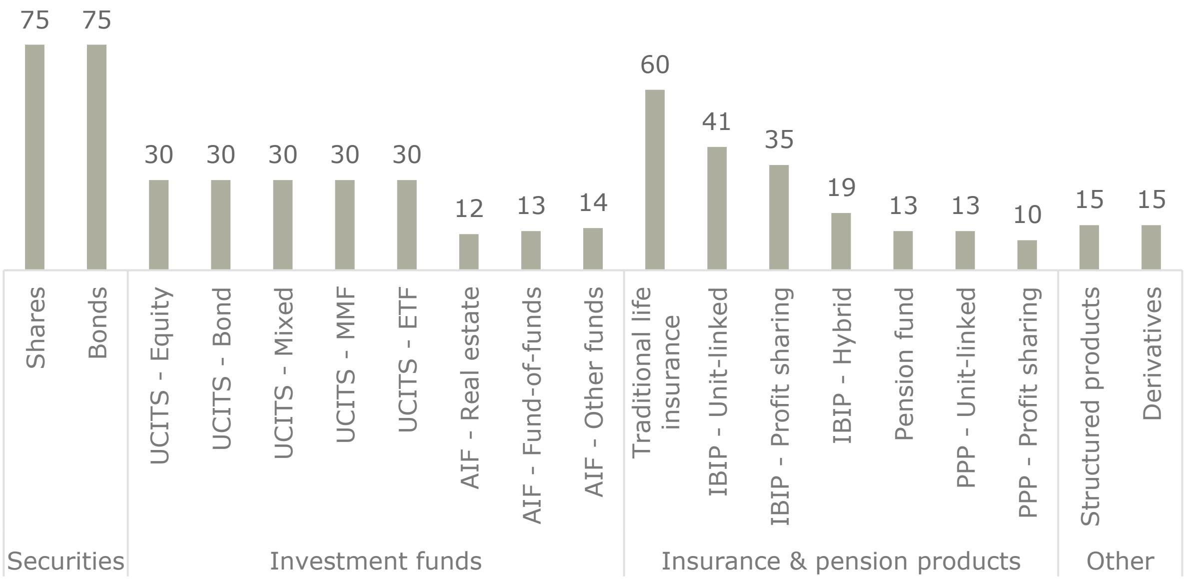
28 1) listed shares, 2) bonds, 3) retail UCITS, 4) retail AIFs, 5) traditional life insurance, 6) insurance-based investment products, 7) personal/individual pension products, 8) structured products, and 9) derivatives.

29 Only the legally required disclosure information was scored and assessed, but the other documentation was included in the repository although not scored.

that was analysed. In total 560 products was covered by the mapping and scoring of product information documents (32 to 48 products per country).

The goal of this exercise was to collect information on disclosure practices across countries and products. The scoring enabled us to assess accessibility, completeness, quality, clarity, costs, and compliance with the rules. It also informed the experiment and thus our conclusions on the disclosure legal framework by taking a practical approach through real-life examples.

Figure.4 - Number of products scored by detailed product category (n=560)



Source: Consortium, based on the product scoring exercise.

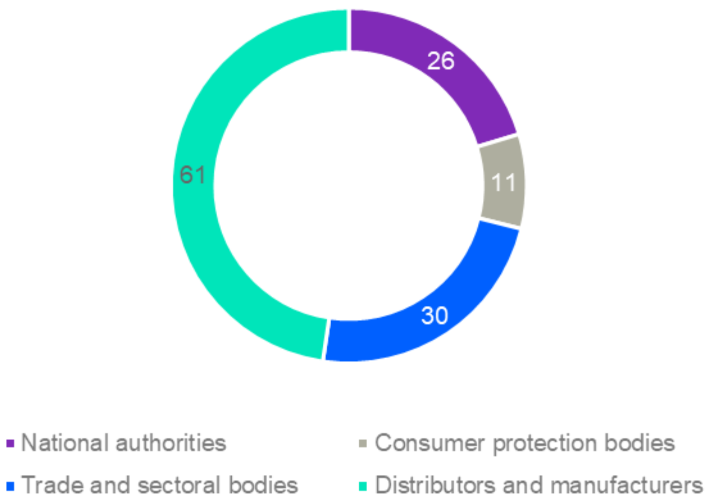
3.3. Stakeholder interviews

The purpose of the stakeholder interviews was to complement all other aspects of the research by gathering feedback from stakeholders at EU and national levels. The interviews covered a combination of national and EU authorities, consumer protection bodies, trade and sectoral bodies, distributors and manufacturers, following a mapping approved beforehand by DG FISMA. In total 128 interviews were completed across the 15 countries[30] taking part in the study and at EU level, with 249 respondents taking part in total. A minimum of three interviews were conducted in each country, with a maximum of 12 in Romania, while 14 interviews were conducted at EU level. The interview insights have been used to inform and complete conclusions arising from other data sources throughout this report. A separate qualitative analysis of the interviews (only) is provided in Annex 7.

More details on the interviews are provided in Annex 2 – Detailed methodology. The topic guides for the interviews are provided in Annex 9 – Data collection instruments and the list of interviewed organisations are provided in Annex 2 – Detailed methodology.

[30] Austria (5 interviews), Germany (7), Czechia (9), Ireland (4), Greece (6), Spain (10), France (11), Italy (10), Luxembourg (9), Latvia (3), the Netherlands (6), Poland (7), Romania (12), Finland (3), Sweden (9).

Figure.5 - Interviews broken down by stakeholder categories (n=128)



Source: Consortium.

3.4. Mystery shopping

In order to assess the quality and process of the suitability assessment and the provision of advice we undertook a mystery shopping exercise. The mystery shoppers noted what information they were asked to provide as well as what information about products they were given, and which products they were recommended. For the purpose of these activities we used two profiles – a risk-averse profile and a risk-seeking one. The same distribution channels were tested with both profiles. The profile descriptions are provided in Annex 2 – Detailed methodology.

The mystery shopping exercise covered both the traditional distribution channels and robot-advisors (an analysis of which is provided in the separate Annexes 3 and 4 respectively).

3.4.1. Traditional distribution channels

The mystery shopping exercise for traditional distribution channels was organised in a subset of eight EU countries (France, Germany, Greece, Italy, the Netherlands, Poland, Romania and Sweden). It was carried out either by way of a digital conversation (telephone, zoom or equivalent) or via a face-to-face visit, with digital conversations representing the majority of the sample.

The mystery shoppers were provided with a list of distributors they could contact, initially by telephone, and if it was not possible to get advice otherwise, in person. Over 280 mystery shopping visits were conducted, 40 of which saw the shoppers being rejected because the distributor did not offer retail products or offered only private investment ones. 240 observations were therefore recorded, of which 70 did not lead to advice as the shoppers were redirected to execution-only platforms or asked for official identity credentials (especially true in the Netherlands and Sweden).

3.4.2. Robo-advisors

In order to understand the advice process of robo-advisors and compare the results with traditional advice, a mystery shopping exercise was conducted with robo-advisors. A list of 13 active solutions in the EU was established, drawing from the robo-advisors.eu sample. The sample of robo-advisors included in this assignment is somewhat different to that covered in the 2020 report of Better Finance[31], with some covered by both studies and some only one study. The Better Finance selection did not cover the same Member States; the focus in this study was on robo-advisors that covered the countries falling within the scope of this study or provided their services in multiple countries. For each robo-advisor we performed the simulation twice, with two different hypothetical profiles of retail investors (full profile available in Annex 2 – Detailed methodology) – i.e. 26 observations. For each observation, a questionnaire was completed concerning all aspects of the retail investor screening process, as well as information on the advice and recommendations given. We also systematically took screenshots from all steps. This data is analysed in a separate document – Annex 3 – Traditional mystery shopping analysis – and also referred to in other parts of this report.

3.5. Survey and behavioural experiment

The survey and behavioural experiment were designed to simulate the exposure of respondents to elements of disclosure and situations regarding inducements in order to assess the impact of the current rules on their decision-making and test potential improvements. The survey collected the responses of 11,497 participants in total. 1,027 of the interviews conducted were considered non-valid based on the patterns of answers of the participants. The details of the overall sample, quality assurance measures and the country and treatments sample can be found in Annex 2 – Detailed methodology.

The survey and experiment were conducted in a subset of 10 countries out of the 15 in scope for the study for statistical significance reasons. Due to the high number of treatments tested, we preferred to limit the number of countries, but to obtain more robust results in those surveyed. The countries selected were Germany, France, Greece, Spain, Italy, the Netherlands, Poland, Romania, Finland and Sweden. The full rationale for the selection is included in Annex 2 – Detailed methodology.

In order to ensure the quality of the data, two instruments were used as quality assurance indicators:

- Measurement of exposure duration: for each treatment, the time spent reading the information was measured. This was then used in the analysis to assess whether performance and answers might have been impacted by the attention given to the experiment.
- Assessment of the treatments. To evaluate how understandable the treatments were, each participant was asked to rate them according to four criteria after completing the experiment. Those criteria were ease of understanding, usefulness of the information, amount of numeric information, and layout.

Another measure to improve the quality of the responses was a gamified environment to improve respondent engagement. The participants had for example to select their profile and persona to make the whole process more entertaining.

The full questionnaire is included in Annex 9 – Data collection tools.

3.5.1. Consumer survey

Participants in the experiment survey had to answer questions in order to contextualise their answers and analyse the data alongside various socio-demographical axes. They were asked several questions related to the following elements to assess their financial situation and literacy:

- Demographics (age, gender, rural/urban, education, etc.).
- Income/savings levels.
- Previous investment experience (looking into or had invested), their experience of advice and experience of suitability assessments.
- Self-perception of financial decision-making.
- Risk behaviour.

[31] Better Finance (2020) *ROBO-ADVICE 5.0: CAN CONSUMERS TRUST ROBOTS? December 2020*

- Financial literacy (Wharton school questions, i.e. practical questions about investments).

3.5.2. Costs disclosure experiment

The aim of the disclosure part of the experiment was to test various approaches towards the disclosure of pre-contractual information on the costs, performance and general characteristics of the investment. The treatments represented legally permitted variations on typical ways in which pre-contractual information is provided to retail investors in real-life situations. They were defined as one-page "information benchmarking documents". The treatments made it possible to analyse which formats enable retail investors to choose the optimal product in terms of costs.

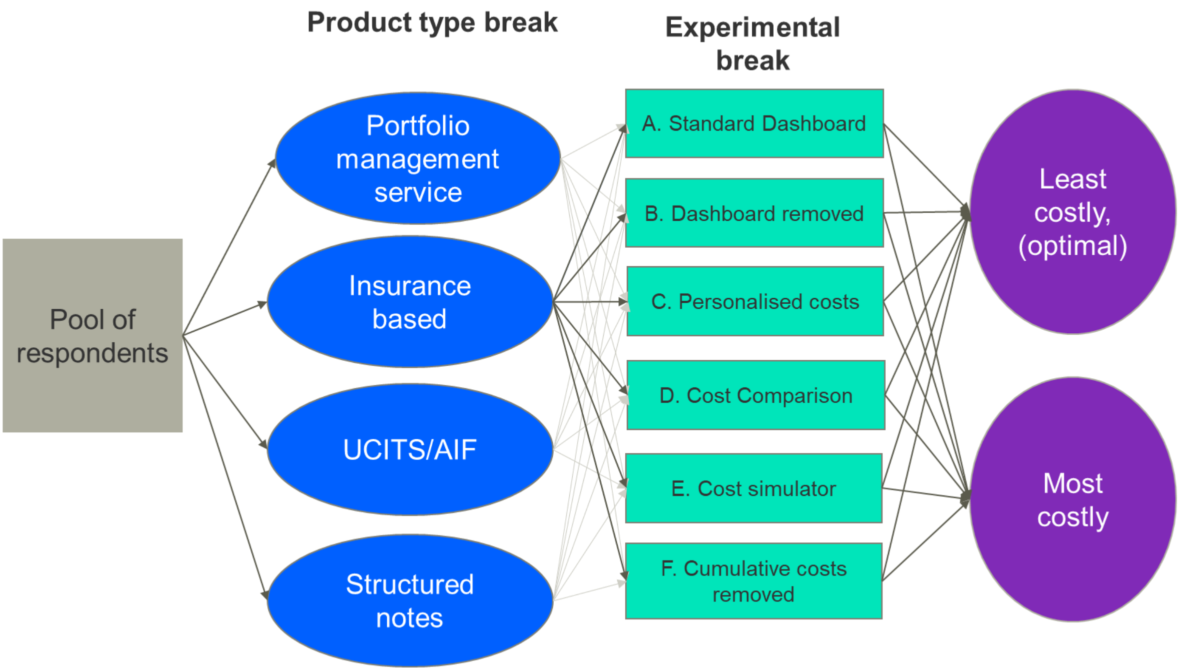
The optimal decision was defined as the one selecting the product with the lowest costs.

The design of this part of the experiment considered four distinct investment products and services: UCITS, structured notes, insurance products and portfolio management services (PMS). For each of these, the experiment tested the effect of six (five in the case of UCITS) approaches towards providing retail investors with the required pre-contractual information. The experiment treatments, in this case the different disclosure formats, are available in Annex 8 – Behavioural experiment treatments.

Each participant was given a choice between two products of the same type, both with the same disclosure (treatment), but one was more costly despite a similar offering. They were then asked to decide which one to choose based on real-life gamified examples (see Annex 9 for the questionnaire). This simple decision task provided a comparison of how helpful the different formats were in identifying the least costly product.

The functioning and overall design of the experiment are shown in the figure below.

Figure.6 - Costs disclosure flow chart



Source: Consortium, based on the behavioural experiment design.

The treatments for which we designed the product-specific one-page information benchmarking documents had the following characteristics:

1. **Treatment A. Standard dashboard**: the document contained the minimum amount and content required to be presented to the investor during the pre-contractual stage for each type of product. This information was provided as a

product-specific dashboard.

2. **Treatment B. Dashboard removed**: this treatment manipulation consisted in removing completely the dashboard of the one-page key investment benchmark information document. This made it possible to test the efficacy of the dashboard.
3. **Treatment C. Personalised costs**: in this version of the dashboard, we presented figures in line with the amount invested by the character. This completely personalised the costs, thus removing some of the burden of calculation.
4. **Treatment D. Cost comparison**: adding a direct cost comparison was meant to draw attention to the headline figure (the summary costs, RIY) and highlight the relative market position of the product in terms of its cost. This was also expected to trigger social norms and nudge the consumer towards getting "normal" costs, i.e., to shy away from high-cost products. In this manipulation, the cheaper items were within the range of comparable product costs while the others were just outside of this range.
5. **Treatment E. Cost simulator**: This consisted in providing participants with a very short spreadsheet comparing the two products, thus replicating to a lesser extent the way in which simulators help retail investors.
6. **Treatment F**. **Cumulative costs removed**: the cumulative EUR cost was removed, and only the RIY was kept. This tested the hypothesis that, for long-term investments, the very high cumulative costs may seem frightening and dissuasive for investors – although the expected yield after costs would make the investment worthwhile.

3.5.3. Inducement experiment

This module investigated how different formats for disclosing information on the presence of inducements – defined as commissions paid to distributors of financial products for selling these to their clients32 - would impact client behaviour.

Participants were shown a one-page information benchmarking document on two financial products of the same type and asked to select the product which they considered the best investment33; this was similar to the disclosure module. This was replicated with five different product types to neutralise the biases that one product type might have. They were also presented with a letter from the fictitious bank featuring in the experiment's description, which simulated advice and recommended them to invest specifically in one of the two products. For half of the respondents the advice was good, meaning it promoted the least costly product with a similar offer. For the other half, the advice was bad. Regardless of the type of advice, it was accompanied by three types of disclaimers about a potential conflict of interest:

1. Implicit information: a simple one-line notice at the bottom of the letter informing potential investors that the advice they had received was paid for by an inducement scheme.

[32] This definition was a simplification of the legal one which is any fee, commission or any non-monetary benefit provided by or paid to a service provider in connection with the provision of a financial service to or by any party except the client.
For the definition of "inducement" under IDD, please refer to Article 2(2) of Commission Delegated Regulation (EU) 2017/2359 of 21 September 2017 supplementing Directive (EU) 2016/97 of the European Parliament and of the Council with regard to information requirements and conduct of business rules applicable to the distribution of insurance-based investment products (IBIPs Regulation);
For the concept of "inducements" under MiFID II, please refer to Article 24(9) of Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU.
In 2021, Article 24 of MiFID II was supplemented by Article 24(9a), which was added by Directive (EU) 2021/338 of the European Parliament and of the Council of 16 February 2021 amending Directive 2014/65/EU as regards information requirements, product governance and position limits, and Directives 2013/36/EU and (EU) 2019/878 as regards their application to investment firms, to help the recovery from the COVID-19 crisis (OJ L 68, 26.2.2021, p. 14–28).

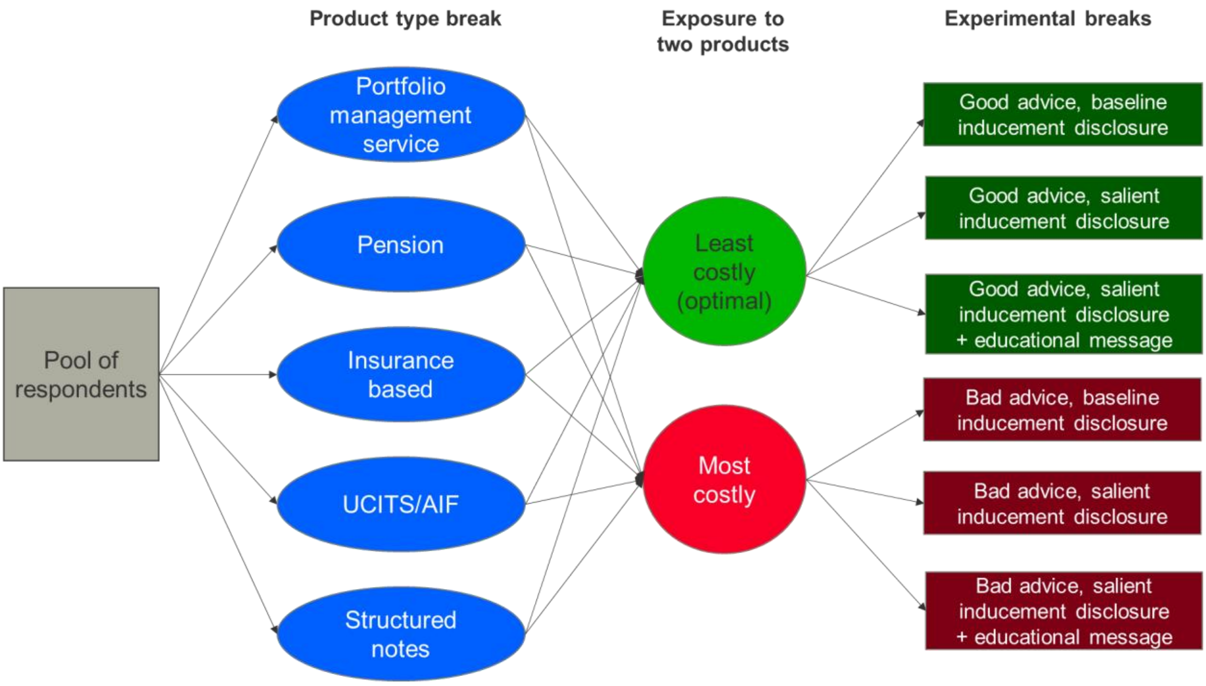
[33] If you were in [persona]'s position and considering the information provided in the documents for the two products, which product would you consider **financially better to invest in**?

2. Explicit information: a dark black box containing a warning label at the bottom of the bank letter. The dark black box was designed to attract the attention of participants to ensure more careful reading of the message.
3. Explicit information with an educational message. An educational message was added in the box below the disclosure message. It clearly explained the inducement scheme of a manufacturer paying a fee to a distributor to recommend a certain product to investors.

The responses to this part of the experiment showed the effects of inducement-based advice on decision makers when purchasing a financial instrument. It helped us assess to what extent participants are influenced by advice received from a trusted source (in this case, the person's own bank). Additionally, it tested whether inducement disclosure messages have a positive or negative impact on individuals making financial decisions in the case of bad but also good advice[34]. In this way it also assessed variations of disclosure messages, shedding light on which messages can lead potential investors to question advice received from a trusted source without being scared away. This allowed us to assess:

a. How likely are consumers to follow advice, even if it is bad advice?
b. Which inducement disclosure method leads to the best investment decision?
c. Do investors understand the concept of inducements and whether inducements are paid when they receive non-independent advice?
d. How does the understanding that inducements are paid affect the retail investor's behaviour? Does this type of disclosure deter consumers from investing?

Figure.7 - Inducement disclosure flow chart



Source: Consortium.

A detailed description of the experiment is provided in Annex 2 – Detailed methodology. The stimuli used are presented in Annex 8 – Behavioural experiment treatments.

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[34] Relevant It has indeed been evidenced by the literature has shown that those messages could create a "knee-jerk" reaction of rejecting the advice, regardless of its quality.

3.6. Scope of the assignment

In this section we provide a summary overview of the scope of this assignment.

3.6.1. Country coverage

The data collection for this study covered the following 15 countries: Austria, Czechia, Germany, Greece, Spain, Finland, France, Ireland, Italy, Latvia, Luxembourg, the Netherlands, Poland, Romania and Sweden.

The rationale for the country selection is presented in Annex 2 – Detailed methodology.

The table below provides an overview of how this country coverage was respected in the data collection.

Table.1 - Country coverage and data collection

	Legal research national	Country fact sheet	Product catalogue	Product information documents scoring	Interviews	Survey and experiment	Traditional channels mystery shopping
Austria	✓	✓	✓	✓	✓		
Czechia	✓	✓	✓	✓	✓		
Germany	✓	✓	✓	✓	✓	✓	✓
Greece	✓	✓	✓	✓	✓	✓	✓
Finland	✓	✓	✓	✓	✓	✓	
France	✓	✓	✓	✓	✓	✓	✓
Ireland	✓	✓	✓	✓	✓		
Italy	✓	✓	✓	✓	✓	✓	✓
Latvia	✓	✓	✓	✓	✓		
Luxembourg	✓	✓	✓	✓	✓		
Netherlands	✓	✓	✓	✓	✓	✓	✓
Poland	✓	✓	✓	✓	✓	✓	✓
Romania	✓	✓	✓	✓	✓	✓	✓
Spain	✓	✓	✓	✓	✓	✓	
Sweden	✓	✓	✓	✓	✓	✓	✓

Source: Consortium.

3.6.2. Products within the scope of the study

The table below provides an overview of the categorisation of products covered by the study as agreed during the inception task and applied throughout the study. This is followed by the definitions of product categories.

Table.2 - Matrix of retail investment products past and current study

Product group	Proposed product subgroups (KANTAR, CEPS and MILIEU)	Product subgroups (Deloitte)
SECURITIES	• listed shares	• equities
	• bonds (investment grade, non-investment grade)	• bonds
INVESTMENT FUNDS	• retail UCITS (equity, bond, mixed, money market funds), including exchange-traded funds (ETFs)	• money market funds • equity funds • bond funds • mixed funds • ETFs
	• retail AIFs (real estate, fund-of-funds, other funds)	• real estate funds
INSURANCE & PENSION PRODUCTS	• *traditional life insurance products (with guarantees, without guarantees) [only covered where applicable]*	• life insurance with guaranteed capital, non-guaranteed capital
	• insurance-based investment products (unit-linked, profit participation, hybrid, multi-options)	
	• personal/individual pension products (pension funds, unit-linked, profit participation product)	• pension products with guaranteed capital, non-guaranteed capital, mutual/pension funds
OTHER PRODUCTS	• structured products	• structured products
	• derivatives (exchange-traded and over-the-counter)	

Box 3.1 Definitions of product categories

Listed shares[35] represent public ownership/interest in a company. All publicly traded companies issue common stock. Some companies also issue preferred stock. A dividend is a distribution of a portion of a company's earnings.

Bonds[36] are debt security which entitles holders to receive interest payments on specified dates following the date of issue, and repayment of the face value at the end of its term upon maturity. Bonds are fixed-income instruments issued by governments, financial institutions and non-financial corporations.

Investment funds[37] are products created with the purpose of gathering capital from investors and investing that capital collectively through a portfolio of financial instruments, such as stocks, bonds and derivatives. There are various types of funds, each with differing features (MMFs[38], ETFs[39], UCITS and AIFs[40]).

Traditional life insurance products[41] can take the form of individual or group contracts. They may be products offering protection, savings products or a combination of both.

Insurance-based investment products[42] are insurance products offering retail clients a maturity or surrender value which is wholly or partially exposed, directly or indirectly, to market fluctuations.

Personal/individual pension products[43] are long-term savings products (pillar 3) to which individuals contribute on a voluntary basis, complementing State and workplace pensions.

Structured products[44] are investments whose return is linked to the performance of one or more reference indices, prices or rates ("reference values").

Derivatives[45] are financial instruments whose value depends on some underlying financial asset, commodity or predefined variable. These can be used for hedging or trading purposes, and can be ETD or OTC.

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35 See point 5.146 in Regulation (EU) No 549/2013 of the European Parliament and of the Council of 21 May 2013 on the European system of national and regional accounts in the European Union: "Listed shares are equity securities listed on an exchange. Such an exchange may be a recognised stock exchange or any other form of secondary market. Listed shares are also referred to as quoted shares. The existence of quoted prices of shares listed on an exchange means that current market prices are usually readily available".

36 Guide to Financial Markets (4 ed.), Levinson, M., The Economist in association with Profile Books Ltd, 2005.

37 An investment fund is a pool of money belonging to many investors that is used to collectively purchase stocks, bonds or other securities. See: The Investment Funds Institute of Canada. Glossary, https://www.ific.ca/en/pg/investor-centre-glossary/

38 Money market funds (MMFs) provide short-term finance to financial institutions, corporations and governments. See Regulation (EU) 2017/1131 of the European Parliament and of the Council of 14 June 2017 on money market funds.

39 Art. 4(1)(46) MiFID II: "'exchange-traded fund' means a fund of which at least one unit or share class is traded throughout the day on at least one trading venue and with at least one market maker which takes action to ensure that the price of its units or shares on the trading venue does not vary significantly from its net asset value and, where applicable, from its indicative net asset value.

40 An ETF may be established as a UCITS or an AIF.

41 A life insurance product is an insurance product for which the benefit payment is based on the occurrence of death of the insured within the specified policy term, or on the life status of the insured at maturity. (CEA (Insurers of Europe). Topography of EU25. Description of markets, products and distribution, 2007, http://ec.europa.eu/internal_market/insurance/docs/solvency/impactassess/annex-c08c_en.pdf)

42 Article 4(2) of Regulation (EU) No 1286/2014 on key information documents for packaged retail and insurance-based investment products (PRIIPs): an insurance-based investment product is an insurance product which offers a maturity or surrender value and where that maturity or surrender value is wholly or partially exposed, directly or indirectly, to market fluctuations.

43 Art. 2(1) PEPP: "'personal pension product" means a product which:
(a) is based on a contract between an individual saver and an entity on a voluntary basis and is complementary to any statutory or occupational pension product;
(b) provides for long-term capital accumulation with the explicit objective of providing income on retirement and with limited possibilities for early withdrawal before that time;
(c) is neither a statutory nor an occupational pension product;

44 Art. 2(28) Regulation (EU) No 600/2014 of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Regulation (EU) No 648/2012: "'structured finance products" means those securities created to securitise and transfer credit risk associated with a pool of financial assets entitling the security holder to receive regular payments that depend on the cash flow from the underlying assets;

45 Art. 2(29) Regulation (EU) No 600/2014 of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Regulation (EU) No 648/2012: "derivatives" means those financial instruments defined in point (44)(c) of Article 4(1) of Directive 2014/65/EU; and referred to in Annex I, Section C (4) to (10) thereto.
Point (44)(c) of Article 4(1) of MiFID II: any other securities giving the right to acquire or sell any such transferable securities or giving rise to a cash settlement determined by reference to transferable securities, currencies, interest rates or yields, commodities or other indices or measures;

3.6.3. *Scope of the EU legal instruments covered in the study by product type and distributor*

The study covers several EU legal instruments that are applicable to retail finance products. These are: MIFID II, IDD, PRIIPs, AIFMD, UCITS, DMFSD, Solvency II, PEPP and E-commerce Directive.

The tables below represent the coverage of the legal provisions of each instrument in terms of product and distributor. The tables clearly show that some legal texts focus on just one product category/one type of distributor while others have a more horizontal aim. There is thus significant variance as to whether (and to what extent) the EU legal instruments analysed apply to investment products and/or to financial firms.

Further detail about this legal scope is added in the respective sub-chapters, sometimes nuancing the data included in the following tables.

Table.4 - Application of legal requirements by product type and subtype

Products		MiFID II	PRIIPs	IDD	Solvency II	UCITS	AIFMD	PEPP	DMFSD	E-commerce
Securities	Listed shares	✓	✓[46]						✓	✓
	Bonds	✓	✓[47]						✓	✓
Investment funds	Retail UCITS	✓	✓			✓			✓	✓
	Retail AIFs	✓	✓				✓[48]		✓	✓
Insurance & pension products	Life insurance products		✓[49]	✓	✓				✓	✓
	Insurance-based investment products		✓	✓[50]	✓				✓	✓
	Personal pension products		✓[51]	✓				✓	✓	✓
Other products	Structured products	✓ (fin. instruments)	✓						✓	✓
	Derivatives	✓	✓						✓	✓

[46] Based on PRIIPS Q&A: ""“Is a KID always required when an investment product is listed on a regulated market? A manufacturer is not required to draw up a KID for a product listed on a regulated market when they have defined the product as meant only for non-retail investors”.

[47] Particularly relevant for corporate bonds available to investors. https://www.esma.europa.eu/sites/default/files/library/jc-2019-64_PRIIPS_KID_supervisory_statement_bonds.pdf Perpetual – PRIIPS is not applicable; Subordinated - PRIIPS is not applicable; Fixed rate - PRIIPS is not applicable; Variable rate – that would depend on the specific “variable” rate feature; Puttable - PRIIPS is not applicable; Callable - Provisions that allow the issuer of the bond to redeem the bond before maturity constitute a contractual termination of the investment, and therefore do not inherently result in a fluctuation based on an exposure to a reference value. However, such features may result in that bond being a PRIIP, if the amount repayable at redemption is not fixed, and fluctuation is caused by exposure to a reference value; Convertible - convertible bonds would be within the scope of the PRIIPs Regulation.

[48] The scope of AIFMD is limited to AIFs marketed to professional investors only, although Member States are free to extend the scope of AIFMD to AIFMs managing retail AIFs.

[49] Excluding life insurance contracts where the benefits under the contract are payable only on death or in respect of incapacity due to injury, sickness or infirmity.

[50] MiFID II amends the Insurance Mediation Directive 2002/92/EC (IMD) through the addition of Customer Protection Provisions governing the distribution of “insurance-based investment products” (IBI Products). A Recital to MiFID II declares that in order to deliver consistent protection for retail clients and ensure a level playing field between similar products, the investor protection requirements, which MiFID II introduces, should apply to “investments packaged under insurance contracts”. The Recitals to MiFID II indicate the Commission’s view that, whereas the investor protection requirements in MiFID should be applied equally to IBI Products, their different market structures and product characteristics make it more appropriate that detailed requirements are set out in IMD II (i.e. IDD) rather than in MiFID II.

[51] Excluding occupational pension products having the primary purpose of providing the investor with an income in retirement. Recital 37: “Having regard to the ongoing work undertaken by EIOPA on disclosure of product information requirements for personal pension products and taking into account the specificities of those products, the Commission should, within four years after the entry into force of this Regulation, assess whether to maintain the exclusion of pension products which, under national law, are recognised as having the primary purpose of providing the investor with an income in retirement, and which entitle the investor to certain benefits. In making its assessment, the Commission should consider whether this Regulation is the best legislative mechanism for ensuring the disclosure relating to pension products, or whether other disclosure mechanisms would be more appropriate.”

Table.5 - Mapping of the financial enterprise scope of the EU legal instruments

Financial enterprise	MiFID II	PRIIPs	IDD[52]	Solvency II	UCITS	AIFMD	PEPP	DMFSD	E-commerce
Insurance company		✓	✓	✓	✓	✓	✓	✓	✓
Investment firm/Company offering investment services	✓	✓[53]			✓	✓	✓	✓	✓
Asset managers*	✓	✓	✓		✓[54]	✓[55]	✓	✓	✓
Insurance intermediary		✓	✓	✓	✓	✓	✓	✓	✓
Other insurance distributors (e.g. broker, insurance agent)		✓	✓	✓	✓	✓	✓	✓	✓
Credit institution/bank	✓	✓			✓	✓	✓	✓	✓
Other financial establishments	✓							✓	✓

Source: Consortium, based on legal analysis.

[52] Expanding the scope from agents and brokers by adding all sellers of insurance products, including insurance manufacturers that sell directly to clients and market participants that sell insurance on an ancillary basis (subject to the proportionality conditions).
[53] PRIIP manufacturer.
[54] UCITS.
[55] AIFs.

As recognised by some national authorities in the interviews and ESMA[56], the scope of each legal requirement is complexified by the cross referencing - meaning that some articles of one legal text refer to criteria and actions set forth in another one, adding another layer of difficulty in the legal implementation.

The sectoral approach[57] also complexifies the translation of the EU legal framework into practice and the identification of the requirements applying to each product for example, especially for those offered through different distribution channels.

Finally, it is noted that Member States have the possibility to "gold plate" (i.e. extend the scope) the MiFID II scope to include AIFMs and UCITS. Czechia, Spain, Italy, Latvia and Poland have made use of this option.

3.6.4. Coherence of common terms used in the EU legal framework relevant for retail investors

Some terms, relevant to the context of this study, are commonly used across various EU legal instruments. These terms (e.g. investors, transferable securities, insurance-based product, advice and durable medium, etc). and their definitions have been mapped in Annex 2 – Detailed methodology and a summary overview of the analysis is provided in Table 3.6.

While often comparable, most definitions are not identical across legal frameworks and the terminology is not always consistently used – neither within one legal instrument nor across various legal instruments. This is mainly due to the sectoral approach of the legislation.

Table.6 - Summary of definition differences across legal frameworks

Concept defined	Legal framework	Consistency of the definition
Transferable security	UCITS, MiFID II (used but not defined in DMFSD)	Comparable but not identical
Retail investor/client/investor/retail client/consumer	UCITS, AIFMD, MiFID II, PRIIPS, IDD, Solvency II, PEPP, DMFSD, E-commerce	No harmonised definition, the term is not always defined and different terms are used
Financial undertaking	PEPP and Solvency II	Not comparable (due to different institutions included)
Insurance-based investment product	IDD and PRIIPS	Consistent
Advice/investment advice	PEPP, IDD, MiFID II, (used but not defined in AIFMD and UCITS)	Consistent but no harmonised approach in the use of terminological expressions "advice" versus "investment advice" is observed, meaning that these two terms are used interchangeably in different legal acts
Durable medium	IDD, UCITS, PEPP, DMFSD, PRIIPS, MiFID II	Consistent but not keeping up with technological development

Source: Consortium, based on legal analysis.

[56] ESMA Call for evidence on impact of the inducements and costs and charges disclosure requirements under MiFID II, point 29.
[57] What is meant by sectoral approach is that the legislation is, at least in part, done by sector (e.g. bank and asset management under ESMA's supervision and MiFID's legal framework; and the insurance sector under EIOPA's supervision and IDD's legal framework)

4. Mapping of product distribution

This chapter presents the results of the mapping exercise in which a sample of the retail investment products distributed in the following 15 countries was analysed: Austria, Czechia, Germany, Greece, Spain, Finland, France, Italy, Ireland, Luxembourg, Latvia, the Netherlands, Poland, Romania and Sweden.[58]

This chapter looks first at the development of the penetration of investment products across the selected Member States. In the second part of this section we provide an overview of the distribution of products across a sample of distribution channels.

4.1. Summary of main findings regarding the development of household assets, retail investment product ownership and product offering developments

The household financial assets in the fifteen countries analysed in this report doubled in the two decades between 2000 and 2020. All of the types of assets increased, except for debt securities. In relative terms besides debt securities, the proportions of household assets held in deposits, pension and insurance products increased, while the proportions held in in equities and investment funds holdings decreased.

Looking at (potential) investors in investment products, about half of the individuals participating in the survey conducted by the consortium had financial products or were curious about or interested in investing in financial products, while the other half either did not have savings or was not interested in such investments.

The individuals investing in financial products can choose from a variety of distributors and product offerings. The product mix offered differs across countries, reflecting differences in national frameworks such as pension systems, as well as consumer preferences and distribution channels. In general banks distribute the widest range of retail investment products, followed by insurance companies. The remaining distributors tend to specialise in the distribution of one or two sub-categories of investment products (e.g. online discount brokers, fund supermarkets, social trading platforms).

The product offering and the importance of distribution channels tend to follow investor demand. There are four major trends affecting retail demand for investment products. First, the low interest rate environment is driving investors towards products with higher yields. Second, greater importance is attached to ESG factors, increasing the demand for sustainable investment products. Third, investors are increasingly focusing on costs, increasing the demand for simpler low-cost products. Fourth, especially young and risk-seeking investors are interested in crypto-assets.

[58] In line with other parts of the study, the retail investment products have been classified into four product groups i) securities, ii) investment funds, iii) insurance and pension products, and iv) other products. This reflects both direct and indirect participation in capital markets. At subgroup level, products have been classified into nine subgroups: 1) listed shares, 2) bonds, 3) retail UCITS, 4) retail AIFs, 5) traditional life insurance, 6) insurance-based investment products, 7) personal/individual pension products, 8) structured products, and 9) derivatives.

4.2. Development of household financial assets

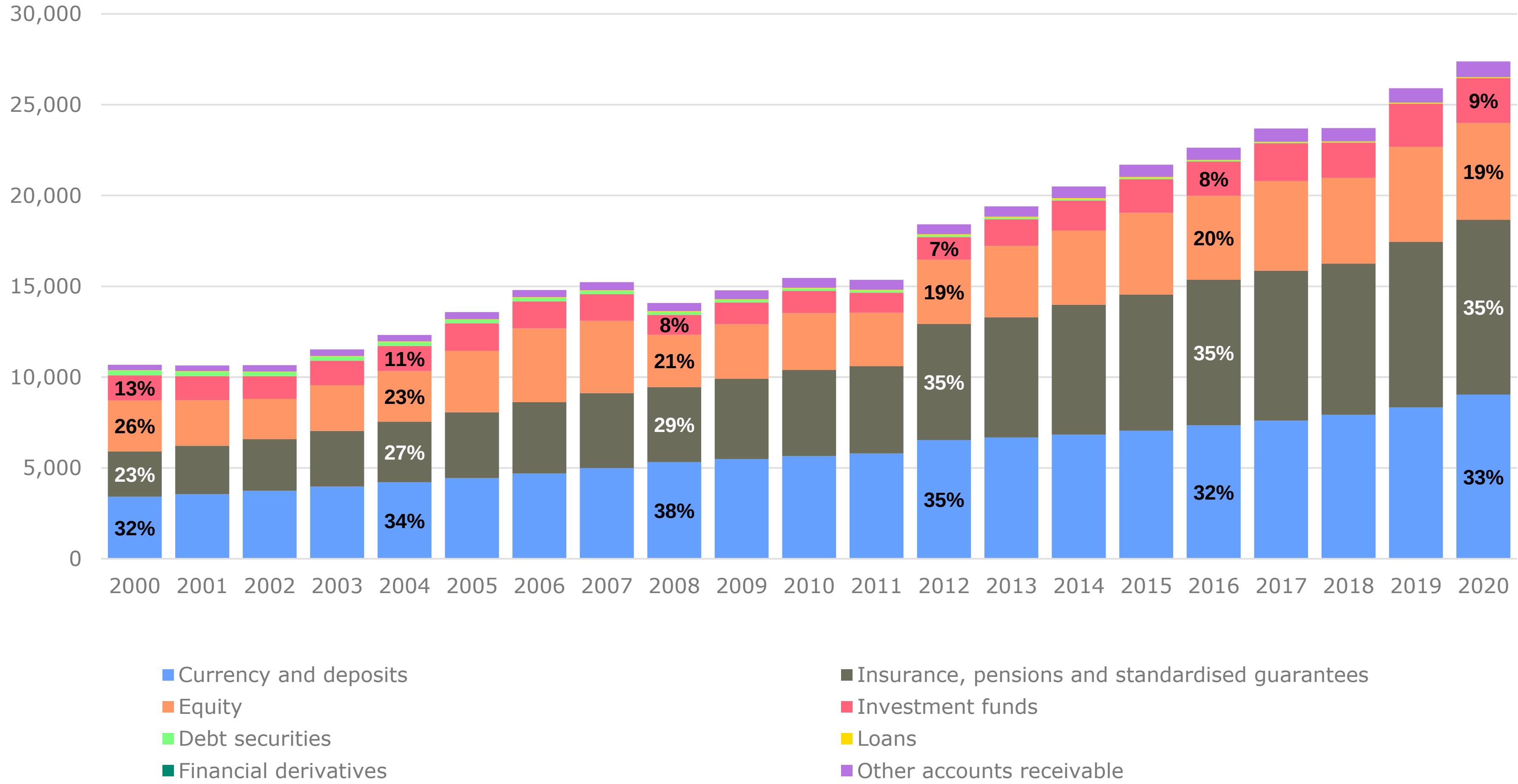
European household financial assets have more than doubled over the last 20 years, from EUR 10.7 trillion in Q4 2000 to EUR 27.4 trillion in Q4 2020 (see Figure.**1**). The main driving forces behind this development are cash and deposits holdings together with investments in insurance and pension products, which collectively account for around two-thirds of household financial assets.

Up until 2011, **cash and deposits were the largest asset class** (38% of household financial assets), but **since then the proportion of such assets has gradually declined** and stood at 33% in 2020. Similarly, holdings of equity and investment funds have trended downwards over the years, representing 19% and 9% respectively at the end of 2020. In turn, the portion of household financial assets held under insurance and pension schemes has grown steadily to 35%, mainly due to an increase in pension entitlements (compared with life insurance and annuity entitlements).[59]

Finally, debt securities, loans and financial derivatives represent a very small part of household financial assets, with their share dropping from about 3% in 2004 to less than 1% in 2020. In addition, other accounts receivable, which are not considered as investment products, account on average for approximately 3% of the financial portfolio over the period under review.

[59] Eurostat (2021). Accessible at: https://ec.europa.eu/eurostat/statistics-explained/index.php?title=Households_-_statistics_on_financial_assets_and_liabilities

Figure.1 - Household financial assets (EUR billion)



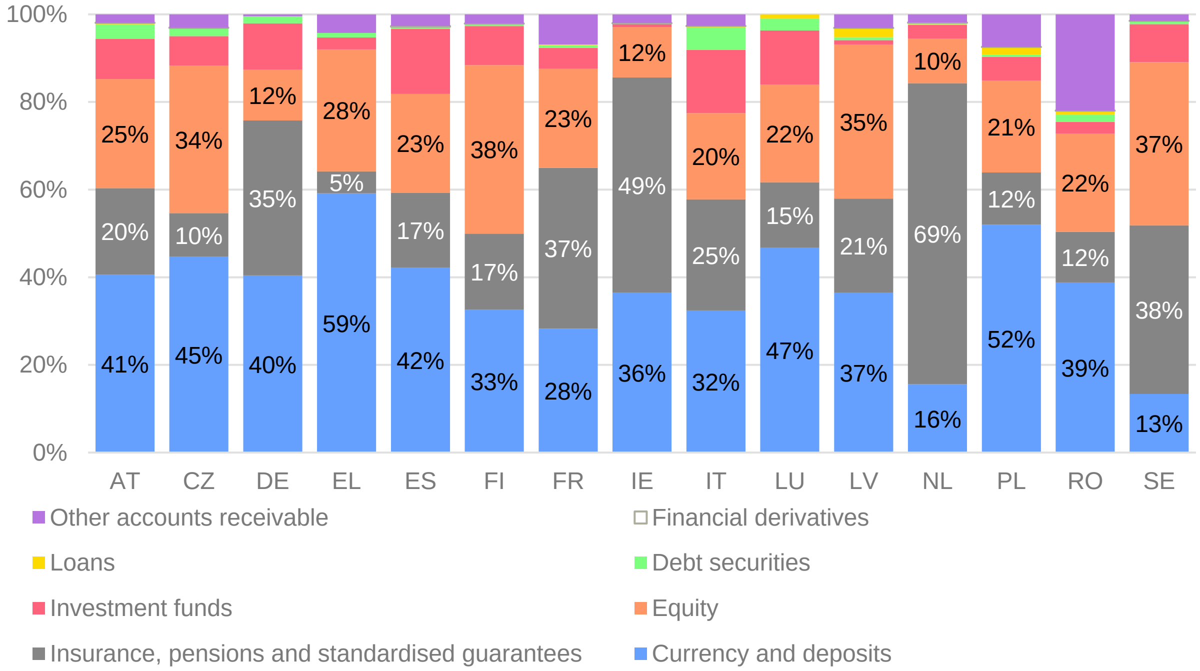
N.B.: The countries covered include: AT, CZ, DE, EL, ES, FI, FR, IE, IT, LU, LV, NL, PL, RO, and SE. *Source:* Eurostat (2021) Household Financial Assets and Liabilities

Source: Eurostat (2021) https://ec.europa.eu/eurostat/statistics-explained/index.php?title=Households_-_statistics_on_financial_assets_and_liabilities

Source: Eurostat (2021) https://ec.europa.eu/eurostat/statistics-explained/index.php?title=Households_-_statistics_on_financial_assets_and_liabilities

The composition of household financial assets varies considerably across EU Member States (see Figure.**2**). While some countries (e.g. Greece, Luxembourg and Poland) have very significant financial assets held in currencies and deposits, others (e.g. Ireland and the Netherlands) have much higher proportions invested in insurance and pension funds. As for equity investments, with the exceptions of Czechia, Finland, Latvia and Sweden where households invest just over one-third of their assets in equities, the remaining countries are below the average of 24% of total financial assets across the 15 Member States analysed. It is worth noting that in countries where financial markets are most developed in terms of financial assets as a proportion of GDP, such as Germany (12% of total financial assets), Ireland (12%) and the Netherlands (10%) the proportions of household assets held in equities and funds are lower.

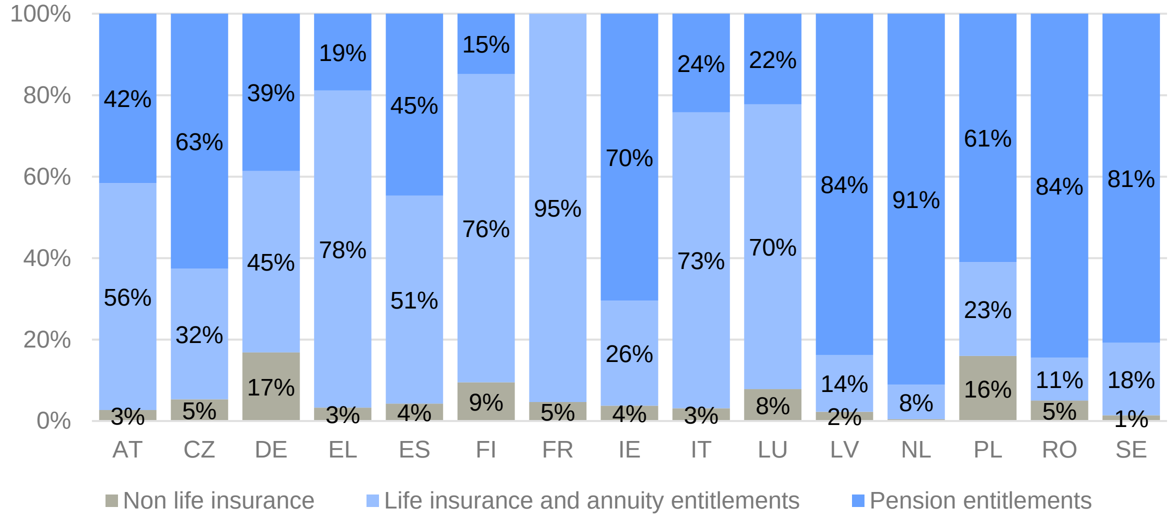
Figure.2 - Household financial assets by type and Member State (Q4 2020, % of total)



Source: Eurostat (2021)

Insurance and pension products are the second largest asset class, representing on average 26% of household financial assets across the countries analysed. However, there are significant disparities between EU Member States, not only in terms of assets held (see Figure.**2**), but also in the way that these are distributed between life, non-life and pension schemes (see Figure.**3**). At the end of 2020, pension entitlements accounted on average for 49% of insurance and pension assets of households, driven mainly by Latvia (84%), the Netherlands (91%), Romania (84%) and Sweden (81%).

Figure.3 - Household insurance- and pension-based assets by type (Q4 2020, % of total)



Note: The dataset refers to the period Q4 2000 to Q4 2020.

Source: Eurostat (2021)

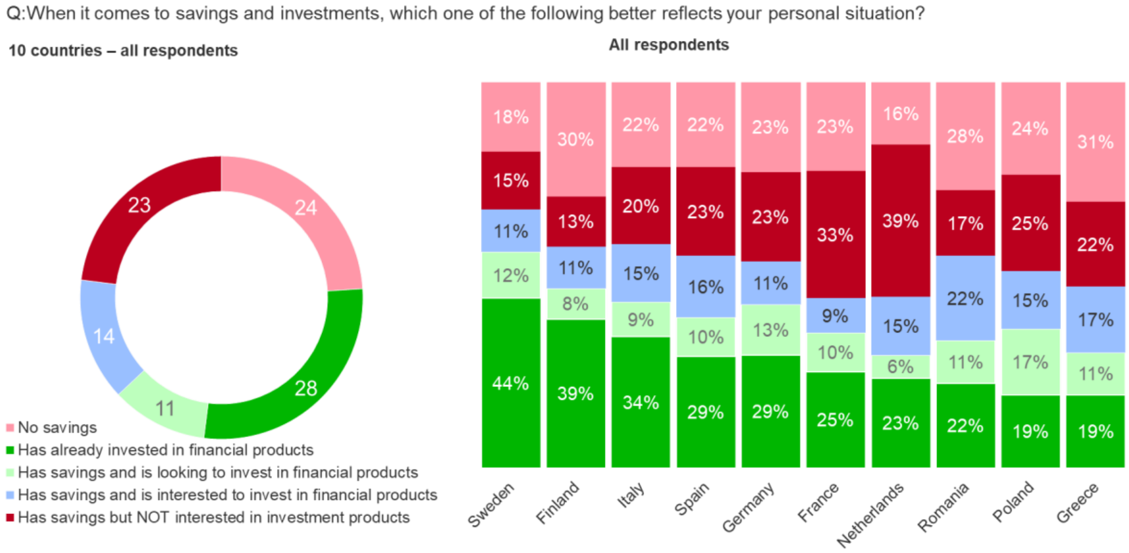
Life insurance and annuity entitlements accounted for 45% of all insurance and pension products. However, there are some **differences between countries**. For instance, insurance-based assets tend to dominate the investment markets in countries such as France (95%) and Greece (78%), while pension entitlements tend to dominate the investment markets in countries such as the Netherlands (91%), Latvia (84%) and Romania (84%). Finally, non-life insurance is generally far less popular among households, with the exception of Germany (17%) and Poland (16%).

Based on the **consumer survey** carried out in 10 of the 15 countries covered by this study[60] over a quarter of (banked[61]) consumers (28%) in these countries had already invested in financial products, with proportions ranging from 19% in Greece and Poland to 44% in Sweden. At the time of the survey there was also a significant share of consumers (11% on average) who were interested and looking to make investments. Another 14% were not actively looking to invest at the time of the study, but were interested in investing and had savings which would allow them to do so. The remaining respondents (just under half) are consumers who either have no savings (24%) or who are not interested in investing even though they do have savings (23%). The latter group is particularly large in the Netherlands and France.

[60] Germany, Spain, Finland, France, Greece, Italy, the Netherlands, Poland, Romania and Sweden

[61] The survey only covered banked consumers. People who do not have a bank account were screened so as not to be included in of the study sample.

Figure.4 – Share of consumers who have or are interested in getting financial investment products (n=10,470)



Source: Consortium, based on the consumer survey.

It is also worthwhile noting that the majority of investors in the sample (61%) held more than one investment product.

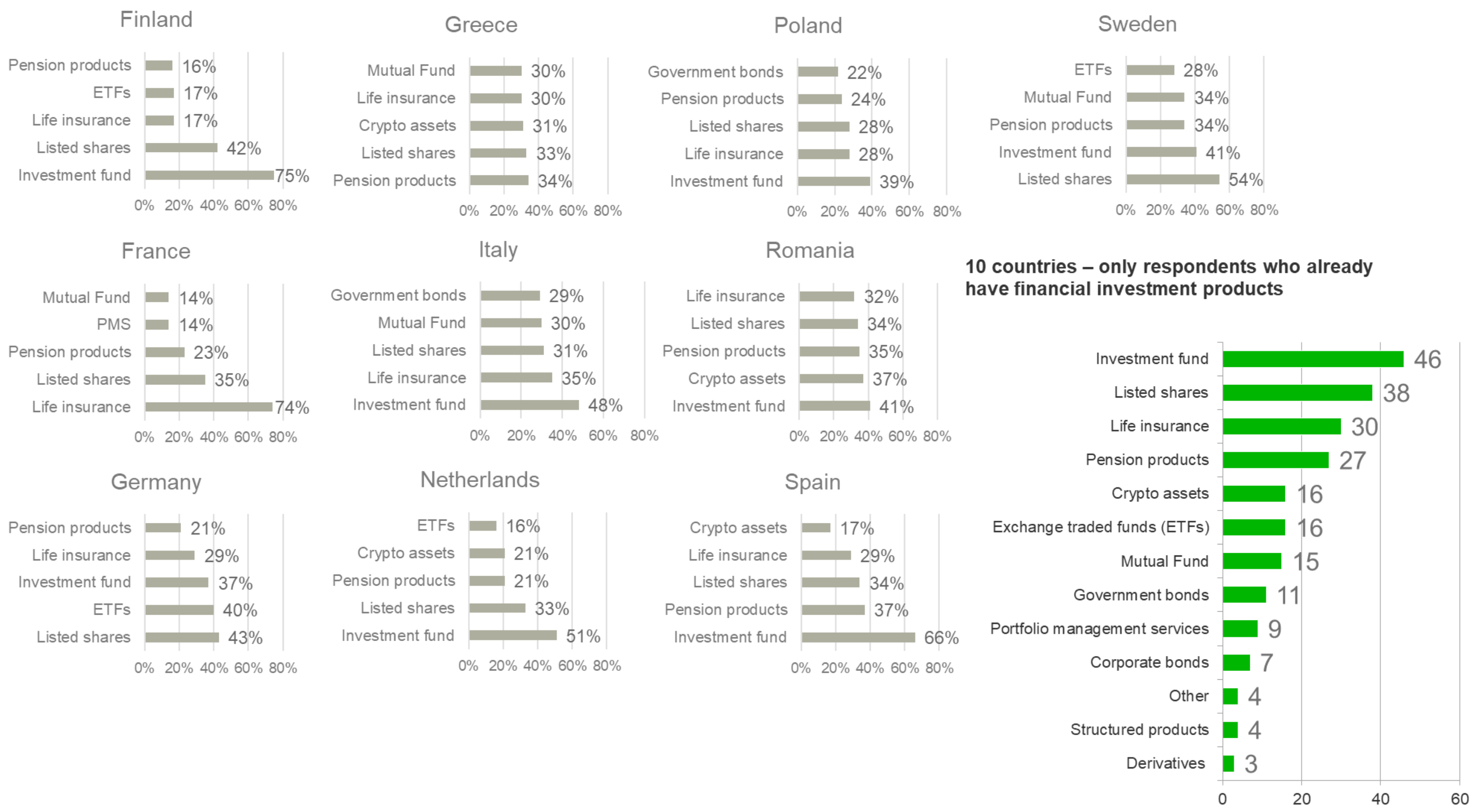
Furthermore, two-thirds of investors had made at least one of their investments in the past three years. In fact one-third of them (35%) had invested in the six months preceding the survey. This confirms that the period of low interest rates attracted people to the financial markets. The same applies to the COVID-19 pandemic period during which some households accumulated wealth due to reduced consumption and decided to invest it.

The **popularity of specific product categories differs between the countries covered**, most likely as a result of tax schemes or the extent to which a third pension pillar is or is not incentivised. The figure below shows that investment funds are the most commonly held product among the consumers surveyed (46% of investors have this product). In most of the countries, investment funds are included in the top five most commonly held products, but their penetration among the investor population differs substantially – from 75% in Finland to 12% in France. Listed shares are the second most commonly held product, in particular in Sweden and Finland. Life insurance is the third most popular product category, most notably in France (75% of investors have this product). Complex products such as structured products and derivatives are held by only 3 or 4% of investors. It is also noteworthy that 16% of investors have invested in crypto-assets. In Greece and Romania more than 30% of investors hold this type of asset.

Figure.5 – The types of investment products held by persons who state having at least one investment product (n=10,470)

Q: In which of the following financial product or service did you invest in?

Top 5 products categories per country - Only respondents who already have financial investment products



Source: Consortium, based on the consumer survey.

4.3. Sample of distributors assessed for product distribution mapping

The product distribution mapping is based on a total of 240 distributors in the 15 selected countries (see Table.1 below). Between 15 and 20 distributors were mapped for each country. Banks constitute the largest share of distributors mapped (106 or 44% of distributors), followed closely by insurance companies (86 or 36% of distributors). The remaining types of distributors (about one-fifth) consist of independent financial advisors, robo/automated advisors, fund supermarkets, online discount brokers, social trading platforms and asset managers.

The distributors were chosen with the aim of creating a representative sample and one that allows for comparison with previous studies such as the one conducted by Deloitte for DG FISMA in 2018[62]. Therefore, in each country the largest banks and insurance companies were chosen in addition to a set of distributors that represent other forms of distribution of retail investment products. Together, the distributors for each country were chosen to represent 80% or more of retail investment distribution.

Importantly, in the mapping the distributors are categorised based on their presentation to retail investors. This means that when banks use various sales channels each of those is considered as one distributor notwithstanding their license. Indeed, some financial groups have various brands with their own distribution channels[63] under one license which are treated separately (e.g. Volksbank in the Netherlands operates ASN Bank, RegioBank, SNS Bank, etc. based on a single credit institution license). On the other hand, there are financial groups with various licenses that sell the products through the same sales channel which are treated as one distributor (e.g. cooperative and savings bank networks with various credit institution licenses as well as bancassurers with both credit institution and insurance licenses). Moreover, distributors are classified according to their primary activity. For example, when banks (i.e. licensed credit institutions) distribute securities under MIFID II as well as insurance products under IDD, they are classified as banks.

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

[63] If a parallel channel is used for the distribution of insurance products, such as a separate website, the investment products are not included as part of the product offering of the bank in question.

Table.1 - Number of distributors scored per country, per type

Country	Banks	Insurance companies	Independent financial advisor, Robo/automated advisors	Fund supermarkets	Online discount brokers	Social trading platforms	Asset/fund managers	Total
AT	5	5	2	0	2	1	0	**15**
CZ	6	6	0	1	1	0	1	**15**
DE	7	5	1	1	0	1	0	**15**
EL	5	6	0	0	0	0	4	**15**
ES	9	4	1	0	0	1	1	**16**
FI	5	5	0	0	1	0	4	**15**
FR	9	6	0	0	1	1	0	**17**
IE	5	5	0	0	2	2	1	**15**
IT	9	6	0	0	0	0	0	**15**
LU	5	7	1	0	2	0	0	**15**
LV	10	3	0	0	1	0	1	**15**
NL	5	6	0	0	3	1	1	**16**
PL	10	7	0	1	1	1	0	**20**
RO	8	9	0	0	1	1	1	**20**
SE	8	6	0	0	1	1	0	**16**
Total	**106**	**86**	**5**	**3**	**16**	**10**	**14**	**240**

Source: Consortium, based on the product scoring.

Box 4.1 Comparison of main findings with analysis carried out by Deloitte (2018)

The scope of this study overlaps to a some extent with the scope of the "Distribution systems of retail investment products across the European Union" study carried out by Deloitte Luxembourg for European Commission in 2018 (Deloitte, 2018). Both studies have similarities in their design in terms of the definition of a retail investor and the percentage of the market covered.

Despite the similarities between the two studies, some, mostly methodological, differences remain. First, this study considers all products that are marketed to retail investors and not only actively marketed products. By considering all the products offered by a distributor this study makes no difference between retail investors without and with a client relationship with a distributor. The latter often have more products offered to them (e.g. in online banking environment). Second, this study has a broader definition of the insurance and pension products distinguishing between traditional life insurance products, insurance-based investment products and pension products. Third, the set of countries covered in this study differs somewhat and the number of banks and insurers is slightly higher.

As a result of the broader coverage as well as different timing of the data collection (2017 vs 2021), the figures presented in this study often differ significantly from those presented in the Deloitte study. This is especially the case for investment funds and securities, which the vast majority of banks distribute in large numbers. For example, the Deloitte study found a total of 658 ETFs offered in the fifteen countries covered by the study. This study shows that, for example, a single German bank alone may distribute 2,350 ETFs on its website. Similarly, the availability of securities is much wider.

In addition to securities and investment funds, the reported number of insurance-based investment products in this study (315) is substantially higher than found by Deloitte (219). This could be explained by the differences in definition. In the Deloitte study insurance-based investment products were classified as life insurance policies (with or without guarantee). In turn this study distinguishes between traditional life insurance policies and insurance-based investment products, where the latter covers all insurance-based investment products (including endowment insurance, etc.) as long as they do not have a clear pension objective.

Lastly, the Deloitte study comments on the number of products offered per country and notes that a set of countries, offers a lower number of investment products to retail investors possibly due to fewer active distributors. This study shares that observation, finding that not only Romania but also Latvia are countries in which fewer different retail investment products are distributed.

4.4. Retail investment product offerings across countries studied

The **breadth of retail investment products available varies by type of distributors** (see Table.2). In the countries studied, distributors such as banks and insurance companies tend to offer retail investment products from multiple product categories. Smaller distributors, such as traditional/online brokers and fund supermarkets, generally specialise in distributing retail investment products from one or more categories. For example, traditional/online brokers are highly likely to offer securities, structured products and derivatives, but rarely distribute insurance products. Fund supermarkets tend to specialise even further and, in the countries studied, they offered solely investment funds.

Moreover, **some retail investment products are more widely available than others**. Investment funds are distributed by nearly every type of distributor, whereas securities are mostly offered by banks, traditional/online brokers, and trading platforms. Among securities, equities are more likely to be offered than bonds, especially in the case of trading platforms. Turning to insurance products, these are rarely offered by distributors other than insurance companies and banks.

Table.2 - Share of distributors offering product categories (across countries studied)

Product group	Product category	Banks	Insurance companies	Independent financial advisors, robo-advisors	Fund supermarkets	Traditional/ online brokers	Trading platforms	Asset/fund managers
Securities	Equities	84%	3%	20%	0%	100%	100%	14%
	Bonds	77%	1%	20%	0%	81%	20%	14%
Investment funds	UCITS	94%	16%	100%	100%	100%	90%	93%
	AIF	72%	2%	20%	67%	50%	10%	64%
Insurance & pension products	Traditional life insurance products	75%	92%	0%	0%	0%	0%	0%
	Insurance-based investment products	58%	78%	0%	0%	6%	0%	7%
	Personal/individual pension products	70%	77%	40%	0%	25%	10%	21%
Other products	Structured Products	63%	0%	20%	0%	88%	10%	7%
	Derivatives	51%	0%	20%	0%	88%	20%	7%
Number of observations		106	86	5	3	16	10	14

Source: Consortium, based on the product catalogue mapping.

As reflected during the interviews, literature review and analysis of household assets above, **EU countries differ in their traditional dominant distribution practices**. In selected countries such as Italy and Spain, retail investors are relatively oriented towards more traditional products (such as bonds and traditional life insurance products). Likewise, countries with a developing interest in retail investor participation, such as Romania, have a similar orientation towards more traditional products. In turn, there are also countries such as the Netherlands and Sweden which have a longer tradition of retail investor participation in capital markets. In these countries investors are more likely to opt for non-traditional products and have a greater appetite for execution-only products, for example, directly investing in investment funds and derivatives.

Despite some national differences, there are **four important trends in the supply of products** for retail investors that can be observed across the EU.

First, the **low interest rate environment** has driven retail investors towards products with higher yields and, accordingly, often with more risk. For instance, from government bonds to equities, from government bonds to corporate bonds, from traditional life insurance products to IBIPs or from traditional guaranteed products to hybrid and unit-linked products. According to many interviewees, this has prompted more participation in the market as retail investors move from low-interest bank deposits to investment products with a higher potential return. Banks in countries such as Italy and the Netherlands have also become keener to promote retail investments amongst their clients, as having excessive liquidity is costly for them given negative monetary interest rates.

Secondly, there is a **growing offer of sustainable investment products**, with financial institutions increasingly actively distributing "green", "social", and "impact" products. Retail investors also reportedly have a high interest in these kinds of products. Nevertheless, the actual investments of retail investors in sustainable investment products are still limited. For example, only 5% of Italian investors hold ESG-investment products.

Thirdly, there is an **increased focus on low-cost products**. Enhanced disclosure and awareness of the costs of retail investment products, as well as supervisory interventions, have contributed to an increase in the popularity of simple investment products in most countries. For example, low-cost ETFs have gained in popularity in many countries such as Finland, the Netherlands and Poland, though they remain marginal in other countries such as France.

Fourthly, **interest in crypto-assets** from – especially young and risk-seeking - retail investors, also seems to be increasing in all selected Member States. Nevertheless, many distributors indicate that they do not offer crypto-assets at all or only to investors that qualify as professionals.

4.5. Banks

Banks have the most diverse product offering among the distributors covered in this study. The larger banks in the fifteen countries distribute more or less the same categories of retail investment products. The large majority of banks covered distribute equities, bonds and investment funds. Furthermore, a majority of banks offer derivatives and structured products to retail investors. The main differences are observed in the distribution of pension and investment-based insurance products, which are distributed in varying degrees by banks across countries. These differences reflect diversity in national frameworks, consumer preferences and distribution models.

4.5.1. Analysis

Large retail banks are the main distributors of retail financial instruments in the countries studied. The availability of retail investment products amongst large banks in the countries studied is relatively homogenous (see Table.3). In nearly all countries, large banks are highly likely to distribute securities (shares and bonds) and investment funds. In addition, large banks in most countries offer structured products and to a lesser extent derivatives.

Similarly, a large number of banks in the countries studied distribute traditional life insurance, IBIPs and pension products. However, there are significant differences between the countries studied. In France and Ireland banks almost universally distribute insurance products to retail investors, unlike in Latvia and Germany, where half or fewer of banks were found to distribute insurance products to retail investors.

The distribution of pension products amongst banks in the countries studied varies greatly, reflecting the varying degrees to which retail investors have responsibility or the fiscal regime for third pillar bank pension products. In Finland, for example, banks are not expected to distribute pension products at all, in stark contrast to countries such as Austria and Spain where the banks from this study universally distribute pension products.

Structured products are generally offered by large banks, but there are differences between countries. Retail investors in Finland, Germany, Italy, the Netherlands and Poland will find structured products at (nearly) all large retail banks in their country, whereas for investors in Ireland, Latvia or Romania it is much less common.

Country-specific circumstances may also influence the offerings of retail investment products by banks, as shown by the examples of Ireland and the Netherlands. Irish banks, for instance, have so far not followed the trend witnessed in other EU countries of increasingly distributing execution-only products. Indeed, very few investment funds and no securities, structured products and derivatives were distributed in Ireland. In the Netherlands, IBIPs enjoyed a peak in the 1990s and early 2000s but distributors almost entirely stopped distributing them after a large mis-selling scandal.

Table.3 - Share of banks offering product listed per country

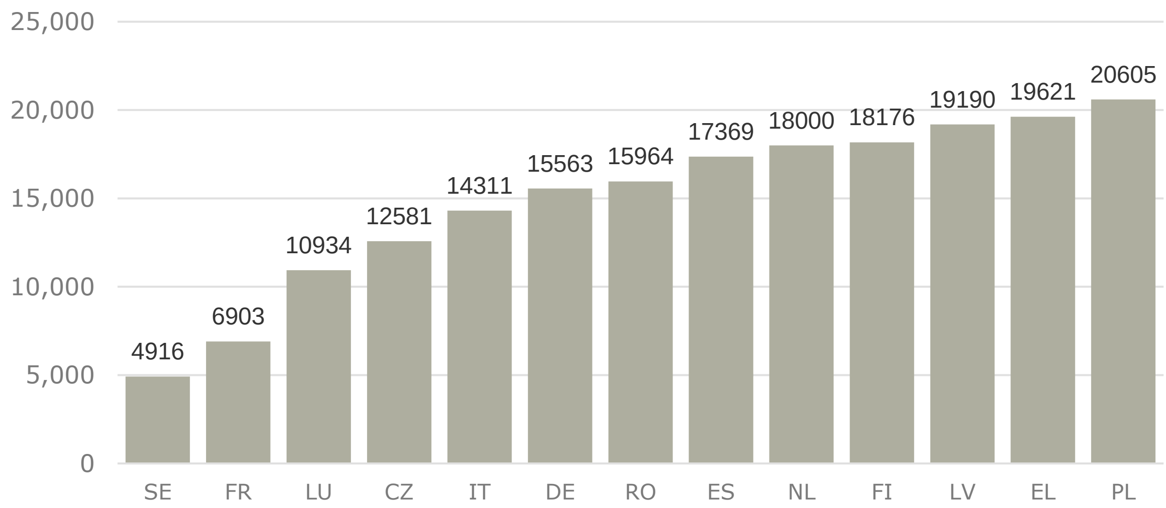
Product group	Product category	AT	CZ	DE	EL	ES	FI	FR	IE	IT	LU	LV	NL	PL	RO	SE
Securities	Equities	100 %	50%	100 %	100 %	100 %	80%	100 %	0%	100 %	100 %	100 %	80%	80%	50%	88%
	Bonds	100 %	33%	100 %	100 %	78%	60%	100 %	0%	100 %	100 %	90%	80%	80%	63%	50%
Invest-ment funds	UCITS	100 %	100 %	100 %	100 %	100 %	100 %	100 %	20%	89%	100 %	100 %	100 %	90%	100 %	100 %
	AIF	100 %	100 %	57%	60%	78%	100 %	78%	0%	89%	0%	90%	100 %	80%	13%	100 %
Insurance & pension products	Traditional life insurance products	100 %	83%	43%	100 %	89%	60%	100 %	100 %	89%	20%	40%	80%	70%	63%	88%
	Insurance-based investment products	100 %	50%	0%	100 %	67%	60%	100 %	80%	78%	60%	10%	0%	30%	88%	63%
	Personal/indi-vidual pension products	100 %	83%	43%	80%	100 %	0%	67%	60%	89%	80%	50%	40%	90%	63%	75%
Other products	Structured Products	60%	50%	100 %	60%	67%	80%	67%	0%	100 %	80%	20%	80%	80%	25%	75%
	Derivatives	60%	50%	86%	80%	56%	0%	11%	0%	78%	20%	60%	80%	50%	38%	75%
Number of observations		5	6	7	5	9	5	9	5	9	5	10	5	10	8	8

Source: Consortium, based on product catalogue mapping.

4.5.2. Shares

In the countries studied, the average number of shares that a bank distributes[64] ranges from approximately 5,000 (Sweden) to as high as 20,000 (Poland) (see Figure 4.6). Banks in France and Germany on average distribute fewer shares than those in Greece and Poland. Ultimately, the extent to which shares are distributed to retail investors comes down to the number of stock exchanges from which banks distribute shares, and in countries such as Greece, Latvia and Poland that number is higher.

Figure.6 - Estimated average number of shares offered per bank



Note.: Only those banks for which the markets from which they offer shares to retail investors are included. The information for at least three banks in the country offering shares needs to be available to be included in the above figure.

Source: Consortium.

Taking a closer look at the exchanges from which banks distribute shares, these include both their domestic regulated market(s) and other regulated European markets. Roughly one-fifth of the banks analysed offer shares from alternative stock exchanges, such as Equiduct and Nasdaq First North. Shares from alternative stock exchanges are most frequently distributed by banks in Finland, Germany and Sweden.

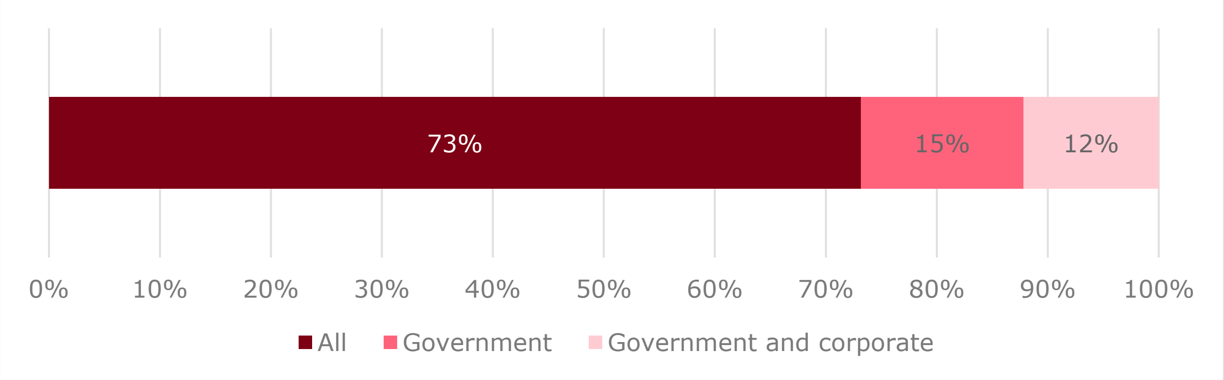
Alongside European exchanges, many banks distribute shares from non-European exchanges. Shares from US stock exchanges (e.g. NASDAQ and New York Stock Exchange) are distributed by the vast majority of banks in the countries studied. Australian, Canadian and Japanese exchanges also feature amongst the non-European exchanges whose shares are distributed by banks. Approximately 10% of banks in the countries studied do not distribute shares from non-European exchanges.

64 The number of stocks offered is estimated based on the exchanges to which the banks provide access.

4.5.3. Bonds

About three-quarters of the large banks analysed offer bonds to retail investors. Almost three-quarters of those banks distribute all types of bonds (government, corporate and financial institution bonds), 15% only government-issued bonds and lastly 12% both government and corporate bonds (see Figure.**7**).

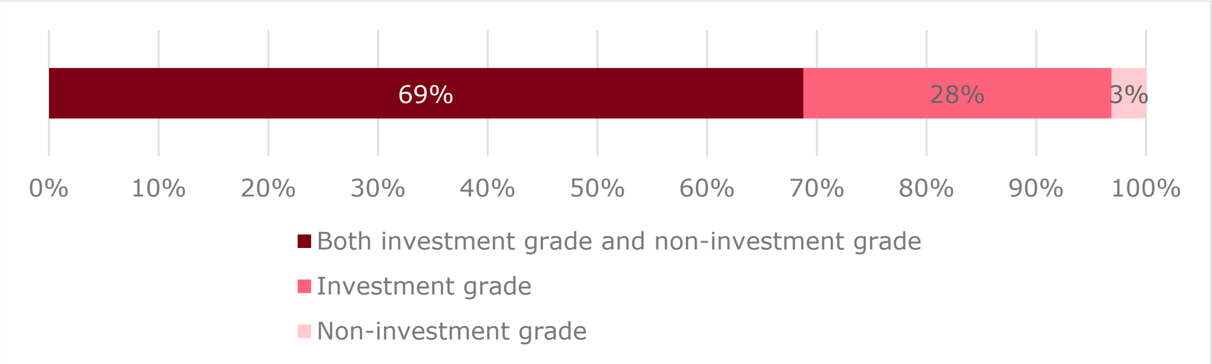
Figure.7 - Types of bonds offered by bond distributing banks, per category as a percentage of total



Source: Consortium, based on the product catalogue mapping.

Banks that offer bonds from each of the three types of issuers (corporates, financial institutions and governments) are likely to offer retail investors both investment grade bonds (above BBB-) and non-investment grade bonds (BBB- or below). In fact, over two-thirds of banks in the countries studied distribute both investment and non-investment grade bonds (see Figure.**8**). Just over a quarter of the banks distribute only investment grade bonds. The fact of only distributing investment grade bonds may (1) be a consequence of only offering government issued bonds in a country where the government has a strong rating or (2) offering a mix of corporate, financial institution and government bonds from high-rated debtors. A small number of distributors offer only non-investment grade bonds to retail investors. In all instances these are banks in countries with domestic government bonds with a non-investment-grade rating.

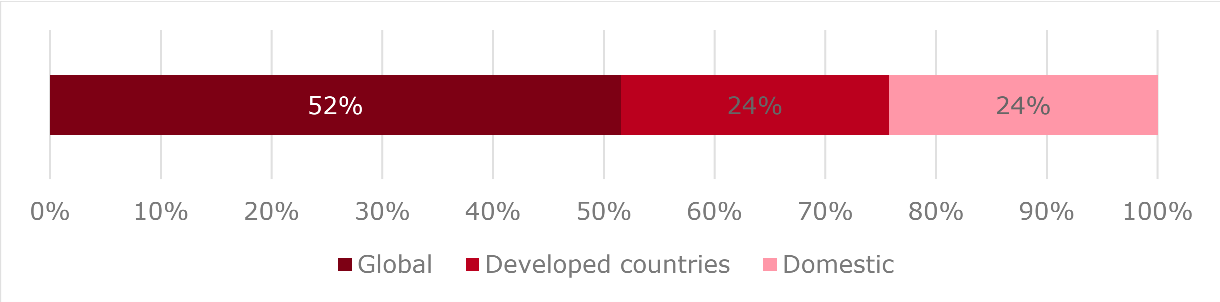
Figure.8 - Credit quality of bonds offered by bond distributing banks, per category as a percentage of total



Source: Consortium, based on the product catalogue mapping.

In addition to the type and credit rating of bonds, an insight into the origin of bonds is provided. About half of bond distributing banks (52%) offer bonds from across the globe (see Figure.**9**). For just under a quarter of bond distributing banks (24%) only bonds from developed economies are distributed. Another quarter of bond distributing banks (24%) offer only domestic bonds.

Figure.9 - Geographical coverage of bonds offered by bond distributing banks



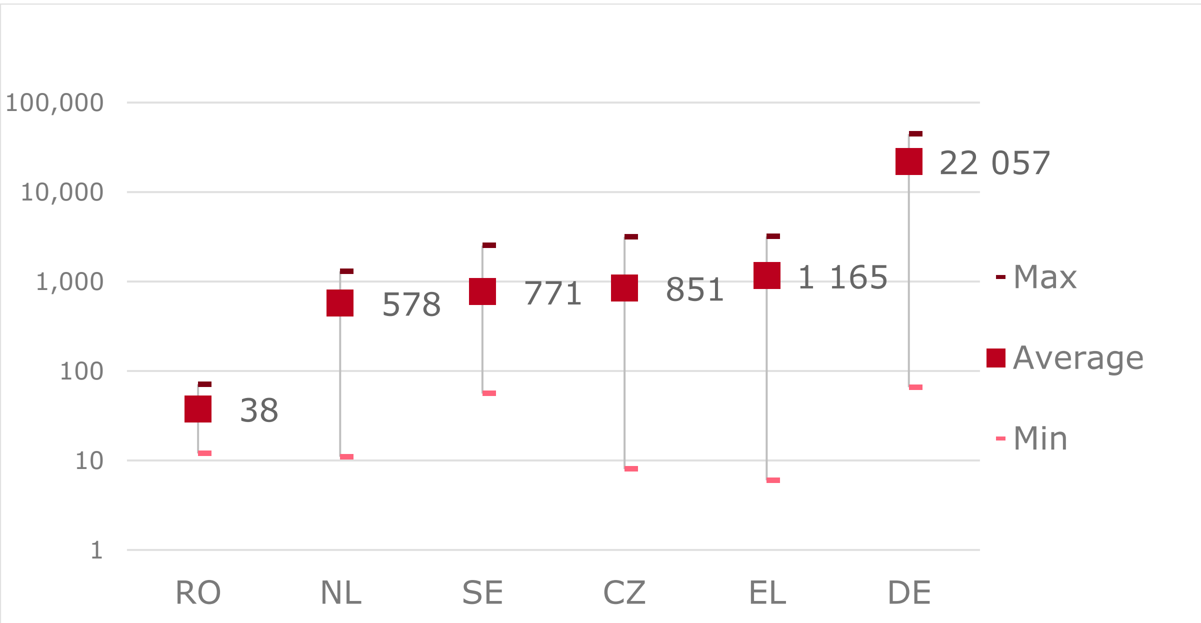
Source: Consortium, based on the product catalogue mapping.

4.5.4. *Funds*

The average number of funds offered differs considerably between banks and countries (see

Figure**.10**). A large German bank distributes on average thousands of funds to retail investors. However, retail investors in Czechia, the Netherlands and Sweden generally have less than a thousand investment funds from which to choose. Banks in Romania offer on average less than a hundred investment funds to their retail investors. There are two general factors influencing the number of funds offered. First, some banks offer only in-house funds. In this case, the total number of investment funds distributed rarely exceeds 100 funds. Secondly, when third-party ETFs are offered the total number of funds is much larger.

Figure.10 - Average number of funds offered per bank



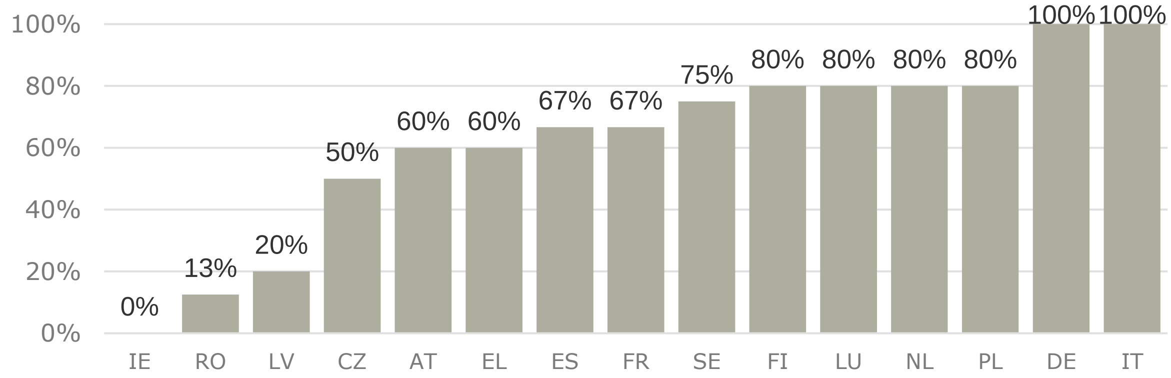
Note: The figure above indicates only the countries for which at least three banks specified the exact number of funds distributed.

Source: Consortium, based on the product catalogue mapping.

4.5.5. Structured Products

Structured products are distributed by large banks in the countries studied, with the exception of Ireland (see Figure**.11**). In fact, all of the banks studied in Germany and Italy offered structured products to retail investors. In the remaining countries the majority of banks distributed structured products to retail investors. Structured products are often distributed to retail investors to provide an investment opportunity with either some form of guarantee to reduce the risk or higher leverage with a potentially higher return, but also risks for the retail investors.

Figure.11 - Share of banks offering structured products, by country



Source: Consortium, based on the product catalogue mapping.

Certificates and warrants are the most frequently distributed structured products by banks in the countries of this study (see Table.**4**). Other products, such as notes and structured bonds, are offered sparingly. Certain structured products are especially prevalent in one or two countries, such as Turbos in the Netherlands and Deposit Certificates in Greece.

Table.4 - Share of banks offering a certain structured product, by country

Coun-try	Certificate	Warrant	Note	Bond	Deposit	Turbo	Number of observations
EL	0%	0%	20%	0%	60%	0%	3
IE	0%	0%	0%	0%	0%	0%	0
LV	0%	0%	0%	0%	0%	0%	2
NL	0%	0%	60%	0%	0%	60%	4
RO	13%	0%	13%	0%	0%	0%	1
LU	20%	20%	0%	0%	0%	0%	4
ES	33%	67%	0%	0%	0%	33%	6
FR	33%	44%	11%	0%	0%	22%	6
PL	30%	20%	10%	0%	0%	0%	8
SE	25%	50%	13%	0%	0%	13%	6
FI	40%	40%	0%	0%	0%	0%	4
CZ	50%	33%	17%	0%	0%	0%	3
AT	60%	40%	0%	0%	0%	0%	3
IT	89%	100%	0%	0%	0%	0%	9
DE	100%	71%	0%	0%	0%	14%	7

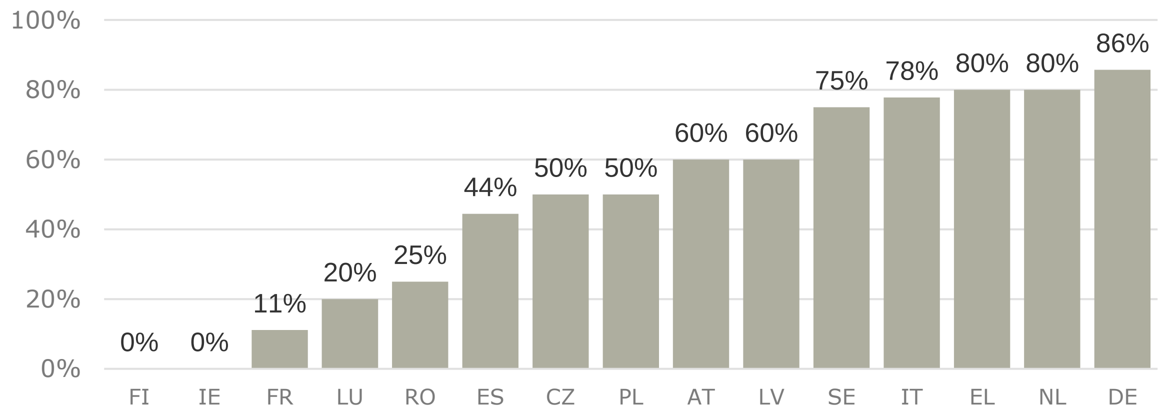
Note.: Only banks for which the types of structured products distributed were specified are included.

Source: Consortium, based on the product catalogue mapping.

4.5.6. Derivatives

Derivatives are distributed by banks in the vast majority of countries (see Figure.**12**), though less frequently than structured products. Derivatives are most frequently offered by banks in countries such as Germany, Greece, Italy, the Netherlands and Sweden, while the large banks in countries such as Finland and Ireland appear not to offer derivatives to retail investors.

Figure.12 - Share of banks offering derivatives, by country



Source: Consortium, based on the product catalogue mapping.

The derivatives that are most frequently distributed by banks in the countries studied are call and put options (see Table.**6**). Additionally, forwards and futures are offered to retail investors by a significant number of banks, though to a lesser extent then call and put options.

Table.5 - Share of banks offering a certain derivative, by country per category

Country	Call	Put	Forward/Future	Number of observations
FI	0%	0%	0%	0
IE	0%	0%	0%	0
FR	11%	11%	0%	1
RO	13%	13%	25%	2
CZ	17%	17%	50%	3
LU	20%	20%	0%	1
PL	30%	30%	40%	5
ES	44%	44%	33%	4
LV	50%	50%	60%	6
AT	60%	60%	20%	3
SE	63%	63%	38%	6
IT	78%	78%	44%	7

Country	Call	Put	Forward/Future	Number of observations
EL	80%	80%	80%	4
NL	80%	80%	0%	4
DE	86%	86%	57%	6

Source: Consortium, based on the product catalogue mapping.

4.6. Insurance companies

The largest life insurance companies in the countries analysed **primarily distribute insurance and pension products to retail investors**. They distribute traditional life insurance, insurance-based investment (IBIPs) and personal pension products. There are some differences in the availability and amount of IBIPs and personal pension products distributed across countries, due to differences in the pension systems and consumer preferences.

4.6.1. Analysis

Traditional life insurance and IBIPs are offered by nearly all large insurance companies in the countries studied (see Table.**6** below), especially in France, Greece, Latvia, Poland and Spain, where the insurers studied universally offered them.

Personal pension products are also offered by a substantial share of insurance companies in the countries studied. Some insurance companies that have investment firm licences distribute investment funds, albeit to a lesser extent than insurance and pension products. For instance, in Poland and Spain about half of all insurance companies studied also offer investment funds.

Insurance companies in the countries studied rarely offer securities and do not offer structured products or derivatives.

Table.6 - Share of insurance company offerings, by country

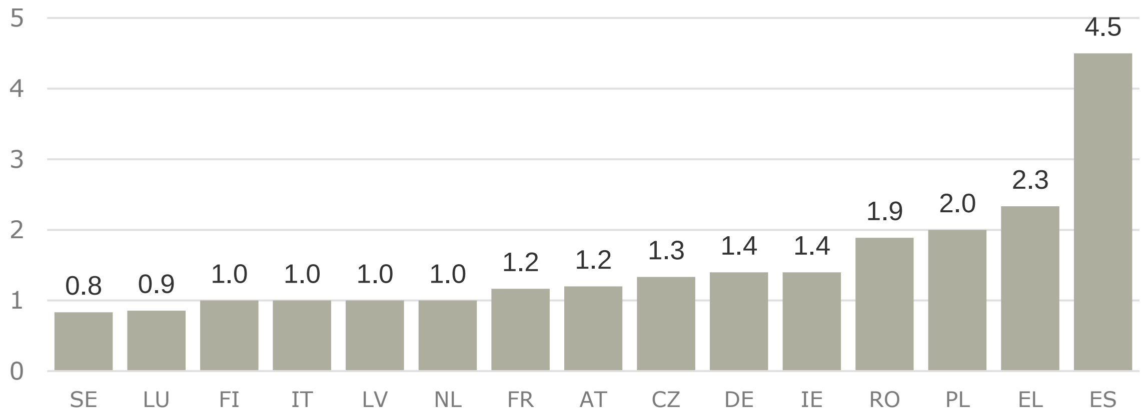
Product category	Product sub-category	AT	CZ	DE	EL	ES	FI	FR	IE	IT	LU	LV	NL	PL	RO	SE
Securities	Equities	0%	0%	0%	0%	0%	0%	17%	0%	0%	0%	0%	0%	0%	0%	33%
	Bonds	0%	0%	0%	0%	0%	0%	17%	0%	0%	0%	0%	0%	0%	0%	0%
Investment funds	UCITS	0%	33%	20%	17%	50%	20%	17%	0%	0%	0%	0%	17%	43%	0%	33%
	AIF	0%	0%	0%	0%	25%	0%	0%	0%	0%	0%	0%	17%	0%	0%	0%
Insurance & pension products	Traditional life insurance products	100 %	100 %	100 %	100 %	100 %	100 %	100 %	60%	83%	86%	100 %	100 %	100 %	78%	83%
	Insurance-based investment products	80%	83%	20%	100 %	100 %	40%	100 %	60%	100 %	86%	100 %	0%	100 %	100 %	83%
	Personal/ individual pension products	100 %	50%	100 %	50%	100 %	40%	100 %	60%	100 %	100 %	100 %	17%	86%	67%	100 %
Other products	Structured Products	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%
	Derivatives	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%
Number of observations		5	6	5	6	4	5	6	5	6	7	3	6	7	9	6

Source: Consortium, based on the product catalogue mapping.

4.6.2. *Traditional life insurance products*

The product range for traditional life insurance products[65] is fairly limited. The average number of traditional life insurance products offered by a large insurance company in the countries of this study is no more than five (see Figure.**13**). Notably, in most countries studied insurance companies offer on average between one and two traditional life insurance products. These products often allow for personalisation. For example, in the Netherlands traditional life insurance products offered are largely the same and the fees are calculated based on the same metrics (age, sum insured, smoking yes/no, etc.).

Figure.13 - Average number of traditional life insurance products offered by insurance companies



Source: Consortium, based on the product catalogue mapping.

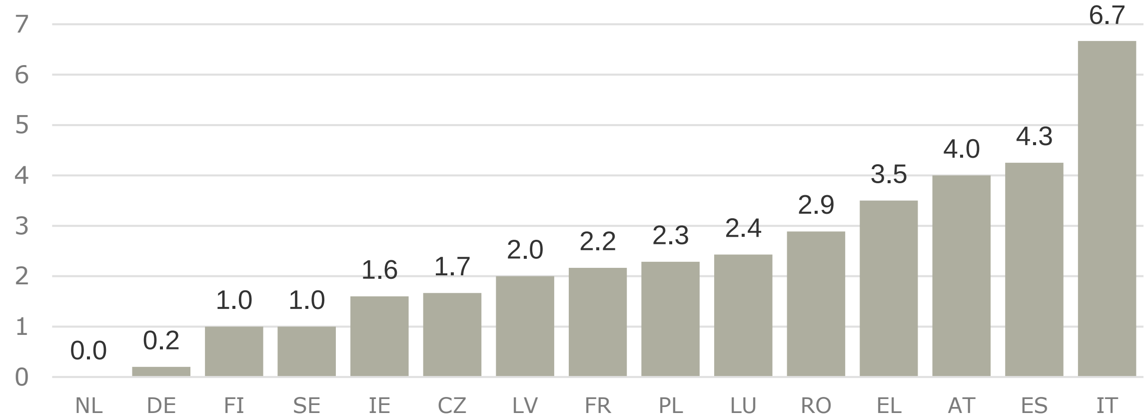
4.6.3. *Insurance-based investment products*

Most insurance companies in the countries studied distribute multiple IBIPs to retail investors (see

65 Traditional life insurance products can take the form of individual or group contracts. They can be products offering protection, savings products or a combination of both.

Figure.14). With the exception of Germany and the Netherlands, where IBIPs are not, or only rarely, offered by the insurance companies studied, insurance companies offer on average between one and six different IBIPs.

Figure.14 - Average number of insurance-based investment products offered by insurance companies

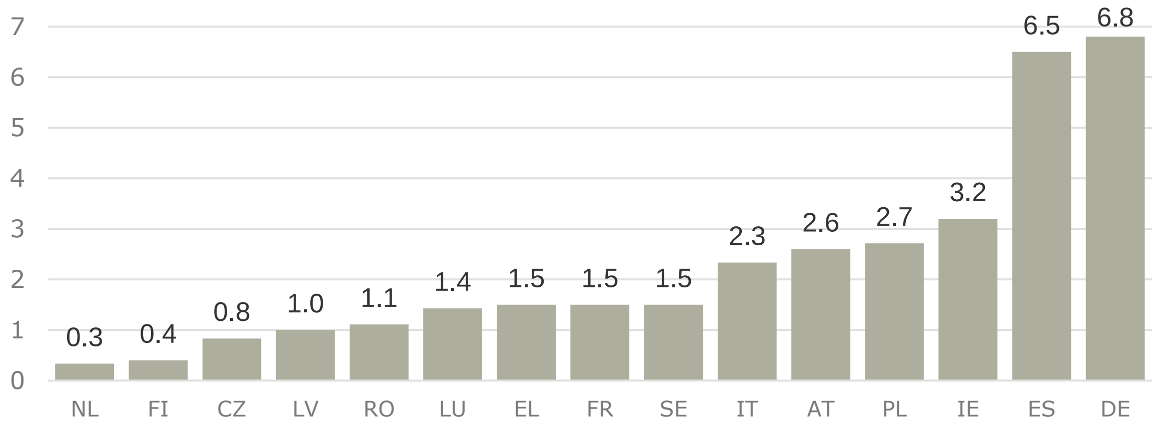


Source: Consortium, based on the product catalogue mapping.

4.6.4. Individual pension products

Individual pension products are distributed by insurance companies in all countries studied (see Figure.**15**). However, there are significant variations between countries, reflecting differences in national regulatory frameworks and the extent to which tax benefits are provided for third-pillar pension products. In most countries, insurance companies offer on average between one and three pension products. Nevertheless, in some countries such as Germany and Spain, insurance companies offer on average significantly more types of individual pension products (between six and seven).

Figure.15 - Average number of individual pension products offered by insurance companies



Source: Consortium, based on the product catalogue mapping.

4.7. Other distributors

The other distributors – covered under MiFID - offer mostly securities, funds, structured products and derivatives (see Table.**7**). This group consists of those distributors that are not banks or insurance companies including asset managers, fund managers, fund supermarkets, online or traditional brokers, independent financial advisors, robo-advisors, trading platforms and other distributors.

Interestingly, nearly all distributors in this group offer investment funds to retail investors, reflecting the popularity of investment funds such as UCITS ETFs, and the desire of a variety of types of distributors to offer such funds to retail investors. A comparison of offerings between countries reveals that few differences exist, certainly less than for banks and insurance companies. This is both a reflection of the distributors being similar across countries, as well as distributors operating in multiple countries (i.e. being pan-European in nature), for example online brokers such as Saxo, DeGiro and eToro, all three of which distribute more or less the same products across a large number of European countries.

Nevertheless, there are some differences between countries. For example, other distributors in Spain and Finland do not offer bonds to retail investors and pension products are offered by distributors in this group in less than half of countries. Moreover, securities are distributed to differing degrees by distributors from this group; countries such as France and Ireland have a much higher percentage of distributors offering securities than those in Czechia, Finland, Greece or Spain.

Table.7 - Share of products offered by other distributors, by country

Product category	Product sub-category	AT	CZ	DE	EL	ES	FI	FR	IE	LU	LV	NL	PL	RO	SE
Securities	Equities	60%	33%	67%	25%	33%	20%	100%	100%	67%	50%	80%	67%	67%	100%
	Bonds	40%	33%	33%	25%	0%	0%	50%	60%	67%	50%	40%	33%	67%	50%
Investment funds	UCITS	100%	100%	100%	100%	67%	100%	100%	100%	100%	50%	100%	100%	100%	100%
	AIF	20%	33%	67%	75%	0%	80%	0%	40%	0%	0%	60%	67%	67%	50%
Insurance & pension products	Traditional life insurance products	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%
	Insurance-based investment products	0%	0%	0%	0%	0%	20%	0%	0%	0%	0%	0%	0%	0%	50%
	Personal/individual pension products	40%	0%	0%	0%	67%	0%	0%	40%	0%	50%	40%	0%	0%	50%
Other products	Structured Products	40%	33%	33%	0%	0%	20%	50%	40%	67%	50%	40%	33%	67%	50%
	Derivatives	60%	33%	33%	25%	0%	20%	50%	20%	67%	50%	40%	33%	67%	50%
Number of observations		5	3	3	4	3	5	2	5	3	2	5	3	3	2

Note: The results in the above are for all distributors surveyed, excluding banks and insurance companies. Moreover, Italy was excluded given insufficient observations to obtain a representative view.

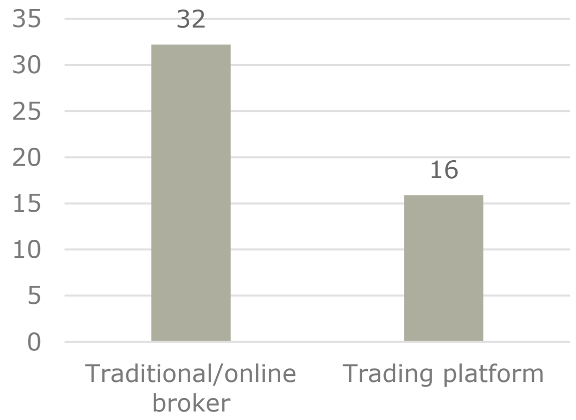
Source: Consortium, based on product catalogue mapping.

4.7.1. Traditional/online brokers and trading platforms

Among the sample of other distributors, traditional/online brokers and trading platforms make up the largest share and distribute a similar set of products (see Section 4.3). A closer comparison between these two types of distributors reveals that while they may offer the same type of products, there is a difference in the depth of their offering. In fact, traditional/online brokers distribute a higher number of funds. Similarly, traditional/online brokers on average cover a higher number of stock exchanges (see Figure.**16** and Figure.**17**).

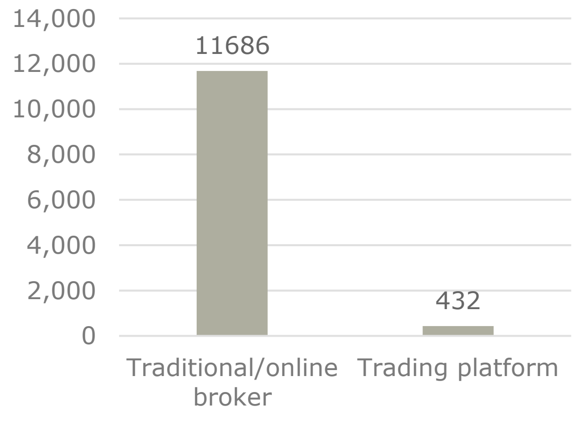
The fact that traditional/online brokers offer a wider variety of retail investment products concurs with the observation that trading platforms focus on a smaller set of well-known retail investment products and market them to new retail investors. Examples of such investment products include UCITS ETFs that track well-known indices such as the DAX40 and the S&P500.

Figure.16 - Average number of stock exchanges from which shares are offered by traditional/online brokers and trading platforms



Source: Consortium analysis

Figure.17 - Average number of funds offered offered by traditional/online brokers and trading platforms



Source: Consortium analysis

Box 4.2 Rise in popularity of online brokers and trading platforms

The last decade has witnessed a sharp rise in the popularity of new generation retail investment distributors, such as online discount brokers and social trading platforms. As digitalisation progresses and smartphone penetration increases, younger retail investors especially are moving away from traditional retail investment distributors (i.e. traditional banks and insurance companies) and instead choosing online discount brokers and social trading platforms for their investments.

For example, eToro - an Israeli social trading and multi-asset brokerage company – has in the last five years almost quadrupled its number of registered users, up to 20 million in March 2021. It is unclear how many of these users are actually active on the platform. This might be significantly lower as eToro had "only" about 1 million funded accounts end-2020. More than two-thirds (69%) of its users are based in Europe (eToro, 2021a; eToro, 2021b).

FlatexDegiro has become one of the largest pan-European online discount brokers. The combination of Flatex AG and Degiro has seen its clients more than double in the past two years, from about 0.85 million end-2019 to 2.04 million end- 2021. The large majority of these clients are in the EU. The number of transactions on the platform has followed a similar pattern, increasing by 94% between March 2020 and March 2021 (FlatexDegiro, 2022).

There are several explanations for the growing popularity of online brokers and social trading platforms.

First, these distributors offer their products on a low-cost basis or with no direct costs. The costs are low because of the alternative revenue streams (e.g. order payments revenue flows, security lending and interest-based revenue models), the focus on execution-only and highly digitalised processes and investment platforms.

Secondly, these distributors target the younger, more tech-savvy generation. For example, a typical eToro client is aged around 34 and works in finance, IT, sales or marketing (EToro, 2021). These clients often do not require advice and seek easy, fast, hassle-free investment platforms that allow for "one-click" purchases.

Thirdly, online brokers and trading platforms often offer a wider range of retail investment products compared with traditional banks and insurers. For example, online brokers and trading platforms also facilitate investment in commodities, currencies and crypto-assets, which are rarely offered by most large banks and insurance companies.

eToro, FlatexDegiro and several other online discount brokers and social trading platforms are growing rapidly, but often still have fewer assets under management than the large banks and insurance companies in the countries where they are active. Many banks and insurance companies are responding to the increasing popularity of online discount brokers by altering their existing service and pricing or creating their own online discount broker or social trading platforms.

5. Disclosure

5.1. Introduction

Retail investor protection in financial markets by means of information disclosure began to be high on government agendas after the global financial crisis[66] as a way of limiting market failures due to information asymmetries and driving better consumer outcomes.[67] Information disclosure was intended to be, on the one hand, a transparency measure towards the market and, on the other hand, as assessed later in this study, a means of empowering potential investors to make well-informed rational decisions about products[68]. However, it is important to note from the outset that the EU regulatory framework also acknowledges that disclosure in isolation is not enough to achieve optimal outcomes for investors. Other measures have also been introduced regarding inducements, conflicts of interest, advice and suitability assessments, demands and needs tests. As will be discussed in the relevance and effectiveness sections below, there are limits on the influence on consumer choices that disclosure can achieve in addressing biases driving consumer behaviour by providing them with information to support decision-making. These other measures (advice, profile screening to understand clients) are discussed in the remaining chapters of this study, but should be borne in mind when reading the findings of this section.

This section focuses primarily on pre-contractual disclosure regarding products and services. Disclosure through marketing communications and ongoing disclosure were covered as part of the legal analysis and included in the consistency analysis but they were not the main focus of the study.

Furthermore, the focus of this section is on the role of disclosure in investor decision-making. While acknowledging that disclosure also plays an important role in making the market more transparent and thus enhancing competition, these considerations were not analysed as part of this study.

5.1.1. Summary of the relevant legal provisions

Scope: *this section only provides a high-level summary of the requirements regarding the prospectus, as this information document was not covered in depth in the legal mapping of this study.*

Disclosure requirements are covered in a large and multi-layered set of legal documents at EU level. The table below shows the legal instruments covered as part of this study when analysing disclosure rules.

At product level, retail investors have to be provided with a Key Information Document or a Key Investor Information Document and in some cases also the Prospectus depending on the product category in which they are interested. At service level, retail investors are additionally provided with a pre-contractual information document. The scope of these types of information documents is presented below.

[66] (Seira, Elizondo, & Laguna-Müggenburg, 2017).
[67] (Australian Securities and Investments Commission (ASIC) & Dutch Authority for Financial Markets (AFM), 2019).
[68] See for example Kern (2018) Marketing, Sale and Distribution and Mis-selling of Financial Products.

Prospectus

UCITS funds must publish a prospectus which sets out the operation of the fund, investment objectives and policies, risk factors, parties involved, valuation rules, how to buy and sell shares etc. The prospectus forms part of the contract between the fund and the investor.[69]

Equally, when offering units in an **Alternative Investment Fund** (AIF), a prospectus is provided to professional and non-professional investors before they acquire units. For an AIF, three prospectus regimes can be distinguished:

- AIFMD prospectus regime70: this prospectus regime applies to the prospectus of an AIF when the units are only distributed to professional investors.
- Retail prospectus regime71: this prospectus regime applies to the prospectus of an AIF when the units are (also) distributed to retail investors.
- Prospectus Regulation regime: this prospectus regime applies, inter alia, to the prospectus of an AIF which qualifies as a closed-end AIF and when the units are offered to the public or admitted to trading on a regulated market. The requirements are outlined in the Prospectus Regulation72. It needs to be observed that the scope of the Prospectus Regulation is broad(er) and covers all securities which are either offered to the public within the EU or admitted to trading on a regulated market.

Since recently, the prospectus needs to take into account the information disclosure requirements regarding sustainability. These requirements are outlined in Regulation (EU) 2019/2088[73], which entered into force on 10 March 2021.

Pre-contractual information document

Potential retail clients must receive information on the product(s) they are interested in ahead of signing the contract. The goal of a pre-contractual information document is to provide the investor with information on the essential elements of the investment product or service and to specify where and how to obtain additional information on the proposed investment.

This pre-contractual information at product level is provided in the UCITS KIID[74] (Key Investor Information Document), the PEPP KID[75] (Key Information Document) and the PRIIPs KID[76]. The **PRIIPs KID** is required for banking products, insurance products and investment products available to retail clients, given that it applies to packaged products that are "subject to fluctuation because of exposure to reference values, or subject to the performance of one or more assets which are not directly purchased by the retail investor" (Recital 6 and Article 4(1) PRIIPs Regulation).[77]

[69] Chapter IX, Section 1 UCITS.
[70] Article 23 (1)-(2) Directive 2011/61/EU.
[71] The relevant legal provisions are laid down at Member State level.
[72] Regulation (EU) 2017/1129 of the European Parliament and of the Council of 14 June 2017 on the prospectus to be published when securities are offered to the public or admitted to trading on a regulated market, and repealing Directive 2003/71/EC, OJ L 168, 30.6.2017, p. 12–82.
[73] Regulation (EU) 2019/2088 of the European Parliament and of the Council of 27 November 2019 on sustainability-related disclosures in the financial services sector, OJ L 317, 9.12.2019, p. 1–16.
[74] Chapter IX, Section 3 UCITS.
[75] Article 26 PEPP.
[76] Chapter II PRIIPs.
[77] With the PRIIPs Regulation, the EU opted for a cross-sectoral scope approach to product information, requiring the same key information document for structured deposits (banking product), insurance-based investment products (insurance product) and packaged financial instruments (investment product). In other words, the PRIIPs KID applies a one-size-fits-all standard to a wide variety of very different products, (i.e. short- and long-term products, speculative and guaranteed products, and products with and without insurance benefits). Nevertheless, the risks section of the PRIIPs KID differentiates between four different PRIIPs categories – see Table 5.7. See also: "The 'targeted standardisation' in the PRIIPs framework is not a 'one size fits all' approach, but involves dividing PRIIPs into four categories and tailoring the disclosure requirements accordingly" in Proposal for a Regulation of the European Parliament and of the Council amending Regulation (EU) No 1286/2014 as regards the extension of the transitional arrangement for management companies, investment companies and persons advising on, or selling, units of undertakings for collective investment in transferable securities (UCITS) and non-UCITS, COM(2021)397 final, 15.7.2021.

The **UCITS KIID** is produced for all UCITS. However, as of January 2023, the UCITS KIID will be replaced by the PRIIPs KID.[78] The disclosure rules of the new Regulatory Technical Standards are designed to make PRIIPs KIDs for UCITS fully applicable.[79]

The PRIIPs regime applies to all products manufactured by the financial services sector which provide an investment opportunity to retail investors where (irrespective of the investment's legal form) the product's return is subject to the performance of assets which are not directly purchased by the retail investor. **Retail AIFs** therefore constitute PRIIPs for the purposes of the regime. Hence, retail AIFs must prepare a (PRIIPs) KID.

All **PEPP** providers and distributors are required to provide PEPP clients with the PEPP KID. This pre-contractual information should enable PEPP clients to decide whether to invest in a particular PEPP and also to decide the appropriate investment option offered by the PEPP. The PEPP KID is, essentially, modelled after the PRIIPs KIID.[80]

Additionally, **MiFID II** states that the client must be informed, in good time, about the investment firm and its services, the financial instruments and proposed investment strategies, execution venues and all costs and related charges (Article 24(4) MiFID II). The MiFID EU legal framework does not establish an information template or document comparable to the UCITS KIID, PRIIPs KID or PEPP KID.[81] MiFID II Delegated Regulation (EU) 2017/565 lays down further requirements on information including marketing communications and information to be provided after contract signature.[82]

DMFSD very generally includes provisions on pre-contractual information, stating that the content and format are to be kept simple and easy to understand.

Following **IDD**, a standardised insurance product information document (IPID) should only be provided for non-life insurance products – hence falling outside the scope of this study as irrelevant in the case of retail investments. IBIPs have a PRIIPs KID, produced under that Regulation. IDD additionally includes some general information requirements that need to be disclosed before the conclusion of an insurance contract (Article 18) by the insurance intermediary or undertaking and some more specific information requirements in relation to the distribution of IBIPs (Article 29).

Finally, **Solvency II** lays down some general information requirements, to be disclosed before a life insurance contract is concluded.[83]

The above shows that the pre-contractual information requirements from multiple Directives and Regulations might need to be taken into account, depending on the investment product or service to be sold. It also shows that these EU Directives and Regulations can reinforce each other in a very efficient manner. For example, the PRIIPs KID will help MiFID II firms fulfil their information requirements when informing their clients on the risk return profile of the products they sell.[84] Equally, if the financial instrument is within the PRIIPs scope, then the investment firm can use the publicly available PRIIPs KID

[78] Regulation (EU) 2021/2259 of the European Parliament and of the Council of 15 December 2021 amending Regulation (EU) No 1286/2014 as regards the extension of the transitional arrangement for management companies, investment companies and persons advising on, or selling, units of undertakings for collective investment in transferable securities (UCITS) and non-UCITS, OJ L 455, 20.12.2021, p. 1–3.

[79] Commission Delegated Regulation (EU) 2021/2268 of 6 September 2021 amending the regulatory technical standards laid down in Commission Delegated Regulation (EU) 2017/653 as regards the underpinning methodology and presentation of performance scenarios, the presentation of costs and the methodology for the calculation of summary cost indicators, the presentation and content of information on past performance and the presentation of costs by packaged retail and insurance-based investment products (PRIIPs) offering a range of options for investment and alignment of the transitional arrangement for PRIIP manufacturers offering units of funds referred to in Article 32 of Regulation (EU) No 1286/2014 of the European Parliament and of the Council as underlying investment options with the prolonged transitional arrangement laid down in that Article, OJ L 455I , 20.12.2021, p. 1–55.

[80] S. N. Hooghiemstra (2020), "The Pan-European Pension Product Regulation – Europe's Solution to the 'Pensions Gap'", available at https://ssrn.com/abstract=3676918.

[81] Instead, Member States may allow that information to be provided in a standardised format (Article 24(5) MiFID II).

[82] Chapter III Section 1 Del Reg 2017/565.

[83] Articles 185 Solvency II.

[84] MiFID II firms must comply with the information obligations on financial instruments included in Article 24(4)(b) of MiFID II and Article 48 of the Delegated Regulation. In the case of PRIIPs products, the KID could cover the information obligations included in Article 24(4)(b) of MiFID II as long as it includes all the information previously mentioned in Article 48 of the Delegated Regulation. As confirmed by: CNMV (2020), "Questions and answers on the implementation of the MiFID II Directive", available at: https://www.cnmv.es/docportal/Legislacion/FAQ/FAQ_MiFIDII_22oct2020_en.pdf

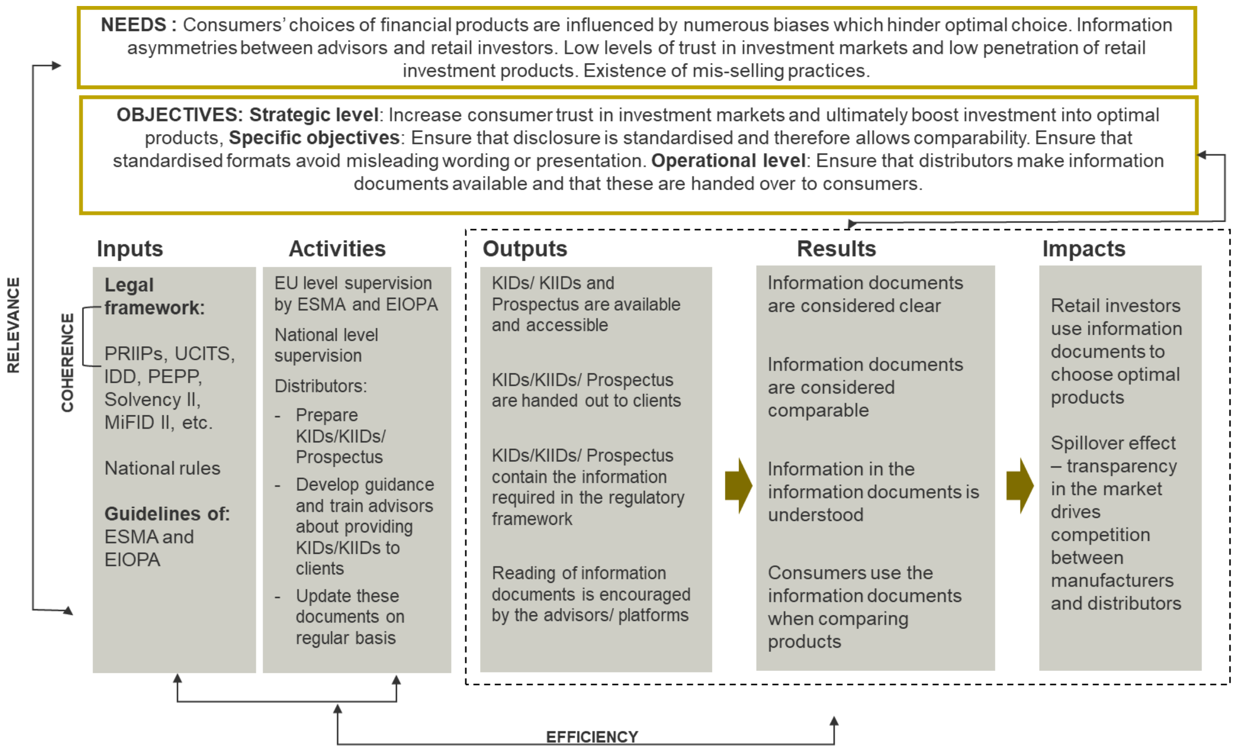
to obtain data relevant for ex-ante costs disclosure.[85] In the same vein, an insurance distributor is required to take the Solvency II Directive, the PRIIPs Regulation and IDD into account when selling an IBIP. A PEPP can be distributed by insurance intermediaries under IDD and investment firms providing advice under MiFID II. Therefore, the IDD/Solvency II and the MiFID II disclosure requirements have to be followed, respectively, when disclosing the PEPP KID.

5.1.2. Intervention logic of disclosure rules

As shown above, the legal provisions governing disclosure are spread across multiple legal frameworks, some of which may have a defined the intervention logic in the impact assessments and legal frameworks that underpin them, whilst for others this is not the case. However, even in the cases where an intervention logic exists this does not focus specifically on disclosure. Therefore, in the absence of a pre-existing intervention logic focused solely on disclosure and encompassing the different legal frameworks, we have reconstructed the assumptions and logical links between the policy objectives and expected outputs, results and impacts. The result is summarised in the intervention logic figure below.

The figure also shows the relationship between the different elements of the intervention logic and the evaluation criteria. These items were used to guide the analysis presented in the following sections.

Figure.1 - Reconstructed intervention logic



Source: Consortium.

[85] The PRIIPs KID will contain detailed information about costs and charges of the PRIIP. ESMA is of the view that the cost components, as mentioned in the PRIIPs KID, cover all cost components, so that an investment firm can fulfil its obligation under the MiFID II regime with regard to the ex-ante costs and charges of a financial instrument. See: Answer 7 in ESMA (2020), Questions and Answers on MiFID II and MiFIR investor protection and intermediaries topics.

5.2. Relevance

The relevance criterion is about the extent to which the intervention (disclosure requirements and disclosure documents) meets the current and future needs of stakeholders, in this case primarily retail investors.

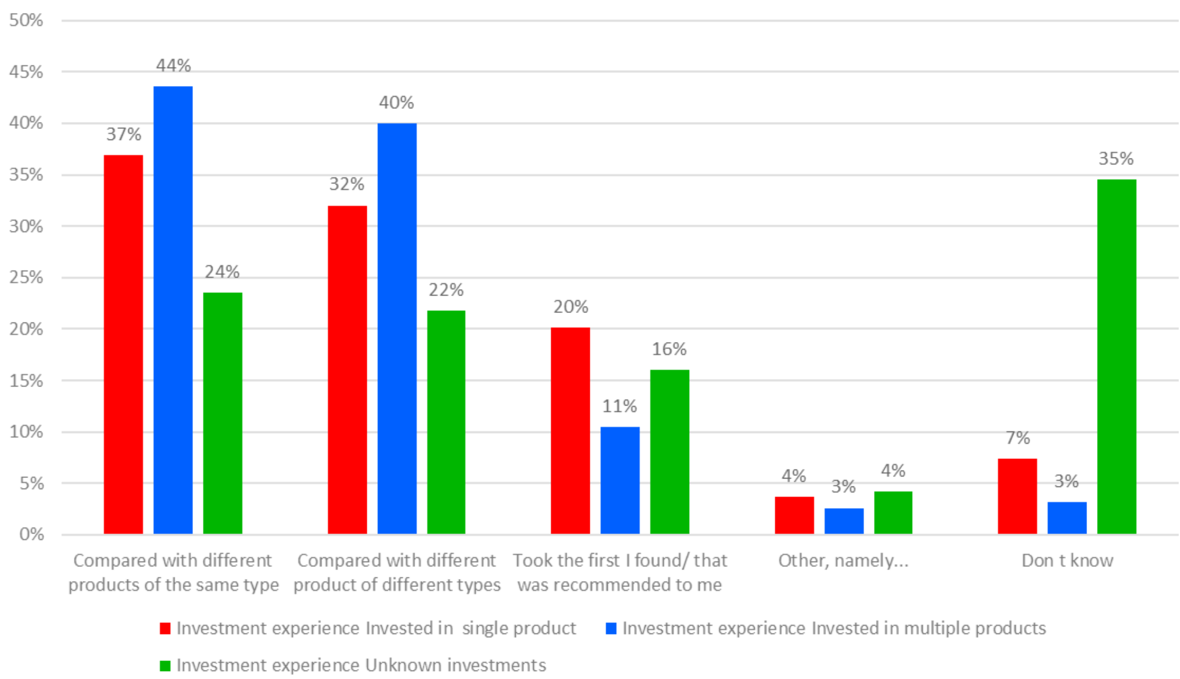
5.2.1. Summary of main findings

This study, alongside other studies summarised in the text below, shows that **disclosure is a necessary but not a sufficient means to support retail investors in making their choices**.

The existence of standardised disclosure documents continues to be **crucial to create transparency** in the market and provide investors with documents that detail information in a reasonably synthetic manner on the products purchased. Disclosure documents do address some behavioural biases which affect retail investment decisions as these documents aim to make consumer choices more rational. However, there are other behavioural biases which inversely affect the effectiveness of disclosure.

The assumption behind the standardisation of disclosure documents is that potential retail investors carry out product searches and comparisons before making their choice. This assumption proves true as the **vast majority of survey respondents, who have at least one investment product, have compared** the product purchased with other products before making their decision. This therefore supports the relevance of the efforts to make disclosure documents comparable.

Figure.2 - When you purchased the product(s) did you take the first product that you found, or did you compare several different products before making a decision? * Investment experience cross-tabulation[86]



Source: Consortium, based on the consumer survey. (n=2943 persons who have invested in financial products)

The types of content that the legal framework (IDD, MiFID, UCITS, PRIIPs, PEPP, DFMSD and E-commerce) requires disclosure documents to include (product description, risk, past

[86] The differences between groups are statistically significant, with a chi-squared value = 301, df = 8 and a p-value <0.001

and expected future performance, costs, holding period) **are indeed highly relevant** for the choice and protection of consumers.

However, there are **also limits on what the current disclosure framework can achieve**. First, in terms of key success factors for an effective disclosure, some factors are not well catered for in the legal framework or its application, notably the templates reviewed are not "engaging". Engagement is a precondition for understanding and subsequent decision-making. The current legal framework does emphasise accessibility and availability, but it does not encourage ensuring that the information documents are engaging for users and capture their already limited attention[87]. The criteria of the legal framework for example focus on the information to be included in the document, but do not mention specific actions to ensure that the document is pleasant to navigate, with layered information to make different items more or less salient depending on their importance or so that that people who skim read (most people indeed skim read this type of document) are also to grasp the content of the information document. While the standardisation covers some items that improve understanding (using common reference points for comparison, such as standardised risk indicators), it does not overcome the complexity of the terminology or complexity of costs. This inherent complexity, even when presented in a standardised manner, does inhibit understanding. There is limited focus on the environment and context in which the disclosure is to be used which would encourage consumers to use the information in the disclosed documents to take action. There is limited focus on reducing the burden of carrying out a search or making a comparison.

Finally, the legal framework for disclosure documents seems to respond to **multiple policy challenges**. Depending on the underpinning challenge, the relevance of disclosure as a solution to the problem will differ. Disclosure can be expected to be **more or less relevant**:

- Given the transparency that disclosure documents provide, disclosure is conducive to the objective of consumer protection. It provides evidence that can be used in view of litigation if needed.
- There is mixed evidence about the usefulness of disclosure documents to support the optimal choice of those people already engaged in selecting a financial investment product, considering the limitations discussed above. However, for those investors who are interested, engaged and financially literate, these documents do provide a tool that allows them to make comparisons.
- There is no evidence that disclosure could encourage those consumers who are not considering financial investments to choose this form of investment over other means of making their money work for them. For this segment the current formats of key information documents which are dense, long and complex could in fact have the opposite effect.

5.2.2. Overall relevance of pre-contractual disclosure as a means of improving retail investment choices

The main assumption that underpins the rationale for rules regarding disclosure documents for retail investors is that, considering the information asymmetry, the availability of information and its relative clarity will result in understanding on the consumer side which will lead to better decisions. In this logic consumers are regarded as rational decision-makers weighing the costs and benefits of different products. However, a wealth of behavioural economics studies has shown that numerous biases affect consumers in the area of financial decision-making. The aim of disclosure documents is to encourage consumers to overcome some of these (system 1 – irrational) biases and activate their

[87] The literature review and the stakeholder interviews have both extensively confirmed that the extent to which consumers'c reading of disclosure and contractual information is limited. The causes are multiple and include the amount of information with which they are provided, the little interest they have in reading it, and the trust in the advisors and the legal consumer protection framework. These factors are then reinforced by the low prevailing financial literacy and understanding of the documents provided. One example of many: a joint Dutch- Australian study evidenced that only 20% of those surveyed read the disclosure information. Australian Securities and Investments Commission (ASIC) & Dutch Authority for Financial Markets (AFM), 2019.

system 2 (rational) decision-making.[88] Some of the biases or behavioural factors that are prominent in the field of retail investment products and which are relevant to the topic of disclosure are shown in the figure below[89]. For some of these the disclosure documents aim to address them and for the others, it is the factor mentioned that adversely affects effectiveness of disclosure:

- **Choice overload**: disclosure aims to simplify the choice by facilitating comparison (at least that is the assumption). On the other hand given the high volume of products on the market, disclosure documents do not always receive as much attention as needed and are more likely to be ignored.
- **Information overload and complexity of information**: consumers pay limited attention to the information presented, in particular when it is complex. Disclosure documents aim to summarise the main information and make it more accessible. However, as evidenced by our product information sheet scoring exercise as well as the consumer survey (see below), the information displayed in many information documents is dense and the language used is often too complex to enable people to make rational and accurate comparisons.
- **Framing:** the same information can be presented differently and have a very different effect on the consumer. By framing the same information differently manufacturers may attract attention or distract attention from important items. The disclosure requirements at EU level aim to ensure that framing is standardised insofar as possible.
- **Anchoring:** past experience is used as a benchmark or a proxy when making decisions about investments. Price is commonly used as a referencing point when the remainder of the information is complex. Lack of an anchor/comparator makes choices which entail complex information difficult. Risk disclosure that uses a common grid aims to provide a reference to guide investor understanding of risk.
- **Use of percentages:** EU requirements on disclosure place considerable emphasis on the disclosure of costs. In most documents – see section on costs disclosure (5.4.3) - this means presenting information in percentages and as maximum costs. This requires consumers to make complex calculations mentally which they are often not doing or doing incorrectly. Thus, personalised disclosure that uses absolute numbers applied to specific investment values has the advantage of freeing consumers from the need to perform the calculations themselves[90].

Appropriate disclosure does help to address some behavioural biases that affect consumer decision-making when considering retail investment products. It is therefore a relevant element of policy response. However, there are also clear limits on what disclosure can achieve for consumers and preconditions for it to be effective which are discussed below.

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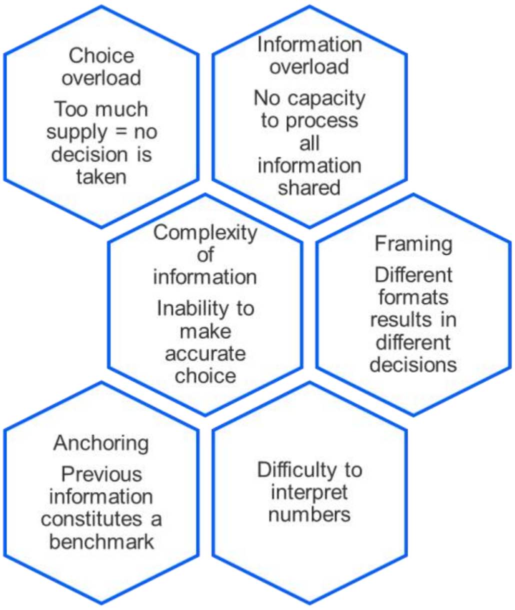
[88] System 1 and 2 are behavioural insights concepts formalised by Kahneman in "'Thinking Fast and Slow" (2011), summarising prior behavioural research. Every person uses both systems all the time depending on the situation. System 1 is the impulsive, instinctive and emotional reaction that happens when little reflection is needed or invested (e.g. doing simple, repetitive or habitual tasks). Because it is less reflexive and prone to quick association of concepts, system 1 tends to make people prone to more cognitive biases. System 2 is used in arduous tasks that require deeper thinking and are more mentally engaging (e.g. writing a report). Because more thinking is involved when using system 2, people would then tend to question the premises more and be less prone to cognitive biases. Transition between one system and the other can happen instantly by being triggered, for example in our case by providing information/documents that can make people more inquisitive and use system 2.

[89] Based on Johnson (2015) Financial Product Disclosure: Insights from Behavioural Economics and OECD (2018) Improving online disclosures with behavioural insights Towards better outcomes for consumers.

[90] See for example the report Plain Numbers (2021) Project: Initial trials report. The report shows, based on multiple experiments, the difficulties people have interpreting percentages in relatively simple financial documents.

Figure.3 - Examples of behavioural biases and factors affecting decisions in the field of retail finance which are relevant to disclosure [91]



Source: Consortium, based on multiple sources.

5.2.3. Relevance of items covered in pre-contractual disclosure requirements

As discussed in the coherence section, the pre-contractual documents covered by PRIIPs, PEPP, UCITS as well as IDD and MiFID II **have to cover**, next to other items, disclosure of:

- Product key characteristics;
- Risks;
- Costs and charges;
- Past performance and future scenarios; and,
- For complex products, a comprehension alert also needs to be included.

MiFID II and IDD requirements are often filled using the UCITS, PRIIPS or PEPP information documents, with some refinements on the definitions of the items covered and some indications in terms of style. Yet, in some cases, an additional MiFID II disclosure document is needed to supplement the KIID/KID, for example (but not only) in the case of service costs (see the coherence section 5.3).

Risks, costs, potential returns and past performance are indeed four important criteria for consumers when deciding whether to invest in a financial product, as shown in the figure below. More than half of potential investors are concerned about risks, potential returns and costs (see figure below). Over one-third also take into consideration past performance. Previous studies also show that these issues are indeed key items of concern for the disclosure of information about investment products.[92]

These items are therefore clearly relevant for consumers when making their choice.

However, the **legal requirements regarding costs disclosure are rather complex** and require costs to be broken down into different categories. As shown in the survey data and also acknowledged in stakeholder interviews, what consumers care about are the total

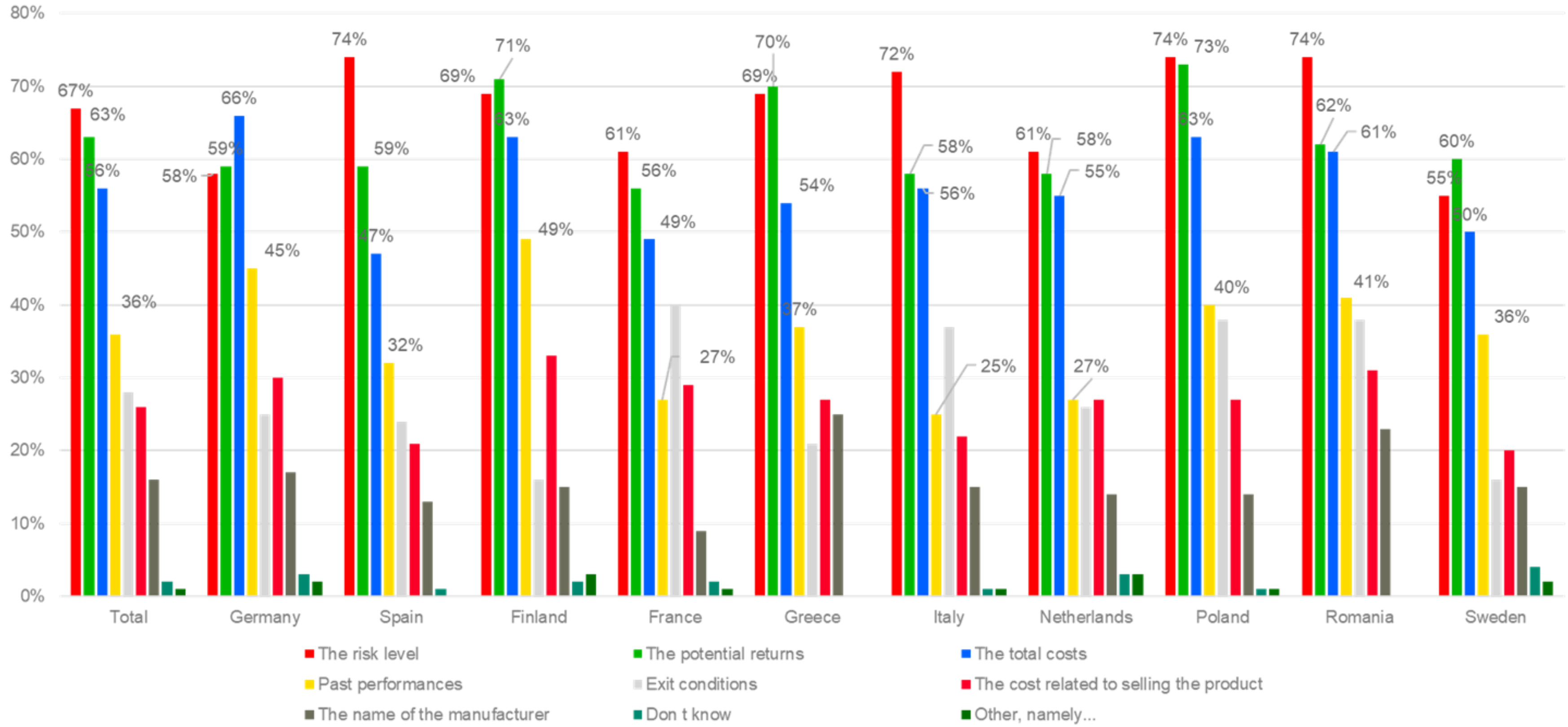
[91] Johnston et al. (2015) Financial Product Disclosure: Insights from Behavioural Economics.
[92] See for example a summary in Financial Conduct Authority (2014) Review of literature on product disclosure.

product cost, not necessarily how this breaks down into different cost categories of costs. In fact, the proliferation of cost categories in the disclosure document may negatively affect the understanding of costs and thus actually diminish the effectiveness and relevance of the document[93]. There is also evidence that the language and terminology used to present the different cost categories are not familiar to consumers and therefore diminish the overall understanding of information on costs[94]. This goes against the requirement of MiFID II to use plain language for example.

Furthermore, as discussed below, while the legal framework does cover the most relevant items for consumers from a decision-making point of view, the actual templates used are very dense and often not designed to be engaging[95]. This negatively affects the usefulness of the information documents to support decision-making.

[93] See for example Financial Conduct Authority (2014) Review of literature on product disclosure.
[94] Behavioural Insights Team in collaboration with the Ontario Securities Commission Investor Office (2019) Improving fee disclosure through behavioural insights.
[95] AMF (2018) Placements à formule lisibilité et appropriation de la documentation par les épargnants.

Figure.4 - When deciding to invest in financial products, what characteristic of the product would you pay the most attention to?



Source: Consortium, based on the consumer survey. (n=5546 persons who have invested in financial products or have savings and are interested in doing so)

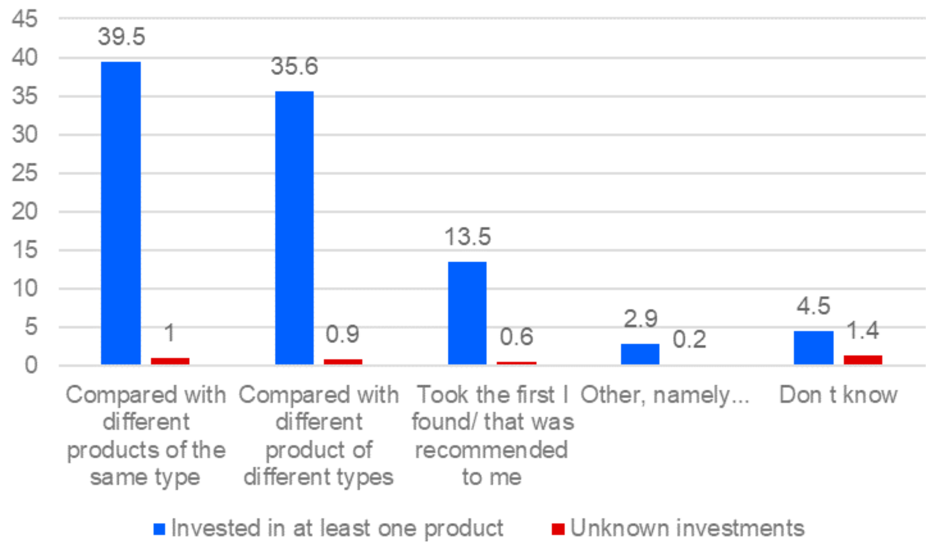
5.2.4. Relevance of efforts to enhance comparability across products and product types

An important assumption underpinning the harmonisation of pre-contractual information disclosure requirements across different product categories is the **expectation that comparability of information documents matters to consumers** when making their choice. It is assumed to matter because consumers are expected to be 'shopping around' for products and comparing products prior to their investment decision.

Indeed, the survey of 10,470 consumers carried out for this assignment confirms this assumption. Only 14% of respondents who had at least one investment product stated that they chose the first product on which they received advice. The vast majority of surveyed investors said they made a comparison:

- 40% said they compared the product in which they invested with other products of the same type; and
- 36% said that they compared the product in which they invested with products from other product categories.

Figure.5 - When you purchased the product(s) did you take the first product that you found, or did you compare several different products before making a decision? * Investment experience cross-tabulation (%) (Investors having invested in at least one product)



Source: Consortium, based on the consumer survey. (n=5546 persons who have invested in financial products or have savings and are interested in doing so)

This **data confirms the need for disclosure documents to be comparable** not only for the same product type but, insofar as possible, also across product categories. This therefore supports the continued relevance of the effort to standardise pre-contractual information across product categories.

5.2.5. Preconditions for effective disclosure

Previous studies[96] about the effectiveness of disclosure documents or retail investment procedures identified a number of preconditions for the format to be effective. They show that having a standardised set of information provided to the consumer is not sufficient for the consumer to take notice of this information and successfully use it to make a decision. Across the different documents reviewed the main preconditions regularly identified can be grouped into three main categories[97]:

- **Measures that enhance engagement**:
  - Making sure the disclosure **document is actually received and seen by the consumer**. EU requirements already place emphasis on how the information document should be made prominent to consumers when giving advice.
  - **Encouraging consumers to read the document,** including having the advisor encourage reading, and having a layout that makes it more appealing. While many distributors do use practices that require investors to acknowledge and sign the documents (see effectiveness), there are limitations as regards the actual effect on consumers taking the time to reading them. Furthermore, the layouts reviewed as part of this study are not particularly engaging and, moreover, were not designed with engagement in mind[98] (see section on effectiveness).
- **Measures that enhance comprehension**:
  - Using **plain language** that consumers understand or alternatively using examples to make it clear[99]. The language found when reviewing the information documents in this study is frequently very technical, despite requirements pushing for the contrary.
  - **Layering of information** and using formats so that key information is more salient than other aspects[100]. Using web-based formats which facilitate interactivity in the layering of information is one way to achieve this.
  - Use of **reference points and comparators** to provide investors with benchmarks that allow them to better understand the expected performance, risk or costs.[101]
  - **Personalisation of costs** or the use of examples that go beyond percentages.[102]
- **Measures to bridge the intention action gap** and encourage consumers to actually apply the information they have processed and understood (previous points) to make a decision.

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[96] Decision Technology Ltd (2010) Consumer Decision-Making in Retail Investment Services: A Behavioural Economics Perspective, for the European Commission; Wang, A., & Dowding, T. (2010). Effects of Visual Priming on Improving Web Disclosure to Investors. Journal of Behavioral Finance, 11(1), 11-20. doi: 10.1080/15427561003590159; Lefevre, A-F, Chapman, M. (2017) Behavioural economics and financial consumer protection, OECD Working Papers on Finance, Insurance and Private Pensions No. 42.

[97] Behavioural Insights team (2019) Improving fee disclosure through behavioural insights; Also FCA (2014) Review of literature on product disclosure; Johnston et al. (2015) Financial Product Disclosure: Insights from Behavioural Economics.

[98] Financial Conduct Authority (2014) Review of literature on product disclosure; AMF (2018) Placements à formule lisibilité et appropriation de la documentation par les épargnants; DEVSTAT (2020) Consumer testing services - Retail investors' preferred option regarding performance scenarios and past performance information within the Key Information Document under the PRIIPs framework, for the European Commission, DG FISMA; OECD Working Papers on Finance, Insurance and Private Pensions No. 42: Behavioural economics and financial consumer protection. Complexity creates more chances to make the wrong decision..; Malbon and Oppewal (2018) (In)effective disclosure: an experimental study of consumers purchasing home contents insurance.

[99] Central Bank of Ireland (2014) Review of Annual Personal Pension Statements.

[100] LSE Europe and IPSOS (2015) Consumer testing study of the possible new format and content for retail disclosures of packaged retail and insurance-based investment products; Gentile et al. (2015) also showed that synthetic information helped consumers the most to take the optimal decision https://www.consob.it/documents/11973/204072/qdf82.pdf/58dc22f8-504b-4bad-9679-610306359dfc

[101] This was suggested by consumer protection agencies to better anchor consumer understanding. See annex 5.

[102] The studies mentioned above have evidenced the complexity for consumers to take costs into consideration and apply them to their own situation. Even percentages are seen as complex to understand when used for compound interest and costs.

- These are measures that aim to empower consumers by making it easy to compare, examine and question the information received and also making it easy for them to search for advice/products elsewhere. These measures aim to reduce the burden of searching or the possible embarrassment of discussing for example fees and costs with their advisor.
- These measures are not specifically about the disclosure documents but rather about the context and environment in which these documents are seen and distributed.

Using experiments and pre-testing disclosure documents is a means of verifying whether these preconditions are indeed effective. This was for example the approach used when designing PEPP disclosure[103]. Different alternatives were tested using a behavioural experiment informing the final design choice.

The regulatory framework for disclosure reviewed in the section on coherence as well as that on advice **addresses some of these preconditions but not all of them**. Standardisation is intended to improve comprehension. However, the language used[104], the use of maximum costs[105]and breaking down of costs into many categories make KIDs and KIIDs complex.[106] This complexity is further heightened if, to comply to MiFID II, the provider uses two disclosure documents (a KID/KIID and a MiFID one) using different cost descriptions and titles (see section 5.3.3). The evidence for these claims is provided in detail in the section on effectiveness. Accessibility and availability are emphasised in the EU legal framework, but among the abovementioned measures to actually encourage engagement with the document, only PEPP emphasises the importance of the layering of information and its salience[107]. As analysed further in section 5.3.5, due to different 'by default' means of providing the information to the consumer in PRIIPs and MiFID (paper and digitally), this can multiply the sources of information and therefore lessen access to it. Therefore, it can be concluded that only part of the preconditions for the effectiveness of disclosure is reflected in the current legal framework, thus somewhat hindering its relevance.

5.2.6. Limitations of disclosure as a means of supporting decision-making

The disclosure requirements, especially through the key information documents, analysed later in this study (see section on coherence) require substantial volumes of information to be covered, resulting in densely written and laid out information documents. There appears to be an **underlying inconsistency between the two objectives** that disclosure requirements are expected to meet:

- On one hand, disclosure documents are seen as consumer protection tools. They are documents that are part of the contractual engagement and can be used as evidence in disputes in the event of misleading claims or mis-selling.
- On the other hand, they are expected to support potential investor decision-making.

There is an inherent contradiction between these two objectives as the first one requires detail and exhaustiveness, while the other necessitates simplicity and engagement/salience.

[103] LSE et al. (2020) Consumer testing and communication design work specifying the details of the pan- European Personal Pension Product (PEPP) Key Information Document (KID) and Benefit Statement (PEPP BS).)

[104] Central Bank of Ireland (2014) Review of Annual Personal Pension Statements.

[105] Here again, the literature mentioned above and below indicates that figures easy- to- understand figures are most effective. In the interviews, the stakeholders across all categories argued that maximum costs figures are not well understood and make it hard to compare products and calculate costs as these depend on the personal/distributor arrangements.

[106] Gentile et al. (2015) showed that having synthetic information helps consumers the most in optimal decision- making. https://www.consob.it/documents/11973/204072/qdf82.pdf/58dc22f8-504b-4bad-9679-610306359dfc; some consumer protection bodies and national authorities also pushed for a synthetic indicator to help consumers (in the stakeholder interviews)

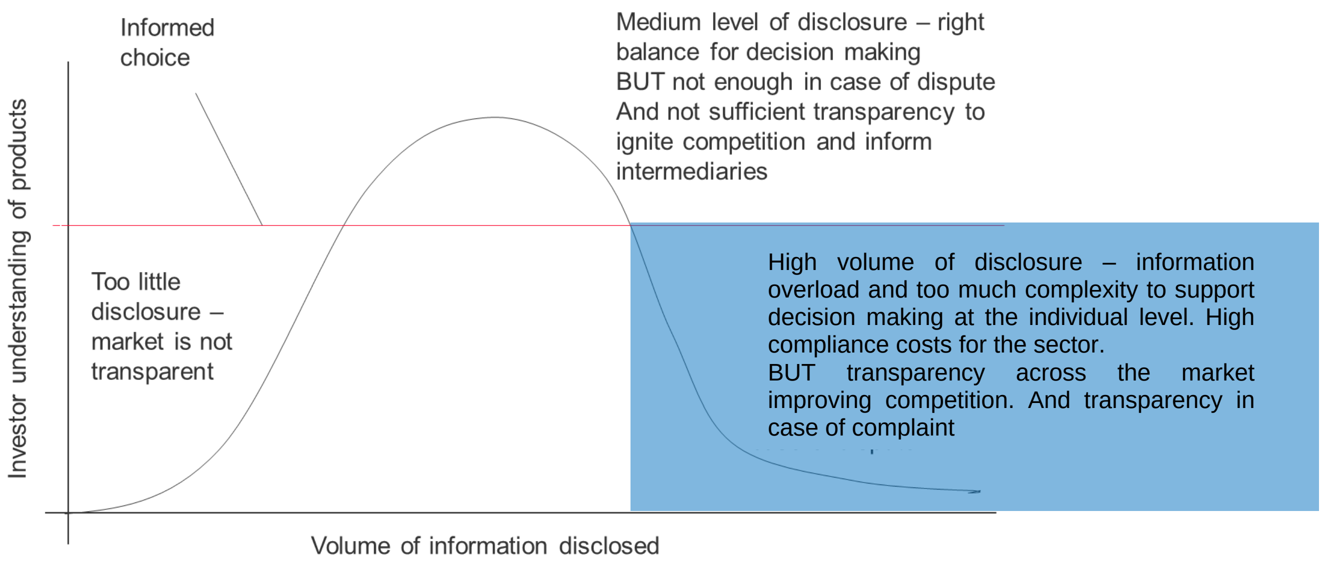
[107] Although it is noted that PRIIPs and UCITS include measures on readability such as a page limit, the inclusion of graphs and the use of simple language.

A joint report between the Dutch Authority for Financial Markets (AFM) and its Australian counterpart summarises this dilemma as follows[108]:

> *"Disclosure can and does contribute to better financial markets. For example, when media, competitors and intermediaries use it to gauge and thus enhance competition. Regulators can use it to contribute to market transparency, integrity and efficiency. And consumers can use disclosure as post-purchase reference documents in the event of disputes. However, we cannot assume that disclosure alone, including warnings, will be effective in protecting consumers, enabling good decision making and driving competition from the demand side."*

The figure below illustrates the dilemma of disclosure depending on whether the investor protection is viewed from the angle of choice or from the angle of potential litigation. The current EU legal framework as described in the section on coherence appears to be situated rather in the third quadrant ("high volume of disclosure").

Figure.6 - Relationship between volume or disclosure and retail investor understanding of products



Source: Consortium.

The abovementioned AFM and ASIC report which is based on a comprehensive review of literature about the effectiveness of disclosure, often using experimental designs, summarised the main limitations of disclosure as follows[109]:

- Disclosure does not solve the issues of the complexity of products and financial services markets: even seemingly comparable templates will always have to present information that is complex. To be precise they have to use vocabulary that is not familiar to consumers. When products differ on several variables, which they very often do, making an accurate comparison becomes complicated or even impossible for many.
- Disclosure competes for people's attention: the disclosure documents are just one of multiple touchpoints when consumers are making investment decisions. The advisor, the web-based platform, other documentation provided, marketing material, etc. will make information more or less salient, relatable and engaging for the consumer and, depending on the context, the disclosure documents may or may not be read and taken into consideration.

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108 AFM and ASIC (2019) Disclosure: Why it shouldn't be the default.
109 AFM and ASIC (2019) Disclosure: Why it shouldn't be the default.

- One size does not fit all – there are different profiles of potential investors and different situations and contexts. It is therefore unreasonable to expect that the same format will fulfil the needs of experienced investors with high financial literacy, as well as those of disinterested investors who have savings but do not consider financial investments as a suitable solution for themselves mostly because of the complexity of these products (see section on advice for more information about segmentation of retail investors).
- When disclosure is too complicated to process it can actually create the opposite effect, i.e. people will rely entirely on the advisor.

Thus, while there are many positive aspects to disclosure, notably as explained above, market transparency as well as consumer protection in cases of litigation, there are also limits on what it can achieve. It can be seen as a **necessary but not sufficient condition** for improving the market for financial services.

Finally, one of the policy objectives of the Retail Investment Strategy is to facilitate retail investments. In the segmentation presented in the section on advice we found two segments of people who are crucial target groups for this objective of the Retail Investment Strategy, but which have different approaches. On one hand there is a pool of people who have savings and are interested in making investments. This group will most likely carry out product searches and comparisons. For this segment, disclosure is one of the solutions that will come into play in the consumer journey as it will facilitate product comparisons. However, there is also a second segment which consists of **people with savings but no interest in investing**. For this segment to consider financial investment products as an option for earning a return on their savings **disclosure is not going to be a key factor encouraging investment**.

An in-depth qualitative study carried out by the French Financial Markets authority[110] showed the differences between how these two segments look at disclosure documents and demonstrate **very different reactions**. While both groups found disclosure documents complex, the segment of prospective interested investors was mostly looking for clarity and engaged with the documents with a view to understanding them. On the other hand, the other segment of disinterested investors was put off by the disclosure documents. They were looking for simplicity which they could not find in the documents and they would therefore most likely seek answers to their questions from advisors or peers[111].

Therefore, depending on the policy objectives, disclosure can be expected to be **more or less relevant**:

- Given the transparency that disclosure documents provide, disclosure contributes to the objective of consumer protection in the context of litigation. It provides evidence that can be used in court if needed.
- There is mixed evidence about the usefulness of disclosure documents to support the optimal choice[112] of those people already engaged in selecting a financial investment product. This stems from the limitations discussed above and is linked to the consumer profiles/behaviours and biases. However, for those investors who are interested, engaged and financially literate these documents do provide a tool that allows them to compare products.

[110] AMF (2018) Placements à formule lisibilité et appropriation de la documentation par les épargnantss

[111] Some translated examples of quotations mentioned in the French study which illustrate the reactions of this segment are:
I have no desire to read this. Dustbin immediately. Too much text. No colour or structure. I prefer to immediately take an appointment with an advisor who will explain – I'll have much less headache.
Aie aie aie this is very dense. Written in small print …. One does not know where to start. The format is horrible maybe besides the summary tables but even those are far too detailed.
AMF (2018) Placements à formule lisibilité et appropriation de la documentation par les épargnants.

[112] Here the argument is about whether disclosure plays a role in helping consumers make the right decision. It does not pose any judgement on whether information documents are important for information sharing, but whether these are effective to ignite an optimal decision.

- We have found no evidence that disclosure could encourage those consumers who are not considering financial investments to choose this form of investment over other means of safeguarding and earning a return on their savings. Moreover, according to the study by the French AMF referred to above, for this segment the current formats of key information documents - if they result in documents that are dense, long and complex - could in fact have the opposite effect.

5.3. Coherence

The assessment of coherence covered **marketing practices**, **pre-contractual** and **ongoing disclosure**. Most attention was paid to pre-contractual disclosure which was the core of the study. The focus was exclusively on coherence between the different EU legal frameworks, as disclosure rules are mainly laid down at EU level (especially in the case of PRIIPs, UCITS and PEPP), with very little room for leeway at Member State level.

Before presenting the detailed coherence analysis, the text below summarises the main findings. The evidence underpinning these findings is presented in subsequent subsections.

5.3.1. Summary of main findings

Disclosure and content of pre-contractual information documents

With regard to **the template of the** pre-contractual information document, PRIIPs and PEPP provide legally binding templates for disclosure while the UCITS KIID template, as laid down by CESR, does not constitute binding guidance. MiFID II only includes specific provisions on font size and layout, and language, which are compatible with the KIID/KID readability requirements. Overall, the format, readability, clarity, conciseness, language use and comprehensive coverage requirements are coherent.

All the legal frameworks require pre-contractual information to be **disclosed "in good time**" before the retail investor is bound by any contract or offer relating to the product or service, with only PEPP, MiFID II and PRIIPs further specifying at which point in the consumer journey this disclosure occurs. [113] The effectiveness section shows that practices are divided between distributors that provide disclosure documents early in the process (during the first contact) whilst, in another half of the cases, disclosure documents are not provided at this point.[114] There is therefore a certain gap in the definition of "in good time" which would ensure that KIDs and KIIDs are used as the main resource for consumer decision-making.

All pieces of EU legislation include the **option to communicate the pre-contractual information through various means**, i.e. on paper, on a durable medium other than paper, and on a website. As a result, when the product is purchased face to face, legal provisions state that the PRIIPs KIDs are to be provided in paper form, while the MiFID II pre-contractual information is to be provided electronically (unless requested otherwise). These multiple information sources do not facilitate a comparison of the services related to various products. Generally, it would be advisable, also with regard to the means of communication, to future proof the relevant legal provisions and place greater emphasis on the digital environment – as PEPP does.

The requirements regarding the **introductory section** of the pre-contractual disclosure documents are broadly coherent. The exception is the explanatory statement in the UCITS KIID, which neither refers to understanding the "costs, potential gains and losses" nor relates to comparability with other products. Only PRIIPs requires a 'comprehension alert' for products that are potentially harder to understand for the average retail investor.

In some situations, fully or partially equivalent information is to be disclosed for the same investment product or service. Solvency II and PRIIPs thus require the cumulative pre-contractual disclosure of information to consumers. There is also an equivalent requirement

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[113] Only PEPP includes specific timing conditions in the case of information provided online.

[114] These different practices can be seen as compliant with the "in good time" requirement but, in practice, disclosure at the time of the contract signature is in all likelihood too late to give consumers sufficient time to use this document to inform their choice.

on the disclosure of product costs under IDD and PRIIPS. However, as long as the PRIIPs KID satisfies the requirements of the Solvency II or IDD legislation, respectively, this potential duplication of information can be avoided. From a legal point of view this duplication in the text would be best avoided in the first place.

The **methodologies for calculating risks** in the PEPP KID and the PRIIPs KID are largely consistent and coherent. Differences can be explained by the difference in nature of the risks of the products (e.g., potential negative value, linearity of the risks, average maturity, etc.), and differences in the objectives of the products.

The disclosure of **the performance** of a specific retail investment product has been vigorously debated in several reports and was mentioned by many interviewees, generally calling for harmonisation. Most concerns relate to the performance disclosure in the PRIIPs KID, which seems ill-adapted to insurance products. However, this and other concerns seem to have been addressed by the new PRIIPs RTS. At the same time, while PRIIPs KID and PEPP KID are largely consistent and coherent, some differences in the design of scenarios and calculation methodologies remain due to the different nature of the products (e.g., average maturity, recommended holding period, etc.).

National authorities interviewed generally commented that the **comparability of costs** across products has not (yet) been achieved and retail consumers are facing uncertainties. Existing issues mostly relate to technical aspects, such as differences in the reference period, different methodologies, etc. and to reconciling the overall costs with the breakdown of the costs. Interviewees pointed out that comparability is even more problematic when a consumer wants to compare product costs between different distributors or investment firms. Practical incoherencies have also been mentioned in ESMA's Technical Advice.[115] Distributors interviewed, on the other hand, focused on the lack of comparability across different types of products (but admit that this is "logical") and maintain that comparability for the same type of product (e.g. different UCITS products) does not constitute a problem. There does not seem to be agreement on the comparability of costs for the same product sold via different distribution channels. Furthermore, the introduction of cost transparency through MiFID II has generally been welcomed, even though there is still room for improvement as cost statements are not standardised.

Review of and changes to the pre-contractual information documents

The **regular (at least annual) review** of KIDs and KIIDs provided for under PEPP, PRIIPs and UCITS is regulated in a coherent manner.

There is a range of reporting obligations with which distributors and manufacturers must comply and many kinds of reports are required depending on the legal framework. Some of the reports are common (even though their name might be different) to various pieces of legislation and can be compared. UCITS and AIFMD make it easy to find specific provisions dealing with a specific report. MiFID II, on the other hand, makes it difficult for the person in charge of disclosure to identify all the relevant reporting obligations not only because these are spread across numerous legal provisions, both in the MiFID II Directive and in Del Reg 2017/565, but also because they depend on the kind of product or service provided by the investment firm.

There could be some potential overlap between the insurance intermediary primarily responsible for reporting to clients on costs and charges on IBIPs and providing periodic reports to clients, and the insurance undertaking which is always responsible for delivering information on the products, as required under the Solvency II Directive.[116] According to EIOPA, it will depend upon who is providing the service.[117] This may generally be expected

[115] ESMA (2019), Call for evidence on impact of the inducements and costs and charges disclosure requirements under MiFID II, available at: [Call for evidence impact of the inducements and costs and charges disclosure requirements under MIFID II]

[116] M. Siri, "Insurance-Based Investment Products: Regulatory Responses and Policy Issues" in P. Marano, K. Noussia (eds.), Insurance Distribution Directive, AIDA Europe, Research Series on Insurance Law and Regulation 3.

[117] Articles 30(4) and (5) IDD.

to be an insurance intermediary, except where the insurance undertaking is providing services when distributing directly. Thus, the insurance undertaking always remains responsible for delivering information required by Article 185 of Directive 2009/138/EC (Solvency II).[118]

Even though IDD includes reporting obligations after contract signature, it does not include any provision requiring the **disclosure of changes to information provided**. This is considered a potential gap (see **section 5.3.11**). The **timing** of the provision of information about such changes is not consistent between the different rules. Finally, a definition of the term "material change" is currently lacking in most legal texts, with the exception of AIF Delegated Regulation (EU) No 231/2013.

Ongoing information disclosure

The information to be disclosed in the annual report for UCITS and AIFMD is consistent, while the PEPP Benefit Statement has a different content, due to the specificities of the product.

The provisions for ongoing **costs** disclosure were not analysed in detail as part of this assignment. Nevertheless, no clear inconsistencies, redundancies, overlaps or gaps were identified, but a clear link between ex-ante costs and ex-post costs (e.g. by using the same calculation and disclosure methodology), thereby enhancing comparability, would be welcomed. The latter point was raised by various stakeholders.

5.3.2. Coherence of requirements regarding marketing communications

Regarding marketing communications, IDD[119], UCITS[120], DMFSD[121], PRIIPs[122], PEPP[123], the E-Commerce Directive[124], AIFMD[125] and MiFID II[126] include specific provisions (Solvency II does not). Generally, these communications should:

1) be fair, clear and not misleading;
2) be clearly identifiable as such;
3) not include any statement contradicting pre-contractual information; and
4) describe risks and rewards in an equally prominent manner.

There are **certain differences** in the texts. Some of the texts cover all four criteria (AIFMD, MiFID II, UCITS), while others do not (IDD, PEPP, PRIIPs, E-Commerce) and the non-product-specific DMFSD uses a different wording as shown below. These differences are due to the different nature and scope of the legal instruments and hence **do not lead to inconsistencies**.

The practical implications of these marketing materials were not analysed in the remainder of the study as marketing materials were outside the scope of the primary data collection.

118 EIOPA 17/048, Technical Advice on Insurance Distribution Directive (1 February 2017), at 72ff
119 Article 17(2) IDD.
120 Article 77 UCITS; repeated in Articles 4-5 Reg 2019/1156.
121 Article 3(2) DMFSD.
122 Article 9 PRIIPS.
123 Article 29 PEPP.
124 Article 6(a) E-Commerce Directive.
125 Chapter VII AIFMD; Articles 4-5 Reg 2019/1156.
126 Article 24(3) MiFID II; Article 44 Del Reg 2017/565.

Table.1 - Marketing communications

	Fair, clear and not misleading	Clearly identifiable as such	No statement that contradicts pre-contractual information + reference to this information	Description of risks and rewards in an equally prominent manner
IDD	X	X		
UCITS	X (repeated in level 2)	X (repeated in level 2)	X (repeated in level 2)	X (level 2)
PEPP			X	
E-commerce		X		
DMFSD	Clear, comprehensible, appropriate to distance communication	"the commercial purpose of which must be made clear"	Principles of good faith and protection of minors	
PRIIPs			X	
AIFMD[127]	X	X (level 2)	X (level 2)	X (level 2)
MiFID II	X	X	X	X
Solvency II	No provisions related to marketing			

Source: Consortium, based on legal analysis.

5.3.3. Coherence of requirements regarding the templates of pre-contractual documents

As regards the coherence of requirements regarding the templates of pre-contractual documents, a number of legal provisions specify the template of each key information document (UCITS, PEPP and PRIIPs), including its length, the sections to be included, its readability, the presentation of visual information and its language. These requirements are overall **coherent**.

In short, the **UCITS KIID** template is laid down in a CESR document and hence does **not** constitute binding **guidance**.[128] It consists of five sections - 1. Objectives and investment policy; 2. Risk and reward profile; 3. Charges for the fund; 4. Past performance; 5. Practical information - and can be longer for structured UCITS.

The legally binding **PEPP KID** template is established in an Annex of Delegated Regulation (EU) 2021/473 and consists of six sections: 1) What is this product?; 2) What are the risks and what could I get in return?; 3) What happens if [the name of the PEPP provider] is unable to pay out?; 4) What are the costs?; 5) What are the specific requirements for the sub-account corresponding to [my Member State of residence]?; 6) How can I complain?. The PEPP Delegated Regulation places considerable emphasis on the layering of information when the PEPP KID is provided in electronic format, for example through pop-ups or through links to other layers.

Finally, the legally binding **PRIIPs KID** template is specified in an Annex to Delegated Regulation (EU) 2017/653 and consists of seven sections: 1) What is this product?; 2) What are the risks and what could I get in return?; 3) What happens if [the name of the PRIIP manufacturer] is unable to pay out?; 4) What are the costs?; 5) How long should I

[127] It is noted that the EU Passport introduced by the AIFMD allows an AIFM to market the shares of an AIF to professional investors – by contrast, the marketing of AIF to retail investors remains in the discretion of each Member State. Where Member States permit the marketing of AIF to retail investors, they can impose stricter requirements.

[128] CESR (2010), CESR's guide to clear language and layout for the Key Investor Information Document. The guide includes the following text: "This guide describes ways of meeting the regulatory objective for Key Investor Information (KII) to achieve the clarity and simplicity of presentation that is required by retail investors. There may be other ways in which UCITS can meet this requirement. This guide is intended as a statement of good practice. It does not constitute binding guidance on UCITS or their management companies."

hold it and can I take money out early?; 6) How can I complain?; 7) Other relevant information.

All three key information documents must be written in a concise, clear, succinct and comprehensible manner, in a language that facilitates understanding, and with a focus on key information. Furthermore, the colour used in all three information documents cannot diminish the comprehensibility of the information in the event that the document is printed or photocopied in black and white. Any logo or corporate branding cannot distract or obscure the text. Also, the presentation should be laid out in a way that is easy to read, using characters of readable size. The key information documents must be written in the official language (or one of the official languages) and translations should faithfully reflect the content of the original information. Slightly different wording on the latter is used in the PEPP legislation.

MiFID II only includes specific provisions on font size and layout, and language, which are **compatible with the readability requirements of the KIID/KID**. After all, Article 44(2) of Delegated Regulation 2017/565 states that the font size used in the indication of relevant risks should be at least equal to the predominant font size used throughout the information provided. Furthermore, the information should be consistently presented in the same language throughout all forms of information, unless the client has agreed to receive information in more than one language.

5.3.4. Coherence of provisions regarding when a pre-contractual document should be provided to potential clients

UCITS, PEPP, PRIIPs, DMFSD and MiFID II all require pre-contractual information to be disclosed "**in good time**" before the retail investor is bound by any contract or offer relating to the product or service.

The **PEPP and the PRIIPs Delegated Regulations give further input as to what the "in good time" requirement might entail**. Recital 83 of **MiFID II also provides a further interpretation**.[129] Article 9(1-2) Delegated Regulation 2021/473, for example, defines "in good time" (for PEPP) as "sufficiently early so as to allow a prospective or current PEPP saver enough time to consider the document before being bound by a contract or an offer, taking into account:

- Knowledge and experience of PEPP saver
- Complexity, long-term nature and limited redeemability of PEPP
- Urgency expressed by PEPP saver".

PRIIPs[130], DMFSD[131] and MIFID II[132] include **exceptions** to the "in good time" requirement in case of distance communication. Only Article 9(3) of the PEPP Delegated Regulation includes specific timing conditions if the information is provided online.

It is noted that the question of the timing of the pre-contractual information was raised in Joined Cases C-143/20 and C-213/20 submitted to the Court of Justice of the European Union in relation to the distribution of life insurance contracts (question 4). The CJEU decided that, regarding the contractual information, communication of the **minimum information** shall take place **prior** to the conclusion of a contract. To make an informed choice, a **certain period of time** should be provided to the consumer **for the evaluation** of this information. This will enable a consumer to make a choice of the contract best suited to his/her needs. In practice, this means that a consumer must be given **sufficient time** to make **an informed choice**. This can be ensured only if, based on the principle of

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[129] Recital 83 Mifid II: "In determining what constitutes the provision of information in good time before a time specified in this Directive, an investment firm should take into account, having regard to the urgency of the situation, the client's need for sufficient time to read and understand it before taking an investment decision. A client is likely to require more time to review information given on a complex or unfamiliar product or service, or a product or service a client has no experience with than a client considering a simpler or more familiar product or service, or where the client has relevant prior experience."

[130] Article 13(3)(a) PRIIPS.

[131] Article 5(2) DMFSD.

[132] Article 1(4)(a) Directive 2021/338.

effectiveness, a consumer is provided with clear and accurate information **in writing**. Also, sufficient time should be provided to weigh the **risks and benefits** of the contract offered, enabling the consumer to formulate the decision and make an informed choice[133].

As shown in the *effectiveness section* there are notable **differences between countries and institutions** regarding how the "in good time" requirement is being implemented. Only in 54% cases were mystery shoppers provided with a KID during the first contact with the distributor. Thus, clearly some distributors interpret "in good time" as the first moment of contact whilst others probably provide it at a later stage. In the interviews it was then clarified that in the great majority of cases the industry interprets "in good time" as following the suitability assessment when the choice of products has been narrowed down. This does not seem to be in contradiction with the legislation, but, in practice, disclosure at the time of the contract signature is in all likelihood too late to give consumers sufficient time to use this document to inform their choice. Some other mentions by industry stakeholders of disclosure "before the contract signing" indicate a potentially shorter time frame for reflexion, which is not best practice and suggests compliance and clarity of the legal frameworks issues.

There is therefore a **certain gap** in the definition of "in good time" which would ensure that KIDSs and KIIDs are used as the main resource for consumer decision-making.

5.3.5. Coherence of provisions regarding the means by which a pre-contractual document should be provided to potential clients

Pre-contractual information needs to be not only **accessible** but also **actively provided** to the consumer. Pre-contractual information can be **disclosed** to potential retail investors through various means, including **on paper, on a durable medium, or on a website**.

Table.**2** provides an overview of how the UCITS KIID, the PRIIPs KID and the PEPP KID can be communicated to potential clients. It adds the means of communication of the pre-contractual information document related to MiFID II and makes a comparison with how the distance marketing directive DMFSD requires the disclosure of pre-contractual information.

PEPP places considerable emphasis on the digital environment, something only taken up (partially) in MiFID II – where disclosure on paper is only available if requested by the potential retail client; otherwise, the pre-contractual information must be offered in an electronic format.

From a legal point of view, an **inconsistency** has been created where one information document is provided to the retail investor in paper format while another one is available only in an online format. For example, when purchasing a product face to face, PRIIPs KIDs are usually provided in paper form while the MiFID II pre-contractual information is provided electronically (unless requested otherwise). This multiplies the information sources and does not facilitate a comparison of the services related to various products. Generally, it would be advisable, also with regard to the means of communication, to future proof the relevant legal provisions and place greater emphasis on the digital environment.

There are two reasons for this emphasis on digital formats:

- A web-based, interactive format allows different layers of information, thereby ensuring the salience of the most important items and minimising information overload; and
- It also reflects the growing role of digital platforms and robot-advisors as distribution channels.

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[133] A v O and G.W. and E..S. v A. Towarzystwo Ubezpieczeń Życie S.A., Joined Cases C-143/20 and C-213/20, ECLI:EU:C:2022:118, par. 109-118.

Table.2 - Means of communication of pre-contractual information document

	On paper	On durable medium other than paper, if		On website, if					Paper copy can be provided if so requested and free of charge	Definition of "appropriate in the context of the business conducted"	Definition of durable medium	Other
		Appropriate in the context of the business conducted	under certain conditions	appropriate in the context of the business conducted	the client has consented	the client has been notified electronically of the address of the website	Information remains accessible on the website for reasonable period of time	Other				
UCITS KIID[134]		X (level 2)	Client has been given the choice		X (level 2)	X (level 2)	X (level 2)	X (level 2)	Info up to date	X	X (level 2)	X
PEPP KID[135]	Emphasis on digital [136] (level 2)		Adapted to device used (level 2)			QR code linking to electronic version (level 2)	X	Downloadable, easily found and accessed	X		X	Right to request a copy on another durable medium
PRIIPs KID[137]	X (default option where offered face to face)	X	X	X	X	X	X	Downloadable	X	X	X	

[134] Article 81 UCITS and Chapter V Reg 583/2010.
[135] Article 24 PEPP.
[136] Information in PEPP KID in online environment should be identical to the information in paper version.
[137] Article 14(2)(a) PRIIPS.

	On paper	On durable medium other than paper, if		On website, if					Paper copy can be provided if so requested and free of charge	Definition of "appropriate in the context of the business conducted"	Definition of durable medium	Other
		Appropriate in the context of the business conducted	under certain conditions	appropriate in the context of the business conducted	the client has consented	the client has been notified electronically of the address of the website	Information remains accessible on the website for reasonable period of time	Other				
DMFSD[138]	X	X (no conditions)	X (no conditions)	X (no conditions)	X (no conditions)	X (no conditions)	X (no conditions)	X (no conditions)	X (no reference to 'free of charge')	N/A	X	
MiFID II[139]	X (level 2) - on paper only if so requested– otherwise: electronic	X (level 2)	X (level 2)	X (level 2)	X (level 2)	X (level 2)	X (level 2)	Info up-to-date	X only for retail client	X	X	Inform of material changes to the information in a durable medium (level 2)

Source: Consortium, based on the legal analysis.

[138] Article 5(1) DMFSD.
[139] Article 1(4)(b) Directive 2021/338.

5.3.6. Coherence of requirements regarding the introductory section of pre-contractual disclosure documents

The pre-contractual information document has been attributed a single name under **UCITS, PEPP** and **PRIIPs**. These three pieces of legislation also require an explanatory statement to be added to the introductory section of the key information document and require similar data to identify the document and the product – adapted to the specific investment product. Furthermore, a specific statement needs to be included in the PEPP KID and in the PRIIPs KID.

MiFID II also requires specific information about the product and service to be included in the document, such as the name and contact details of the investment firm. Comparable provisions are included in **AIFD**, **DMFSD**, **Solvency II**, **IDD** and the **E-Commerce Directive**.

Table 5.3 provides an overview of the content of the introductory section in each specific pre-contractual information document. The requirements regarding the introductory section of the pre-contractual disclosure documents are **broadly coherent**. The **exception** is the explanatory statement in the UCITS KIID, which neither refers to understanding the "costs, potential gains and losses" nor relates to comparability with other products.

Uniquely, **PRIIPs additionally requires a "comprehension alert"** for products that are potentially harder to understand for the average retail investor. In such cases, the KID should contain the following warning: "You are about to purchase a product that is not simple and may be difficult to understand". Following Recital 18 in PRIIPs, "a product should be regarded as not being simple and as being difficult to understand in particular if it invests in underlying assets in which retail investors do not commonly invest, if it uses a number of different mechanisms to calculate the final return of the investment, creating a greater risk of misunderstanding on the part of the retail investor or if the investment's pay-off takes advantage of retail investor's behavioural biases, such as a teaser rate followed by a much higher floating conditional rate, or an iterative formula". While PRIIPs avoids equating "not simple" with "complex", the RTS states that the comprehension alert can only be avoided for products linked to non-complex instruments and for non-complex instruments themselves (Article 1 second paragraph Delegated Regulation 2017/653). In other words, the comprehension alert should be provided in respect of any "complex" product as defined in MiFID II. The three criteria laid down in the Recital still need to be considered.

Although not including a comprehension alert, **MiFID II does include a complex product stipulation** that makes it mandatory to offer advice before investment (see section on demands & needs tests and suitability assessment).

Table.3 - Requirements regarding the introductory section of pre-contractual disclosure documents

	Explanatory statement	Name	Statement
UCITS KIID ***(Art. 4 Reg 583/2010)***	X[140]	- Identification of UCITS (incl. share class or investment compartment name) + where it exists, code number UCITS - Name of management company and, where it exists, name of group to which it belongs	- This fund is authorised in [name of Member State] and regulated by [identity of competent authority] - [Name of management company] is authorised in [name of Member State] and regulated by [identity of competent authority] - This key investor information is accurate as at [the date of publication]
PEPP KID ***(Art. 28(3))***	X[141]	- Name of the PEPP - Whether Basic PEPP or not - Identity and contact details of PEPP provider - Info about CAs of PEPP provider - Registration number of PEPP in central public register - Date	The retirement product described in this document is a long-term product with limited redeemability which cannot be terminated at any time.
PRIIPs KID ***(Art. 8(3))***	X[142]	- Name PRIIP - Identity and contact details PRIIP manufacturer - CA of PRIIP manufacturer - Date	Where applicable, the following comprehension alert: “You are about to purchase a product that is not simple and may be difficult to understand”
MiFID II – investment services ***(Art. 47(1) Del Reg 2017/565)***		- Name & address & contact details investment firm - CA See further Table 5.6	Where the investment firm is acting through a tied agent, a statement of this fact specifying the Member State in which that agent is registered
MiFID II – financial instruments ***(Art. 48 Del Reg 2017/565)***		- Name & address & contact details investment firm - CA See further Table 5.6	Where the firm provides a retail client with information about a financial product subject to a current offer to the public and a prospectus has been published, the firm must inform the client where the

[140] Art. 4(3) Reg 583/2010: “This document provides you with key investor information about this fund. It is not marketing material. The information is required by law to help you understand the nature and the risks of investing in this fund. You are advised to read it so you can make an informed decision about whether to invest.”

[141] Art. 28(2) PEPP: “This document provides you with key information about this pan-European Personal Pension Product (PEPP). It is not marketing material. The information is required by law to help you understand the nature, risks, costs, potential gains and losses of this personal pension product and to help you compare it with other PEPPs.”

[142] Art. 8(2) PRIIPS: “This document provides you with key information about this investment product. It is not marketing material. The information is required by law to help you understand the nature, risks, costs, potential gains and losses of this product and to help you compare it with other products.”

Explanatory statement	Name	Statement
		prospectus is made available to the public[143]
IDD *(Art. 18)*	- Identity and address of insurance intermediary or of insurance undertaking - For insurance intermediary: register and means for verifying it has been registered + whether representing the client or acting on behalf of the insurance undertaking	
E-commerce Directive *(Art. 5)*	- Name of service provider - Geographic address - Details of service provided, incl. email - Trade or similar public register + registration number - Relevant supervisory authority - Professional title & rules, in case of regulated profession - VAT number	
DMFSD *(Art. 3)*	- Identity and main business of the supplier, address - Identity of representative, address - Identity of professional, capacity in which he is acting, address - Registration number, if any - Relevant supervisory authority, if any	
AIFMD *(Art. 23)*	- Info on where master AIF (and underlying funds) is established - Identity of the AIFM, the AIF's depositary, auditor and any other service providers and a description of their duties and the investor's rights - Identity of the prime broker	
Solvency II *(Art. 185(2))*	- Name of the undertaking and its legal form - Name of the MS & address in which the head office and, where appropriate, the branch concluding the contract is situated	

Source: Consortium, based on the legal analysis.

143 Article 48(3) Del Reg 2017/565

5.3.7. *Coherence of requirements regarding general content of pre-contractual documents*

In terms of **specific subsections**, the following types of items are covered by the legal frameworks reviewed:

- Subject.
- Risks.
- Costs.
- Complaints.
- Manufacturer default holding period.

Table 5.4 shows details of the sections to be included in each pre-contractual information document that are common to most retail products and services.

Provisions about risks and rewards as well as costs are analysed in greater detail below, while this section provides a general overview of the extent to which such information has to be disclosed.

The **PEPP KID** and the **PRIIPs KID** include almost identical sections, with the PEPP KID providing additional subsections related to the retirement-specific aspects of the product. The **UCITS KIID** is simpler in content (section-wise)[144] and details are only provided in Level 2 legislation. The absence of sections on complaints, manufacturer default and holding period could be considered a **potential gap** which will be alleviated with the regulatory use of KIDs for UCITS in 2023.

Similar sections as in PEPP and PRIIPs must also be included following **MiFID II**, with the exception of a complaints section. With regard to the latter, complaints are regulated in Article 26.2 MiFID II Delegated Regulation 2017/565, but the pre-contractual information document does not need to include a section on complaints: "Investment firms shall publish the details of the process to be followed when handling a complaint."

The **IDD**, **E-commerce Directive**, **DMFSD**, **AIFMD** and **Solvency II** also include specific requirements with regard to the general content to be included in the pre-contractual information document, although the general content does not seem to be arranged according to pre-defined headings.

[144] See, e.g. https://www.kneip.com/priips-a-long-and-winding-road/ : "Although similar to the earlier 2-page Key Investment Information Document (KIID) obligatory for all UCITS fund investors since 2011, the 3-page PRIIPS KID contains significant, additional disclosure of Risk, Performance and Costs & Charges information."

Table.4 - General content of pre-contractual information

	Subject	Risks	Costs	Complaints	Manufacturer default	Holding period
UCITS KIID[145]	X	X, including past performance	X			
PEPP KID [146]	X[147]	X [148] including past performance	X	X	X	X[149]
PRIIPs KID[150]	X	X	X	X	X	X
MiFID II – investment services		X[151]	X (aggregate costs, costs and charges not included in UCITS KIID, illustrate cumulative effect of costs on return)[152]	[153]		
MiFID II – financial instruments	X[154]	X[155]			X[156]	X (impediments or restrictions for disinvestment)
IDD - IBIPs[157]		X	X	X		
DMFSD[158]	X	X	X	X	X	X
AIFMD[159]	X	X	X			
Solvency II[160]	X	X	X	X	X	X

Source: Consortium, based on the legal analysis.

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[145] Art. 4 Reg 583/2010.
[146] Art. 28 PEPP.
[147] Art. 3 Del Reg 2021/473: "What is this product?" includes: a) how is my money invested?; b) who is this for?; c) are my savings guaranteed?; d) what happens when I retire?; e) what happens to my PEPP savings if I die/ / become disabled/ / live longer than assumed in my PEPP contract?; f) what happens if I move countries?; g) can I withdraw from the product early?; h) can I switch my provider?; i) can I change my investment option?; j) will my money be invested sustainably?; k) is this governed by MS law?; l) can I cancel or change my mind?
[148] Art. 4 Del Reg 2021/473: "What are the risks and what could I get in return?" includes: a) what is the risk profile of this product?; b) is there a risk that I will lose all my invested capital?; c) what can I expect at retirement?
[149] The section titled "What is this product?" should include information, where applicable, on whether there is a cooling-off period or cancellation period for the PEPP saver, and the consequences thereof.
[150] Art. 8 PRIIPS.
[151] - A fair and prominent indication of any relevant risks when referencing any potential benefits of an investment service or financial instrument; (Art. 44(2)(b) Del Reg 2017/565)
- Where portfolio management services are proposed: the management objectives, the level of risk to be reflected in the manager's exercise of discretion, and any specific constraints on that discretion; (Art. 44(3(e) Del Reg 2017/565).)
[152] Art. 50 Del Reg 2017/565.
[153] While information about complaints needs to be published this is not necessarily part of the information document: "Investment firms shall publish the details of the process to be followed when handling a complaint." Article 26.2 MiFID II Delegated Regulation 2017/565.
[154] The description should explain the nature of the specific type of instrument concerned.
[155] - A fair and prominent indication of any relevant risks when referencing any potential benefits of an investment service or financial instrument; (Art. 44(2)(b) Del Reg 2017/565)
- General description of the nature and risks of financial instruments, taking into account, in particular, the client's categorisation (risks associated with type of financial instrument and explanation of leverage and its effects; volatility of the price; impediments or restrictions for disinvestment; additional financial commitment; margin requirements) (Art. 48(1) Del Reg 2017/565).)
[156] Where the investment firm holds client financial instruments or client funds, a summary description of the steps which it takes to ensure their protection, including summary details of any relevant investor compensation or deposit guarantee scheme which applies to the firm by virtue of its activities in a Member State. (Art. 47(1)(g) Del Reg 2017/565).)
[157] Art. 29(1) IDD.
[158] Art. 3(2 & 4) DMFSD.
[159] Art. 23(1) AIFMD.
[160] Art. 185(3-4) Solvency II.

5.3.8. *Coherence of requirements regarding additional content in pre-contractual documents*

Following specific sections on the subject, risks, costs, complaints, manufacturer default and holding period, there is **additional information** to be included in the pre-contractual information document, not necessarily connected to the specificity of the investment product or service. A large number of different specifications about additional information to be disclosed can be found in the legal instruments covered. An overview is provided below.

Table.5 - Requirements regarding additional content in pre-contractual documents

	Other additional information
UCITS KIID	Practical information
PEPP KID	"What are the specific requirements for the sub-account corresponding to [my Member State of residence]?": - requirements for the pay-in phase - requirements for the pay-out phase "PEPP at a glance": (a) the projected accumulated capital for a monthly contribution of EUR 100 for a period of 40 years, under the unfavourable and favourable scenario; (b) the total costs per annum as a percentage of the accumulated capital on the basis of monthly contributions of EUR 100; (c) the classification of the summary risk indicator; and (d) a statement whether the product provides for a guarantee.
PRIIPs KID	Other relevant information
MiFID II[161]	- additional requirements where info compares - additional requirements where info on past performance - additional requirements where info on simulated past performance - additional requirements where info on future performance - additional requirements where info on tax treatment - client categorisation - terms of the agreement - language & methods of communications - nature, frequency and timing of the reports on the performance of the service - steps to ensure protection of client financial instruments or client funds - method and frequency of valuation of financial instruments in client portfolio - details of any delegation of discretionary management - benchmark specification - types of instruments in client portfolio and transactions that may be carried out - nature and scope of guarantee or capital protection - info on safeguarding client financial instruments or client funds

161 Arts. 44-49 Del Reg 2017/565. Article 48 specifically relates to "information about financial instruments" and Article 49 is about "information concerning safeguarding of client financial instruments or client funds".

	Other additional information
E-commerce	- different technical steps to follow to conclude the contract - whether or not the concluded contract will be completed by the service provider and whether it will be accessible - the technical means for identifying and correcting input errors prior to the placing of the order - the languages offered for the conclusion of the contract - codes of conduct to which service provider subscribes & how to consult these electronically
DMFSD	- any limitations of the period for which the information provided is valid - arrangements for payment and for performance - various entries in case of distance contract (i.e. minimum duration; applicable law; language) - info on contractual obligations
AIFMD	- a description of the procedures by which the AIF may change its investment strategy or investment policy, or both - a description of the main legal implications of the contractual relationship entered into for the purpose of investment - a description of any delegated management function and of any safekeeping function delegated by the depositary - a description of the AIF's liquidity risk management - a description of how the AIFM ensures a fair treatment of investors and, if any, description of preferential treatment - latest annual report - procedure and conditions for the issue and sale of units or shares - latest net asset value of the AIF - historical performance of AIF - description of how info will be disclosed
Solvency II	- concrete reference to the report on the solvency and financial condition - the terms of the contract - the means of terminating the contract - definition of the units to which the benefits are linked - indication of the nature of the underlying assets for unit-linked policies - tax arrangements - applicable law

Source: Consortium, based on the legal analysis.

The **PRIIPs KID, PEPP KID and UCITS KIID** legislation clearly focus on key information and include **additional information requirements only to a very limited extent**. The legal provisions included in the other pieces of legislation, on the other hand, include numerous other additional information requirements. There is **no commonality** between these additional information requirements even though, for example, information on the methods of communication, the applicable law and related tax arrangements, and the contractual obligations could be made available for each type of investment product or service.

One PEPP specificity is the provision for a "PEPP at a glance" section in the KID. This is on the first page and summarises the most important information requirements. Similar sections are not provided in the UCITS KIID and the PRIIPs KID. It was expected that such layered information could address some of the challenges existing with the current formats for KIDs and KIIDs (see effectiveness section). However, as further explained in the effectiveness section, the behavioural experiment did not show a significant impact of that layering.

In some situations, **fully or partially equivalent information** is to be disclosed for the same investment product or service. Article 3(2) PRIIPs even makes this explicit: "Where PRIIP manufacturers subject to this Regulation are also subject to Directive 2009/138/EC [Solvency II], this Regulation and Directive 2009/138/EC shall both apply." Solvency II and PRIIPs thus require the cumulative pre-contractual disclosure of information to consumers. However, as long as the PRIIPs KID satisfies the requirements of the Solvency II legislation, this potential duplication of information can be avoided. Yet, the fact that the wording of the Solvency II is older than PRIIPs can often create differences and duplication with PRIIPs, including with the same information presented in two different ways. This was especially highlighted by the industry actors and some national authorities. Another example of potential overlap relates to the equivalent requirement on the disclosure of product costs under IDD and PRIIPS but, again, duplication of information (overlap) can be avoided when the PRIIPs KID satisfies the IDD requirements. From a legal point of view this **duplication** in the text would be **best avoided** in the first place.

EIOPA also identified **overlapping information requirements** in EU legislation relevant to the sale of IBIPs[162], pointing out a high practical burden of duplication and a high potential for increased confusion/hampering of decision-making for consumers with regard to e.g. information on contract termination (including cooling-off); a medium level burden of duplication with regard to e.g. information on complaints-handling procedures; and a low level burden of duplication with regard to e.g. the insurance undertaking's and intermediary's identity and contact details.[163] EIOPA addresses this issue of duplication (overlapping information requirements) by proposing, in certain cases, the non-application of DMFSD for IBIPs sold on-line or the non-application of Solvency II for IBIPs.[164] In particular: "Solvency II disclosures could be shortened by disapplying the provisions that do not concern personalised information for IBIPs, are both duplicated in the PRIIPs KID or are not relevant for the identification of the document (e.g. duplicative information on the identity of the insurance undertaking might be justified). The remaining personalised disclosures under Solvency II could be transferred to the IDD."[165] Furthermore, "it could be considered to limit the scope of Solvency II pre-contractual disclosures under Article 185 to "**pure protection**" life insurance products as the scope of the Solvency II disclosures includes also pure protection life insurance products and since they are not IBIPs, consumers of such products do not receive other standardised EU level disclosures. Hence, for these products, the generalised information required under Solvency II provisions could be kept and possibly moved into the IDD."[166] Finally, "the disapplication of DMFSD provisions for IBIPs sold online could bring some important benefits as both the duplicative IDD disclosures and the PRIIPs/Solvency II disclosures should be delivered when a product is sold online".[167]

[162] EIOPA (2022), "Consultation Paper. Advice to the European Commission regarding certain aspects relating to retail investor protection", available at: https://www.eiopa.europa.eu/sites/default/files/publications/consultations/eiopa-bos-22-020-consultation-paper-retail-investor-protection.pdf

[163] EIOPA (2022), "Annexes to EIOPA's Consultation paper on Retail Investor Protection", p. 51, available at: https://www.eiopa.europa.eu/sites/default/files/publications/consultations/eiopa-bos-22-021-consultation-paper-retail-investor-protection-annexes.pdf

[164] Ibid, Annex with Table 1 "duplications between disclosures in IDD and other legislative acts" and other Table "duplications between PRIIPs and other regulations".

[165] EIOPA (2022) Consultation Paper, Page 15.

[166] Idem.

[167] EIOPA (2022) Consultation Paper, Page 16.

5.3.9. Coherence of information about risks and rewards in pre-contractual documents

Risk indicator

One of the main information requirements to be disclosed in the pre-contractual information document relates to "**risks and rewards**" and has, generally, been included in the key information document under the section "What are the risks and what could I get in return" (**PEPP** and **PRIIPs**). Also the **UCITS KIID** includes a similar section, while **MiFID II** states that a "fair and prominent indication of any relevant risks when referencing any potential benefits of an investment service or financial instrument"[168] should be included, as well as a "general description of the nature and risks of financial instruments, taking into account, in particular, the client's categorisation".[169] The elements to be included in the description of risks of financial instruments are laid down in Article 48 of the MiFID Delegated Regulation 2017/565. Given that the UCITS KIID will be phased out in favour of the PRIIPs KID, UCITS has been included in the table below but has not been further discussed; any potential current inconsistencies between the UCITS KIID and the PEPP/PRIIPs KID will be resolved due to the phase-out (thereby boosting comparability of the key information documents).

Table.**6** compares how risks and rewards need to be calculated and presented within the information document of PEPP and PRIIPs.

Table.6 - Risk and rewards – risk indicator

	UCITS KIID	PEPP KID	PRIIPs KID
Risk-reward profile	*Article 8 Reg 583/2010* 1. synthetic indicator	*Article 28(3)(d) PEPP* 1. summary risk indicator 2. possible maximum loss of invested capital 3. appropriate performance scenarios 4. info on conditions for returns or built-in performance caps 5. statement re tax legislation	*Article 8(3)(d) PRIIPS* 1. summary risk indicator 2. possible maximum loss of invested capital 3. appropriate performance scenarios 4. info on conditions for returns or built-in performance caps 5. statement re tax legislation
Methodology for the presentation and assessment of risks	Y (CESR guidelines)	Holistic assessment of the PEPP's risks and rewards – methodologies laid down in Annex III	Y (Annex II)
Indicator			
Risk indicators	Synthetic indicator (SSRI or Synthetic Risk and Reward Indicator), supplemented by:	Summary Risk Indicator (SRI), supplemented by:	Summary Risk Indicator (SRI), supplemented by:

168 Article 44(2)(b) Del Reg 2017/565.
169 Article 48(1) Del Reg 2017/565.

	UCITS KIID	PEPP KID	PRIIPs KID
	a) narrative explanation of the indicator and its main limitations; b) narrative explanation of risks which are materially relevant to the UCITS and which are not adequately captured by the SSRI	a) narrative explanation of that indicator, its main limitations; b) narrative explanation of risks which are materially relevant to the PEPP and which are not adequately captured by the SRI	a) narrative explanation of that indicator, its main limitations; b) narrative explanation of risks which are materially relevant to the PRIIP and which are not adequately captured by the SRI
Included risks	Market risk only. Risks which are not captured by the synthetic indicator[170]: ▪ Credit risk ▪ Liquidity risk ▪ Counterparty risk ▪ Operational risks ▪ Impact of financial techniques ▪ Risks posed by each underlying collective undertaking (in case of fund of funds)	▪ Market risk ▪ Credit risk ▪ Liquidity risk	▪ Market risk measure MRM, with PRIIPs divided into four categories[171] ▪ Credit risk measure CRM ▪ (Liquidity risk – to be described in the risk narrative, if relevant)
Explanation of indicator	*Annex I Reg 583/2010* Measure of volatility of the fund's prices over the previous 5 years, presented on a scale from 1 to 7, based on prescribed intervals Calculated and monitored weekly, in the case of daily-priced funds => KIID must be updated and reissued if actual SRRI differs from published SRRI for a period of 16 weeks	*Point 1 Annex III Del Reg 2021/473* allocate the Basic PEPP and the individual alternative investment options to four different categories: 1, 2, 3 and 4, with allocation based on: ▪ the risk of not recouping the inflation-adjusted contributions (stochastic simulation, use of ultimate forward rate UFR)	*Annex II Del Reg 2017/653* Shows the relative risk of the PRIIP, using a combination of MRM (market risk measure, based on the historical price volatility) and CRM (credit risk measure, i.e. the risk of the issuer defaulting), presented on a numerical scale from 1 to 7 => KID must be updated and reissued when published level is no longer the most common when comparing all

170 The identification and explanation of risks should be consistent with the internal process for identifying, measuring and monitoring risk adopted by the UCITS' management company as laid down in Directive 2010/43/EU.

171 Category 1 comprises derivative-like products, products with a less than monthly price assessment and products where the retail investor may lose more than their invested premiums. Category 2 covers products which provide a linear exposure to their underlying assets whereas Category 3 encompasses products with non-linear exposure to their underlying investments. Finally, Category 4 contains products whose "values depend in part on factors not observed in the market" and especially includes insurance-based investment products that include some profit participation which is generally not directly observed in the market.

	UCITS KIID	PEPP KID	PRIIPs KID
		▪ the expected shortfall (stochastic determination) ▪ compared to the expected rewards in terms of reaching a certain level of PEPP benefits, as appropriate, at the start of, or during the decumulation phase (stochastic determination)	observations over the last 4 months
Data	5 years of historical data	10 years of historical data, if possible	5 years when available, otherwise 2 years for daily, 4 years for weekly, and 5 years for monthly funds
Volatility	Standard deviation of returns (*CESR guidelines*)	Standard deviation of the monthly returns of an appropriate equity index for an appropriate, representative time period to annualise the result (*point 21 Annex III Del Reg 2021/473*)	Value-at-Risk-equivalent volatility (VEV) based on Cornish-Fisher expansion of a Gaussian Value-at-Risk (*point 12 Annex II Del Reg 2017/653*)
Presentation format for risk indicator (Y/N)	Y (*CESR template*)	Y (Annex I)	Y (Annex III)

Source: Consortium, based on the legal analysis.

The above shows that the risks and rewards for the retail products legislated in both **PEPP KID** and **PRIIPs KID** need to be presented by using the **summary risk indicator** ("SRI"). The SRI calculation methodology introduces the credit risk dimension and assesses market risk using a more complex Cornish Fisher methodology (PRIIPs). While the SRI in PRIIPs is also presented on a numerical scale of 1 to 7, less risk classes need to be presented under PEPP, hence diverging from PRIIPs. It is noted that the new PRIIPs RTS permits manufacturers to increase the calculated SRI score where they consider that the calculated score does not accurately reflect the risks of the PRIIP.

The PEPP KID and PRIIPs KID need to include both a **narrative explanation of the indicator used**, including its main limitations, and a **narrative explanation of** those **risks** which are materially relevant to the investment product but which are not adequately captured by the risk indicator.

The description of risks related to **MiFID II** financial instruments must include: a) risks associated with the type of financial instrument and an explanation of leverage and its effects; b) price volatility; c) impediments or restrictions for disinvestment; d) additional financial commitment; e) margin requirements (*Article 48(2) of the MiFID Delegated Regulation 2017/565*). The legislation of risks and rewards in MiFID II is hence quite general, while specificities are further included in (PEPP and) PRIIPs, as it relies on distributors receiving the necessary information on products from the manufacturer. It is therefore advisable for firms to have a written policy in situations where a product is in-scope for MiFID II and PRIIPs, and when it comes to disclosing risks to investors, they must document which approach has been taken.[172]

With regard to **volatility**, stakeholders were asked whether their national legislation and/or general practice suggest that the market risk measure (MRM) in PRIIPs is derived through **Cornish-Fischer** or through **Monte Carlo** Value-at-Risk. While most Member States do not specify or require in their national legislation one particular methodology for MRM, Cornish-Fischer is generally used for **linear products** while, for **products without linear underlying** (lock-out), Monte Carlo is recommended. This was confirmed in Austria and Spain. Luxembourg, on the other hand, commented that insurers generally use the Monte Carlo method, as it is more familiar to them.

All in all, the methodologies for calculating risks in the PEPP KID and the PRIIPs KID are **largely consistent and coherent**. Differences can be explained by the difference in nature of the risks of the products (e.g., potential negative value, linearity of the risks, average maturity, etc.), and differences in the objectives of the products. For instance, unlike PRIIPS KID, PEPP KID uses a longer period of historic data (10 years) in the calculation and considers risks to the decumulation phase (i.e. pension pay-out) in its risk indicator as it has pension objective.

Performance

Within the risk and rewards section of each Key Information Document, the **performance of the specific retail investment product** needs to be disclosed. Table 5.7 compares the information to be included in the PEPP KID and the PRIIPs KID in relation to performance. Given that the UCITS KIID will be phased out in favour of the PRIIPs KID for retail funds, UCITS has been included in the table below but has not been further discussed; and any potential current inconsistencies between the UCITS KIID and the PEPP/PRIIPs KID will be resolved **with the phase-out** (thereby boosting comparability of the key information documents).

[172] https://a-teaminsight.com/mifid-ii-and-priips-the-double-act/?brand=ati . See also "Since different firms in the chain may have different approaches to defining risk, the firm should be explicit about the criteria that must be met in order to categorise a client in this way. Firms should use the risk indicator stipulated by the PRIIPs Regulation or the UCITS Directive, where applicable, to fulfil this requirement" in ESMA (2018), Guidelines on MiFID II product governance requirements, page 6.

Table.7 - Risk and rewards – performance disclosure

	UCITS KIID (*Section 4 Reg 583/2010*)	PEPP KID (*Art. 4 and Annex III Del Reg 2021/473*)	PRIIPs KID (*Annex IV Del Reg 2017/653*)
Performance presentation	▪ Past performance presentation or, ▪ where relevant, simulated performance scenarios for the period before data was available ▪ min. 3 prospective scenarios for structured UCITS (1 with an unfavourable outcome, 1 with a positive return and 1 with a moderate growth in capital) Including up to 10 years of past performance	Three standardised performance scenarios of:[173] ▪ favourable ▪ best estimate ▪ unfavourable Adjustments for effects of inflation[174] Nominal projected benefits	Four appropriate performance scenarios: ▪ stress scenario ▪ unfavourable scenario ▪ moderate scenario ▪ favourable scenario[175] + for IBIPs: scenario reflecting the insurance benefit the beneficiary receives where covered insured event occurs For up to three time periods, including the recommended holding period (Annex IV)[176]
Visual presentation of performance	▪ past performance information to be presented in a bar chart (*Annex III Reg 583/2010*) + where relevant, bar showing the performance of the benchmark (*Art. 18 Reg 583/2010*) ▪ selection and presentation for structured UCITS laid down in *CESR Guidelines*: either tables or graphs, whichever is clearer	▪ projections should include four generic PEPP savers with 40, 30, 20 and 10 years accumulation periods until the end of the accumulation phase and be based on a standardised contribution level ▪ past performance, presenting average returns over 10, 5, 3 and 1 years – complemented with a relevant benchmark (e.g. basic PEPP investment option or average performance of all PEPPS offered or ultimate forward rate) – link with expected outcomes following pension projections and performance scenarios	Formats laid down in Annex V: ▪ Template A: single investment and/or single premium is paid ▪ Template B: regular investments and/or premiums are paid

[173] The favourable scenario should refer to the 85th percentile of the distribution, the best estimate scenario to the median and the unfavourable scenario to the 15th percentile of the distribution.
[174] To calculate the annual rate of inflation, the PEPP provider should use a one factor Vasicek process.
[175] The unfavourable, moderate and favourable scenario should correspond to the 10th-, 50th- and 90th-percentile of the PRIIP's probability distribution of returns
[176] The proposed new PRIIPs RTS amend the requirement to show an intermediate holding period (IHP) to only those PRIIPs with a recommended holding period (RHP) over ten years (rather than three years)

	UCITS KIID (*Section 4 Reg 583/2010*)	PEPP KID (*Art. 4 and Annex III Del Reg 2021/473*)	PRIIPs KID (*Annex IV Del Reg 2017/653*)
Calculation of performance presentation	▪ The calculation of past performance figures should be based on the net asset value of the UCITS, and they should be calculated on the basis that any distributable income of the fund has been reinvested (Art. 16) ▪ For structured UCITS, at least three scenarios of the UCITS' potential performance, based on reasonable and conservative assumptions about future market conditions and price movements. (Art. 36)	Stochastic determination When determining the different elements of the stochastic model, PEPP providers should use the annual rate of inflation and may consider to take a modular approach for the stochastic calculation of, at least: a) the nominal interest rates (G2++ short-rate model); b) the credit spreads[177], including migration and default; and c) the equity returns (model for the development of one stock market index through the use of geometric Brownian motion).	▪ Cornish-Fisher approximation for products Cat. 2 ▪ Simulation by means of a bootstrap for products Cat. 3 ▪ "robust and well organized industry and regulatory standard" for products Cat. 4 ▪ No calculations for products Cat. 1 but the possible derivative-like structure of this type of products (such as e.g. a call-option) should be indicated graphically instead Annex IV

Source: Consortium, based on the legal analysis.

[177] For the determination of credit spreads, the PEPP provider may use the simulation of credit spreads so as to combine the risk-free zero coupon bond term structure to yield a credit-risky zero coupon bond term structure. The hazard rates of bonds of different rating classes may be modelled using of Cox-Ingersoll-Ross (CIR) processes.

For the majority of the investment funds, the **PRIIPs KID** discloses the performance scenarios under favourable, moderate, unfavourable and stressed conditions (i.e. **four** scenarios). In addition, performance scenarios are displayed at different points in time, depending on the recommended holding period. The PRIIPs Regulation thus introduced a forward-looking approach similar to the compilation of the Market Risk Measure ("MRM"), and based on historical data, applying the Cornish-Fisher VaR expansion for category 2 PRIIPS. It is noted that the data for PRIIPs derived from past performance causes difficulty for comparisons with different types of AIFs.[178] More generally, the ESAs acknowledged that "it has proved very difficult to design appropriate performance scenarios for the different types of products included within the scope of the PRIIPs Regulation that would allow for appropriate comparisons between products, avoid the risk of generating unrealistic expectations amongst retail investors and be understandable to the average retail investor. In particular, no academic consensus has been reached on how to develop common performance scenarios that would be equally appropriate for all types of PRIIPs, proving the inherent difficulty of such an approach." This might now have been attenuated in the new PRIIPs RTS, which set out a **new methodology** underpinning the calculation of performance scenarios for UCITS and AIFs, except for structured UCITS and structured AIFs and other Category 2 PRIIPs, such as unit-linked insurance-based investment products. Under the new methodology[179], unfavourable, moderate, and favourable performance scenarios show a range of future outcomes as an estimate from a distribution of past returns of the PRIIP or a relevant benchmark.[180] Furthermore, it is said that the PRIIPs KID should present prominently the existence or absence of biometric risk cover (important for IBIPs), as this is a crucial element in consumers' comparison and choice of products.[181] No **past performance** is shown in a PRIIPs KID – something now changed in the new PRIIPs RTS, which have inserted a new Annex on "Content and presentation of past performance information". Performance scenarios will have to be calculated (and published) on at least a monthly basis.

On the other hand, under **PEPP**, the KID needs to include information on the **standardised performance scenarios** of favourable, best estimate and unfavourable (i.e., three scenarios), with the projections including four generic PEPP savers with 40, 30, 20 and 10 years until the end of the accumulation phase.

The expected PEPP benefits should be determined using **stochastic modelling**. In the PEPP KID, benchmarked funds display historical performance alongside **benchmark performance**.

Finally, **MiFID II** does not include a similar description of the performance scenarios to be used for a financial instrument or an investment service, but legislates conditions where the information a) contains an **indication of past performance** of a financial instrument, a financial index or an investment service, b) includes or refers to **simulated past performance**, or c) contains **information on future performance** (Article 44(4-6) Delegated Regulation 2017/565). With MiFID II, **forward-looking performance** scenarios can only be performed in specific standardisations. For this type of performance scenario evaluation, asset managers are not to base forward-looking performance on past transactions and these must be based on **reasonable assumptions**. In these findings, advisors are to include warnings about the

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[178] The "need for stronger integration in technological terms" has also been emphasised in: KPMG, Report on the Operation of the Alternative Investment Fund Managers Directive (AIFMD) – Directive 2011/61/EU, FISMA/2016/105(02)/C, Submitted 1010th of December 2018, Available at: AIFMD operation report

[179] In the new methodology, the calculation of the unfavourable, moderate and favourable scenarios for Category 2 PRIIPs is based on a direct estimate of the historical performance of the PRIIP. A time series with a minimum of 10 years of historical data is required. The exact required length of the time-series is the recommended holding period plus 5 years but with an absolute minimum of 10 years. This means that the performance scenarios (requiring 10 years or more) and the SRI (requiring between 2-5 years) will be calculated using a different set of returns. Hence, the risk reflected in the scenarios differs from the risk embedded in the SRI score. See: Risk Concile, PRIIPs 2.0: The countdown has begun!, November 2021.

[180] COMMISSION DELEGATED REGULATION (EU) …/... of 7.9.2021 amending the regulatory technical standards laid down in Commission Delegated Regulation (EU) 2017/653 as regards the underpinning methodology and presentation of performance scenarios, the presentation of costs and the methodology for the calculation of summary cost indicators, the presentation and content of information on past performance and the presentation of costs by packaged retail and insurance-based investment products (PRIIPs) offering a range of options for investment and alignment of the transitional arrangement for PRIIP manufacturers offering units of funds referred to in Article 32 of Regulation (EU) No 1286/2014 of the European Parliament and of the Council as underlying investment options with the prolonged transitional arrangement laid down in that Article, C(2021)6325 final, page 5.

[181] Making EU regulation that works and benefits consumers

unreliability of the data and to take into consideration the impact of costs, fees, and charges. Furthermore, positive and negative performance periods must be used.

The disclosure of the performance of a specific retail investment product has been vigorously debated in several reports and was mentioned by many **interviewees**, generally **calling for harmonisation**. Most concerns relate to the performance disclosure in the PRIIPs KID and its application in the insurance sector. Interviewees expressed a concern that the KID requirements were developed for investment funds and are ill-adapted to insurance products. More specifically, there are certain elements which are specific to insurance-based investment products (biometric risk) that do not find an appropriate placeholder in the KID. Another example given by interviewees was that the KIID for mutual funds informs clients about the fund's past performance, while the KID for insurance products informs clients about the expected performance. Both concerns were addressed by the new PRIIPs RTS, which requires KIDs to present prominently the existence or absence of biometric risk cover and adopt the forward-looking scenario approach for mutual funds.

At the same time, **while PRIIPs KID and PEPP KID are largely consistent and coherent, some differences in the design of scenarios and calculation methodologies** remain due to the different nature of the products (e.g., average maturity, recommended holding period, etc.). For example, PEPP products have a long-recommended holding period, the PEPP KID performance scenarios must consider the impact of inflation, age of target audience, etc., which are not included in PRIIPs KID, while PRIIPs traditionally have a shorter holding period.

5.3.10. Coherence of information about costs and charges in pre-contractual documents

All pre-contractual information documents include a section on "costs/charges", generally referred to as "what are the costs?" (PEPP and PRIIPs) and "charges for this fund" (UCITS). Table 5.8 compares 1) the **types of costs** to be disclosed in the PRIIPs KID[182], the UCITS KIID[183], the PEPP KID[184] and the pre-disclosure document for the financial instruments and the financial services regulated under MiFID II[185], 2) the **format of disclosure**, and 3) the **timeframe** of the costs that need to be disclosed. Given that the UCITS KIID will be phased out in favour of the PRIIPs KID for retail funds, UCITS has been included in table 5.8 below but has not been further discussed; and any potential current inconsistencies between the UCITS KIID and the PEPP/PRIIPs KID will be resolved with the phase-out (thereby boosting comparability of the key information documents).

The **MiFID II** Delegated Regulation 2017/565 distinguishes situations where full ex-ante costs disclosures must be provided and where the costs disclosures only need to include the costs and charges related to the investment and/or ancillary service provided[186]:

- "Full" ex-ante disclosure has to be provided where the investment firm recommends or markets financial instruments to clients or where the investment firm providing any investment services is required to provide clients with a UCITS KIID or PRIIPs KID in relation to the relevant financial instruments (Art. 50(5)). In such cases, the costs disclosure must disclose the aggregated costs and charges related to i) the financial instrument and ii) the investment or ancillary service provided.
- In the remaining (residual) situations, investment firms only need to inform their clients about all costs and charges relating to the investment and/or ancillary service provided (Art. 50(6)).

While **IDD** only establishes a specific pre-contractual information document for non-life insurance products, it does include various provisions with regard to **ex-ante costs disclosure for the distribution of IBIPs**. The IDD ex-ante costs disclosure rules (Article 29(1)) follow those laid down in MiFID II – and hence not further discussed explicitly. The IDD does not provide

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182 Art. 5, Annex VI and Annex VII Del Reg 2017/653.
183 Art. 10- 14 and Annex II Reg. 583/2010.
184 Art. 5, Chapter V and Annex I Del Reg 2012/473.
185 Art. 24(4)(c) MiFID II; Art. 50 and Annex II Del Reg 2017/565.
186 See also: [Call for evidence impact of the inducements and costs and charges disclosure requirements under MiFID II]

further specification of the costs disclosure duties at Level 2. See also Recital 42 of IDD: "*Insurance intermediaries and insurance undertakings are subject to uniform requirements when distributing insurance-based investment products, as laid down in Regulation (EU) No 1286/2014 of the European Parliament and of the Council. In addition to the information required to be provided in the form of the key information document, distributors of insurance-based investment products should provide additional information detailing any cost of distribution that is not already included in the costs specified in the key information document, so as to enable the customer to understand the cumulative effect that those aggregate costs have on the return of the investment. This Directive should therefore lay down rules on provision of information on costs of the distribution service connected to the insurance-based investment products in question*." Ex-ante costs disclosure requirements for other (i.e. non-IBIP) insurance products are not included in IDD.

National authorities interviewed generally commented that the **comparability of costs across products has not (yet) been achieved** and retail consumers are facing uncertainties. Existing issues mostly relate to technical aspects, such as differences in the reference period, different methodologies, etc. and to reconciling the overall costs with the breakdown of the costs. Interviewees pointed out that comparability is even more problematic when a consumer wants to compare product costs between different distributors or investment firms. Equally, entities might have their own scheme or form of presentation of information on costs and charges, sometimes including the costs of services and the costs of instruments, therefore affecting the comparability of information. This is discussed in depth in the *section on the effectiveness* of costs disclosure.

Practical incoherencies have also been mentioned in ESMA's Technical Advice.[187] In particular, ESMA's Q&A clearly states that MIFID firms can use PRIIPS KIDs in order to fulfil their obligations to provide investors with **information on costs**.[188] MiFID firms should additionally ensure that **all information is disclosed**, meaning that if costs are added, additional information on these costs should be included in the MiFID pre-contractual information document (Art. 51 MiFID Delegated Regulation 2017/565).[189] Indeed, given that the MiFID II costs disclosures also include service costs, firms cannot solely rely on the PRIIPs KID or UCITS KIID, which are product disclosure documents.[190] Costs can thus be presented through the KID/KIID according to the methodologies there, and the MiFID-designed costs disclosure can then be added when execution services or investment advisory services are provided as well. However, ESMA pointed out some issues in the implementation of this guidance: "Based on feedback received from some national competent authorities and market participants, it seems that, even where the MiFID II and PRIIPS/UCITS costs disclosures overlap, investment firms do not rely on the information available in the PRIIPs KID or in the UCITS KIID for their MiFID II costs disclosures. This has **created divergent interpretations and applications of the costs disclosures rules** across the European Union, which makes it difficult for clients to compare costs between products, investment firms, and Member States".[191] One stakeholder mentioned that some firms are coming up with more client-friendly ways to explain MiFID cost elements, but then they also deliver the PRIIPs KID and therefore they cannot be sure whether clients using a self-service portal understand the difference between the two, and why the numbers look different.

The interviewed distributors, on the other hand, focused on the **lack of comparability across different types of products** (but admit that this is "logical") and maintain that comparability

[187] ESMA (2019), Call for evidence on impact of the inducements and costs and charges disclosure requirements under MiFID II, available at: https://www.esma.europa.eu/sites/default/files/library/call_for_evidence_impact_of_the_inducements_and_costs_and_charges_disclosure_requirements_under_mifid_ii__0.pdf

[188] ESMA (2021), Q&A on MiFID II and MIFIR investor protection and intermediary topics, Section 9 Information on costs and charges, available at: https://www.esma.europa.eu/sites/default/files/library/esma35-43-349_mifid_ii_qas_on_investor_protection_topics.pdf

[189] "Investment firms distributing units in collective investment undertakings or PRIIPs shall additionally inform their clients about any other costs and associated charges related to the product which may have not been included in the UCITS KID or PRIIPs KID and about the costs and charges relating to their provision of investment services in relation to that financial instrument."

[190] A stakeholder noted that "there is no clear definition of what is meant by 1) Service costs and 2) Product costs. Especially, costs that seem to not fit in with either category, seem open to different interpretations. For example, swing pricing or implicit costs like market spreads could be interpreted as both service- and product costs. In practice, this means that financial institutions make their own consideration with regard to these cost aspects, which leads to various interpretations between different jurisdictions (and even, within jurisdictions)." See: EBF response to ESMA's call for evidence: Impact of the inducements and costs and charges disclosure requirements under MiFID II, September 2019, page 14.

[191] ESMA Call for evidence on impact of the inducements and costs and charges disclosure requirements under MiFID II, point 91.

for the same type of product (e.g. different UCITS products) does not constitute a problem. There does not seem to be agreement on the comparability of costs for the same product sold via different distribution channels. Furthermore, one distribution stakeholder pointed out that "most of the complexity in comparing costs is related to two items, namely distribution costs (for the banking channel) and performance fees (for the local agencies). Calculating such costs is very difficult for the client because it implies a very refined knowledge of the market. Ultimately, clients pay a different price for the same exact product depending on the distribution channel they choose. In particular, they could face different price levels for the same price category (up-front, etc) and sometimes also different price categories".

Furthermore, the introduction of cost transparency through MiFID II has generally been welcomed, even though there is still room for improvement as **cost statements are not standardised**.

The PRIIPs KID was deemed to be ill-adapted to the specificities of multi-option products (MOPs) given that, in the case of PRIIPs products offering a range of options for investment, **the PRIIPs KID can be misleading** where it is highly unlikely in practice that the highest levels of charges will actually be applied.[192] This issue is **likely to be solved by the new PRIIPs RTS**, as, for MOPs (including IBIPs), the cost tables must show a clear distinction between costs arising from the insurance product or wrapper and those arising from the underlying investment options.[193] This change will enable the retail investor to identify the total costs of investing in a particular investment option.

[192] A generic KID covers in general terms the types of investment options offered and separate information on each underlying investment option (Article 10(b) Delegated Regulation (EU) 2017/653). ESA hereby considered the following challenge: "Where a generic KID is used (in accordance with Article 10(b) of the PRIIPs Delegated Regulation) it is difficult for the investor to identify the total costs related to a particular investment option. This arises because the generic KID shows a range of costs, but does not always identify which costs are specific to an investment option and which costs relate to the insurance contract. At the same time, it is understood that the information on the underlying investment option (in accordance with Article 14 of the PRIIPs Delegated Regulation), does not usually include the total costs of investing in that option. Therefore, it is often not possible for the investor to identify from the generic KID the costs that may apply in addition to those shown in the option-specific information". See: ESAs (2019), Joint Consultation Paper concerning amendments to the PRIIPs KID, page 51, available at: https://www.esma.europa.eu/sites/default/files/library/jc-2019-63_consultation_paper_amendments_priips_kid.pdf

[193] Article1(9) Commission Delegated Regulation (EU) 2021/2268, replacing Article 13 of the Delegated Regulation (EU) 2017/653.

Table.8 - Ex-ante costs disclosure

	:IIPs KID	:ITS KIID	PP KID	MiFID II – investment services and ancillary services	FID II – financial instruments
Definition					
Costs vs charges	The costs disclosure includes the disclosure of the related charges[194]	The presentation of charges includes the costs incurred	Only refers to costs (Level 2 refers to costs and fees)	Consistently refers to “costs and associated charges”	Consistently refers to “costs and associated charges”
Types of costs to be disclosed					
One-off costs[195]	X	X Entry and exit charges (maximum figures – actual charges to be found with financial advisor or distributor)	X	X	X
Recurring costs[196]	X *Includes fund portfolio trading costs*	X Ongoing charges (single figure, based on last year’s expenses – may vary from year to year) *Does not include fund portfolio trading costs*	X	X	X
Incidental costs[197]	X	X	No explicit statement	X	X
All transaction costs[198]	X	No explicit disclosure requirement	X	X	X
Format					
Monetary/percentage terms	Monetary and percentage terms Summary cost indicator in monetary and percentage terms for different time periods[199]	Percentage terms	Monetary and percentage terms (presented as “total costs per annum” in monetary terms	Monetary and percentage terms	Monetary and percentage terms

194 Description of each of the different costs, specifying where and how such costs may differ from the actual costs the retail investor may incur.
195 All costs and charges (included in the price or in addition to the price of the financial instrument) paid to product suppliers at the beginning or at the end of the investment in the financial instrument. Examples: front-loaded management fee, structuring fee, distribution fee, marketing costs, subscription fee, deposit fees, termination fees, switching costs.
196 All ongoing costs and charges related to the management of the financial product that are deducted from the value of the financial instrument during the investment in the financial instrument. Examples: management fees, service costs, advisory fees, swap fees, securities lending costs and taxes, financing costs.
197 Example: performance fees, carried interest.
198 All costs and charges that incurred as a result of the acquisition and disposal of investments. Examples: broker commissions, entry- and exit charges paid by the fund, markups embedded in the transaction price, stamp duty, transactions tax and foreign exchange costs.
199 The calculation method of the summary cost indicator is laid down in Part 2 of Annex VI of Del Reg 2017/653.

	IIPs KID	ITS KIID	PP KID	MiFID II – investment services and ancillary services	FID II – financial instruments
			and as a percentage of the accumulated capital)		
Presentation of costs/charges/fees (template)	“Costs over time”: Summary cost indicator of the total costs and Reduction in Yield (RIY) “Composition of costs”: Cost details table including one-off costs, recurring costs and relevant incidental costs	Charges table including entry charges, exit charges, ongoing charges, performance fees	Matrix presentation, with costs, fees and charges to be broken down by one-off and recurring costs.	ESMA allows the use of a grid or table, in limited circumstances[200]	ESMA confirmed that investment firms could rely on the PRIIPs KID or UCITS KIID as a basis for their MiFID II costs disclosures.[201]
Aggregation	Yes All above mentioned costs (summary cost indicator) + cost of distribution in relation to IBIPs[202]	Not required	Yes All above mentioned costs + costs of the guarantee[203], if any *For Basic PEPP, there is a 1% cost cap on the accumulated capital per annum*	Yes (*Art. 50(2) Del Reg 2017/565*) All above mentioned costs and associated charges charged by the investment firm or other parties where the client has been directed to such other parties, for the investment services(s) and/or ancillary services provided to the client +	Yes (*Art. 50(2) Del Reg 2017/565*) All costs and associated charges associated with the manufacturing and managing of the financial instruments.

200 According to ESMA Q&A on Investor Protection, Section 9 Information on costs and charges, question & answer 23: “ : « Where there are no product costs for the relevant financial instrument (management, structuring or distribution fees which are neither included in the price or in addition to the price of the financial instrument) or in the residual instances where the assessment of product costs is not required (in accordance with Article 50(6) of the MiFID II Delegated Regulation), firms may meet their ex-ante costs and charges disclosure obligation by providing to their clients a grid or table displaying the relevant costs and charges specific to i) the investment or ancillary service and ii) the financial instrument category offered to or demanded by the client. However, such grids or tables should comply in full with the MIFID II costs and charges requirements. Consequently, the amounts and percentages disclosed in such grids or tables for the relevant investment service(s) and category(ies) of financial instruments should be the same as those that would have been disclosed had the firm informed the client of the relevant costs and charges before each transaction and in a fully individualized, transaction-based manner. This means that the categories of financial instruments used as a basis to calculate and disclose service costs through such grids or tables have to be granular enough for this purpose. This also means that the information provided should be clear and understandable by the client to which it is provided, and such grids or tables should not be brochures in which the firm sets out a long list of tariffs that may or may not apply to a broad range of clients, when specific conditions apply to each. However, as per Recital 78 of the MIFID II Delegated Regulation, the firm may base the costs and charges disclosed as a cash amount on an assumed investment amount. Nevertheless, the costs and charges disclosed must reflect the costs the client would actually incur on the basis of the assumed investment amount (Recital 78). As per Article 50(2) of the MiFID II Delegated Regulation, the costs and charges should also be disclosed as a percentage. In addition, the information provided in such grids or tables must be updated every time any element changes so that the information provided to the client is, at all times, the same as the information that would have been provided to the client had the firm made such disclosure before each transaction and in a fully individualized, transaction-based manner. The firm should provide such grids or tables in good time before the first investment service is provided to a new client and at any time they are updated. In addition, they should remain easily available at all times to clients.” »

201 ESMA also published some Q&As on this topic (for instance, Q&As 9.6 and 9.7 of ESMA’s Q&As document on MiFID II and MiFIR investor protection and intermediaries’ topics).

202 IDD lays down the rules on the provision of information on costs of the distribution service connected to IBIPs. These requirements are largely aligned with those of MiFID II and include disclosure of all costs and charges in an aggregated form under the same conditions as provided for in MiFID II.

203 Premium charged for guarantees, which reflect the market price of the cover against the risk of financial loss, or limiting the financial loss or the cover of biometric and any other risks.

	IIPs KID	ITS KIID	PP KID	MiFID II – investment services and ancillary services	FID II – financial instruments
			(not including costs of guarantees)	charges that are related to ancillary services[204]. *Third-party payments received by investment firms in connection with the investment service provided to a client should be itemised separately.*	
Cumulative effect of costs on the return	To be disclosed	N/A as no aggregation required	To be disclosed	To be disclosed (with an illustration[205])	To be disclosed (with an illustration)
Timeframe					
Ex-ante estimates/ex-post figures	Ex-ante estimates and ex-post figures (annualized figures calculated with assumptions on return over the recommended holding period)	Ex-ante estimates (when the ongoing charges are not available, an estimate should be provided on reasonable grounds) and ex-post figures (actual cost data - no assumptions on estimated return and recommended holding period)	Ex-ante estimates and ex-post figures (actual incurred costs, incurred directly at the level of the provider or at the level of an outsourced activity or investment fund)	Ex-ante estimates and ex-post figures (use actually incurred costs as a proxy for the expected costs and charges; where not available, make reasonable estimations of these costs; review ex-ante assumptions based on ex-post experience) (*Art. 50(8) Del Reg 2017/565*)	Ex-ante estimates and ex-post figures (use actually incurred costs as a proxy for the expected costs and charges; where not available, make reasonable estimations of these costs; review ex-ante assumptions based on ex-post experience) (*Art. 50(8) Del Reg 2017/565*)
Annualisation	X		X	Transaction-specific[206]	Transaction-specific

Source: Consortium, based on the legal analysis.

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[204] Example: research costs, custody costs.

[205] Such illustration must be part of the costs disclosures both on an ex-ante and ex-post basis and should meet the following requirements: a) to show the effect of the overall costs and charges on the return of the investment; b) to show any anticipated spikes or fluctuations in the costs; and c) to be accompanied by a description. There is flexibility as to format of presentation of the illustration – it can take multiple forms, among others a graph, a table or a narrative. See ESMA Q&A on Investor Protection, Section 9 Information on costs and charges, question & answer 2.

[206] According to ESMA Q&A on Investor Protection, Section 9 Information on costs and charges, question & answer 22: " : « According to Article 24(4) of MiFID II and Article 50(2) of the MiFID II Delegated Regulation, investment firms should provide ex-ante information on costs and charges in a fully individualized, transaction-based manner, i.e. in relation to the specific financial instrument (ISIN-based) and in relation to the specific investment service or ancillary service provided. This is in line with the objective of the MiFID II costs and charges provisions. Recital 78 of the MiFID II Delegated Regulation clearly states that the MiFID II costs and charges provisions have the objective of ensuring clients' awareness of all applicable costs and charges as well as enabling a comparison of different financial instruments and investment services. ESMA is of the view that this is only achievable if the costs and charges disclosures are specific to the transaction (especially ISIN-based). The only relief to this principle can be found in Recital 78 which allows firms to provide costs and charges disclosures on the basis of an assumed investment amount. Nevertheless, the costs and charges disclosed must reflect the costs the client would actually incur on the basis of the assumed investment amount (Recital 78 sentence 3)."). »

One-off costs

With regard to one-off costs, **MIFID II makes a distinction** as to whether the costs relate to investment services and/or ancillary services, or to financial instruments.[207] Equally, **PRIIPs defines different one-off costs** related to investment funds, PRIIPs other than investment funds, and IBIPs.[208]

The following tables on one-off costs show that the definition of one-off costs is not entirely uniform across the different EU legal instruments. However, even though the terminology used differs, in general one-off costs cover entry and exit costs in all the legal documents analysed. Therefore, this is **not considered an incoherence or inconsistency**.

[207] Annex II Delegated Regulation 2017/565.
[208] Annex VI Delegated Regulation 2017/653.

Table.9 - Coherence in the definition of one-off costs

	MiFID II – investment services	MiFID II – financial instrument	PRIIPS – investment funds	PRIPS other than investment funds	PRIIPS – IBIPs	UCITS[209]	PEPP[210]
Definition	All costs and charges paid to the investment firm at the beginning or at the end of the provided investment service(s).	All costs and charges (included in the price or in addition to the price of the financial instrument) paid to product suppliers at the beginning or at the end of the investment in the financial instrument.	A one-off cost is an entry or exit cost which is either: (a) paid directly by the retail investor; or (b) deducted from a payment received by or due to the retail investor.	A one-off cost is an entry and exit cost which include initial charges, commissions or any other amount paid directly by the retail investor or deducted from a payment received by or due to the retail investor.	A one-off cost is an entry and exit cost which includes initial charges, commissions or any other amount paid directly by the retail investor or deducted from the first payment or from a limited number of payments due to the retail investor or from a payment upon redemption or termination of the product.	One-off charges taken before or after you invest.	The costs for signing up to the contract and the one-off fees if the contract is terminated within five years.

Source: Consortium, based on the legal analysis.

[209] Annex II Regulation 583/2010.
[210] Point 24 Annex I Delegated Regulation 2021/473.

The **scope of the types of one-off costs** (see Table 5.10) varies, which is at least partly due to the character of the specific investment instrument or service. PRIIPs is the most detailed in listing various types of fees included under the **definition of one-off costs**, especially in its part concerning entities other than investment funds: various types of possible costs are listed separately for the entry and the exit costs. It is noted that PRIIPS includes a ceiling on the distribution costs. PEPP, on the other hand, includes distribution costs under "recurring costs".

Table.10 - Types of one-off costs

MiFID II – investment and/or ancillary services	MiFID II – financial instrument	PRIIPs – investment funds	PRIPs other than investment funds	PRIIPs – IBIPs	UCITS
Examples: deposit fees, termination fees and switching costs[211]	Examples: front-loaded management fee, structuring fee[212], distribution fee	Include, but are not limited to: (a) distribution fee, to the extent that the amount is known to the management company. If the actual amount is not known to the management company, the maximum of the possible known distribution costs for the specific PRIIP should be shown; (b) constitution costs (up-front part); (c) marketing costs (up-front part); (d) subscription fee including taxes.	One-off entry costs and charges include, but are not limited to: (a) sales commissions; (b) structuring costs, including market-making costs (spread) and settlement costs; (c) hedging costs (to ensure that the PRIIP manufacturer is able to replicate the performance of the derivative component of the structured product — these costs include transaction costs) (d) legal fees; (e) costs for capital guarantee; (f) implicit premium paid to the issuer. One-off exit costs and charges include, but are not limited to: (a) proportional fees; (b) bid-mid spread to sell the product and any explicit costs or penalties for early exit applicable. The estimation of the bid-mid spread should be done in relation to the availability of a secondary market, to the market conditions and the type of product. In the situation where the PRIIP manufacturer (or a related third party) is the only available counterparty to buy the product on the secondary market, it should estimate the exit costs to be added to the fair value of the product according to its internal policies; (c) contract-for-difference (CFD) related costs such as: i. commissions charged by CFD providers — general commission or a commission on each trade — i.e. on opening and closing a contract; ii. CFD trading such as bid-ask spreads, daily and overnight financing costs, account management fees and taxes which are not already included in the fair value.	Include, but are not limited to: (a) structuring or marketing costs; (b) acquisition, distribution, sales costs; (c) processing/ operating costs (including costs for the management of the insurance cover); (d) cost part of biometric risk premiums referred to in point 59 of this Annex; (e) costs of holding required capital (up front part to be disclosed insofar as they are charged).	Entry charge Exit charge

Source: Consortium, based on the legal analysis.

[211] Switching costs should be understood as costs (if any) that are incurred by investors in switching from one investment firm to another investment firm.
[212] Structuring fees should be understood as fees charged by manufacturers of structured investment products for structuring the products. They may cover a broader range of services provided by the manufacturer.

Recurring costs

As for one-off costs, **MIFID II makes a distinction** as to whether the recurring costs relate to investment services and/or ancillary services, or to financial instruments.[213] Equally, **PRIIPs defines different recurring costs** related to investment funds, PRIIPs other than investment funds, and IBIPs.[214]

The definition of recurring costs is **different in wording** across the pieces of legislation assessed – see Table 5.11. MiFID II refers to "ongoing costs and charges", both related to products and services; PRIIPs to costs that are regularly deducted from the assets or from all payments due to the retail investor while UCITS refers to the "charges taken from the fund over a year"[215]. Article 28(3)(f) PEPP and Article 5(1) Delegated Regulation 2021/473 refer to "recurring costs" (next to one-off costs), without including any definition.

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[213] Annex II Delegated Regulation 2017/565.
[214] Annex VI Delegated Regulation 2017/653.
[215] Annex II Regulation 583/2010.

Table.11 - Coherence in the definition of recurring costs

MiFID II – investment and/or ancillary services	MiFID II – financial instrument	PRIIPs – investment funds	PRIPs other than investment funds	PRIIPs – IBIPs	UCITS	PEPP
All ongoing costs and charges paid to investment firms for their services provided to the client.	All ongoing costs and charges related to the management of the financial product that are deducted from the value of the financial instrument during the investment in the financial instrument.	Recurring costs are payments deducted from the assets of an AIF or UCITS, and represent the following: (a) expenses necessarily incurred in their operations; (b) any payments, including remunerations, to parties connected with the AIF or UCITS or providing services to them; (c) transaction costs.	Recurring costs are payments regularly deducted from all payments due to the retail investor or from the amount invested.	Recurring costs are payments regularly deducted from all payments from the retail investor or from the amount invested or amounts that are not allocated to the retail investor according to a profit-sharing mechanism.	Charges taken from the fund over a year	No definition

Source: Consortium, based on the legal analysis.

As to the **types of costs included** under the heading "recurring costs" (see Table 5.12), **MiFID II** lists examples in relation to investment and/or ancillary services such as management fees, advisory fees, and custodian fees; and examples in relation to financial instruments, such as management fees, service costs, swap fees, securities lending costs and taxes, and financing costs. **PRIIPs**, in relation to investment funds, is very detailed in providing a long non-exhaustive list of types of costs falling under the category of recurring costs; it describes not only the types of payments but also the persons and the institutions to whom these payments are due. **PEPP** includes some examples of costs that are to be understood as administrative costs, investment costs or distribution costs.[216] **UCITS** gives no further indication and is therefore not included in that table.

An inconsistency has been noted where the transaction costs are included in the PRIIPs KID and PEPP KID under "recurring costs", while they are mentioned separately as a cost category under MiFID II (services and products).

[216] Art.5(2) Delegated Regulation 2021/473.

Table.12 – Types of recurring costs

MiFID II – investment and/or ancillary services	MiFID II – financial instrument	PRIIPs – investment funds	PRIPs other than investment funds	PRIIPs – IBIPs	PEPP
Examples: management fees charged by an investment firm providing the service of portfolio management to its clients, advisory fees, custodian fees	Examples: management fees charged by an investment fund manager to its investor, service costs, swap fees, securities lending costs and taxes, financing costs	Include, but are not limited to: (a) all payments to the following persons […]; (b) all payments to any person providing outsourced services to any of the above, […]; (c) registration charges, listing fees, regulatory charges and similar charges, including passporting fees; (d) provisioned fees for specific treatment of gain and losses; (e) audit fees; (f) payments to legal and professional advisors; (g) any costs of distribution or marketing, to the extent that the amount is known to the management company. (h) financing costs, related to borrowing (provided by related parties); (i) costs of capital guarantee provided by a third-party guarantor; (j) payments to third parties to meet costs necessarily incurred in connection with the acquisition or disposal of any asset in the fund's portfolio (including transaction costs as referred to in points 7 to 23 of this Annex);	Indicative, not exhaustive list: (a) costs related to coupon payments; (b) costs of the underlying, if any. Where a fund invests in a PRIIP other than UCITS or AIFs, its summary cost indicator should take account of the charges incurred in the underlying PRIIP.	Indicative, not exhaustive list: (a) structuring or marketing costs; (b) acquisition, distribution, sales costs; (c) processing/operating costs (including costs for the management of insurance cover); (d) cost part of biometric risk premiums referred to in point 59 of this Annex[218]; (e) other administrative costs; (f) costs of holding capital (recurring part to be disclosed insofar as they are charged); (g) any amount implicitly charged on the amount invested such as the costs incurred for the management of the investments of the insurance company (deposit fees, costs for new investments, etc.); (h) payments to third parties to meet costs necessarily incurred in connection with the acquisition or disposal of any asset owned by the insurance-based investment product	(a) Administrative costs arising from the PEPP provider's activities when administering accounts, collecting contributions, providing information to members and executing payments. (b) Investment costs: - costs of safekeeping of assets, including fees paid to the custodian for keeping assets safe and collecting dividends and interest income. - portfolio transaction costs, including actual payments by the PEPP provider to third parties to meet costs incurred in connection with the acquisition or disposal of any asset in the PEPP account. Examples are brokerage and currency exchange fees. These costs are passed on to PEPP savers as a reduction of return or assets value or in a fee.

[218] The cost disclosure of the biometric risk premium of insurance-based investment products is laid down in points 54 to 60 of Annex to Del Reg 2017/653.

MiFID II – investment and/or ancillary services	MiFID II – financial instrument	PRIIPs – investment funds	PRIPs other than investment funds	PRIIPs – IBIPs	PEPP
		(k) the value of goods or services received by the management company or any connected person in exchange for placing of dealing orders; (l) where a fund invests its assets in UCITS or AIFs, its summary cost indicator should take account of the charges incurred in the UCITS or AIFs. (m) operating costs (or any remuneration) under a fee-sharing arrangement with a third party to the extent that they have not been already included in another type of cost mentioned above; (n) earnings from efficient portfolio management techniques if they are not paid into the portfolio; (o) implicit costs incurred by structured funds as referred to in section II of this Annex, and notably points 36 to 46 of this Annex[217]; (p) dividends served by the shares held in the portfolio of the funds, should the dividends not accrue to the fund.		(including transaction costs as referred to in points 7 to 23 of this Annex). Where a fund invests in an investment product other than a PRIIP its summary cost indicator should take account of the charges incurred in the underlying investment product	- other costs relating to the management of the investments. (c) Distribution costs arising from marketing and selling the PEPP product, including the costs and fees related to providing advice. (d) Guarantee costs charged to the PEPP saver for the financial guarantee to pay back at least the accumulated capital at decumulation and of any other financial guarantee provided under the PEPP contract

Source: Consortium, based on the legal analysis.

[217] The calculation of implicit costs of PRIPs other than investment funds is laid down in points 36-46 of Annex Del Reg 2017/653.

Transaction costs

Table 5.13 provides an overview of the definitions used for "transaction costs" and lists the types of costs therein included. **MIFID II makes a distinction** as to whether the transaction costs relate to investment services and/or ancillary services, or to financial instruments.[219]

Table.13 – Transaction costs

	MiFID II – investment and/or ancillary services	MiFID II – financial instrument
Definition	All costs and charges that are related to transactions performed by the investment firm or other parties.	All costs and charges incurred as a result of the acquisition and disposal of investments.
Include	Examples: broker commissions incurred by the investment firm when trading on behalf of its clients[220], entry- and exit-charges paid to the fund manager, platform fees, mark-ups (embedded in the transaction price)[221], stamp duty, transactions tax and foreign exchange costs.	Examples: broker commissions paid by investment funds when trading on behalf of the fund), entry- and exit-charges paid by the fund, mark-ups embedded in the transaction price, stamp duty, transactions tax and foreign exchange costs.

Source: Consortium, based on the legal analysis.

Only MiFID II provides a definition of transaction costs, both with regard to investment services and with regard to investment products. In principle, transaction costs encompass all the costs related to the transactions, including both the recurring/ongoing and one-off (entry/exit) costs. While transaction costs are mentioned separately in MiFID II, they are included within the heading of "recurring costs" under **PRIIPs** and **PEPP**. Indeed, with regard to the latter, as long as the requirement of disclosing all the costs related to the transactions (either as a general statement or by dividing them into one-off and ongoing costs) is clearly indicated, there is no need to separately define this category of costs. The **UCITS KIID does not cover product transaction costs** – consequently firms will need to obtain such information from UCITS managers in order to include it in product cost disclosures.[222]

The PRIIPs Delegated Regulation (EU) 2017/653 sets out two **methodologies** on how firms should calculate actual transaction costs: 1) the arrival price methodology, where these costs must be determined using an "arrival price", which requires firms to calculate the difference between the bid/ask midpoint price at the point at which a trade is first submitted, and the final execution price of the same trade; and 2) the turnover methodology. It is noted that the PRIIPs arrival price calculation systematically treats market movement in the price of an asset between the time of order submission and order execution (so-called slippage) as a cost factor. Due to either the arrival price methodology for implicit costs, or high anti-dilution proceeds, negative transaction costs could occur. Negative figures may lead investors to draw inaccurate conclusions about the desirability of certain funds and the true brokerage charges which they will ultimately bear. It is noted that the new PRIIPs RTS establish that the total transaction costs might not be lower than the explicit transaction costs, making it now impossible to observe negative transaction costs. Smaller funds with less transaction costs can also opt for the half-spread method (aka new-PRIIPs method).

According to Article 24(4) MiFID II, all costs and charges, including costs and charges in connection with the investment service and the financial instrument, due to the underlying market risk (i.e. relating only to movements in the value of capital invested caused directly by movements in the value of underlying assets) should not be included in the aggregated

[219] Annex II Delegated Regulation 2017/565.
[220] Broker commissions should be understood as costs that are charged by investment firms for the execution of orders.
[221] Mark-ups and structuring costs that are embedded in the transaction price need to be identified and disclosed to clients by the investment firm. Investment firms should identify such costs by calculating the difference between the price of the position for the firm and the price for the client. In case of PRIIPs, ESMA would expect the investment firm to apply the calculation methodology in paragraphs 36 to 46 of Annex VI of the PRIIPS RTS.
[222] See Article 50(4) MiFID Del Reg: "*In relation to the disclosure of product costs and charges that are not included in the UCITS KIID, the investment firms shall calculate and disclose these costs, for example, by liaising with UCITS management companies to obtain the relevant information*."

information about costs and charges. The price as referred to in Recital 79 of the MiFID II Delegated Regulation should be understood as the current value of the financial instrument when the firm offers the instrument to the client (ex-ante) or when it sells it to the client (ex-post). Despite MiFID rules referring to costs "not caused by the occurrence of underlying market risk", ESMA's Q&As state that MiFID firms calculating transaction costs, whether for a product or for service costs, are expected to comply with MiFID requirements by using the PRIIPs cost methodology, which includes market risk. So, some figures may be different as firms capture only the market spread and not "slippage" while following the MiFID II rules.[223]

National authorities were asked whether firms are obliged under their national legislation to disclose their underlying methodologies on how the final transaction costs figure has been calculated, and whether such disclosure is common practice. **No Member States, except for Greece, have additional legal provisions** requiring the disclosure of the transaction cost methodology. In Spain, there is no public disclosure, but the underlying methodologies should be shared with the Comisión Nacional del Mercado de Valores (CNMV), which will verify that the valuation system is correct and adjust it where necessary to the conventional parameters.

Disclosure of methodologies is **not seen as a common practice** by the stakeholders interviewed since, as one stakeholder put it, there is some nervousness that trade secrets could be included in the breakdown of the (MiFID) costs.

Incidental costs

With regard to incidental costs, only **PRIIPs (in relation to investment funds AIFs and UCITS)** includes specific steps on how to calculate performance-related fees and carried interest. The other legislations do not cover this.

5.3.11. Review of/changes to pre-contractual information documents

UCITS, PRIIPs, PEPP and also MiFID II (financial services) define when a pre-contractual information document needs to be **reviewed**, and when and how a revised version needs to be **made available** to the retail client (see Table 5.14 for details).

Table 5.14 - Review of/changes to pre-contractual information documents

	Review	Revised version
UCITS (Section 6 Reg 583/2010)	▪ At least every 12 months ▪ Prior to proposed changes to prospectus, fund rules or instrument of corporation ▪ Prior to or following material changes to information in KIID	▪ Changes to KIID to be made available promptly ▪ Changes to KIID due to changes in prospectus, fund rules or instrument of incorporation, to be made available before change comes into effect ▪ Changes to past performance of UCITS to be made available no later than 35 business days after 31 December
PEPP (Chapter III Del Reg 2021/473)	▪ At least annually ▪ Every time there is a change that significantly affects or is likely to affect significantly the information and, at least, every 12 months following the date of the initial publication of the PEPP KID	▪ Changes to PEPP KID to be made available promptly ▪ Without undue delay where review concludes that changes need to be made ▪ Publish revised KID on website and inform PEPP

[223] https://www.efama.org/sites/default/files/publications/18-4008_EFAMAPRIIPsEvidencePaper_0.pdf. For more on the "arrival price" methodology for calculating transaction costs and the link with costs specifying the underlying market risk, see, e.g., the comments from a German investment funds association in the context of the Joint Consultation Paper concerning amendments to the PRIIPs KID (JC 2018 60), pages 4-5, available at: German Investment Funds Association (BVI)

	Review	Revised version
	▪ Verify whether the information contained in the PEPP KID is accurate, fair, clear, and not misleading. In particular: ▪ - whether information is compliant with general form and content requirements ▪ - whether risks and rewards have changed, where such change necessitates move to different class of summary risk indicator	savers promptly
PRIIPs (Chapter III Del Reg 2017/653)	Regularly Every time there is a change that significantly affects or is likely to affect the information and, at least, every 12 months following the date of their initial publication or last review date Review whether information remains accurate, fair, clear, and not misleading. In particular: ▪ whether information is compliant with general form and content requirements ▪ whether market risk or credit risk measures have changed, where such change necessitates move to different class of summary risk indicator ▪ whether the mean return has changed by more than 5%	▪ Changes to be made available promptly ▪ Without undue delay where review concludes that changes need to be made ▪ Update all sections affected by such changes ▪ Publish revised KIDD on website
MiFID II - financial services (Art. 16(3) MiFID II; Art. 50(8) Del Reg 2017/565)	▪ Regular review, taking into account any event that could materially affect the potential risk to the identified target market ▪ Review of ex-ante cost assumptions based on ex-post experience	

Source: Consortium, based on the legal analysis.

While the provisions dealing with the review (process) of the Key Investor Document under **PEPP**[224] and **PRIIPs**[225] are **largely similar**, the **UCITS** Implementing Regulation[226] is **less detailed** and does not include specific instances where the document must be reviewed. Furthermore, it does not require the revised pre-contractual information to be **published** on the website but includes, on the other hand, a specific timeframe for making the revised KIID available if changes to past performance have been made. The information within the PEPP KID, PRIIPs KID and UCITS KIID must be **reviewed regularly** (at least annually) and should also be revised promptly when a review indicates that changes need to be made. All in all, the regular (at least annual) review of KIDs and KIIDs provided for under PEPP, PRIIPs and UCITS is regulated in a **coherent** manner.

Under **MiFID II**, investment firms that manufacture financial instruments for sale to clients are obliged to regularly review these financial instruments, considering "any event that could materially affect the potential risk to the identified target market, to assess at least whether the financial instrument remains consistent with **the needs of the identified target market** and whether the **intended distribution strategy** remains appropriate" (Article 16(3) fourth para MiFID II). Furthermore, these investment firms should "maintain, operate and review a process for the approval of each financial instrument and significant adaptations of existing financial instruments before it is marketed or distributed to clients" (Article 16(3) second para MiFID II). Furthermore, Article 50(8) Delegated Regulation 2017/565 states: "*Where calculating costs and charges on an ex-ante basis, investment firms shall use actually incurred costs as a proxy for the expected costs and charges. Where actual costs are not available, the investment firm shall make reasonable estimations of these costs. Investment firms shall review ex-ante assumptions based on the ex-post experience and shall make adjustment to these assumptions, where necessary*." This means that, in practice, ex-ante information documents are to be reviewed at

[224] Chapter III Del Reg 2021/473.
[225] Chapter III Del Reg 2017/653.
[226] Section 6 Reg 583/2010.

least annually in light of new ex-post data. Any material changes to the product costs that occurs during the year should trigger a revision of the information document.

5.3.12. Coherence of ongoing disclosure requirements – whether and when reporting is required

Retail investors not only need to be informed about their investment product or service before contract signature, but also during the lifecycle of the product or service. Therefore, **UCITS**[227], **PEPP**[228], **IDD**[229], **AIFMD**[230] and **MiFID II**[231] have included **specific provisions as to which reports need to be provided** to the clients and what they should include (see Table 5.15 with mapping of legal provisions).

[227] Chapter IX, Section I UCITS.
[228] Chapter IV, Section IV PEPP.
[229] Articles 29(1) & 30 IDD ; Art. 18 Del Reg 2017/2359.
[230] Articles 22 & 23(4) AIFMD.
[231] See specific references in the table.

Table.15 – Disclosure of information after contract signature

	UCITS	PEPP	IDD	AIFMD	MiFID II
Information reports	1. Annual report 2. Half-yearly report	1. PEPP Benefit Statement 2. Pre-retirement information 3. Information on PEPP benefits due	1. Information on costs and charges 2. Report on the service provided (IBIPs) 3. Periodic assessment of suitability[232]	1. Annual report 2. Periodic report	1. Annual costs and charges report, under certain conditions (*Art. 50(9) Del Reg 2017/565*) 2. Periodic assessment of suitability (when providing investment advice or portfolio management)[233] 3. Reporting obligations in respect of execution of orders other than for portfolio management (*Art. 59 Del Reg 2017/565*) 4. Periodic statement and other reporting obligations in respect of portfolio management (*Arts. 60 & 62 Del Reg 2017/565*) 5. Statement of client assets by investment firms holding client financial instruments or client funds (*Art. 63 Del Reg 2017/565*) 6. Where necessary, conflict of interest report when providing investment and ancillary services (*Art. 34(4) Del Reg 2017/565*) 7. Report on top five execution venues for investment firms executing client orders (*Art. 27(6) MiFID II*)
Person in charge of the disclosure	Self-managed UCITS investment companies/UCITS management companies	PEPP providers	Insurance intermediary or insurance undertaking	Authorised AIFMs	Investment firms
In relation to	Each UCITS they manage	Any PEPP	IBIPs	Each EU AIF they manage /each AIF they market in the Union	The disclosure of reports is dependent on the type of product or service being provided by the investment firm (see first row)
Does accounting information need to be audited?	Yes, if contained in the annual report	No	No	Yes	No
Template available	No	Yes, *"EIOPA*	No	No	No

232 See "Demands & Needs and Suitability Rules" section for more details.
233 See "Demands & Needs and Suitability Rules" section for more details.

	UCITS	PEPP	IDD	AIFMD	MiFID II
		illustrative example”			
MS requirements		MS may require PEPP providers to provide PEPP savers with additional pension benefit projections where the rules to determine the assumptions are set by the respective MS.	MS may allow that information on costs and charges to be provided in a standardised format.	AIFs authorised under the national law of a MS may be subject to stricter requirements regarding the date of publication of periodic reports.	

Source: Consortium, based on the legal analysis.

Apart from the reports required under UCITS, PEPP, IDD, AIFMD and MiFID II, it is noted that Solvency II also includes some provisions on *ex-post* disclosure. **Solvency II** states, with regard to information for life insurance policy holders, that they must be kept informed during the contract of specific changes.[234] Although there is no obligation for example for annual reporting, information on the state of bonuses needs to be provided annually.

The general directive on distance marketing **DMFSD** only states that "at any time during the contractual relationship the consumer is entitled, at his request, to receive the contractual terms and conditions on paper" (Art. 5(3) DMFSD). In addition, according to the opinion of the European Banking Authority on disclosure to consumers of banking services through digital means under Directive 2002/65/EC, "when communicating through digital means, providers should be required to ensure that the consumer pays attention to **important communications** after the sale of the product, such as statements of changes to terms, conditions, fees or charges, and other forms of communication, unawareness of which could be detrimental to consumers." Furthermore, "the DFMSD, and Article 5(3) in particular, should be reviewed to assess the merit of amending that provision in order to ensure that, where a contract has been signed via digital means, the terms of the contract should specify the extent to which the consumer can switch to a nondigital provision of the service and, if so, under what conditions".[235]

Given that **PRIIPs** only focuses on products and not services, this EU legislation only includes provisions on pre-contractual information regarding products.

All in all, there is a **range of reporting obligations** with which distributors and manufacturers must comply and numerous kinds of reports are required depending on the legal framework. Some of the reports are common (even though their name might be different) to various pieces of legislation and can be compared. UCITS and AIFMD make it easy to find specific provisions dealing with a specific report. MiFID II, on the other hand, makes it difficult for the person in charge of disclosure to identify all the relevant reporting obligations not only because these are spread across numerous legal provisions, both in the MiFID II Directive and in Del Reg 2017/565, but also because they depend on the kind of product or service provided by the investment firm.

There could be some **potential overlap between the insurance intermediary** primarily responsible for reporting to clients on costs and charges on IBIPs and providing periodic reports to clients, **and the insurance undertaking** which is always responsible for delivering information on the products, as required under the Solvency II Directive.[236] According to EIOPA, with regard to the obligations to provide appropriate reporting under Articles 29(1) and 30(5) IDD and Article 18 of Delegated Regulation 2017/2359, it will depend upon who is providing the service.[237] This may generally be expected to be an insurance intermediary, except where the insurance undertaking is providing services when distributing directly. Thus, the insurance undertaking always remains responsible for delivering information required by Article 185 of Directive 2009/138/EC (Solvency II).[238]

Finally, it is noted that Annex VI Part I of Del Reg 2017/653 point 82 (only once) refers to "**PRIIPs**' statement of operations published in its latest annual or half-yearly report", leading to a **potential inconsistency** given that PRIIPs is a product regulation.

[234] Article 185(5) Solvency II.
[235] See also: EBA (2019), Opinion of the European Banking Authority on disclosure to consumers of banking services through digital means under Directive 2002/65/EC.
[236] M. Siri, "Insurance-Based Investment Products: Regulatory Responses and Policy Issues" in P. Marano, K. Noussia (eds.), Insurance Distribution Directive, AIDA Europe, Research Series on Insurance Law and Regulation 3.
[237] Articles 30(4) and (5) IDD.
[238] EIOPA 17/048, Technical Advice on Insurance Distribution Directive (1 February 2017), at 72ff

5.3.13. Coherence of ongoing disclosure of changes made

UCITS[239], PEPP[240], AIFMD[241], MiFID II[242] and Solvency II[243] legislation explicitly require the disclosure of changes to information provided.[244] **IDD does not have a similar provision** requiring the disclosure of changes to information provided. This is considered a **potential gap.**

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239 Art. 69(3)(e) UCITS.
240 Art. 35(5-6) PEPP.
241 Art. 22(2)(d) AIFMD.
242 Art. 46(4) Del Reg 2017/565.
243 Art. 185(5) Solvency II.
244 Note that for DMFSD, according to EBA, attention must be paid to changes to terms, conditions, fees or charges, etc.

Table.16 – Disclosure of changes to information post contract signature

	UCITS	PEPP	AIFMD	MiFID II	Solvency II
Disclosure of changes is foreseen (y/n)	Yes	Yes	Yes	Yes	Yes
Report/format	In periodic reports (including the annual report)	In the PEPP Benefit Statement	In annual report	In a durable medium if information is also given in a durable medium	In a clear and accurate manner, in writing, in an official language of the Member State of the commitment
Timing to inform about these changes	At least annually (in the annual report)	Annually (when the PEPP Benefit Statement is made available)	During the financial year	In good time	Throughout the term of the contract (annually for information on the state of bonuses)
Person in charge	Investment companies/management companies	PEPP providers	AIFMs	Investment firms	Insurers
Disclosure of <u>material</u> changes is foreseen (y/n)	Yes, it is provided that the annual report should include material changes to the adopted remuneration policy (*Art. 69(3)(e) UCITS*).	Yes, it is provided that any material changes to the information contained in the PEPP Benefit Statement compared to the previous statement should be clearly indicated. (*Art. 35(5) PEPP*)	Yes, it is provided that the annual report should include any material changes[245] (*Art. 22(2)(d) AIFMD*)	Yes, it is provided that investment firms should notify a client about any material change to the information provided under Articles 47 to 50[246] of Delegated Regulation 2017/565 which is relevant to a service that the firm is providing to that client. (*Art. 46(4) Del Reg 2017/565*)	No, there are no references made to "material changes".
Disclosure of specific changes	Periodic reports should include a statement of changes in the composition of the portfolio during the	In addition to the PEPP Benefit Statement, the PEPP saver should be informed promptly throughout the term of	AIFMs should assess changes in the information referred to in Article 23 of Directive		Information of any change concerning: 1. the policy conditions, both general and special;

[245] Delegated AIF Regulation (EU) No 231/2013: "Any change shall be deemed material if there is a substantial likelihood that a reasonable investor, becoming aware of such information, would reconsider its investment in the AIF, including because such information could impact an investor's ability to exercise its rights in relation to its investment, or otherwise prejudice the interests of one or more investors in the AIF"."

[246] i.e. information about the investment firm and its services for clients and potential clients; information about financial instruments; information concerning safeguarding of client financial instruments or client funds; and information on costs and associated charges.

	UCITS	PEPP	AIFMD	MiFID II	Solvency II
	reference period, changes in capital account, and any other changes affecting the assets and liabilities of the UCITS (*Annex I Schedule B point IV UCITS*).	the contract of any change concerning the following information: 1. contract terms; 2. name of PEPP provider, legal form, address head office, branch; 3. information on how investment policy takes into account ESG factors. (*Art. 35(6) PEPP*)	2011/61/EU.[247] (*Art. 23(1) AIFMD*)		2. the name of the life insurance undertaking, its legal form or the address of its head office and, where appropriate, of the branch which concluded the contract; and 3. all the information listed in points (d) to (j) of paragraph 3 in the event of a change in the policy conditions or amendment of the law applicable to the contract; 4. annually, information on the state of bonuses. (*Art. 185(5) Solvency II*)

Source: Consortium based on the legal analysis.

[247] Under Article 23 of the Directive, for each EU AIF an EU AIFM manages and for each AIF either an EU AIFM or a non-EU AIFM markets in the EU, AIFMs must make certain information available to investors before they invest in the AIF, together with any updates. This information includes a description of: A) the investment strategy and objectives of the AIF and the techniques it may employ and all associated risks, any applicable investment restrictions, and details in relation to any leverage and collateral and asset re-use arrangements (including the maximum level of leverage under the Gross Method and Commitment and if such limit has been set). It is a requirement for all AIFMs authorised under the Directive to set such leverage limits in relation to each of the AIFs they manage; B) the procedures by which the AIF may change its investment strategy or investment policy; C) the main legal implications of the contractual relationship entered into for the purpose of investment (which will normally include the constitutional document(s) of the AIF and any subscription agreement), including information on jurisdiction, applicable law and the existence of any legal instruments providing for the recognition and enforcement of judgments in the territory where the AIF is established; D) the identity of the AIFM, the AIF's depositary, auditor and any other service providers, together with a description of their duties and the investors' rights in relation thereto; E) how the AIFM complies with the requirements to cover professional liability risks under the capital requirement provisions, i.e. either via additional own funds or professional indemnity insurance; F) any delegated management or depositary function and any associated conflicts of interest; G) the AIF's valuation procedure and pricing methodology; H) the AIF's liquidity risk management, including redemption rights; I) all fees, charges and expenses (including maximum amounts) borne by investors (including amounts borne indirectly by investors, e.g. fees and expenses at the master level for feeder funds); J) how the AIFM ensures fair treatment of its investors; K) any preferential treatment received by an investor (e.g. by way of a side letter); L) the latest annual report; M) the procedure and conditions of issue and sale of units or shares; N) the latest net asset value of the AIF or the latest market price of the units or shares of the AIF according to the valuation provisions; O) where available, the historical performance of the AIF; P) prime brokerage arrangements; Q) any arrangements made by the depositary to contractually discharge itself of its liability under the Directive, together with any changes with respect to depositary liability; and R) how and when periodic disclosures will be made.

Where the disclosure of changes is required, it is specified that **"material changes"** should be disclosed to the client (except under Solvency II). **A definition of the term is only available in the AIF Delegated Regulation (EU) No 231/2013**: "*Any changes in information shall be deemed material if there is a substantial likelihood that a reasonable investor, becoming aware of such information, would reconsider its investment, including because such information could impact an investor's ability to exercise its rights in relation to its investment, or otherwise prejudice the interests of one or more investors*". Therefore, it is up to firms to determine what consists of a material change for their particular purposes. Overall, any circumstances that might result in a change that affects or is likely to affect the accuracy, fairness or clarity of the information could be considered a material event. MiFID II Delegated Regulation 2017/565 only includes a definition of "material change" in the context of investment firms carrying out portfolio management and of the execution policy and related to "parameters of best execution" (Art. 65(7); Art. 66(1)).

Furthermore, also **specific changes** should be disclosed, mostly relating to the contract terms or the name of the provider of the investment product (PEPP, Solvency II) or the composition of the portfolio (UCITS). Following AIFMD, all changes related to the pre-contractual information should be disclosed.

The **timing** of the provision of information about such changes is **not consistent** between the different rules. Under UCITS and PEPP, changes must be disclosed at least annually (within the annual report) and annually, respectively; AIFMD states that changes should be notified during the financial year (i.e. at least annually); changes under Solvency II rules must be disclosed throughout the term of the contract (and annually in case they relate to the state of bonuses); under MiFID II rules, changes have to be disclosed "in good time". The latter implies that a more frequent disclosure of changes is encouraged, which is something that can also be envisaged and taken up in the other legal texts discussed.

5.3.14. Coherence of requirements regarding annual and half-yearly reports

An **annual report** is envisaged in UCITS[248], PEPP[249] and AIFMD[250], to be published within four months from the end of the period to which the information relates (UCITS) or not later than six months following the end of the financial year (or four months if the annual financial report needs to be made public following Directive 2004/109/EC) (AIFMD). The PEPP Benefit Statement only needs to be made available annually during the accumulation phase.

As to the information to be included in the annual report, **UCITS and AIFMD include very similar requirements**, in particular:

- Balance sheet or a statement of assets and liabilities.
- An income and expenditure account for the financial year.
- A report on the activities of the financial year.
- The total amount of remuneration for the financial year, split into fixed and variable remuneration paid.
- The aggregate amount of remuneration.
- Material changes.

Furthermore, the UCITS annual report should also include a description of how the remuneration and the benefits have been calculated; the outcome of the reviews of the remuneration policy and its implementation (points (c) and (d) of Article 14b(1) of UCITS Directive 2009/65/EC) including any irregularities that have occurred; the information provided for in Schedule B of Annex I of UCITS Directive 2009/65/EC (i.e. the information to be included in the periodic reports); and any significant information which will enable investors to make an informed judgement on the development of the activities of the UCITS and its results.

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[248] Chapter IX, Section 1 UCITS.
[249] Section IV, Articles 35 to 37 PEPP.
[250] Article 22 AIFMD.

The data to be provided in the UCITS and AIF's yearly report is further elaborated in the Annex to Regulation (EU) 2015/2365.

The **PEPP Benefit Statement**, on the other hand, should include, broken down for all existing sub-accounts:

- Personal details of the PEPP saver and earliest date start decumulation phase.
- Name and contact address of the PEPP provider, identification PEPP contract.
- Member State authorisation PEPP provider, names of the competent authorities.
- Information on pension benefit projections + disclaimer ("what will I receive when I retire?").
- Information on contributions paid into PEPP account ("how much have I saved in my PEPP?").
- Breakdown of all costs incurred.
- Guarantee or risk mitigation techniques.
- Number and value of units corresponding to PEPP saver's contributions.
- Total amount in PEPP account.
- Information on past performance of investment options ("how has my PEPP changed in the last twelve months?").
- Summary information on investment policy relating to ESG factors.

The template of the PEPP Benefit Statement is available in Delegated Regulation (EU) 2021/473.

The information to be disclosed in the annual report for UCITS and AIFMD is **consistent**. Indeed, the main information to be included in the annual report is the same, with additional information linked to the specificity of the rules. The PEPP Benefit Statement has a different content, clearly detailed under Level 1 rules. Also, the template of the PEPP Benefit Statement is available in Delegated Regulation (EU) 2021/473.

Only UCITS[251] and AIFMD[252] rules provide for a **half-yearly/periodic report**, with a clear indication of what needs to be included in this report.

UCITS requires the publication of a half-yearly report, to include:

- statement of assets and liabilities;
- number of units in circulation;
- net asset value per unit; and
- the portfolio.

Where a UCITS has paid or proposes to pay an interim dividend, the figures must indicate the results after tax for the half-year concerned and the interim dividend paid or proposed.

The data to be provided in the UCITS half-yearly report is further elaborated in the Annex to Regulation (EU) 2015/2365.

The **AIFMD** periodic report should include:

- the percentage of the AIF's assets which are subject to special arrangements arising from their illiquid nature;
- any new arrangements for managing the liquidity of the AIF;

[251] Chapter IX, Section 1 UCITS.
[252] Article 23(4) AIFMD.

- the current risk profile of the AIF and the risk management systems employed by the AIFM to manage those risks;
- for AIFMs managing EU AIFs employing leverage or marketing in the Union AIFs employing leverage: any changes to the maximum level of leverage which the AIFM may employ on behalf of the AIF as well as any right of the reuse of collateral or any guarantee granted under the leveraging arrangement, as well as the total amount of leverage employed by that AIF.

The content of the AIFMD periodic report is further elaborated in Articles 108 and 109 Delegated Regulation (EU) No 231/2013. Periodic reporting to investors, as required by the AIF's rules or instruments of incorporation should be disclosed — as a minimum — **at the same time as the annual report** is made available or made public in accordance with Article 22(1) of Directive 2011/61/EU.

5.3.15. Coherence of requirements for ongoing disclosure of personalised costs and charges

Both the **IDD**[253] and **MiFID II** envisage the regular (at least annual) publication of a report on costs and charges, during the life cycle of the investment. Such reporting under MiFID II is however subject to **certain conditions** (*Art. 50(9) Delegated Regulation 2017/565*): "*Investment firms shall provide annual ex-post information about all costs and charges related to both the financial instrument(s) and investment and ancillary service(s) where they have recommended or marketed the financial instrument(s) or where they have provided the client with the KID/KIID in relation to the financial instrument(s) and they have or have had an ongoing relationship with the client during the year. Such information shall be based on costs incurred and shall be provided on a personalised basis*."

Even if no specific report on costs is foreseen under PEPP rules, the **PEPP Benefit Statement** should include a breakdown of all costs incurred, directly and indirectly, by the PEPP saver over the previous 12 months, indicating the costs of administration, the costs of safekeeping of assets, the costs related to portfolio transactions and other costs, as well as an estimation of the impact of the costs on the final PEPP benefits.[254]

PRIIPS, on the other hand, only requires ex-ante costs disclosure (the PRIIPs KID is a pre-sale document only, which nevertheless is to be updated in case of changes).

Furthermore, **UCITS** investors incur ongoing charges that cover a **host of services**, including portfolio management, administration, compliance costs, accounting services, legal costs, and payments to distributors. The total cost of these charges is disclosed to investors through either the total expense ratio (TER), often found in a UCITS annual report and other marketing documents, or in the ongoing charges figure, found in the KIID. This ongoing charges figure is based on costs incurred by each fund over the previous year, excluding transaction costs and any performance fee.

All in all, **no** clear **inconsistencies**, redundancies, overlaps or gaps were identified, but **a clear link between ex-ante costs and ex-post costs** (e.g. by using the same calculation and disclosure methodology), thereby enhancing comparability, **would be welcomed**. The latter point was raised by various stakeholders. For example, the estimated transaction costs of an investment fund are not part of the description of the ongoing costs in the relevant KID/KIID established by the management company. Under MiFID II, an investment firm will however have to disclose such costs as part of the product's costs in good time prior to a potential investor's investment decision. Thus, the ongoing costs related to the product may, due to differences in the calculation and disclosure methodology, differ from the pre-contractual documentation of the fund. This is not an inconsistency and should not constitute a (legal) problem, but practical difficulties and/or interpretation problems are implied.

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[253] Art. 29(1) and 30(5) IDD.
[254] Art. 36(1)(f) PEPP.

Furthermore, some stakeholders commented about additional challenges regarding the ongoing disclosure of costs. The issues noted concern the following:

- The **information about costs being provided late** by the issuers meaning that advisors need to manually prepare an estimate of costs. which is resource intensive.
- Potential **duplication of information** between the obligations for the advisor and the product issuer which both disclose the costs, to ensure that at least one delivers. The fact that the advisor does not have all the costs was not taken into account. Advisors cannot deliver all the costs to clients. The manufacturers report their costs to the client, while the advisor may potentially have additional sales costs, which they must also report to the client. The client then receives the same report twice.
- In the area of life insurance, it was mentioned that **insurers do not want to pass on/convey the data.**

5.4. Effectiveness

N.B.: *The assessment of effectiveness only covers pre-contractual disclosure. Data in this section is based on mystery shopping, a review of product information documents and a behavioural experiment that tested the effectiveness of disclosure in selecting the most financially optimal product (i.e. the one with lowest costs). In none of these activities would it have been feasible to cover ongoing disclosure.*

Effectiveness is about the extent to which the intervention, in this case the EU legal framework for disclosure, has met its objectives. This follows the assessment of outputs, results and impacts with the focus on retail investors.

5.4.1. Summary of main findings

The following paragraphs summarise the insights developed in the subsections below.

In terms of outputs:

- Information documents are generally **available and accessible** when a consumer searches for them.
- However, they are **not systematically provided** to potential clients at a very early stage in their search trajectory. Only 54% of mystery shoppers received a key information document or were referred to one online when they were simulating the first contact with an advisor. It is possible that these advisors would have provided the document at a later stage, which would however be too late for the decision-making. Furthermore, a substantial proportion of them were given other documents which may actually contribute to information overload.
- The vast **majority of information documents reviewed were compliant and complete** in terms of the items covered. They were also mostly the part up-to-date. There is however a notable difference in the completeness of information documents for investment products (generally good) and that of insurance and pension products. When comparing information documents with a standard set of categories, pension and insurance investment products have many more **gaps** than the investment products reviewed. This could however be due to the fact that for these products disclosure is typically personalised and hence provided during advice sessions.
- The **costs** of retail investment products are disclosed for nearly all investment products, excluding traditional life insurance. For most of the products multiple fees are disclosed with varying names and calculation base (absolute, NAV, RIY, etc.).
- For most of the products with cost information, **limited or no information** is provided on indirect distribution fees or inducements. The standardised product information analysed often did not clearly state whether inducements are paid and none of these documents included the inducement paid.
- More could be done to encourage potential investors to **read information documents**, both in terms of the format and in the talks with the advisor. Whilst the distributors

interviewed state that they encourage clients to read such documents and also require consumers to sign documents, in practice only around half of the information documents reviewed contain nudges for reading[255]. Only around half of the mystery shoppers who received an information document were encouraged by the advisors to read it. Furthermore, the **review of information documents** shows that they are rarely engaging and that their layout is frequently very dense and therefore they do not encourage recipients to read them. Other studies show similar limitations of disclosure.

In terms of results, the country researchers[256] who screened the information documents tend to consider that the **information in them is clearly presented**. It is accurately labelled and correctly structured. Information about costs tends to be regarded as the least clear, in part because it is most likely to contain inconsistencies (see the coherence section) as well as complex terminology, and because the numerical information is disclosed in percentages and/or using maximum amounts. **Clarity however is not equivalent to usefulness for comparison or understanding**. As a matter of fact, the comparability scores for information documents were lower than the quality scores, meaning that while the information in one document was clear, it could not be compared with the information contained in another, or only with difficulty[257]. In particular across product categories the information documents were rarely considered as comparable. Researchers scored comparability within the same product type as rather good. The country researchers gave a lower score on clarity and comparability to insurance and pension than other types of products reviewed and that is true across all categories of items.

The analysis of costs disclosure looked not only at the extent to which costs disclosure is compliant, but also the **actual costs of products sold**. The study found that there are notable differences in the costs across countries. Based on a comparable set of products in the sample, the costs in the least expensive country are just over half of those of the most expensive country. Looking at distributors that sell the same investment products, online discount brokers distribute securities and investment funds at a lower cost than banks. A similar comparison across banks and insurance companies for insurance and pension products shows no clear differences in the costs charged. Furthermore, based on the limited information on inducements that could be obtained from the different pre-contractual documents, it appears that the costs of investment funds with inducements are on average higher than for funds without inducements. At least part of this difference is explained by the composition of the sample (cheaper UCITS ETFs and UCITS MMFs are overrepresented in the sample of investment funds without inducements).

The **behavioural experiment**, using already simplified versions of the product information documents, showed that **disclosure had a limited impact on the consumer making the right decision**. This was true across all formats of disclosure and all investors, although certain groups and disclosure methods fared slightly better than others. This demonstrated the limits of the effectiveness of disclosure when it comes to supporting consumers' decision making. Effectiveness is even more limited when the products get more complex or atypical, such as the structured notes and product management services (PMS).

Finally, in **terms of impacts, the behavioural experiment confirms the mixed findings of other studies**. The experiment used in this study required consumers to choose the financially most advantageous product from two products presented. Consumers were shown simplified one-page versions of information documents. The experiment used different product categories and different variations of treatments. When using the baseline treatments which are similar to the status quo currently used in the market, the findings vary greatly by type of product. While for the insurance product and UCITS, the disclosure documents (regardless of their format) were effective in supporting optimal choice, this is not the case for structured notes and Portfolio Management Services (PMS). For the latter categories, respondents chose the optimal products and services with a lower frequency than if they had made a random choice. The same pattern was found when testing the effectiveness of different alternative disclosure formats. For UCITS

[255] This conclusion stems from the scoring exercise whose results are included in annex 6.
[256] As explained in the methodology section, in order to cover all 15 countries of the study and for specific data collection activities, national experts were used, i.e. enlisted. They were researchers able to speak the local language, with a solid understanding of financial topics and local contexts.
[257] Country researchers were briefed on how to assess the clarity and comparability of product information documents as part of the scoring exercise. The scoring template is available in Annex 6.

and pension products some disclosure formats proved more effective than the status quo. However, this was not the case for PMS and structured notes. The complexity of these products and services outweighs the potential benefits of the disclosure document, meaning that the document does not help the consumer make the right choice. Even when controlling for a number of other variables, the product category is the most impactful variable in terms of explaining the differences in results observed, meaning it is the main explanatory variable for consumers to make the adequate decision. Another factor that matters is the consumer's financial literacy. Overall, the findings confirm that even when the documents differ only on one variable (costs) it is still complicated for consumers to make a decision about which product would be most financially advantageous for them. The simplified one-page document did not succeed in overcoming the complexity of this decision in the case of complex products with which people are not familiar.

5.4.2. Outputs: Access to pre-contractual documents

The data in this section shows that **for the majority of products a KID or KIID are available**. However, it is **not systematically the case for life insurance, pension funds and personalised pension products as well as shares and bonds**. If investors are searching for the information themselves, they will find the KIDs for most products readily available on distributor websites. It is only in a small number of cases that these information documents were not available on distributor websites and had to be requested. At the same time, we also found that the KID/KIID is not systematically provided in the early stages of the provision of information to clients. The number of instances where a type of document than the KID was provided to the client while the KID was not provided is also relatively high. Finally, when the KID is provided, it is often accompanied by at least one, but relatively frequently two or even more other documents. The fact that the KID is not systematically provided during the first contact with the advisor is likely to negatively affect its usefulness for informing the consumer's choice. There is also the risk that the KID is somewhat "drowned" when it is handed out together with a range of other, often long, documents. Finally, many advisors guided consumers to digital tools and solutions which are able to provide key information in a more dynamic and searchable way than a static KID.

Access to information documents during the advisory process

During the mystery shopping data collection, mystery shoppers made 240 attempts to get information and advice about financial investments that would suit their mystery shopping profile (see Annex 2 for detailed description of the mystery shopping methodology). In 158 instances, specific products that would suit their profile were suggested to the mystery shoppers. **The mystery shoppers received a Key Information Document in only 54% of these conversations**. In 42% of the cases, they did not receive such document. In the remaining few cases they were promised such a document via email but did not receive it. These conversations were undertaken either face-to-face (28% of cases which resulted in a discussion about a specific product) or via telephone/teams or equivalent (remaining 72%). These conversations simulated the early phase in the consumer journey when the consumer is shopping around and trying to identify potentially suitable products.

As regards **robot-advice, a Key Information Document (KID) was not once provided at the recommendation stage** when the client completed information about their profile and preferences and received a product recommendation. It could be that the KID is provided at the final stage when the client is completing the purchase. On the other hand, the robot-advisors do provide information about product, past performance, anticipated gains (often with scenarios); however, this is not provided in form of a separate KID but directly on the platform.

This shows that the KID or KIID is **not systematically provided** during the initial contact when the consumer is looking around. It is possible that these documents are systematically provided at a later stage closer to contract signature (the mystery shopping did not go up to that phase). As stated in the coherence section, legislation specifies that the KID/KIID should be provided to clients "in good time" (section 5.3.4). The data collected shows that there are different interpretations of "in good time" in practice. While around half of the distributors involved in the mystery shopping exercise provided it at the initial contact stage (including when the contact was a digital session), others did not.

There are **notable differences between countries**. In Greece, Germany and Romania in the majority of conversations (over 70%) the mystery shoppers were provided with the KID. In Italy, on the other hand, the mystery shoppers received a KID in only 31% of conversations simulating the first contact, even though the majority of sessions in Italy were face-to-face sessions, thus closest to the traditional advisory method. The mystery shoppers were more likely to have received a KID when they were recommended an investment fund product or an IBIP (life or non-life). They were less likely to receive a KID when they were recommended personal pension products.

Furthermore, the fact that the mystery shoppers did not receive a KID does not mean they received no documentation. In four cases the mystery shoppers did not receive a KID but received a personalised scenario (insurance products). However, in 32 cases (i.e. nearly half of the cases where no KID was provided) they received other documentation that is not legally required, notably:

- Marketing brochure (14).
- Digital information (12).
- Prospectus (3).

In these 32 instances, it could be considered that the KID/KIID was intentionally not provided as other documents were provided instead. Indeed, if information was provided, the advisor considered that the client was potentially interested in the product. These represent 20% of cases where a product was proposed to the mystery shopper.

When a KID/KIID was provided, it was often **not the only document provided**. In fact, 65% of the mystery shoppers who received a KID also received at least one additional document and in a number of cases they received two or three additional documents (32% of cases where a KID was provided). This made the marketing brochure the most commonly used document across all observations, after the KID/KIID (36% of all mystery shoppers who received at least one document received it), followed by digital tools (22%), a prospectus (21%) or personalised scenarios (12%)[258].

Access to information when a consumer is searching online

The accessibility of pre-contractual information documents was also assessed through the exercise whereby we gathered, reviewed and scored information documents for 560 products. For more information about this data collection activity see Annex 2 with additional information about the methodology. For all identified products available information documents were collected and stored. These included, where available, the Key Investor Information Document (KIID), Key Information Document (KID), prospectus, product sheets, annual/semi-annual reports, product webpages, central tariff sheets and other marketing documents.

In the section on the summary of the relevant legal provisions, we show the types of information documents that are required for different types of products (see section 5.3.3). **In line with EU legislation KIIDs were available for most identified investment funds and KIDs were available for nearly all IBIPs, PPPs, structured products and derivatives** (see figure below). The impact of regulatory provisions also spills over to other product types. For instance, KIDs were also provided for some bonds and even one share without any legal requirement. Nevertheless, regulatory provisions can also create confusion for stakeholders. For instance, the exercise identified a number of investment products for which the incorrect title and/or template of the main information document was used. In particular, this is relevant for the KIIDs and KIDs which are sometimes mistaken. Even though legal provisions (see section on coherence) for

[258] These values are calculated on the total of all mystery shoppers who received at least one document independent of whether it was a KID or another.

these two documents prescribe a similar title and layout, they differ in terms of the number of pages, format and content.

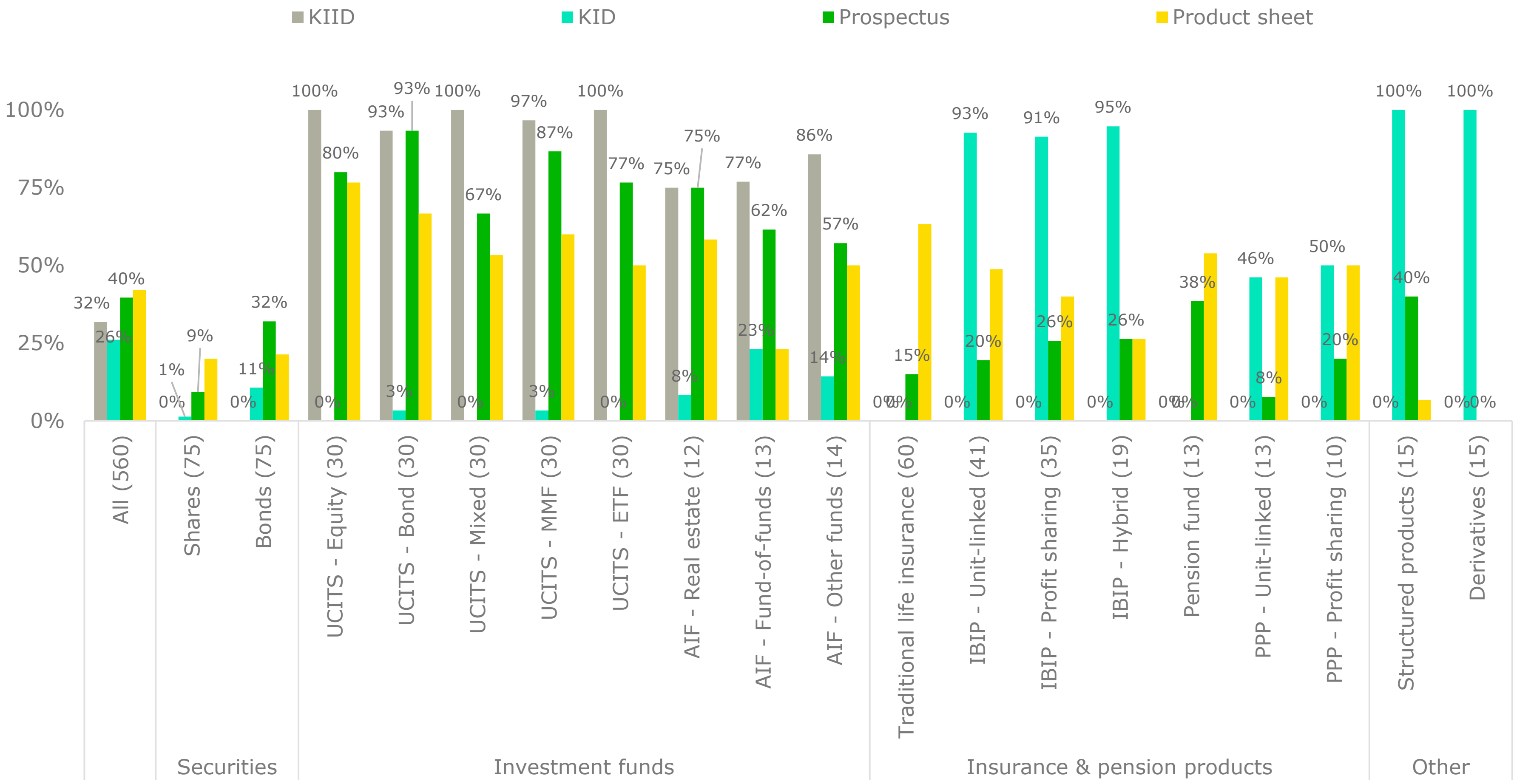
In turn, for products such as **traditional life insurance products and pension funds fewer information documents (e.g. no KID or KIIDs) were provided**. These products have less standardised information as they require a personalised offer made in person/by email depending on the advice for potential clients. For traditional life insurance and pension funds available information documents consisted mostly of product sheets and prospectuses.

In some countries, the availability of information documents for traditional life insurance products was influenced by a **legislative spill-over**. There is no requirement to produce and disclose a standardised document for traditional life insurance products, such as a KID for IBIPs (1286/2014) or IPID for non-life insurance products (2017/1469). Some Member States, for example Austria (LV-InfoV 2018)[259] have filled this gap by requiring the disclosure of a Life Insurance Product Information Document (LIPID) for traditional life insurance products.

Relatively **few information documents are provided for shares and bonds**. This is due to product supply specificities – often distributors simply indicate the availability of shares and bonds, without having individual information documents for each of the securities.

[259] This practice was also observed in Finland, France, Greece, Italy, Latvia, Luxembourg, Poland and Sweden.

Figure.7 - Availability of information documents for assessed products by type of information document (% of assessed products for which a given type of document is available)



Note: UCITS - Undertaking for the Collective Investment in Transferable Securities; MMF – Money Market Fund, ETF – Exchange Traded Fund, AIF – Alternative Investment Fund; IBIP – Insurance-Based Investment Product; PPP – Personal Pension Product.
Readers' Note: For each product type (horizontal axis), the different bars show the frequency with which each type of information document was provided (KID/KIID, prospectus, product sheet-. The number of sampled products is shown in brackets. *Source:* Consortium analysis derived the collection of product information sheets via the websites of providers.

Source: Consortium, based on the product scoring.

As regards the accessibility of information documents when searching for them online, **for most of the assessed products the information was readily available online during the initial web search**. Only in a few cases was it necessary to request the information by email as it was not available before purchasing a product from the distributor.

Language accessibility

In line with the legal requirements (see section 5.3 on coherence), the documents are always provided in the national language or in one of the national languages. In some instances, in addition to the national language, documents may also be provided in other languages. For example, distributors from Czechia also report providing it in Slovak and others have documentation available in English. However, it is often only the documentation from the manufacturers, which is not country-specific such as the product sheet. In addition, some distributors report that they provide the documentation in languages other than the national language upon request. More concretely in specific locations, the documents might also be in regionally spoken languages if the potential target group is large enough, for instance in Catalonia.

Paper/digital format

According to legal provisions (see section 5.3 on coherence), the documentation can be provided both digitally and on paper. Most distributors interviewed say their main means is electronically, but many also provide it in paper format if the advice is face-to-face or if requested by the client. However, a few distributors only provide it digitally. The large majority of information documents collected were provided in digital format (pdf format) on the distributor's website. This is partially influenced by the nature of the exercise and the time during which the information was collected. Hence, the initial product search was mostly carried out remotely without making the final purchase. When the information was available in digital and paper format, the digital format was preferred. Additionally, the products were more frequently offered remotely due to Covid restrictions.

5.4.3. Outputs: completeness of information documents regarding presentation of different categories of information

In the section on coherence (5.3.7), we discussed in detail the requirements regarding the types of information that has to be provided in KIDs and KIIDs. We also analysed the comparability of these requirements and specifically those regarding the calculation of risks and costs. In this section we present the results of the analysis of 560 information documents and the extent to which the information provided in information documents is complete.

To ensure that retail investors understand the nature of the product and are able to compare it with other products available pre-contractual information must be complete. The findings indicate that the current **disclosure practices largely cover the types of information prescribed by legislation**. The types of information commonly covered follow the templates for the types of information in the respective products, including investment policy as well as information on product risks, costs and performance. Looking at the disclosure practices across products, it appears that products with a higher degree of standardisation of pre-contractual disclosure such as investment funds, IBIPs, PPPs, structured products and derivatives are more complete than others such as securities, traditional life insurance products and pension funds.

The completeness of information was analysed across several aspects that must be disclosed to ensure retail investors have information on all the main features of the product, such as target asset allocation, recommended holding period, performance benchmarks, guarantees, and investment objectives. Legislative provisions regulating pre-contractual information help to ensure the completeness of information available on retail investment products. For instance, the templates developed for KIID/KID under UCITS/PRIIPs legislation include a list of common information items and indicators that must be disclosed (see section on coherence).

The table below gives an overview of the content categories that were covered in the information documents reviewed by type of product. The total for each column is the total number of products in a given category, including those products for which no KID/KIID was available. It is to be noted that the total figure also includes shares. However, for all the share products reviewed (75) none of this information was disclosed as neither a KID nor a KIID was available, as shown above. Each of the categories of content is subsequently discussed below. Information on costs disclosure is also presented separately later in this section.

Please note that in this section all information documents were assessed against a common set of criteria regardless of whether a given criterion is or is not required to be disclosed for a given product. The text in the following sections does clarify when a given type of information is or is not required to be disclosed (for example benchmarks are not required or relevant for some product categories).

The purpose of this comparison is to understand the quality of reporting across products with different legal requirements.

Table 5.17 - Overview of content categories covered by information documents analysed

Main category		**Securities**		**Investment funds**								**Insurance & pension products**							**Other**	
Sub-category	All (560)	Shares (75)	Bonds (75)	UCITS - Equity (30)	UCITS - Bond (30)	UCITS - Mixed (30)	UCITS - MMF (30)	UCITS - ETF (30)	AIF - Real estate (12)	AIF - Fund-of-funds (13)	AIF - Other funds (14)	Traditional life insurance (60)	IBIP - Unit-linked (41)	IBIP - Profit sharing (35)	IBIP - Hybrid (19)	Pension fund (13)	PPP - Unit-linked (13)	PPP - Profit sharing (10)	Structured products (15)	Derivatives (15)
Target asset allocation	52%	N/A	N/A	100%	100%	97%	97%	97%	100%	100%	93%	2%	63%	57%	47%	62%	62%	60%	100%	100%
Recommended holding period	56%	N/A	N/A	80%	83%	77%	77%	67%	92%	100%	93%	25%	95%	91%	95%	46%	85%	80%	100%	100%
Performance benchmarks	44%	N/A	N/A	93%	93%	80%	80%	93%	42%	77%	86%	0%	54%	46%	53%	46%	46%	30%	100%	67%
Guarantees (if any)	20%	N/A	N/A	17%	13%	13%	33%	20%	33%	23%	29%	23%	29%	66%	37%	15%	23%	90%	13%	0%
Investment objectives (General savings, Retirement, etc.)	61%	N/A	N/A	100%	100%	70%	80%	77%	67%	77%	93%	57%	98%	97%	95%	62%	85%	100%	100%	100%
Risk categories	59%	N/A	N/A	100%	100%	97%	100%	100%	67%	100%	100%	8%	93%	91%	95%	46%	85%	80%	100%	100%
Investor profile	44%	N/A	N/A	53%	53%	37%	43%	43%	42%	77%	43%	33%	95%	91%	89%	38%	62%	80%	100%	100%
Performance information	56%	N/A	N/A	100%	100%	97%	100%	100%	83%	100%	100%	3%	71%	91%	89%	62%	69%	90%	100%	33%
Calculation methodologies	42%	N/A	N/A	70%	67%	40%	60%	70%	50%	85%	64%	7%	61%	89%	89%	31%	31%	40%	100%	100%
Information on inducements[260]	7%	N/A	N/A	10%	17%	7%	7%	7%	25%	8%	0%	5%	17%	9%	16%	0%	23%	0%	0%	0%

Note: A low percentage does not indicate low compliance in the category as those numbers and the presence of the information was assessed irrespective of the legal requirements. The analysis on compliance is done in the paragraph thereafter. Number of sampled products in parentheses.

Source: Consortium analysis

[260] Please note that this figure also includes documents where the disclosure of inducements may not have been necessary due to their absence.

Target asset allocation

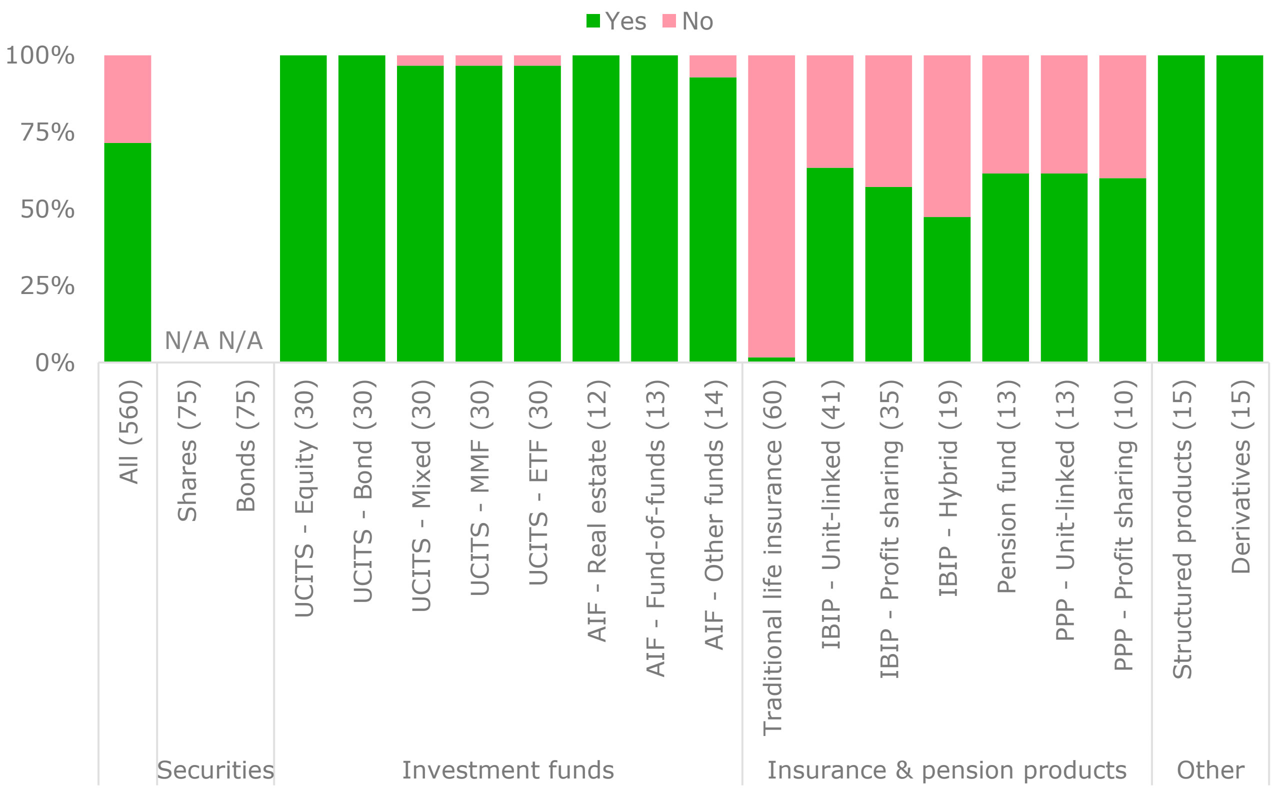
Target asset allocation indicates in which assets the funds are invested. This information is crucial to understand the riskiness of the product as some assets carry more risk than others. Target asset allocation is not applicable to securities (shares and bonds).

The large majority of investment funds (both UCITS and AIFs) include an indication of the target asset allocation (see Figure.**8**). This is in line with the legislative provisions on a common KIID template, which requires manufacturers to indicate the main target assets of the investment funds. For most investment funds the target asset allocation is mentioned clearly and explicitly with an indication of the exact or maximum proportion of funds per asset class where applicable. Nevertheless, some information documents only included a vague indication referring to the "classic pool of assets". Target asset allocation is also indicated for most of the derivatives, in the sense that the pre-contractual information for derivatives usually includes the underlying asset.

For **products subject to a KID (IBIPs, PPPs and structured products) the target asset allocation is mentioned in only about a half of the products in the sample**. In part this is due to the investment nature of these products. Often the exact target asset allocation for these products is defined by distributor together with the retail investor, depending on the risk preferences of the latter. However, this is also in part due to the fact that target asset allocation is not specified as a separate category in the KID template. Therefore, when included in the KID, target asset allocation is often not clearly mentioned.

For traditional life insurance products, the target asset allocation is almost never mentioned, because the product is not linked to specific assets. For traditional life insurance the client simply pays a premium that is invested by the insurer who bears the investment risk.

Figure.8 - Target asset allocation indication (% of assessed products)



N.B.: UCITS - Undertaking for the Collective Investment in Transferable Securities; MMF – Money Market Fund, ETF – Exchange Traded Fund, AIF – Alternative Investment Fund; IBIP – Insurance-Based

Investment Product; PPP – Personal Pension Product. The number of sampled products is shown in brackets. Target asset allocation is not applicable for shares and bonds.

Source: Consortium, based on the product scoring.

Recommended holding period

The recommended holding period indicates the minimum time an investor is advised to hold the product. Depending on the underlying assets and investment strategy chosen some products are designed to be held for a certain period of time. For instance, IBIPs or PPPs are traditionally long-term savings, as they are designed in such a way that the maximum return is obtained at least five to 10 years after the initial investment. Exiting these products would be costly and reduce the expected return. Therefore, such products would not be suitable for investors that need to recover their funds after a short time period.

Similarly, to target asset allocation, the recommended holding period is included in the KIID/KID template. For the **majority of investment funds, IBIPs, PPPs, structured products and derivatives, pre-contractual information does indicate the recommended holding period** (see Figure.**9**). The share of IBIPs and PPPs mentioning the recommended holding period is higher than the share of investment funds mostly due to the investment objective (long-term savings/retirement) as well as the KID template which requires manufacturers to indicate the recommended holding period in a separate section.

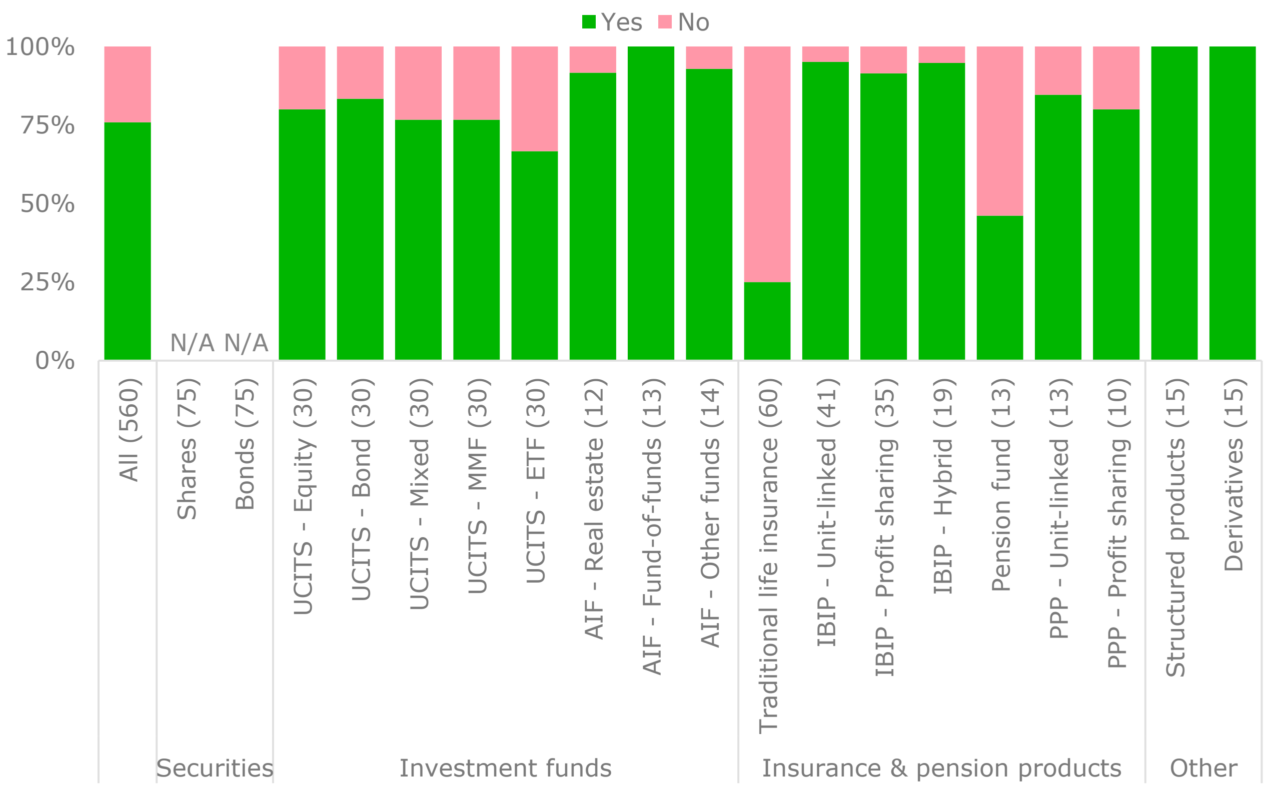
KIDs usually explicitly mention the recommended holding period through a standard formulation with an exact number of years (e.g. "Recommended holding period – 8 years") or by indicating the product's maturity date (mostly the case for structured products and derivatives).

For investment funds, the recommended holding period is usually included in the general "Investment objectives and policy section" in the KIID. Moreover, due to the absence of an insurance component the recommended holding period depends only on the underlying assets and therefore the indication can be slightly less precise, for example "The Share Class of the Fund should be held for at least a medium-term investment horizon."

This effectively means that products with different legal forms but with a comparable underlying investment proposition (e.g. investment funds on a stand-alone basis and an IBIP that invests in investment funds) are not presented as meeting the same objective. Investment funds in general have a shorter investment horizon than IBIPs and PPPs with an underlying fund investment proposition.

For traditional life insurance products and pension funds only a minority of documents indicate the recommended holding period. This is understandable as these products have a high degree of product personalisation.

Figure.9 - Recommended holding period indication (% of assessed products)



Note: UCITS - Undertaking for the Collective Investment in Transferable Securities; MMF – Money Market Fund, ETF – Exchange Traded Fund, AIF – Alternative Investment Fund; IBIP – Insurance-Based Investment Product; PPP – Personal Pension Product.
The number of sampled products is shown in brackets. The recommended holding period is not applicable for shares and bonds.

Source: Consortium, based on the product scoring.

Performance benchmarks

Performance benchmarks are usually different assets or indexes against which the performance of the product is measured. Some investment products with mostly passive investment strategies (e.g. ETFs) aim to replicate one or more performance benchmarks. A clear indication of whether a product follows a performance benchmark, and which benchmark it follows helps retail investors to understand the strategy behind the product and compare its performance with the benchmark.

For the **large majority of investment funds the main information documents included performance benchmarks** (see Figure.**10**). Indeed, investment funds are more likely to follow benchmarks compared with other products, in part due to the legislative provisions that require fund manufacturers to disclose whether a fund follows an active (no benchmark or just to measure performance) or passive (tracking a benchmark) strategy in the KIID. Among investment funds, traditional bond and equity UCITS funds are more likely to indicate the performance benchmark in the KIID. The number of mixed and money market UCITS disclosing the performance benchmark is slightly lower. These funds more frequently follow an active investment strategy. A small minority of ETF investment funds also do not disclose the performance benchmark, despite following a passive investment strategy.

Among the AIFs, most of the funds of funds, AIFs and other AIF funds largely do disclose a performance benchmark, while the real estate AIFs mostly do not disclose a performance benchmark followed. This is mostly related to the nature of the underlying assets – real estate AIFs invest directly in real estate, for which there are fewer benchmarks available.

Only about **half of all IBIPs and PPPs include an explicit reference to a performance benchmark**. This may be due to their predominantly active investment strategy and the personalised character of such products, where investment strategies can be tailored to the risk preferences of retail investors. Unlike IBIPs and PPPs, structured products and derivatives mostly explicitly mention the performance benchmark.

Expectedly, almost none of the traditional life insurance includes an explicit reference to a performance benchmark, which is often not relevant as the performance is not based on performance of a single or portfolio of assets with guaranteed returns.

Figure.10 - Performance benchmark indication (% of assessed products)

Note: UCITS - Undertaking for the Collective Investment in Transferable Securities; MMF – Money Market Fund, ETF – Exchange Traded Fund, AIF – Alternative Investment Fund; IBIP – Insurance-Based Investment Product; PPP – Personal Pension Product.
The number of sampled products is shown in brackets. The performance benchmark is not applicable for shares and bonds.

Source: Consortium, based on the product scoring.

Guarantees

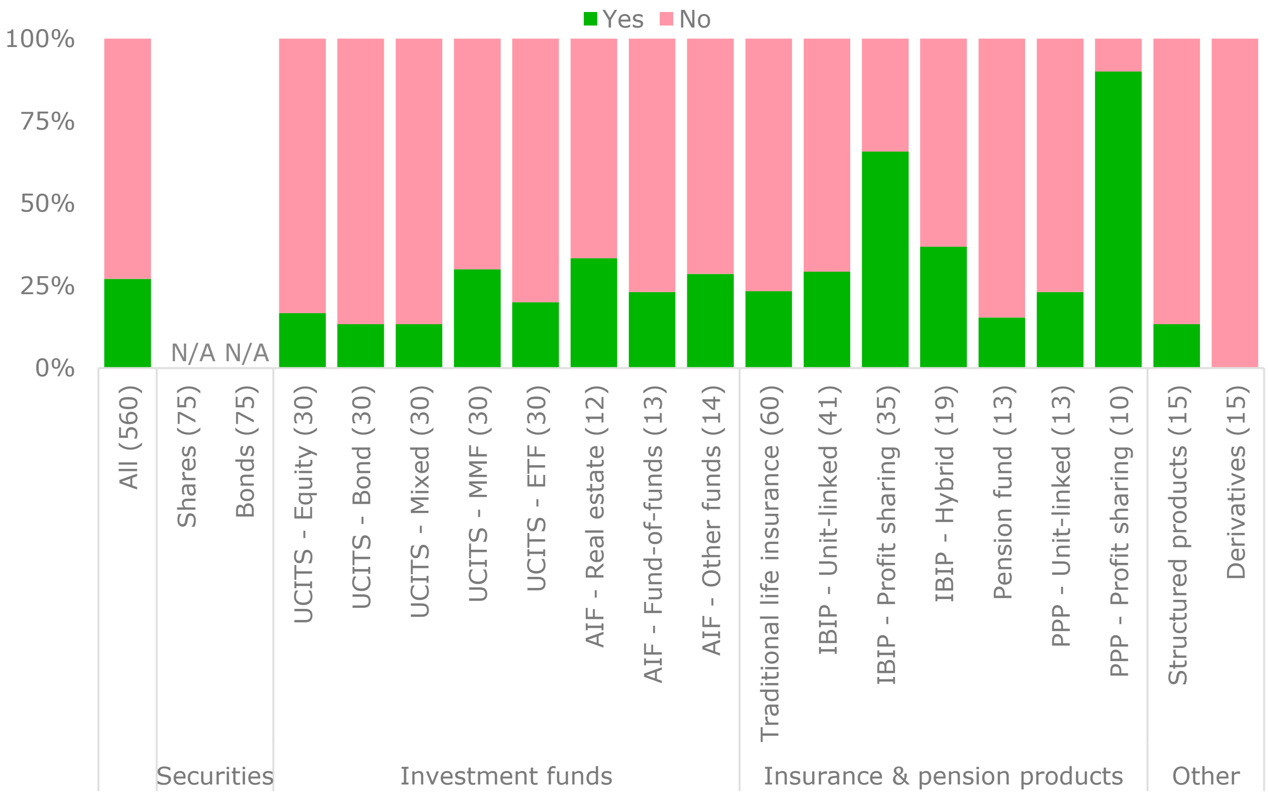
To ensure retail clients have a comprehensive and complete understanding of the risks associated with the product the pre-contractual information should give a clear indication whether or not guarantees of any kind are provided (e.g. capital, interest rate, etc.). In many languages, particularly for insurance products the insurance may be called "guarantee" which could lead to a wrong assumption that the capital is guaranteed, while in reality the pay-out depends partially or entirely on the performance of the investments.

Overall, **a minority of all products include a clear indication of whether a guarantee is available or not** (see Figure.**11**). Very few investment funds include information on guarantees in the main information document, which is at least in part due to the fact that very few of those include a guarantee. Nevertheless, when it comes to mentioning the absence of such a guarantee, less than a quarter of all investment funds assessed clearly indicated in their documentation that: "The Fund is not a guaranteed investment". Other investment funds only included information that risk categories and/or past performance cannot be considered a guarantee for performance and may change in the future.

Among insurance and pension products, **the share of products that include a clear indication of the availability or non-availability of a guarantee is only slightly higher than that of investment funds**. The only exceptions are profit-sharing IBIPs and PPPs. The large majority of profit-sharing IBIPs and PPPs provide a clear indication of guarantees, which is due to the nature of the product. Hence, profit-sharing implies that the invested capital is guaranteed in part or in full. In turn, only about a quarter of all other insurance and pension products indicate the applicability or non-applicability of a guarantee.

Guarantees are clearly indicated in the main information document for only a small minority of the structured products assessed. Additionally, although derivatives are by definition not guaranteed, for a small minority of derivatives assessed, the non-availability of guarantees is explicitly indicated in the main information document (e.g. "repayment of the invested capital is not guaranteed").

Figure.11 - Guarantees indication (% of assessed products)



Note: UCITS - Undertaking for the Collective Investment in Transferable Securities; MMF – Money Market Fund, ETF – Exchange Traded Fund, AIF – Alternative Investment Fund; IBIP – Insurance-Based Investment Product; PPP – Personal Pension Product.
The number of sampled products is shown in brackets. Guarantees are not applicable for shares and bonds.
Source: Consortium analysis

Source: Consortium, based on the product scoring.

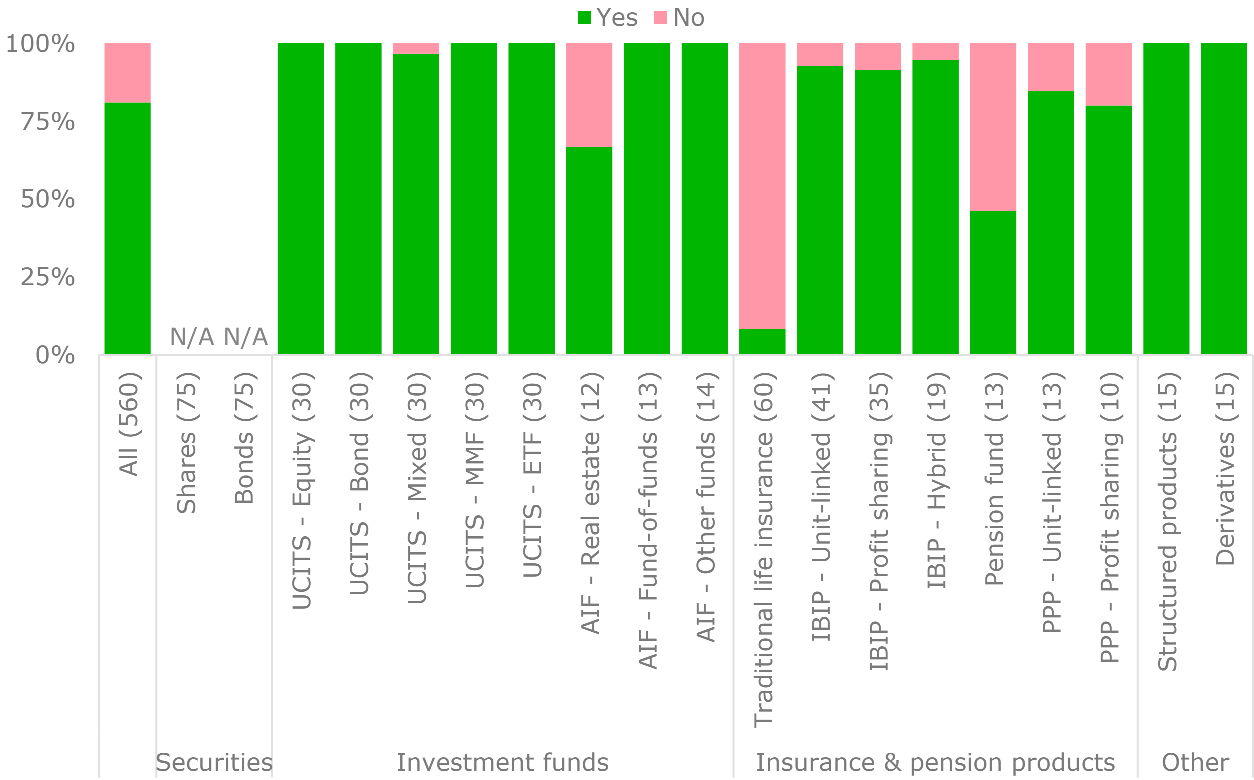
Risk categories

Both KIID and KID templates stipulate the format of the risk information to be disclosed. More specifically, the level of risk should be indicated in a standardised format using a seven-point scale, where products with a score of one are the least risky and those with score of seven the most risky. Having similar risk information disclosure requirements across different products ensures greater product understandability and comparability.

Expectedly, **nearly all the products (UCITS, AIFs, IBIPs, PPPs, structured products and derivatives) that have a KIID or KID as their main information document adequately disclose information on risk categories** (see Figure.**12**). These products usually include a general grid with risk categories and a short explanation of potential risks and their calculation. The share of documents with risk categories correctly disclosed is slightly lower only for real estate AIFs and profit-sharing PPPs. These products do not feature risk categories at all or do not include an explanation on what is implied by this information.

In line with the Solvency II requirements life insurance and pension funds should also disclose information "to provide a proper understanding of the risks underlying the contract which are assumed by the policy holder." (Article 185(4)). However, the **risk categories are adequately disclosed for only a small minority of traditional life insurance products and nearly half of all the pension fund products**.

Figure.12 - Risk categories indication (% of assessed products)



Note: UCITS - Undertaking for the Collective Investment in Transferable Securities; MMF – Money Market Fund, ETF – Exchange Traded Fund, AIF – Alternative Investment Fund; IBIP – Insurance-Based Investment Product; PPP – Personal Pension Product.
The number of sampled products is shown in brackets. Risk categories are not applicable for shares and bonds.

Source: Consortium, based on the product scoring.

Performance information

Performance information provides retail investors with a brief overview of past or potential performance of the product and helps them make an informed decision. Legal provisions for both KIIDs and KIDs specify that the performance information must be disclosed in a specific format depending on the product. For investment funds the performance information should usually be displayed as the product's past returns over a period of years, supplemented by a brief description of the calculation methodology, currency, period and benchmark (if any). For IBIPs, PPPs, structured products and derivatives, the performance information must be indicated in terms of performance scenarios, as the expected return depends on the investment amount and its duration. It also should include a brief description of the calculation methodology, main assumptions, currency and period.

Overall, the **main information documents assessed in general comply with the legal provisions on performance disclosure** (see Figure.**13**). For the large majority of the investment funds the performance information is indicated correctly. The performance information was unavailable, incomplete or could be perceived as misleading for only a few funds (mixed UCITS and real estate AIFs). For example, some KIIDs did not specify what information is presented on the chart, how the returns are calculated, etc.

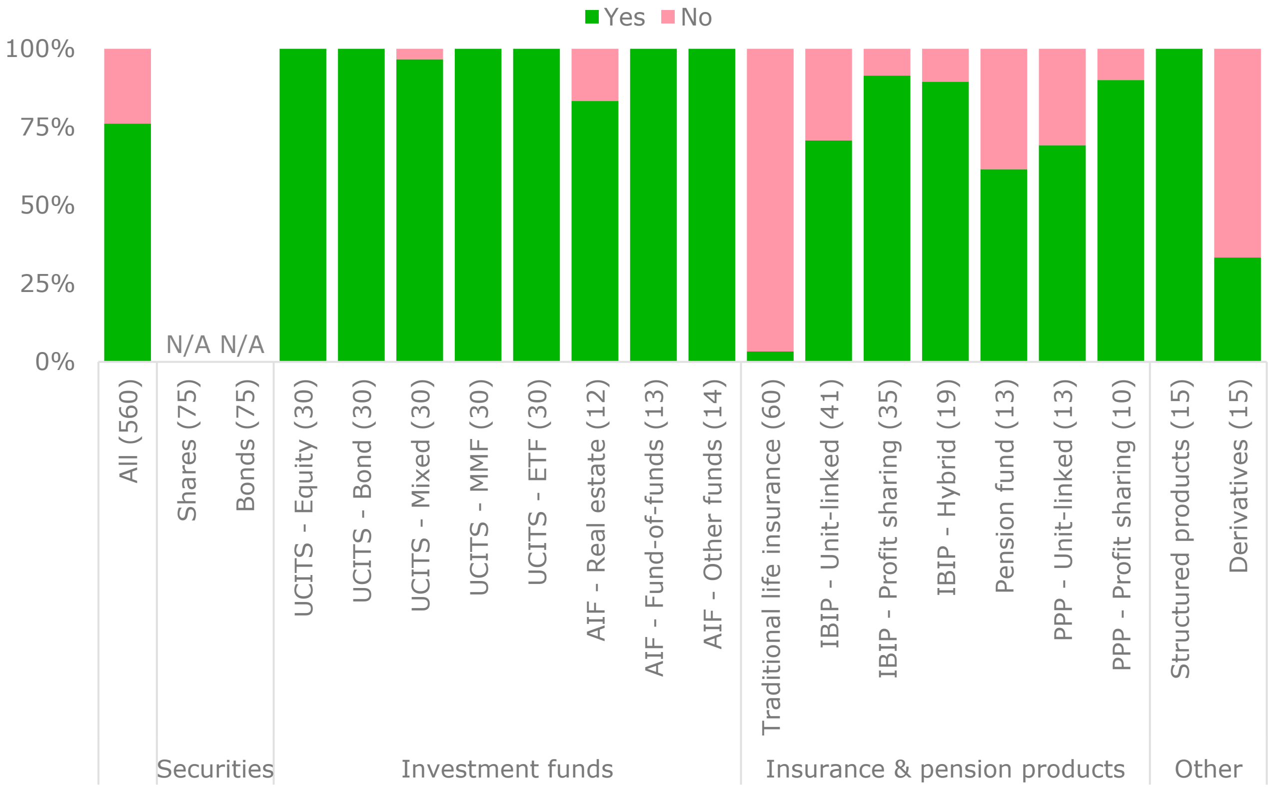
Across the different types of insurance and pension products, **the performance information was adequately disclosed for the large majority of profit-sharing and hybrid IBIPs and PPPs**. In contrast, far fewer unit-linked IBIPs and PPPs contained adequate information on the performance. In fact, for about a quarter of the assessed unit-linked IBIPs and PPPs the performance information was either entirely absent or incomplete. For example, some of the information documents assessed mentioned only the potential return for different periods, without background information on assumptions or calculation.

All of the structured products and derivatives assessed included adequate performance information, due to the fact that both follow the KID format.

Overall, most of the products assessed with highly standardised pre-contractual disclosure information (i.e., investment funds, IBIPs, PPPs, structured products and derivatives) the written information provided was aligned and consistent with the information provided – mostly in simplified form – in the performance charts. This is related to legislative requirements for common templates detailing in particular the calculation methodology information (e.g., currency, benchmark, start date, etc.) alongside performance information.

For traditional life insurance products and pension funds there are no legal provisions on performance information disclosure at EU level, but a small minority of the traditional life insurance products assessed and a majority of pension funds included an adequate indication of the product's potential performance. As pre-contractual information for these products is less standardised, the performance disclosure format is distinct from the KIID or KID. Nevertheless, for some traditional life insurance products and pension funds simplified performance scenarios containing several examples and a brief description of underlying assumptions were included.

Figure.13 - Performance information (% of assessed products)



Note.: UCITS - Undertaking for the Collective Investment in Transferable Securities; MMF – Money Market Fund, ETF – Exchange Traded Fund, AIF – Alternative Investment Fund; IBIP – Insurance-Based Investment Product; PPP – Personal Pension Product.
The number of sampled products is shown in brackets.
Performance information is not applicable for shares and bonds.

Source: Consortium, based on the product scoring.

Costs information disclosure

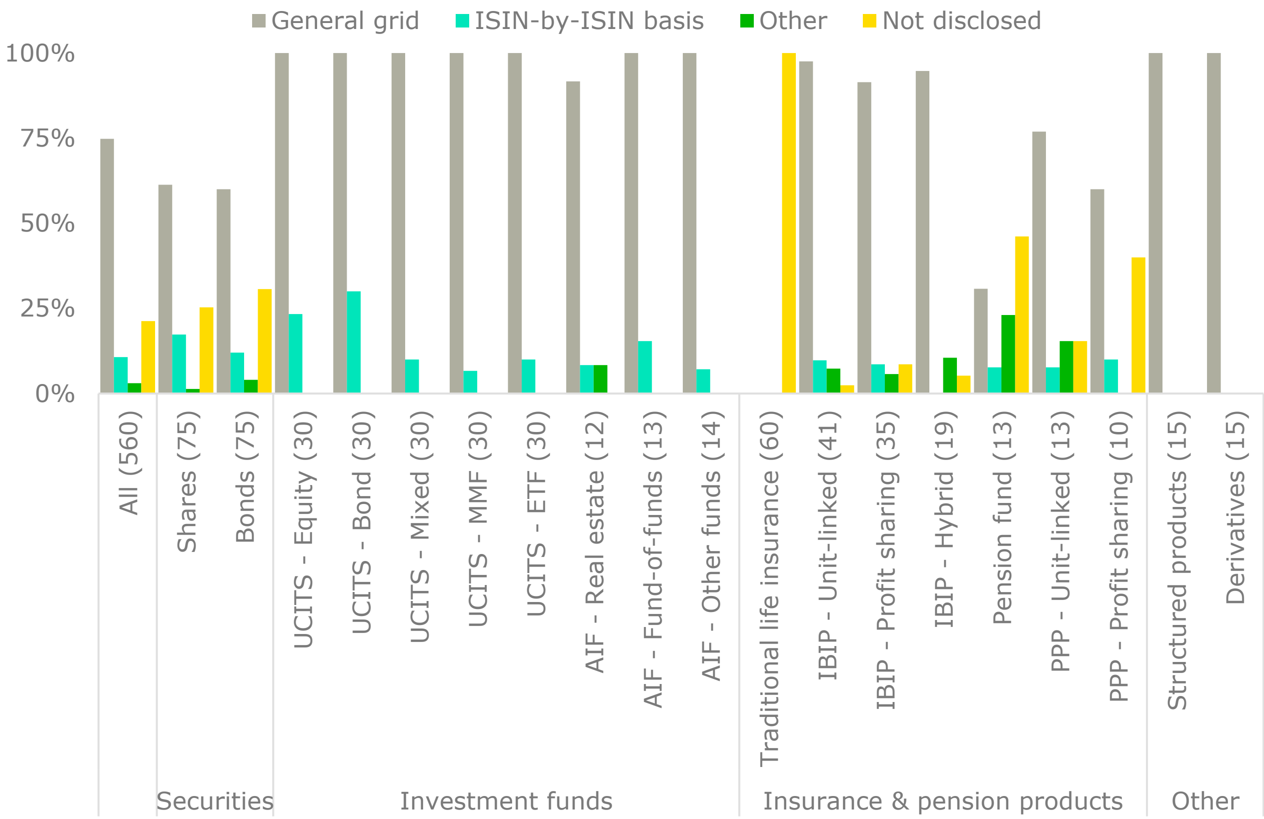
Costs information is an integral part of the pre-contractual information. The product's costs are important as they lower the returns or expected pay-outs of most investment products. Most of the information documents must include an accurate estimate and comprehensive description of all products related costs which the retail investor could incur when making an investment. The format and units usually vary depending on the product. For instance, to ensure comparability of different products both KIID and KID templates prescribe the same format of costs disclosure (see coherence section): a general grid divided into one-off (entry/exit) and other ongoing costs. In addition to the general grid format costs can be provided on ISIN-by-ISIN basis for each of the underlying assets, by number of operations, by strategy chosen or simply as a list or plain text.

For most of the shares and bonds assessed the cost information is not disclosed in the main information document but was available separately from the distributor.

Due to the high standardisation of the pre-contractual information in the KIID and KIDs **nearly all of the investment funds, IBIPs, PPPs, structured products and derivatives assessed disclose the costs based on a general grid** (see Figure.**14**). The costs were unavailable for only a few of mixed UCITS funds and unit-linked IBIPs. Additionally, for a minority of unit-linked and profit-sharing PPPs the costs were not disclosed at all.

For all **traditional life insurance products and about half of all pension funds assessed extensive cost information was missing**. There is only a low level of standardisation of pre-contractual information for these products. In terms of what is disclosed, these products usually include the costs in the monthly premiums and only the final monthly amount is communicated to the investor. It is therefore hard to disentangle costs and premium.

Figure.14 - Costs format (% of assessed products)



Note: UCITS - Undertaking for the Collective Investment in Transferable Securities; MMF – Money Market Fund, ETF – Exchange Traded Fund, AIF – Alternative Investment Fund; IBIP – Insurance-Based Investment Product; PPP – Personal Pension Product.
The number of sampled products is shown in brackets.

Source: Consortium, based on the product scoring.

5.4.4. Outputs: costs disclosure

This section provides an assessment of the costs charged for retail investment products based on a sample of 453 products from the 15 selected countries. It considers various aspects related to costs, including disclosure practices, cost structure as well as the level of costs.

The cost information was obtained for all products in the product sample from the pre-contractual documentation. Only information provided to an investor about the cost of purchasing, holding and selling of the investment product *before* closing the agreement to invest was considered. The majority of cost information was retrieved from the standardised product information sheets. In addition, tariff brochures, cost overviews and prospectuses were consulted to complete the cost information.

Costs in the context of this study are the minimum total costs charged to a retail investor by both distributor and manufacturer. Hence, only fees that cannot be avoided by retail investors are considered in this analysis. This means that fees charged for placing phone orders, spread fees, dividend handling fees or real-time market data fees are excluded. [261]

To allow for the comparison of costs across investment products on an equal basis, the total costs for each product are calculated using the same assumptions concerning the holding period, investment return and amount invested, more specifically:

- The investor holds the product for five years, which is the most frequently recommended holding period of products in the sample.
- The annual return is 5% per year, which is in between the returns of historically higher-returning asset classes, such as stocks, and lower-returning asset classes, such as bonds and money market products.
- The initial sum invested is EUR 10,000, which is a representative amount for a typical retail investor as defined in this study.

Based on the above assumptions, the total costs of each investment product are estimated. The costs are presented as percentages of Net Asset Value (NAV)[262], which allows for an easy comparison across product categories. The entry costs are presented as a percentage of NAV when acquiring the investment product (NAV0), and the exit costs as a percentage of NAV when exiting the investment after holding it for five years (NAV5). Ongoing and total costs are summed, divided by the holding period, and consequently presented as a percentage of the average NAV during the five year holding period.

Key findings

The **costs of retail investment products are disclosed for nearly all investment products**, excluding traditional life insurance products. For most of the products multiple fees are disclosed with varying names and calculation base (absolute, NAV, RIY, etc.), which for comparability purposes have been divided along the lines of entry, ongoing and exit fees, as well as distributor and manufacturer charges. For most of the product categories the ongoing costs account for the large majority of the costs, except for securities for which the entry and exit costs account for nearly half of the costs charged.

The **total product costs differ across product categories**. In general, the more complex a product, the higher the costs (e.g. retail AIFs have higher costs than securities and UCITS). There are notable differences in the costs across countries. Based on a comparable set of products in the sample, the costs in the least expensive country are just over half of those of the most expensive country.

For most of the products with cost information **there is limited or no information provided on indirect distribution fees or inducements**. Hence, the standardised product information

[261] When only a maximum fee and no actual fee was provided, the maximum fee was taken as the actual fee, assuming it to be the closest approximation to the actual fee provided.

[262] The NAV (Net Asset Value) calculation does not include costs incurred during the investment period. In other words, ongoing charged incurred during the holding period are not subtracted from the value of the investment.

analysed often did not clearly state whether inducements are paid and none of these documents included the inducement paid. Based on the limited information on inducements that could be obtained from the other pre-contractual documents, it appears that the costs of investment funds with inducements are on average higher than for funds without inducements. At least part of this difference is explained by the composition of the sample (cheaper UCITS ETFs and UCITS MMFs are overrepresented in the sample of investment funds without inducements).

Lastly, looking at distributors that sell the same investment products, online discount brokers distribute securities and investment funds at a lower cost than banks. A similar comparison across banks and insurance companies for insurance and pension products shows no clear differences in the costs charged.

Access to information about costs

Cost information was provided for nearly all products in the sample (see Table**.17**). No cost information was found for traditional life insurance products in any of the countries. Distributors of traditional life insurance products provide only the total premium, without a breakdown between distribution costs and product costs. Without this breakdown a comparison of distribution costs is impossible, and hence traditional life insurance products are excluded from the results in the remainder of this chapter.

There are also product categories for which a few distributors do not provide cost information. This is mostly because access to the information was restricted to fee-based advisors or local offices. In the product sample, information was not provided for about one-tenth of non-traditional life insurance and pension products (13 out of 131) and a few securities (5 out of 75).

Table.17 - Extent to which costs charged by the distributor and manufacturer were retrieved for products from the sample (% of product sample, per product category)

Category	Sub-category	Product	Products for which costs were retrieved	Products in the product sample	Products for which costs were retrieved as percentage of total product sample
Securities	Listed shares	Shares	70	75	93%
	Bonds	Bonds	75	75	100%
Investment funds	Retail UCITS	UCITS - Equity	30	30	100%
		UCITS - Bond	30	30	100%
		UCITS - Mixed	30	30	100%
		UCITS - MMF	30	30	100%
		UCITS - ETF	30	30	100%
	Retail AIFs	AIF - Real estate	12	12	100%
		AIF - Fund-of-funds	13	13	100%
		AIF - Other funds	14	14	100%
Insurance & pension products	Traditional life insurance products	Traditional life insurance	0	60	0%
	Insurance-based investment products	IBIP - Unit-linked	40	41	98%
		IBIP - Profit sharing	32	35	91%
		IBIP - Hybrid	18	19	95%
	Personal/individual pension products	Pension fund	11	13	85%
		PPP - Unit-linked	11	13	85%
		PPP - Profit sharing	6	10	60%
Other products	Structured products	Structured products	NA	15	NA
	Derivatives	Derivatives	NA	15	NA

Category	Sub-category	Product	Products for which costs were retrieved	Products in the product sample	Products for which costs were retrieved as percentage of total product sample
Total			**452**	**560**	
Average					**85%**

Note: Other products are not in the scope of the costs exercise

Source: Consortium, based on the product scoring.

The products for which no information was found concern seven countries (see Table.**18**). In Austria, Finland, France, and Luxembourg the cost information was not available for a single product and in Ireland, Latvia, and Spain for two or more products. Nevertheless, in all these countries the cost information was available for a large majority of the products in the sample.

Table.18 - Extent to which costs charged by the distributor and manufacturer were retrieved for products from the sample, excluding traditional life insurance (number, per country)

Country	Number of products for which costs were retrieved	Number of products in the product sample	Costs retrieved (% of product sample)
AT	33	34	97%
CZ	32	32	100%
FI	30	31	97%
FR	33	34	97%
DE	27	27	100%
EL	30	30	100%
IE	26	28	93%
IT	34	34	100%
LV	25	33	76%
LU	30	31	97%
NL	26	26	100%
PL	34	34	100%
RO	31	31	100%
ES	30	34	88%
SE	31	31	100%
Total	**452**	**470**	

Note: For some investment funds the exact level of fees was not disclosed.

Source: Consortium, based on the product scoring.

Cost structure

The cost structure of retail investment products is discussed and analysed across the categories presented in product sheets, namely entry, ongoing and exit costs:

- **Entry costs** are the only one-off fees that a retail investor is charged when acquiring an investment product. Per product category, one can generally identify a common entry fee. For securities this is the transaction fee, for investment funds the fund entry fee and for insurance products the fund entry fee as well. For pension products entry fees are less common, and no one type of fee can be identified as the general fee. Additional entry fees are charged too, for example when the product is denominated in a foreign currency or when a security is from a foreign exchange. Together, these one-off fees compose the total entry costs.
- **Ongoing costs** are the only fees that a retail investor is charged while holding the investment product (i.e. after acquiring and before exiting the investment). Ongoing costs for investment funds and IBIPs are commonly the management fee, performance fee and a fund transaction fee, fees that the manufacturer deducts from the value of the investment (fund). For securities, the common ongoing fee is a custody fee for the account in which the security is held, charged directly by the distributor. Ongoing costs therefore consist of fees charged by both distributor and manufacturer. Beyond the common ongoing fees, additional fees may be charged too. For example, a fee for a holding a product from a foreign stock exchange or additional account-related fees such as a maintenance fee. Combining all the aforementioned fees results in the total ongoing costs.
- **Exit costs** are the only one-off fees that a retail investor is charged when exiting the investment. The common exit fee per product category is similar to the entry fee for that category. For example, for securities a transaction fee is charged when exiting the investment, while for investment funds and insurance products a fund exit fee may be charged. For pension products exit fees are less common. Beyond the common exit fee, other one-off fees are included as well, such as a withdrawal fee when transferring money back to the investor's bank account. In turn, surrender or termination (early exit) fees are not considered as the investment products are assumed to be held for their recommended holding period. Combining the one-off exit fees produces the total exit costs.

The extent to which entry, ongoing or exit fees are charged for an investment product varies per category of products (see Table.**19**). For the vast majority of securities in the product sample entry and exit fees are charged, generally in the form of transaction fees. Ongoing fees are charged less frequently (about half or more of products in the sample). Ongoing fees for securities tend to be in the form of custody or maintenance fees. Costs structures differ between distributors and a common fee for one type of distributor might therefore rarely be applicable at a different type of distributor. Social trading platforms, for example, are less likely to charge a common custody fee, but instead charge currency conversion fees or maintain spreads on their CFDs in order to cover their distribution costs. In contrast, banks tend to charge a custody and/or maintenance fee.

Investment funds always charge ongoing fees, which simply reflects the fact that management fees are always charged for an investment fund. Entry fees are also charged for the vast majority of investment funds, albeit less frequently than for securities. Entry fees are most often charged in the form of a fund entry fee or a transaction fee by the distributor. Entry fees such as transaction fees are less frequently charged for investment funds for which the distributor receives inducements. Exit fees are charged less frequently than entry fees for investment funds.

Insurance and pension products almost always charge ongoing fees. The insurance and pension products rarely include exit fees, and entry fees are less frequently charged than for other product categories.

Table.19 - Share of distributors charging entry, ongoing and exit fees (%, per product category)

Category	Sub-category	Product	% of dist. charging entry fee	% of dist. charging ongoing fee	% of dist. charging exit fee	Total
Securities	Listed shares	Shares	97%	50%	97%	70
	Bonds	Bonds	97%	67%	97%	75
Investment funds	Retail UCITS	UCITS - Equity	67%	100%	33%	30
		UCITS - Bond	73%	100%	57%	30
		UCITS - Mixed	60%	100%	30%	30
		UCITS - MMF	70%	100%	47%	30
		UCITS - ETF	93%	100%	87%	30
	Retail AIFs	AIF - Real estate	67%	100%	50%	12
		AIF - Fund-of-funds	85%	100%	46%	13
		AIF - Other funds	79%	100%	57%	14
Insurance & pension products	Insurance-based investment products	IBIP - Unit-linked	63%	100%	3%	40
		IBIP - Profit sharing	66%	97%	3%	32
		IBIP - Hybrid	83%	94%	11%	18
	Personal/individual pension products	Pension fund	55%	73%	9%	11
		PPP - Unit-linked	45%	91%	9%	11
		PPP - Profit sharing	0%	100%	0%	6
Total						**452**
Average			**78%**	**85%**	**54%**	

Source: Consortium, based on the product scoring.

The distribution of the costs across entry, ongoing and exit costs varies between product categories (see Table.**20**). Considering the simulation of the costs for investment products in the sample, for securities around half of total costs are charged through entry and exit fees; this contrasts with the other product categories, where entry and exit fees account for no more than a quarter of total costs. Investment funds, for example, generally have only 10 to 15% of total costs charged through entry and exit fees, with the exception of the less complex funds where entry and exit fees account for roughly a quarter of total costs. This is mostly due to more complex investment funds having higher ongoing fees. For insurance and pension products, exit fees account for a negligible share of total costs, and entry fees also generally make up a minor share of total costs. Albeit to differing degrees, ongoing fees are therefore the main cost category of total costs for all products in the product sample.

Table.20 - Entry, ongoing and exit cost as a share of total costs (%)

Category	Sub-category	Product	Entry costs as % of total costs	Ongoing costs as % of total costs	Exit costs as % of total costs	N
Securities	Listed shares	Shares	19%	57%	24%	70
	Bonds	Bonds	21%	55%	25%	75
Investment funds	Retail UCITS	UCITS - Equity	7%	91%	1%	30
		UCITS - Bond	7%	89%	4%	30
		UCITS - Mixed	9%	89%	1%	30
		UCITS - MMF	15%	79%	6%	30
		UCITS - ETF	12%	78%	10%	30
	Retail AIFs	AIF - Real estate	6%	91%	3%	12
		AIF - Fund-of-funds	8%	90%	2%	13
		AIF - Other funds	8%	87%	5%	14

Category	Sub-category	Product	Entry costs as % of total costs	Ongoing costs as % of total costs	Exit costs as % of total costs	N
Insurance & pension products	Insurance-based investment products	IBIP - Unit-linked	4%	96%	0%	40
		IBIP - Profit sharing	3%	97%	0%	32
		IBIP - Hybrid	6%	93%	1%	18
	Personal/individual pension products	Pension fund	13%	85%	2%	11
		PPP - Unit-linked	8%	91%	1%	11
		PPP - Profit sharing	0%	100%	0%	6
Total						**452**
Average			**8%**	**88%**	**4%**	

Source: Consortium, based on the product scoring.

Level of costs

The average total cost that an investor is charged per annum varies across products (see Table.**21**). **In general, more complex products have higher costs for investors**. More specifically, securities have the lowest costs and AIFs the highest. Similarly, less complex UCITS Money Market Funds and UCITS ETFs follow simpler investment strategies and involve less management and therefore have lower costs compared with UCITS Equity and UCITS Mixed funds. As the dominant cost category, ongoing costs tend to track total costs most closely and are higher for more complex products.

Similar to the total cost, the average entry cost differs across product categories. The average entry cost is lowest for insurance and pension products, understandably as entry fees are less frequently charged for these products. For investment funds, average entry costs are higher when the product is more complex. For securities, entry fees are the most prevalent type of fee (as shown in Table.**21**), nevertheless the average total entry costs are still relatively low compared with other product categories.

Exit fees are the lowest and least frequently charged of the three types of fees. For securities, average total exit costs are similar to average total entry costs. In general, the fees applied to the purchase of securities are similar or the same as those when selling the security. Among investment funds, AIFs tend to come with higher average exit costs than UCITS. Insurance and pension products in general come with low or no exit costs.

Table.21 - Average entry, ongoing, exit and total costs (per product category)

Category	Sub-category	Product	Entry cost (% of NAV Y0)	Ongoing costs (average per annum)	Exit cost (% of NAV Y5)	Total costs (average per annum)	Total
Securities	Listed shares	Shares	0.4%	0.2%	0.4%	0.3%	70
	Bonds	Bonds	0.5%	0.2%	0.4%	0.4%	75
Investment funds	Retail UCITS	UCITS - Equity	0.9%	2.1%	0.1%	2.3%	30
		UCITS - Bond	0.6%	1.3%	0.3%	1.5%	30
		UCITS - Mixed	1.1%	1.9%	0.1%	2.2%	30
		UCITS - MMF	0.7%	0.7%	0.2%	0.9%	30
		UCITS - ETF	0.5%	0.6%	0.3%	0.8%	30
	Retail AIFs	AIF - Real estate	0.9%	2.4%	0.4%	2.6%	12

Category	Sub-category	Product	Entry cost (% of NAV Y0)	Ongoing costs (average per annum)	Exit cost (% of NAV Y5)	Total costs (average per annum)	Total
		AIF - Fund-of-funds	1.4%	2.6%	0.2%	2.8%	13
		AIF - Other funds	1.4%	2.8%	0.8%	3.2%	14
Insurance & pension products	Insurance-based investment products	IBIP - Unit-linked	0.4%	1.9%	0.0%	2.0%	40
		IBIP - Profit sharing	0.3%	1.9%	0.0%	1.9%	32
		IBIP - Hybrid	0.9%	2.2%	0.1%	2.4%	18
	Personal/individual pension products	Pension fund	0.9%	1.0%	0.1%	1.2%	11
		PPP - Unit-linked	0.7%	1.3%	0.0%	1.4%	11
		PPP - Profit sharing	0.0%	1.8%	0.0%	1.8%	6
Total							452

Source: Consortium, based on the product scoring.

The majority of countries have an average total cost of investment products of just over 1% per annum[263]. However, differences do exist, with investments distributed in Sweden coming with significantly lower costs than those in Spain (see Table.**22**). Entry and exit fees tend to vary more between countries than ongoing costs, but their impact on total costs is modest compared with that of ongoing costs. The Netherlands, for example, has among the lowest average entry and exit costs[264]. However, the total annualised cost of investment products is higher than in Czechia and Germany, where entry and exit fees are higher[265].

The figures presented are based on a similar basket[266] of products across countries, but do not necessarily reflect the actual *average* costs investors in these countries face as the composition of the investments may differ from the one assumed in this study.

Table.22 - Average entry, ongoing, exit and total costs (per country)

Country	Entry cost (% of NAV Y0)	Ongoing costs per (average annum)	Exit cost (% of NAV Y5)	Total costs per (average annum)	Total
AT	1.4%	0.9%	0.1%	1.2%	23
CZ	1.4%	0.7%	0.4%	1.0%	23
FI	0.4%	0.9%	0.3%	1.1%	23
FR	1.1%	1.0%	0.6%	1.4%	23
DE	0.8%	0.6%	0.2%	0.8%	23
EL	0.7%	1.1%	0.5%	1.3%	21

263 In 10 out of the 15 countries annual total costs lie between 1.1% and 1.3%.%
264 0.1% and 0.2%, respectively.
265 Total costs are 1.0%, 0.8% and 1.2% for Czechia, Germany and The Netherlands.
266 5 shares, 5 bonds, 8 UCITS, 5 AIFs, assuming all are distributed.

Country	Entry cost (% of NAV Y0)	Ongoing costs per (average annum)	Exit cost (% of NAV Y5)	Total costs per (average annum)	Total
IE	0.5%	1.2%	0.4%	1.4%	23
IT	1.0%	1.2%	0.3%	1.4%	23
LV	0.5%	1.0%	0.2%	1.1%	18
LU	0.8%	0.9%	0.4%	1.2%	20
NL	0.1%	1.1%	0.2%	1.2%	23
PL	0.4%	1.2%	0.2%	1.3%	23
RO	0.4%	1.1%	0.4%	1.2%	22
ES	0.6%	1.1%	0.5%	1.3%	23
SE	0.2%	0.8%	0.2%	0.9%	23
Total					**334**

Note: Since IBIPs are not present in all countries, and pension products vary in design and cost between countries as a result of different pension systems, insurance and pension products are excluded from the country comparison. Securities and investment funds are very consistent across countries, and hence form the basis of the country-by-country comparison.

Source: Consortium, based on the product scoring.

Direct and indirect distribution

Distribution costs are charged by both distributors and manufacturers. Distributors generally charge distribution costs through entry fees, for example in the form of transaction fees or fund entry fees. Manufacturers can charge distribution costs as part of the management fee and pay it to the distributor as an inducement to distribute the product to retail investors. The management fee and inducement are deducted from the value of the investment instead of being charged directly to the investor. These costs are considered an indirect distribution cost. For example, obtaining the direct and indirect distribution costs for insurance and pension products is complicated. Hence, insurance and pension products are often distributed and manufactured by different parts of the same company. The absence of a direct distribution fee does not imply an absence of direct distribution costs, but rather that distribution costs are allocated internally.

Direct distribution costs as a share of total costs vary per product (see Table.**23**). Manufacturers of securities (generally) do not charge costs to investors, and hence direct distribution costs make up all the costs of securities. For investment funds, the share of direct distribution costs depends on the complexity of the product. UCITS Money Market Funds and UCITS ETF come with higher direct distribution costs as a share of total costs compared with more complex or actively managed UCITS Mixed and UCITS Equity.

Table.23 - Direct distribution costs per annum as a share of total costs per annum (%, per product category)

Category	Sub-category	Product	Direct distribution cost	Total costs	Distribution as share of total	N
Securities	Listed shares	Listed shares	0.3%	0.3%	100.0%	70
	Bonds	Bonds (investment/non-investment grade)	0.4%	0.4%	100.0%	75
Investment funds	Retail UCITS	UCITS - Equity	0.4%	2.3%	16.7%	30
		UCITS - Bond	0.4%	1.5%	27.3%	30
		UCITS - Mixed	0.4%	2.2%	18.7%	30
		UCITS - Money market funds	0.4%	0.9%	45.9%	30
		UCITS - ETF	0.3%	0.8%	43.4%	30
	Retail AIFs	AIF - Real estate	0.3%	2.6%	12.5%	12
		AIF - Fund-of-funds	0.7%	2.8%	25.8%	13
		AIF - Other funds	0.7%	3.2%	20.8%	14
Total						334

Note: Insurance and pension products are excluded

Source: Consortium, based on the product scoring.

Indirect distribution fees (i.e. inducements) were collected alongside direct distribution costs. The standardised product information sheet often indicated the existence of indirect distribution fees, but did not indicate the amounts involved. The indirect distribution fees were only collected for investment funds (see Table.**24**). For just over half of investment funds the exact amount of indirect distribution fees charged was provided[267]. For the remainder, only the presence of indirect distribution fees was indicated[268]. For insurance and pension products no indirect distribution fees were collected, since they are not disclosed in the disclosed product information documents.

[267] For 94 out of 189 investment funds it was indicated that there was no inducement fee or the exact inducement fee was not provided.
[268] The prospectus mentioned would mention an inducement or a maximum inducement charge being charged, but did not provide the exact fee.

Table.24 - Percentage of products for which indirect distribution fees were provided (%, per product type)

Category	Sub-category	Product	% of products for which inducements were provided	N
Securities	Listed shares	Shares	0%	70
	Bonds	Bonds	0%	75
Investment funds	Retail UCITS	UCITS - Equity	47%	30
		UCITS - Bond	57%	30
		UCITS - Mixed	57%	30
		UCITS - MMF	43%	30
		UCITS - ETF	33%	30
	Retail AIFs	AIF - Real estate	33%	12
		AIF - Fund-of-funds	54%	13
		AIF - Other funds	36%	14
Insurance & pension products	Insurance-based investment products	IBIP - Unit-linked	0%	40
		IBIP - Profit sharing	0%	32
		IBIP - Hybrid	0%	18
	Personal/individual pension products	Pension fund	0%	11
		PPP - Unit-linked	0%	11
		PPP - Profit sharing	0%	6
Total			19%	452

Source: Consortium, based on the product scoring.

If the manufacturer of an investment fund charges an indirect distribution fee, the inducement is 0.7% on average (see Table.**25**). Indirect distribution fees are paid by the manufacturer from the management fee and alongside other ongoing fees, and on average make up just under half of total ongoing costs. In the scenario, indirect distribution fees make up over one-third of total costs on average, reflecting not only their significant share of costs but also the relatively smaller direct distribution costs among investment funds with inducements.

Table.25 - Average inducements and their share of annual ongoing and total costs (% of NAV, per fund type)

Fund	Inducements (average per annum)	Inducements as a percentage of ongoing costs	Inducements as a percentage of total cost	N
UCITS	0.7%	46%	39%	36
AIF	0.6%	43%	39%	11
Total	**0.7%**	**45%**	**39%**	47

Source: Consortium, based on the product scoring.

Investment funds with indirect distribution fees on average come with higher costs than investment funds without such fees (see Table.**26**). This result holds true for the majority of countries studied. More specifically, the average annual total costs of investment funds with indirect distribution fees (1.9%) are 25% higher than those without (1.5%). This is partially explained by a difference in the composition in the product categories, with cheaper UCITS ETFs and UCITS Money Market Funds being overrepresented in the sample of investment funds without inducements.

Table.26 - Comparison of total costs for products with and without indirect distribution fees (% of NAV per annum, per country)

Country	No indirect distribution fees	Indirect distribution fees	N (no indirect distribution fees)	N (indirect distribution fees)
Austria	0.7%	2.4%	3	10
Czechia	0.8%	1.6%	2	11
Finland	1.5%	1.6%	1	12
France	1.6%	2.2%	1	12
Germany	1.6%	1.2%	5	8
Greece	1.4%	1.8%	1	10
Ireland	1.2%	2.5%	4	9
Italy	NA	1.9%	0	13
Latvia	1.0%	2.1%	6	7
Luxembourg	3.6%	1.5%	2	8
The Netherlands	NA	NA	NA	NA
Poland	NA	2.1%	0	13
Romania	NA	2.1%	0	12
Spain	0.6%	1.8%	1	12
Sweden	0.9%	1.5%	1	12
Average / Total	**1.5%**	**1.9%**	**27**	**149**

Note: Insurance and pension products are excluded. All entries for the Netherlands are marked as not applicable since inducements (indirect distribution fees) are banned in the Netherlands.

Source: Consortium, based on the product scoring.

Obtaining the exact amount of indirect distribution fees is complicated. The standardised product information sheets (e.g., KIIDs) do not disclose indirect distribution fees, but can refer to them. The costs section of the KIID may specify that marketing and distribution costs are part of the charges presented in the cost section, with a reference to the prospectus in which a further breakdown or specification of ongoing costs should be provided. The word "inducement" is not found in the standardised documentation.

Obtaining the indirect distribution fee from the prospectus is not straightforward either. Prospectuses differ in the structure and terminology used from the standardised product information sheets. The indirect distribution fees are listed under different names and different locations in the prospectus. The KIID generally refers to the cost section of the prospectus. These cost sections of the prospectus may refer to an annex or a specific product page, especially when a prospectus covers multiple investment funds. An additional obstacle that the prospectus presents is the legalistic language in which it is written. Furthermore, the prospectus may only indicate the maximum indirect distribution fee paid, rather than the actual amount.

For insurance and pension products no information on indirect distribution fees is provided. The standardised product information sheets of IBIPs and pension products do not disclose indirect distribution fees. Moreover, the additional documentation provided to retail investors also does not include this information.

Distributor comparison

The vast majority of retail products are distributed by banks, insurance companies and online discount brokers. Between these distributors, there is overlap in the products offered. For example, insurance and pension products are distributed by both banks and insurance companies. Similarly, securities and investment funds are distributed by both banks and online discount brokers.

Comparing the distribution of the same type of products distributed by different types of distributors reveals that there is no clear difference in the costs of insurance and pension products distributed by banks and insurance companies. In turn, it is noted that discount brokers distribute securities and investment funds at a lower cost than banks (see Table.**27**). Especially for securities – already the product category with the lowest fees – the differences between online discount brokers and banks are noticeable.

Notably, where banks have similar cost structures, online discount brokers apply varying cost structures. More specifically, banks generally charge transaction fees, custodian fees and currency conversion fees. Some online discount brokers follow the same cost structures, but some do not charge transaction fees and custodian fees at all and rely entirely on currency conversion fees. Other online discount brokers may focus on the distribution of securities in the form of CFDs, and charge distribution costs largely through spreads. The spread costs are excluded from the cost calculation presented in this study as they can for on-exchange purchases be avoided by placing limit orders.

Table.27 - Comparison of total costs of securities and investment funds for banks and online discount brokers (% of NAV per annum, per distributor type)

Distributor	Shares	Bonds	Investment Funds	Securities and Investment Funds
Bank	0.4%	0.4%	1.8%	1.2%
Online Discount Broker	0.1%	0.3%	1.6%	0.9%
# bank	42	52	134	228
# insurance company	14	17	28	59
Total	56	69	162	**287**

Source: Consortium, based on the product scoring.

5.4.5. Outputs: the extent to which information is compliant

The main information documents must comply with the applicable regulatory standards (MiFID II, IDD, PRIIPs, UCITS). This applies not only to the availability of the main information document, but also to its content, format, use of language, etc. Moreover, the documents provided by distributors should be up-to-date and contain accurate and timely information.

Most of the information disclosed and assessed was found to be compliant with the applicable regulatory provisions.

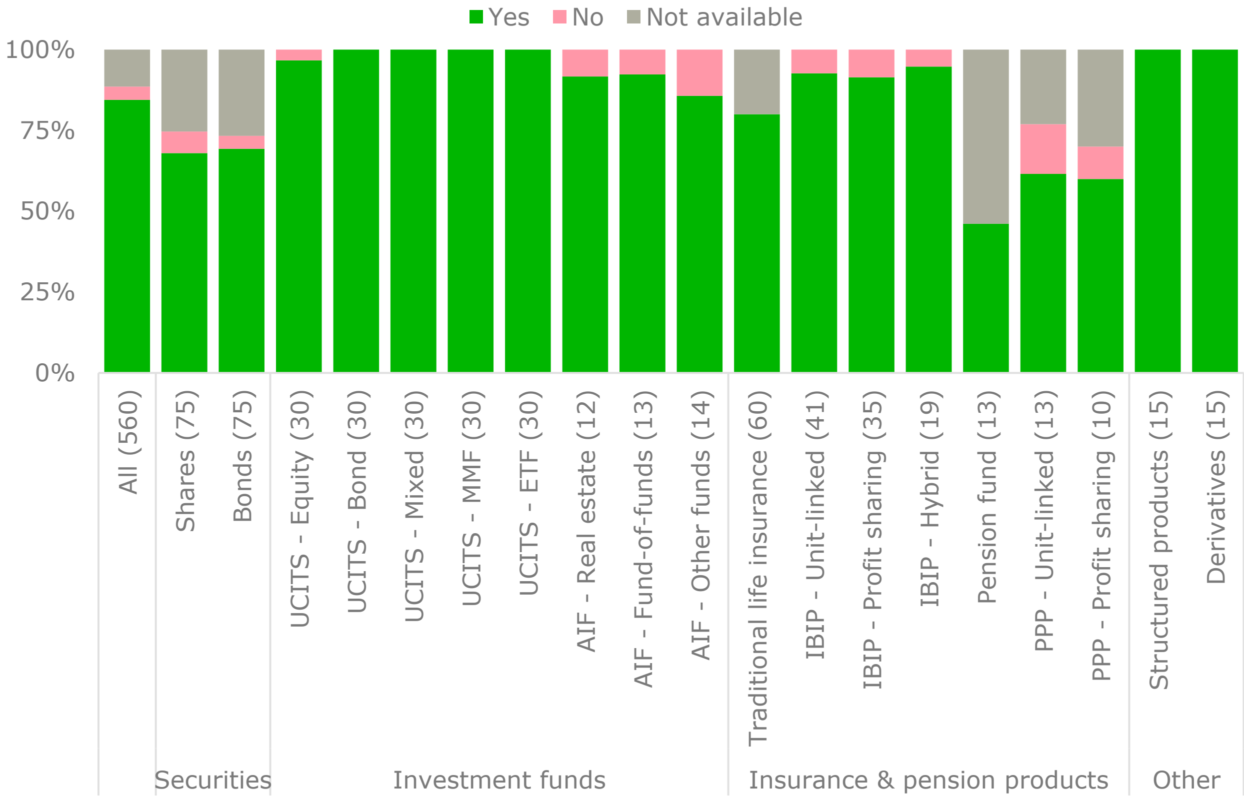
For **securities more than half of all documents were found to be compliant with the disclosure requirements under MiFID II**. This number could be higher in reality as the pre-contractual documentation for some of the products was unavailable during the data collection when researchers searched for them online or requested them from a distributor. It is possible that this information might only be disclosed when the purchase decision is pursued.

Across investment funds, **the large majority of the information documents are compliant with the UCITS Directive in terms of both the KIID's availability and content**. The documents were found to be not fully compliant with the legislative provisions for only a small minority of equity and MMF UCITS funds as well as real estate AIFs. This is mostly due to the use of an incorrect template (KID instead of KIID in the case of UCITS) or incomplete information. For example, for some benchmark-tracking funds the performance of the benchmark was not included in the performance information.

Across insurance and pension products, **only a small minority of IBIPs did not comply with relevant regulatory provisions**. The share of non-complaint PPPs is slightly higher, but still remains low. These products were assessed as non-compliant mostly due to the incomplete or inaccurate disclosure of cost and performance information. For example, for some IBIPs and PPPs the costs were presented using incorrect metrics (cost-effectiveness) or the performance information was incomplete.

Across traditional life insurance products and pension funds, **the majority of assessed products were deemed regulatory-compliant**. Nevertheless, for a large share of these products it is hard to draw conclusions on their regulatory compliance as correct pre-contractual information (Terms and Conditions or Prospectus) was not readily available during the initial web search. Nevertheless, due to the highly personalised nature of these products such information could be provided during the later stages of purchase, which were not included in this exercise.

Figure.15 - Regulatory compliance (% of assessed products)



Note: UCITS - Undertaking for the Collective Investment in Transferable Securities; MMF – Money Market Fund, ETF – Exchange Traded Fund, AIF – Alternative Investment Fund; IBIP – Insurance-Based Investment Product; PPP – Personal Pension Product.
For some products pre-contractual information was not disclosed during the initial web search but could have been provided at later stages of purchases. This was marked as "Not available".
The number of sampled products is shown in brackets.

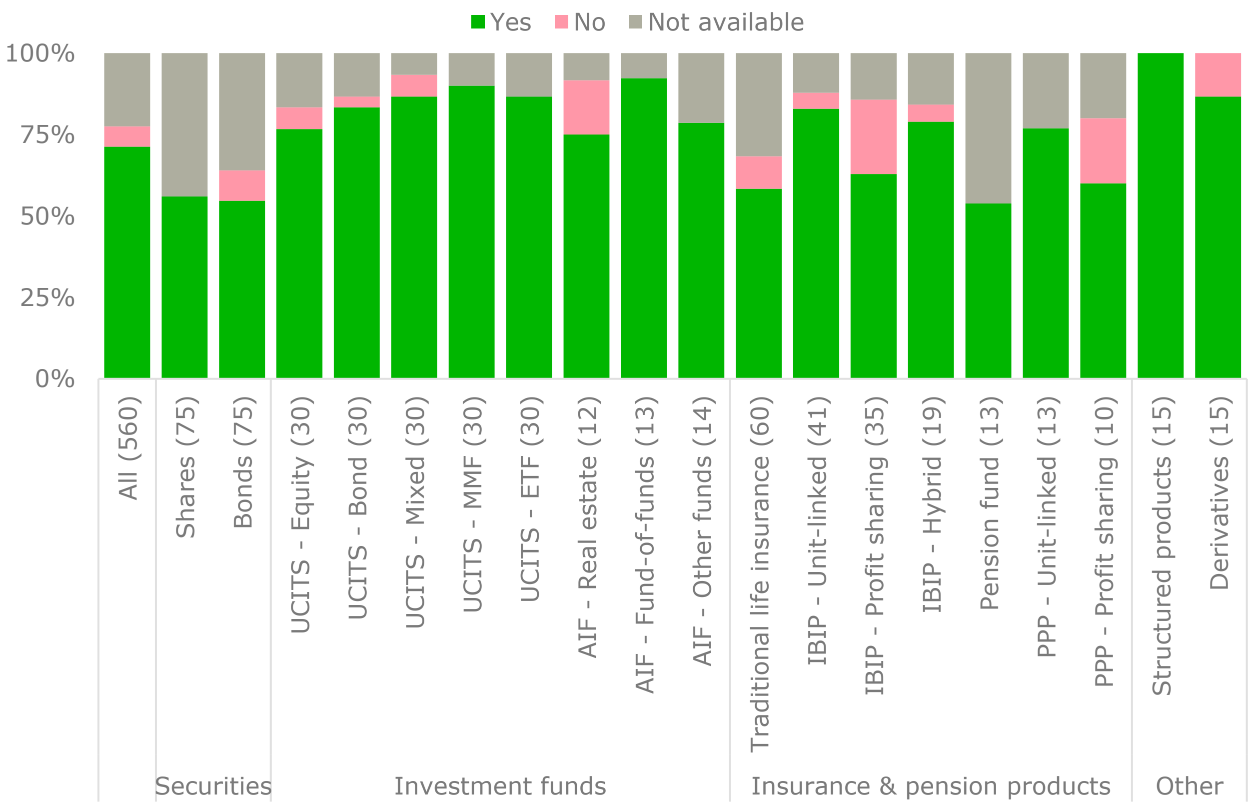
Source: Consortium, based on the product scoring.

5.4.6. Outputs: the extent to which the information is up-to-date

Looking at whether the information was up to date (i.e. updated over the course of 2020-2021), **most documents across all categories were considered compliant**. The only exceptions were real estate AIFs, traditional life insurance and profit-sharing IBIPs and PPPs. For some of these products there might also not have been a pressing need to update the information in the past two years, as for instance the performance information is based on scenarios rather than past performance (e.g. investment funds) requiring regular updates.

Nevertheless, there are some cases where the information was not updated in the past two years, even in the investment funds. It is difficult to say why some of the distributors did not update the information. In general, compliance processes are more focused on the initial preparation of the requisite disclosure documents than the processing of potential revisions after the product launch. This is especially challenging when the information is transferred through multiple channels and the distributors have large product portfolios. However, the product provider may also have an interest in not updating the information, if the past performance of the fund has deteriorated since the last update of the information document.

Figure.16 - Up-to-date information (% of assessed products)



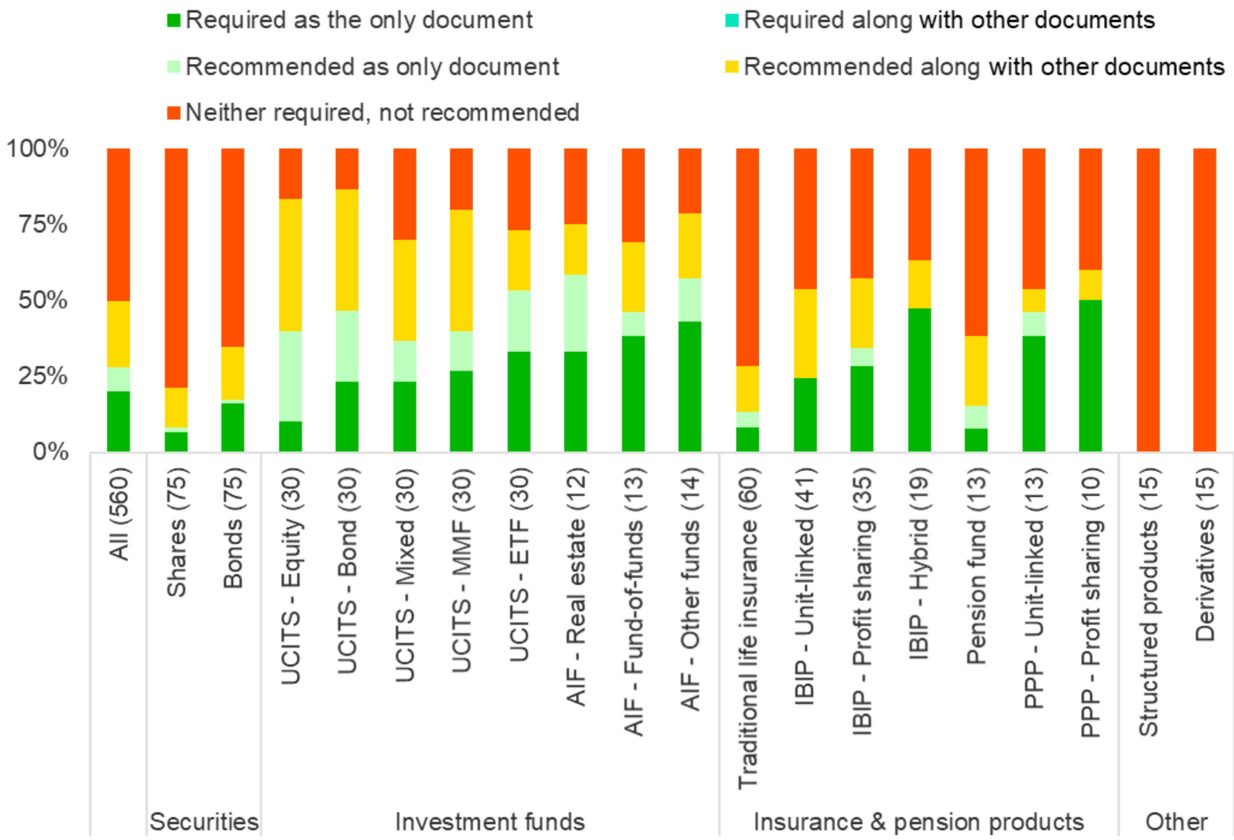
Note: UCITS - Undertaking for the Collective Investment in Transferable Securities; MMF – Money Market Fund, ETF – Exchange Traded Fund, AIF – Alternative Investment Fund; IBIP – Insurance-Based Investment Product; PPP – Personal Pension Product. The number of sampled products is shown in brackets. For some products the information cut-off date was not disclosed during the initial web search. This information was marked as "Not available".

Source: Consortium, based on the product scoring.

5.4.7. Outputs: incentives to read pre-contractual documentation

An important element of the provisions is not only the availability of information documents and their completeness, but also the extent to which consumers are encouraged to read them. When assessing the information documents, we also analysed the extent to which they contain indications that nudge the consumer into reading the document. **For the majority of products with standardised information documents (KIID, KID) distributors do include mentions that require or recommend reading the pre-contractual documentation**. In particular, for the majority of investment funds the KIID is required or recommended to be read as the only document. For IBIPs and PPPs fewer distributors require or recommend reading the KID, however in most cases it is also required or recommended as the sole document. Only a small minority of securities, traditional life insurance products and pension funds mentioned in the pre-contractual information that potential investors were required or advised to read such documentation. However, they could still be required or recommended to read such pre-contractual information during the later stages of the finalisation of their purchase.

Figure.17 - Nudges to read the main information document (% of assessed products)



Note: UCITS - Undertaking for the Collective Investment in Transferable Securities; MMF – Money Market Fund, ETF – Exchange Traded Fund, AIF – Alternative Investment Fund; IBIP – Insurance-Based Investment Product; PPP – Personal Pension Product. The number of sampled products is shown in brackets.

Source: Consortium, based on the product scoring.

The mystery shopping exercise gives a mixed picture regarding the measures to ensure that investors read the information document. In **one-third of the cases where the mystery shoppers received the KID no steps were taken to ensure that the document was read**. In more than half of the cases (59%) reading the document was strongly recommended by the advisor. The advisor read it with the potential investor or the investor was given time to read it in only in a small number of instances (five and three respectively out of the 240 observations, including 170 where shoppers received a recommendation).

Overall, distributors interviewed during the course of this study agree that it is very difficult to ensure that clients read the documents provided to them. Almost all of the distributors interviewed require their clients to declare that they have read the documents. According to them, this is the most important safeguard to ensure that the client has fully understood the product in which they are investing. This obligation is enforced by tick boxes online and signatures offline. Some consumer associations criticised this on the grounds that it is more a way of protecting the distributor in the event of litigation rather than an actual consumer protection measure.

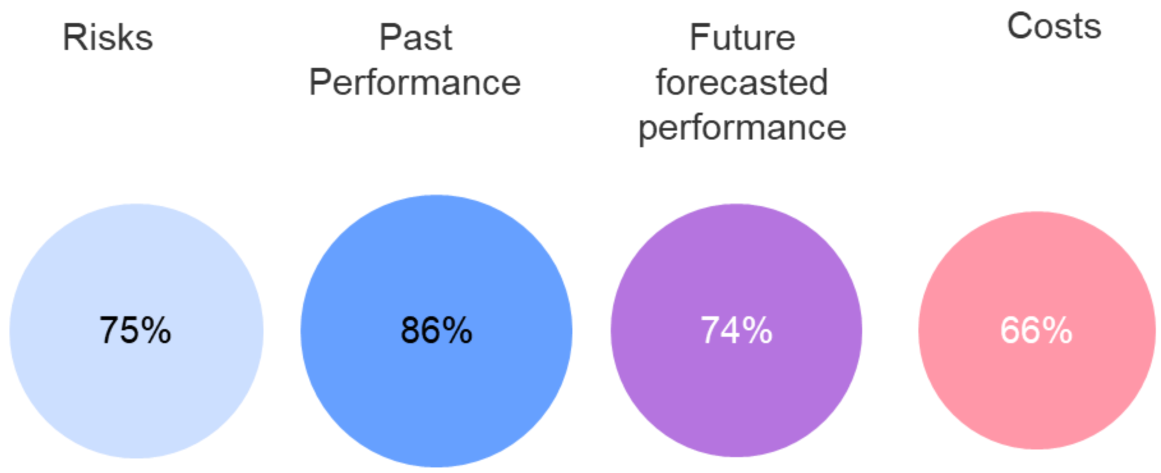
Additionally, some distributors have designed their online procedures with the specific purpose of making their client read the information. For example, the clients of an Italian bank interviewed have to open each mandatory document, complete several checkboxes and sign every document with a strong authentication procedure.

5.4.8. Results: clarity of pre-contractual information

In order for the pre-contractual information to be understood by retail investors it needs to be clear for anyone regardless of their educational or professional background. The use of simple and clear language is crucial to achieve this objective. This is why the legal provisions require the information to be clear, concise and coherent without any contradictions, sector-specific jargon and multi-interpretable statements (see chapter on coherence). The analysis of the clarity of the documents was analysed through the mystery shopping exercise, a consumer survey and product scoring, all of which pointed towards a relative lack of clarity in the information provided, with the costs being the least clear.

During the mystery shopping data collection, the mystery shoppers were also asked to rate the clarity of the information about risks, past performance, anticipated future performance and costs (see figure below). They were asked to make this judgement based not only on the information document but also on the information that the advisor provided. Similarly to the results of the product scoring by country researchers the product scoring, **the mystery shoppers also found that the information on costs was the least clear**.

Figure.18 - Rating of clarity of information provided by mystery shoppers – share of mystery shoppers considering the given item rather clear



Source: Consortium, based on the traditional distribution channel mystery shopping.

Furthermore, during the consumer survey and embedded behavioural experiment, actual consumers were shown a number of simplified (one-page) mock-up product information sheets that were modelled on existing examples. These mock-up documents are shown in Annex 8.8 As one of the follow-up questions to the experiment respondents were asked to rate the way in which the information was presented:

- Only 48% considered that the content of these simplified one-page information documents was rather good or good in terms of ease of understanding (top 4 scores on a scale of 1 to 10), while 23% considered it rather bad or very bad.
- 59% considered the usefulness of this information was rather good or good (the documents contained information about risks, past performance, anticipated future performance as well as cost information, additional narrative was also provided about the nature of the product and its objectives).
- 54% of respondents considered the amount of numbers and figures to be rather good or good.

- Only 52% rated the overall layout positively (rather good or good).

Women, people aged over 55 and people with low trust in banking were the more likely to consider the mock-up information documents as rather unclear. People with low trust in banking and those not interested in investing were notably more likely to rate the mock-ups negatively according to these criteria.

The table below provides a summary overview of this scoring broken down by parts of the key information document and product types. Products with highly standardised pre-contractual information documents (i.e. investment funds, IBIPs, PPPs, structured products and derivatives) are generally clearer than products with less standardised pre-contractual information (i.e. securities, traditional life insurance and pension funds).

Across all products, costs and performance information stand out as the least clear types of information disclosed to retail investors. The information about costs and the information about returns were seen as rather clear in only around half of the cases. The lack of clarity regarding costs information is primarily due to the overall complexity of the costs information, unclear definitions and incomplete information on when and how costs are calculated and charged. For some products such as traditional life insurance this is explained by a personalised premium, which does not differentiate the product costs. Lack of clarity regarding performance information is primarily due to the limited explanation of performance calculation methodology, metrics used, time horizon, etc.

The clarity might even be slightly overestimated[269] as all country researchers were experienced researchers with experience in financial markets and higher education, meaning their assessment might differ from the average retail investor's profile.

[269] Particularly for complex products such as structured products and derivatives.

Table.28 - Rating of clarity of information by country researchers[270]

	Main category		Securities		Investment funds								Insurance & pension products							Other	
	Sub-category	All (560)	Shares (75)	Bonds (75)	UCITS - Equity (30)	UCITS - Bond (30)	UCITS - Mixed (30)	UCITS - MMF (30)	UCITS - ETF (30)	AIF - Real estate (12)	AIF - Fund-of-funds (13)	AIF - Other funds (14)	Traditional life insurance (60)	IBIP - Unit-linked (41)	IBIP - Profit sharing (35)	IBIP - Hybrid (19)	Pension fund (13)	PPP - Unit-linked (13)	PPP - Profit sharing (10)	Structured products (15)	Derivatives (15)
Clarity of descriptions	Rather not	6%	12%	9%	0%	0%	3%	0%	0%	0%	0%	0%	20%	0%	0%	0%	31%	23%	0%	0%	0%
	Moderately	19%	23%	24%	17%	13%	7%	20%	27%	17%	31%	29%	37%	7%	6%	11%	31%	15%	30%	0%	0%
	Rather yes	71%	55%	57%	83%	87%	90%	80%	73%	83%	69%	71%	40%	93%	94%	89%	31%	62%	70%	100%	100%
	N/A	3%	11%	9%	0%	0%	0%	0%	0%	0%	0%	0%	3%	0%	0%	0%	8%	0%	0%	0%	0%
Clarity of narrative	Rather not	7%	8%	9%	3%	0%	0%	3%	3%	0%	0%	0%	32%	0%	0%	0%	23%	15%	10%	0%	0%
	Moderately	16%	25%	20%	20%	23%	10%	3%	7%	17%	23%	29%	20%	7%	9%	11%	31%	15%	10%	0%	0%
	Rather yes	74%	56%	61%	77%	77%	90%	93%	90%	83%	77%	71%	45%	93%	91%	89%	38%	69%	80%	100%	100%
	N/A	3%	11%	9%	0%	0%	0%	0%	0%	0%	0%	0%	3%	0%	0%	0%	8%	0%	0%	0%	0%
Costs - easy to understand	Rather not	21%	24%	33%	7%	3%	7%	7%	20%	8%	8%	7%	63%	5%	9%	5%	46%	23%	30%	0%	0%
	Moderately	24%	16%	15%	47%	50%	40%	33%	27%	8%	23%	29%	13%	32%	23%	16%	23%	8%	10%	20%	13%
	Rather yes	52%	49%	43%	47%	47%	53%	60%	53%	83%	69%	64%	15%	63%	69%	79%	23%	69%	60%	80%	87%
	N/A	4%	11%	9%	0%	0%	0%	0%	0%	0%	0%	0%	8%	0%	0%	0%	8%	0%	0%	0%	0%
Returns - easy to understand	Rather not	22%	23%	40%	13%	10%	7%	13%	17%	25%	8%	7%	63%	10%	9%	5%	31%	23%	20%	0%	0%
	Moderately	26%	11%	11%	27%	30%	43%	23%	17%	25%	62%	50%	12%	32%	17%	26%	23%	38%	30%	100%	100%
	Rather yes	47%	56%	41%	60%	60%	50%	63%	67%	50%	31%	43%	13%	59%	74%	68%	38%	38%	50%	0%	0%
	N/A	4%	11%	8%	0%	0%	0%	0%	0%	0%	0%	0%	12%	0%	0%	0%	8%	0%	0%	0%	0%
Misleading potential	Yes	11%	7%	12%	7%	20%	20%	23%	17%	0%	15%	14%	5%	7%	9%	11%	15%	15%	10%	0%	0%
	No	89%	93%	88%	93%	80%	80%	77%	83%	100 %	85%	86%	95%	93%	91%	89%	85%	85%	90%	100%	100%

Note: The clarity of information was rated by country researchers that collected, scored and analysed pre-contractual disclosure information for each product. UCITS - Undertaking for the Collective Investment in Transferable Securities; MMF – Money Market Fund, ETF – Exchange Traded Fund, AIF – Alternative Investment Fund; IBIP – Insurance-Based
Product.
The number of sampled products is shown in brackets.

Source: Consortium, based on the product scoring.

[270] As explained in the methodology annex, in order to cover all 15 countries of the study and for specific data collection activities, national experts were used, i.e.enlisted. They were researchers able to speak the local language, with a solid understanding of financial topics and local contexts.

Overall, a large majority of the documents assessed contained **product descriptions** that were viewed as moderately clear to very clear. This was particularly the case for products with standardised main information documents (KIIDs or KIDs), including investment funds, IBIPs, PPPs, structured products and derivatives. The KIID and KID templates specify the titles and content of different sections that must be completed by the manufacturer. Therefore, the description of pre-contractual information in the KIID/KID was largely assessed as mostly clear and comprehensible. Nevertheless, for more complex products such as AIFs and PPPs the descriptions were rated slightly less clear than for less complex products such as UCITS funds and IBIPs.

About one-fifth of all main information documents for shares and bonds assessed within the scope of this study were moderately clear and only a small minority contained descriptions that were slightly clear. The main information document for these products was often the prospectus, which are documents that are often quite long, descriptive and technical in nature.

Moreover, for about a quarter of all of the traditional life insurance products and pension funds assessed the descriptions used in the main information documents were only slightly clear or not clear at all. Pre-contractual information for these products is mostly limited to promotional information and general terms and conditions which often do not provide clear descriptions of the product's characteristics.

Similarly to descriptions, among all products assessed, **the narrative of the main information document** was deemed very clear for products with standardised pre-contractual information (i.e. KIIDs and KIDs). The large majority of the main information documents of investment funds contained a narrative which was deemed moderately to very clear. The same holds true for IBIPs, structured products and derivatives. Only a small minority of PPPs contain a narrative that is perceived as less clear, mainly due to the inherent complexity of PPPs and the inclusion of a pension component (i.e. decumulation phase).

The narrative appears less clear for products with a low degree of standardisation of pre-contractual information. About a quarter of all traditional life insurance products and pension funds assessed contain a narrative that is only slightly clear or not clear at all. Pre-contractual documentation for these products often does not cover important aspects of the product (i.e. costs, risks, and performance) and uses generic language to describe the product.

Across all types of investment products only a minority of product documents contained a very clear **performance presentation**. For securities (shares and bonds) only about half of all documents contained a very clear performance presentation. For about a quarter of all shares and bonds assessed the performance presentation was deemed only slightly clear or not at all clear. Despite the relative straightforwardness of the performance presentation of the securities (price and/or turnover of the securities), many information documents only included the performance chart with no explanation on the metrics used. This information is deemed insufficient to draw adequate conclusions about the performance of the securities.

Across investment funds, for a large majority of all UCITS funds assessed the main information documents contained a moderately to very clear performance presentation. Additionally, a small minority of UCITS funds assessed contained performance information that was only slightly or not at all clear. For nearly all AIFs the performance presentation was deemed moderately to very clear. Only for real estate AIFs was a small minority of the product documents assessed deemed not at all clear as regards product performance. This is largely due to the inherent complexity of the AIFs, in particular real estate AIFs for which the valuation of an underlying (i.e. real estate) is much more complex than that of other funds.

Across products that follow the KID disclosure template (IBIPs, PPPs, structured products and derivatives), IBIPs appear to contain a clearer indication of product performance compared with that disclosed for PPPs, structured products and derivatives. This is largely due to the fact that IBIPs are relatively simpler products than PPPs, structured products and derivatives. For traditional life insurance only a small minority of product documents featured a very clear performance presentation. About half of the traditional life insurance products assessed contained a performance presentation that was deemed only slightly or not at all clear. This is in line with earlier findings that the product specificities for traditional life insurance are often not clearly mentioned and the product is considered more of an insurance product than an investment product.

Overall, for most of the products assessed, the clarity of the **cost information** disclosed was considerably lower than the degree of clarity of descriptions or narrative. Only in the case of real estate AIFs, structured products and derivatives was a large majority of cost information in the main information documents deemed very clear.

Despite the availability of a pre-defined template (KIID), for about half of all investment funds assessed in the scope of this study cost information in the main information document was only slightly to moderately clear. This is mostly due to a lack of a clear description of different types of costs. Among the investment funds assessed the cost information disclosure was most frequently deemed unclear for ETF UCITS. The main information documents for ETF UCITS mostly contained only entry and exit costs for on exchange and not for the initial listing for which they refer to the website of the manufacturer.

A similar situation applies for IBIPs and PPPs. Despite the pre-defined template (KID), cost information for these products was only deemed very clear for about half of all the products assessed. For the other half, the cost information was deemed not at all, slightly or moderately clear.

Expectedly, for highly personalised products with a low standardisation of pre-contractual information, the share of products with very clear cost information was lower. In fact, the country researchers assessed the cost information for the majority of these products as not at all clear, due in part due to the pricing schemes of these products. The costs are usually charged on a monthly basis and included in the premium for these products.

As part of the pre-contractual disclosure clarity assessment, the main information documents were also screened for information which could be perceived as **potentially misleading** for retail investors.

Potentially misleading information was identified primarily across investment funds, IBIPs and PPPs. Among investment funds, bond, mixed, MMF and ETF UCITS appear to be most prone to featuring potentially misleading information. One or more potentially misleading information items were identified for about one-fifth of all of the documents assessed for these products.

Among the insurance and pension product documents only a small minority of featured products were deemed to contain potentially misleading information. It appears that across insurance and pension products, hybrid and pension products are more prone to including misleading information.

The most frequent examples of potentially misleading information across all documents relate to cost information, including for instance:

- In some product documentation the additional costs (that should not have been included in the general grid) were reported in the footnotes in a very small font.
- For some products the cost information was also included in the wrong format (e.g. cost -effectiveness per year), which differs from the metrics used in the traditional templates (% of NAV, % of RIY, etc.).
- Different costs were reported for the same product across different documents (KIID/ KID, Prospectus, Factsheet, etc.).

In all instances there is a risk that consumers might misunderstand the total cost of the investment.

Additionally, some product information documents also contained potentially misleading risk information as well as inconsistencies and contradictions in the pre-contractual documents that could be perceived as misleading, for example:

- For some products the risk category indicated in the main information document was not the same as that shown in the product sheet.

- Some unit-linked IBIPs and PPPs suggested that the product "guarantees a pay-out", however later in the text it is explicitly stated that the invested capital is not guaranteed.

There is a risk that these statements might lead the retail investor to believe that a product is more or less risky than it actually is and invest in products which are not suitable for their needs.

5.4.9. Results: comparability of information provided in information documents

The main objective of the pre-contractual disclosure legislation is to inform investment decisions, for which comparability is one of the factors. To facilitate the comparison of different products based on product information, the main information documents need to be structured and formulated in a similar manner. EU legislation aims to ensure the comparability of different products within and across different product categories through similarities in the disclosure templates. Where the same template applies to different products it allows for greater comparability of product information. For instance, the same template for costs disclosure applies to IBIPs, PPPs, structured products and derivatives as these are covered by PRIIPs regulation.

In order to assess comparability, the country researchers who carried out the product information documents analysis were also asked to score the comparability of the information for each of the documents they reviewed. They were asked to assess the comparability of information about costs, performance and risk. For each of these categories they looked at comparability:

- with products of the same type;
- with products in the same product category; and
- with products in other product categories.

It is to be noted that the product scoring was carried out at country level. In each country one country researcher reviewed and scored the 32 to 43 product information documents. Their insights have been supplemented by stakeholder interviews.

Most retail investment products analysed by the country researchers in this study follow a highly standardised template defined in legislation. Hence, the presentation format of the various disclosure documents is similar for products with KIIDs or KIDs as the main information documents. Due to the standardisation of templates (see also section on coherence) these products also have substantially fewer differences in the presentation format of the various disclosure documents (e.g. sequencing of items, labelling of items, etc.) than products without such templates.

Nevertheless, **some information disclosed in the KIID or KID could be difficult to compare as ultimately products are currently to different disclosure templates**. For instance, despite some apparent similarities in the costs/risks disclosure (e.g. general grid, one-off and ongoing costs, etc.) under the UCITS KIID and PRIIPs KID templates, there is internal incoherence in the titles and definitions as well as the scope and format of the required disclosure (see section on coherence). Given that the UCITS KIID is ultimately being phased out and replaced by the PRIIPs KID and that the PEPP KID has not yet been rolled out, the data collected by country researchers does not make it possible to identify opportunities for standardisation of the information presentation for these products.

Many distributors interviewed within the scope of this study indicated that their clients do not complain about comparability. They claimed that MIFID II has facilitated comparison and promoted the creation of comparability and search tools that are very valuable for clients. However, there are other stakeholders (such feedback was collected from distributors in Italy, Germany, Spain, and Greece) who still consider that the products are inherently difficult to compare, especially with regard to costs. Inconsistencies remain across the different pieces of legislation when it comes to the comparability of different disclosure templates and notably costs disclosure (see section on coherence).

For some of the products covered by the study **the pre-contractual information assessed does not include the types of information required to assess comparability** (i.e. cost, performance and risk information). For example, traditional life insurance products and pension funds (i.e. terms and conditions) often do not include any information on costs, performance or risk. This information might in some instances be provided in other pre-contractual documents or at a later stage in the investment process. The comparability of these products therefore was labelled as "Not available" or "N/A".

The tables below give a comparative overview of comparability for each of these criteria and per product type.

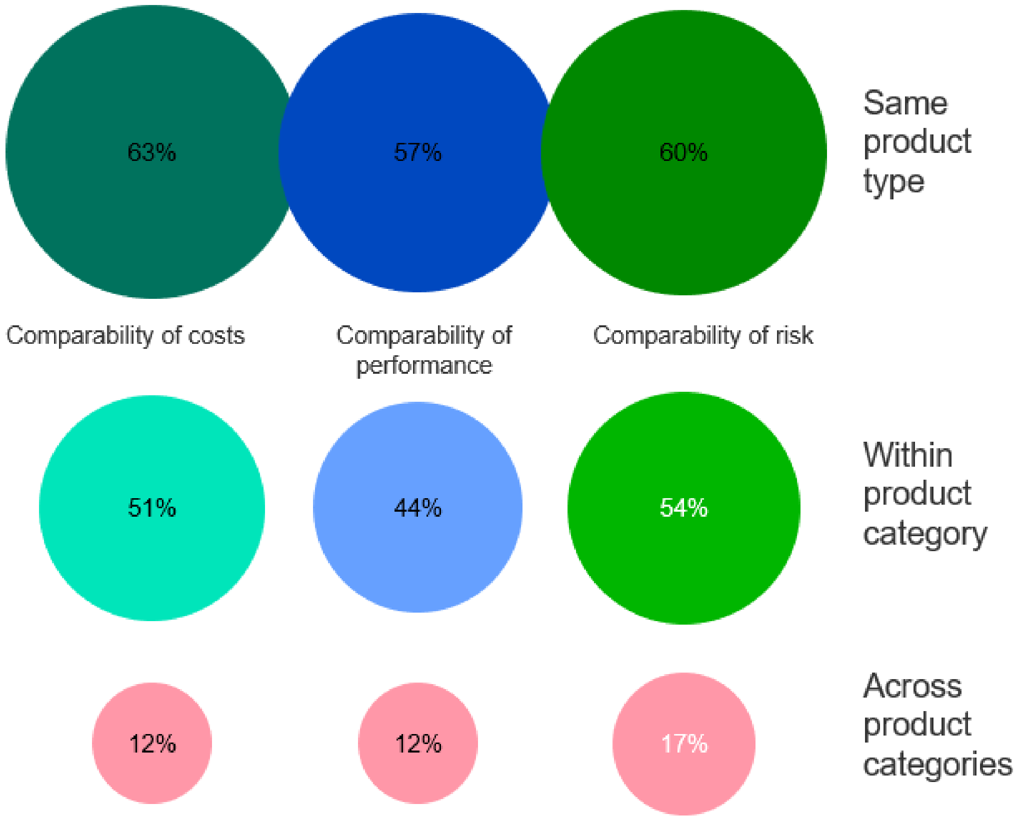
The main findings are:

- **Comparability of all three types of information is seen as lowest for comparisons across product categories.**
- **Comparability of information within the same product category** or when comparing products of the same product type **is generally seen as being better**. However, in most cases comparability within product type or product category is seen as rather good for almost two-thirds of products on average.
- **Across product categories information about costs is in general difficult to compare**.
- **Information about risks is seen as being more comparabl**e even across product categories – it is seen as rather good for around one-third of cases, excluding those for which the risk information was not applicable.
- **Comparability of the information available for insurance and pension products is seen as being good in fewer cases than the comparability of information for UCITS or AIFs**.
- **Comparability of information across countries is similar to the results across products and product categories,** mostly explained by the use of the same product information templates.

As discussed in the section on relevance 76% of respondents having already invested in at least one product stated that they compared products before making a decision. More specifically 40% said they made a comparison with products of the same type. The other 36% said they made a comparison with products of different types (but it cannot be inferred from the data whether they compared with different types of products in the same product category or across product categories)[271]. From the analysis in this section it appears that the templates are very useful for the needs of those who compared different products of the same type. The templates are slightly less relevant for the needs of those who compare different types of products and if they are comparing products in different product categories the comparability is somewhat challenging.

[271] Given that people are not familiar with the grouping of products into categories, they were not asked about whether they made a comparison with products in the same category.

Figure.19 - Summary of the rating of product information comparability (% of products scored considered as having good level of comparability of information displayed)



Source: Consortium, based on the product scoring.

Risk categories

Risk category is one of the most comparable categories of information disclosed for retail investment products within and across product categories. This is mostly due to the fact that products within product categories are usually covered by the same legislation and therefore must use the same disclosure template (e.g. KIID for investment funds, KID for IBIPs, PPPs, structured products and derivatives). Nevertheless, the comparability of risk information for products within the same category is considerably higher than across different product categories.

Looking at the comparability of risk information **within product categories**, for a large majority of the documents assessed the disclosed information is highly comparable**.** Across investment funds, for most products, the risk information was to a large extent comparable. The disclosed risk information was comparable to a lesser extent only for a few investment funds, mostly due to incomplete information on the calculation of risk categories for these products.

Across insurance and pension products the disclosed risk information is to a large extent comparable for products that follow the same disclosure template, i.e. IBIPs and PPPs for which KIDs were disclosed. However, for a small minority of PPPs the disclosed risk information is only slightly comparable to the information disclosed on other insurance and pension products. For traditional life insurance products and pension funds risk information is rarely disclosed, which makes it *de facto* impossible to compare the risk information of the products. Moreover, when the information is disclosed, it is often not comparable with other insurance and pension products.

The comparability of risk information for structured products and derivatives within the same product type and product category was very high, as all of the structured products and derivatives assessed in the sample follow the KID template.

Although the comparability of risk information within the categories was reasonably high, **across different product categories** it was considerably lower, mostly due to the fact that different legislations adopt different indicators and calculations for risk disclosure, with potential inconsistencies (see section on coherence). The disclosed risk information was comparable with products in other product categories for only a minority of products assessed. Across nearly all products the risk information was deemed only to a slight or moderate extent comparable with that of other product categories. Additionally, for a small minority of products the disclosed risk information is not comparable at all. This is particularly the case for equity and bond UCITS funds as well as PPPs, mostly due to incomplete risk information disclosure.

Performance information

Performance information is one of the main characteristics on the basis of which investments are selected. Similarly to risk categories, the comparability of performance information is higher within product categories than across product categories.

Although standardised through regulatory provisions, the performance presentation differs from product to product. For example, legislative provisions specify that for securities and investment funds the performance presentation should rely on an historic approach and be presented as chart of past returns (see section on coherence). For IBIPs and PPPs the performance information adopts a forward-looking approach i.e. five potential performance scenarios presented in a single table. For structured products and derivatives, the performance should be displayed in the form of pay-off structure graphs.

Indeed, based on the analysis of assessed documents, the performance information appears to be mostly highly comparable **within product categories** (i.e. investment funds, insurance and pension products and other products). Only a small minority of products assessed disclosed performance information that was not comparable to other products in the same category.

However, due to different templates and metrics used, the comparison **across product categories** was much more complicated. This is in line with the findings of the legal analysis (see section on coherence) that identified numerous differences related to performance presentation requirements under different legislations. This is understandable as the performance reflects the investment objective and underlying assets of the product and these differ substantially across categories. In particular the performance of structured products and derivatives is not comparable with that of other product categories, as for these products the performance information is very specific and includes both charts showcasing potential returns and scenarios with one or more examples for each of the scenarios.

Cost information

Cost information is another key characteristic based on which investment products, especially within particular product types, are selected.

Cost information is one of the most standardised categories of information disclosure for retail investment products. Despite some legal inconsistencies in titles and definition of costs (see section on coherence), cost information templates in KIID and KID remain to a large extent comparable – costs are usually displayed in the general grid and are divided into one-off (entry/exit) and ongoing costs.

Similarly to risk categories and performance, **within product categories,** the disclosed costs were highly comparable for the large majority of documents assessed. For a majority of investment funds the disclosed costs were moderately to a large extent comparable with those disclosed for other investment funds.

For most IBIPs and PPPs the cost information is to a large extent comparable with that of other insurance and pension products. However, for a small minority of profit-sharing IBIPS and unit-linked PPPs the disclosed information is comparable to a lesser extent, mainly due to incomplete or unclear cost information.

Across insurance and pension products the disclosed costs are to a large extent comparable. For IBIPs and PPPs this is mostly due to the standardisation of the information disclosure in the KID. The disclosed costs were comparable to a lesser extent only for a small minority of these products. The costs disclosure is less comparable for traditional life insurance and pension funds, which use different pricing model and costs metrics. For these products, most costs are not linked to the investment and are included in the monthly premium.

The comparability of disclosed cost information **across product categories** was considerably lower than the comparability of disclosed costs within categories, especially in the case of IBIPs and PPPs, where for a small proportion of the products assessed costs were comparable only to a slight extent with products from other categories. There are four important aspects that make the comparison of costs across products, sub-categories and product categories difficult, including: 1) **differences in the units disclosed** in the product sheets (e.g. the costs of UCITS are presented as % of NAV and IBIPS as % of RIY); 2) **fragmentation of cost items** (e.g. entry, ongoing, and exit charges) across different documents; 3) **variations in cost structure** (e.g. different fees, under different names and with a different base) and 4) **maximum fees**, rather than actual fees. The findings based on the assessment of the product information is in line with the findings of the legal analysis (see section on coherence) which attribute the difficulties in comparison to differences in titles, definition, categorisation and calculation of costs across different pieces of legislation. Additionally, for traditional life insurance products and pension funds the comparability of costs disclosed is generally low as for many of these products no cost information was provided.

Owing to the high standardisation of pre-contractual documentation across the EU, when it comes to the comparability of information provided the trend is similar across EU Member States. The comparability of the information provided (incl. costs, risk categories and performance) is higher among products that belong to the same product category. Comparability is particularly high within investment funds, insurance and pension products, due to common templates (KIID or KID) for these products as laid down in legislation. The comparability of information items decreases when comparing different product categories (e.g. investment funds with shares or IBIPs) as the templates are different for each product category.

Box 5.1 Number of fee categories displayed in information documents for investment products

The total number of fee categories differs across products and distributors, as does the number of fee categories combined when counting the entry, exit and ongoing costs (see table below). The average number of fee categories ranges from less than one for products such as personal pension products (due to the exclusion of maximum fees) to more than three fee categories for securities. Hence, securities have on average more than one entry and exit fee, reflecting the fact that the transaction fee is often accompanied by other fees such as currency conversion fees. However, there are large differences among the products, especially securities and to a lesser extent investment funds. The number of fee categories ranged between one and 11 for shares.

Table.29 - Number of fee categories used per product category (average)

Category	Sub-category	Product	# Entry fees	# Exit fees	# Ongoing fees	Total fee categories (#)	Total			N
							Min	Max	Median	
Securities	Listed shares	Shares	1.4	1.4	0.6	3.4	2	11	3	71
	Bonds	Bonds	1.3	1.3	0.8	3.5	2	7	3	75
Investment funds	Retail UCITS	UCITS - Equity	0.6	0.3	1.4	2.3	1	5	2	30
		UCITS - Bond	0.8	0.5	1.7	2.9	1	8	3	30
		UCITS -	0.7	0.3	1.7	2.7	1	6	3	30

		Mixed								
		UCITS - MMF	0.9	0.5	1.4	2.9	1	5	3	30
		UCITS - ETF	1.1	0.9	1.2	3.2	1	6	3	30
	Retail AIFs	AIF - Real estate	0.7	0.3	1.4	2.4	1	6	2	12
		AIF - Fund-of-funds	0.7	0.5	1.4	2.6	1	6	2	13
		AIF - Other funds	0.8	0.6	1.7	3.1	1	5	3	14
Insurance & pension products	Insurance-based investment products	IBIP - Unit-linked	0.7	0.0	1.5	2.2	1	4	2	40
		IBIP - Profit sharing	0.7	0.0	1.0	1.7	1	4	2	32
		IBIP - Hybrid	0.8	0.1	1.3	2.3	1	4	2	18
	Personal/individual pension products	Pension fund	0.4	0.1	0.8	1.3	0	2	1	11
		PPP - Unit-linked	0.3	0.0	0.6	0.9	0	2	1	11
		PPP - Profit sharing	0.0	0.0	0.8	0.8	0	1	1	6
Total										**453**
Average			**0.9**	**0.7**	**1.2**	**2.7**				

Note: Maximum and minimum fees are excluded from the count of fees, despite maximum fees being used as actual fees in the absence of an actual fee. As a result the total number of fees can drop below one, as for PPPs – Profit Sharing Products. The variable and fixed components of the same fee are counted separately, skewing the count of fees upwards.

Source: Consortium, based on the product scoring.

Box.1 Actual vs maximum fees of investment funds

Maximum entry fees are on average 1.1 percentage point higher (see below) than actual entry fees in our sample of investment funds. Moreover, there is significant variation in the relative share of the actual costs as a share of maximum costs. This means that retail investor are unable to determine the total (minimum) costs for these investment funds. This also complicates the comparison of these costs.

Table.30 - Difference between maximum and actual entry fees disclosed for investment funds (average, % of NAV)

Type of Product	Listed max fee	Actual fee	Actual fee as share of max fee	Difference				N
				Average	Median	Min	Max	
UCITS - Equity	2.3	0.7	30%	1.6	1.5	-0.5	4.9	21

UCITS - Bond	2.2	0.5	22%	1.7	1.5	-0.5	5.0	24
UCITS - Mixed	2.1	0.9	46%	1.1	0.0	-1.0	5.6	26
UCITS - Money market funds	1.2	0.6	53%	0.5	0.0	-1.7	4.3	27
UCITS - ETF	1.3	0.5	38%	0.8	0.0	-1.0	4.3	21
AIF - Real estate	2.1	0.8	40%	1.2	0.0	-0.2	5.0	9
AIF - Fund-of-funds	2.0	0.8	42%	1.1	1.9	-1.5	3.3	10
AIF - Other funds	1.5	1.1	70%	0.5	0.0	-0.3	3.7	12
All funds	**1.8**	**0.7**	**39%**	**1.1**	**..**	**-1.7**	**5.6**	**150**

Note: This includes only those investment funds for which both a maximum fee and actual fee are disclosed. The table includes entries for which a negative difference was found, i.e. funds for which listed maximum costs were lower than actual costs provided. Lastly, the actual entry fee is not to be mistaken for the total entry cost, which includes all fees charged in the process of purchasing the product and is thus expected to be closer to the listed maximum fee.

Source: Consortium, based on the product scoring.

An additional observation regarding maximum fees is that for a substantial subset of the sample they were below the actual entry fee. In most cases, the maximum entry fee for this subset was indicated to be 0%. A possible explanation might be that not all fees charged are included in the listed maximum fee.

Table.31 - Comparability of cost information based on product information documents assessment

		Main category		Securities		Investment funds								Insurance & pension products							Other	
		Sub-category	All (560)	Shares (75)	Bonds (75)	UCITS - Equity (30)	UCITS - Bond (30)	UCITS - Mixed (30)	UCITS - MMF (30)	UCITS - ETF (30)	AIF - Real estate (12)	AIF - Fund-of-funds (13)	AIF - Other funds (14)	Traditional life insurance (60)	IBIP - Unit-linked (41)	IBIP - Profit sharing (35)	IBIP - Hybrid (19)	Pension fund (13)	PPP - Unit-linked (13)	PPP - Profit sharing (10)	Structured products (15)	Derivatives (15)
Cost information	Comparability with same type of products	Rather bad	2%	N/A	N/A	0%	0%	0%	0%	0%	8%	8%	7%	0%	0%	6%	0%	15%	15%	0%	0%	27%
		Moderately	8%	N/A	N/A	7%	3%	7%	20%	10%	8%	0%	0%	0%	5%	3%	0%	8%	8%	0%	0%	0%
		Rather good	63%	N/A	N/A	93%	97%	93%	80%	87%	83%	92%	93%	0%	90%	83%	95%	15%	54%	60%	100%	73%
		Not available	27%	N/A	N/A	0%	0%	0%	0%	3%	0%	0%	0%	100%	5%	9%	5%	62%	23%	40%	0%	0%
	Comparability within same product category	Rather bad	6%	N/A	N/A	7%	7%	0%	0%	7%	8%	8%	7%	0%	10%	11%	0%	15%	23%	10%	0%	27%
		Moderately	15%	N/A	N/A	17%	13%	10%	20%	20%	25%	15%	0%	0%	17%	9%	32%	8%	15%	0%	0%	0%
		Rather good	51%	N/A	N/A	77%	80%	90%	80%	70%	67%	77%	93%	0%	68%	71%	63%	15%	38%	50%	100%	73%
		Not available	27%	N/A	N/A	0%	0%	0%	0%	3%	0%	0%	0%	100%	5%	9%	5%	62%	23%	40%	0%	0%
	Comparability with other product categories	Rather bad	21%	N/A	N/A	23%	20%	13%	20%	27%	25%	8%	7%	0%	22%	14%	11%	23%	31%	10%	0%	27%
		Moderately	41%	N/A	N/A	57%	60%	77%	67%	57%	67%	77%	71%	0%	61%	57%	63%	0%	31%	40%	100%	73%
		Rather good	12%	N/A	N/A	20%	20%	10%	13%	13%	8%	15%	21%	0%	12%	20%	21%	15%	15%	10%	0%	0%
		Not available	27%	N/A	N/A	0%	0%	0%	0%	3%	0%	0%	0%	100%	5%	9%	5%	62%	23%	40%	0%	0%

Note: The comparability of information was rated by the country researchers who collected, scored and analysed pre-contractual disclosure information for each product. UCITS - Undertaking for the Collective Investment in Transferable Securities; MMF – Money Market Fund, ETF – Exchange Traded Fund, AIF – Alternative Investment Fund; IBIP – Insurance-Based Investment Product; PPP – Personal Pension Product.
The number of sampled products is shown in brackets.

Source: Consortium, based on the product scoring.

5.4.10. Findings: Perception of simplified information documents by consumers

The previous section analysed the assessment of information documents made by the researchers who were part of the study team. In addition, as part of the study experiment, we also sought the feedback of consumers.

As explained in the section on impacts below, and in the methodological annex, as part of the behavioural experiment we exposed consumers to a simplified one-page information document. In addition to assessing the extent to which the simplified mock-up information documents supported consumer choice (impact), we also asked for their feedback about the documents reviewed by them. They were asked to give feedback on these criteria:

- ease of understanding;
- volume of numbers and figures (proxy for complexity);
- overall layout and presentation (proxy for engagement)
- usefulness of information.

The **ease of understanding** of the documents shown was **rated the least favourably** of the four criteria. On a ten-point scale whereby 1 is very bad and 10 is very good, the average score was slightly above the mid-point – 6.1. Only 28% of respondents rated the already highly simplified one-page document as easy to understand, selecting the top three scores (8, 9 or 10). Most information documents reviewed as part of the analysis presented above are much longer than one page.

There are also interesting differences in the rating of these mock-up documents by subgroups:

- people with savings, no investments but looking to invest rated the ease of understanding most positively even though it was still below 7 – average score 6.65; but
- people with savings but not interested in investing rated the ease of understanding the worst – average score 5.68 (i.e. 1 point below the segment of people searching to invest);
- people who have high trust in banking rated the ease of understanding relatively high (7.59) compared with those whose trust rating of banking is low (5.09);
- older age groups considered the documents as less clear than younger ones;
- risk-averse individuals rated the documents as more understandable than those seeking risk exposure (6.4 versus 5.54);
- the differences according to level of education or financial literacy scores were much narrower, with the trust and interest in investing variables recording the greatest differences.

When looking at the different treatments[272], meaning the different format of the simplified information document tested, the differences are marginal on the ease to understand. Nevertheless, the cost simulator and personalised costs are rated somewhat higher than the baseline option (dashboard) and other options. There are also some differences linked to products: UCITS information documents were rated somewhat better than other products in terms of ease of understanding. The information documents used in the simulation took into consideration product specificities and reproduced the type of information that is required to be shown for a given product type.

The **complexity of the documents as measured by the perception of respondents of the volume of numbers and figures was also rated as middling** – 6.51 on a scale of 1 (very bad) to 10 (very good). Here again it must be borne in mind that the documents were already simplified (see mock-ups in section on impacts). The relevance discussion focused on whether

[272] By treatment, we mean the visual and content differences the simplified information documents contained, i.e., a dashboard, the dashboard removed, a comparator, a cost simulator, personalized costs and cumulative costs removed.

complexity is one of the barriers to the relevance and effectiveness of disclosure. The same patterns as above apply:

- people seeking to invest considered the volume of numbers and figures more positively (6.9) than those who were not interested in investing (6.14), while the other segments were in-between these two;
- those with trust in banking considered complexity most positively (7.78 versus 5.74 for those with low levels of trust).

The **layout and presentation** of the documents were used as a proxy for the engaging character of the documents. As discussed in the section on relevance engagement is a precondition for people to actually read the disclosure documents. This in turn is a prerequisite of effectiveness. The score for the layout of the documents shown was also middling – 6.43. The same categories as above rated the layout and presentation highest and lowest.

As with the previous criteria, the differences between treatments and product categories were low. Overall cost simulator and personalised costs were rated marginally better and the same applied to UCITS.

Finally, of the four criteria, **usefulness was rated the best**, albeit below 7 points. The average score for the perceived usefulness of information presented was 6.74. Only a small number of people chose the bottom three options (5%) while the majority chose the middle scores (60%). Young people, those who are risk averse, those with a high level of trust in banking and those interested in investing considered the information as more useful compared with other segments.

As above, personalised costs and cost simulator formats were considered slightly more useful in terms of information presented and the same goes for UCITS compared with other products. But again, the differences were minor.

5.4.11. Impacts of disclosure on consumer product decision-making

The aim of the disclosure requirements is to ensure that consumers better informed and, subsequently, make better product choices.

To assess the extent to which disclosure documents contribute to consumer choice and how this differs when using different disclosure formats, we carried out a behavioural experiment integrated in the previously discussed consumer survey. The details of the experiment and the analysis are provided in Annex 8. This section summarises the main findings.

The main objective of the survey's experimental module on disclosure was to investigate whether, and under which conditions, product-specific disclosure practices are effective in supporting retail investors in making optimal choices.

To carry out this assessment, we considered six disclosure practices transposed into the experiment as variations of real-life, regulation-based requirements of the disclosure of pre-contractual information. Taking as the starting point the existing KID templates, we designed a one-page reduced version of benchmarking information documents, with several layout alternatives, which reflected. These reflected information sources through which retail investors are provided with the required pre-contractual information.

Throughout this study, the effectiveness of the disclosure documents is understood from the perspective of the costs associated with an investment product: an investment decision is considered optimal if the investment product selected is the one with the lowest costs. For the implemented experimental design, we considered that a disclosure document is effective if it enables the retail investor to choose the investment product with the lowest costs.

Each consumer was presented with two alternative information documents about supposedly different products, but each time these were products of the same category. Considering an alternative hypothesis in which, in the absence of the disclosure documents, retail investors would make the decision in a purely random manner, they would have a 50% chance of choosing the optimal invest product (i.e. the one with lower costs).

To assess, in a quantifiable manner, the effectiveness of disclosure for both the status quo documents and the five alternatives designed across the investment products considered, we used as counterfactual the hypothesis that retails investors make purely random investment choices, selecting the optimal product in 50% of the cases. Hence, a disclosure document is effective if the retail investors that used it to inform their investment decision have a - statistically significant - higher than 50% rate of choosing the optimal product.

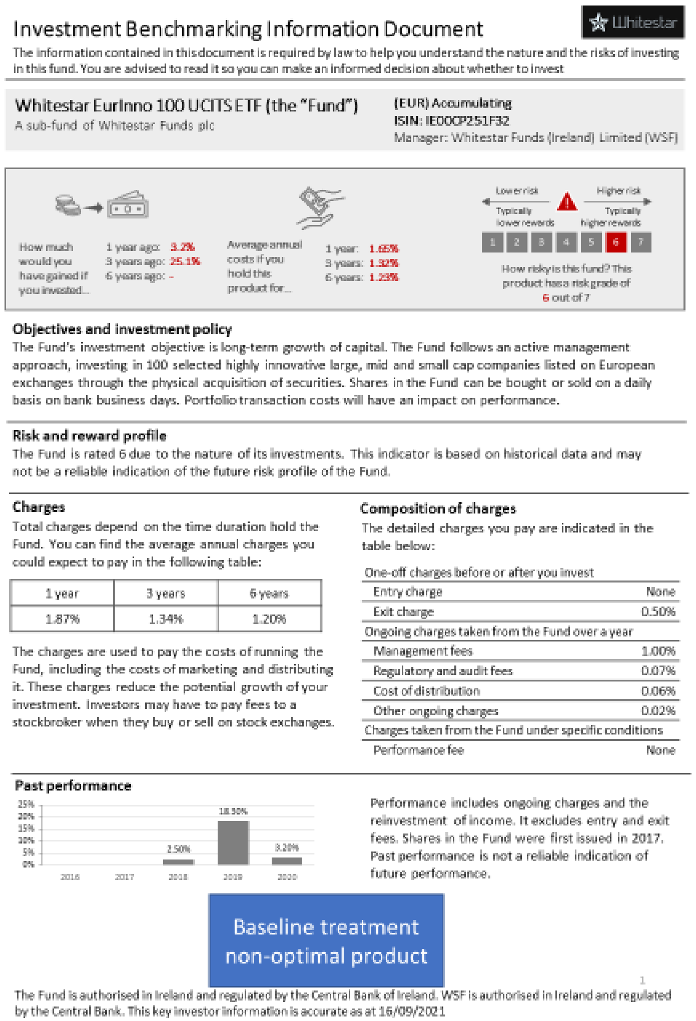
The extent to which the "status quo" in disclosure is effective in enabling people to make a correct choice

To answer this question, the design of the experimental manipulations had as starting point what can be considered as the "*status quo*" for each of the products included in the experiment: a disclosure document reflective of either the regulatory requirements or everyday commercial practices, specific to each of products. As such, in the context of the design's focus on costs, having as starting points the design elements of the KIID for UCITS and those of the PRIIPs KID, we drafted simplified versions of cost and information benchmarking documents. To address the inherent limitations of the experimental environment, we limited the information documents to a simplified one-page version for both the status quo disclosure and the alternatives considered.

Across the three investment products and the investment service considered, in line with the design's focus on costs and the effectiveness of disclosure, the central information element of the *status quo* approach consisted in a graphical table summarising the key cost information. Building around it, we considered that for all three products and the service, the "Dashboard"-based approach best reflects best the status quo. It summarises in a synthetic manner the key cost information required to be disclosed at the pre-contractual stage.

The full set of treatments used is provided in an annex while the figure below shows the mock-up information benchmarking documents used for UCITS and Structured Notes as examples. As shown in these images the treatments had multiple information points about costs and charges as is the case in current real-life disclosure documents used in the market.

Figure.20 - Treatments used for UCITS and for Structured Notes



Investment Benchmarking Information Document

Whitestar

The information contained in this document is required by law to help you understand the nature and the risks of investing in this fund. You are advised to read it so you can make an informed decision about whether to invest

Whitestar EurInno 100 UCITS ETF (the "Fund")
A sub-fund of Whitestar Funds plc

(EUR) Accumulating
ISIN: IE00CP251F32
Manager: Whitestar Funds (Ireland) Limited (WSF)

How much would you have gained if you invested... 1 year ago: 3.2% 3 years ago: 25.1% 6 years ago: –

Average annual costs if you hold this product for... 1 year: 1.65% 3 years: 1.32% 6 years: 1.23%

Lower risk — Typically lower rewards; Higher risk — Typically higher rewards
1 2 3 4 5 6 7
How risky is this fund? This product has a risk grade of 6 out of 7

Objectives and investment policy
The Fund's investment objective is long-term growth of capital. The Fund follows an active management approach, investing in 100 selected highly innovative large, mid and small cap companies listed on European exchanges through the physical acquisition of securities. Shares in the Fund can be bought or sold on a daily basis on bank business days. Portfolio transaction costs will have an impact on performance.

Risk and reward profile
The Fund is rated 6 due to the nature of its investments. This indicator is based on historical data and may not be a reliable indication of the future risk profile of the Fund.

Charges
Total charges depend on the time duration hold the Fund. You can find the average annual charges you could expect to pay in the following table:

1 year	3 years	6 years
1.87%	1.34%	1.20%

The charges are used to pay the costs of running the Fund, including the costs of marketing and distributing it. These charges reduce the potential growth of your investment. Investors may have to pay fees to a stockbroker when they buy or sell on stock exchanges.

Composition of charges
The detailed charges you pay are indicated in the table below:

One-off charges before or after you invest	
Entry charge	None
Exit charge	0.50%
Ongoing charges taken from the Fund over a year	
Management fees	1.00%
Regulatory and audit fees	0.07%
Cost of distribution	0.06%
Other ongoing charges	0.02%
Charges taken from the Fund under specific conditions	
Performance fee	None

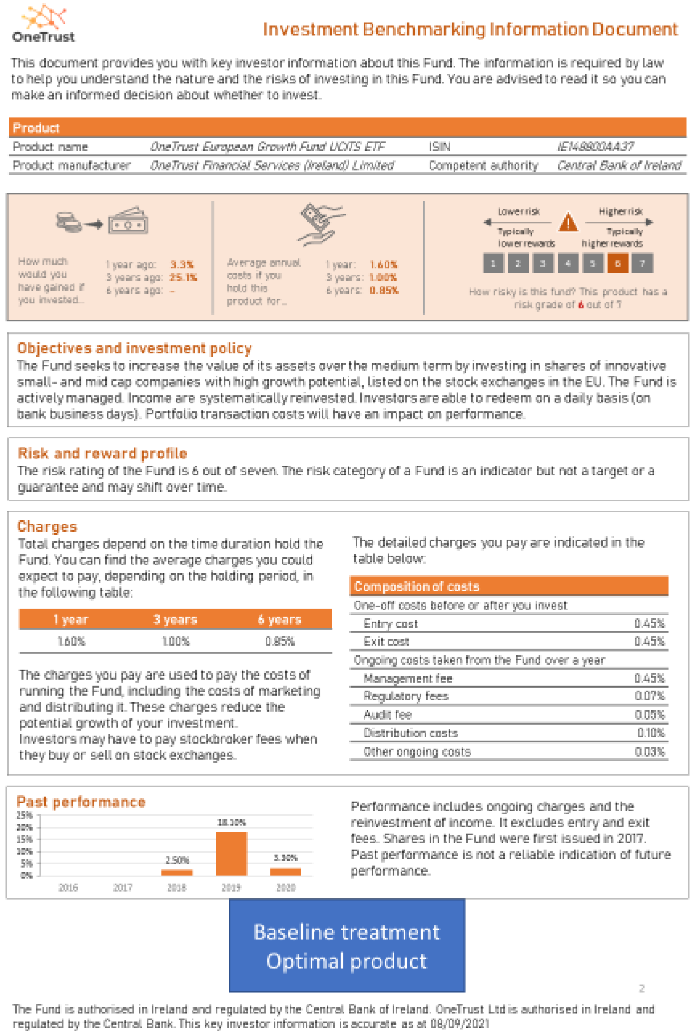
Past performance

Performance includes ongoing charges and the reinvestment of income. It excludes entry and exit fees. Shares in the Fund were first issued in 2017. Past performance is not a reliable indication of future performance.

Baseline treatment non-optimal product

1

The Fund is authorised in Ireland and regulated by the Central Bank of Ireland. WSF is authorised in Ireland and regulated by the Central Bank. This key investor information is accurate as at 16/09/2021



OneTrust

Investment Benchmarking Information Document

This document provides you with key investor information about this Fund. The information is required by law to help you understand the nature and the risks of investing in this Fund. You are advised to read it so you can make an informed decision about whether to invest.

Product			
Product name	*OneTrust European Growth Fund UCITS ETF*	ISIN	*IE148800A437*
Product manufacturer	*OneTrust Financial Services (Ireland) Limited*	Competent authority	*Central Bank of Ireland*

How much would you have gained if you invested... 1 year ago: 3.3% 3 years ago: 25.1% 6 years ago: –

Average annual costs if you hold this product for... 1 year: 1.60% 3 years: 1.00% 6 years: 0.85%

Lower risk — Typically lower rewards; Higher risk — Typically higher rewards
1 2 3 4 5 6 7
How risky is this fund? This product has a risk grade of 6 out of 7

Objectives and investment policy
The Fund seeks to increase the value of its assets over the medium term by investing in shares of innovative small- and mid cap companies with high growth potential, listed on the stock exchanges in the EU. The Fund is actively managed. Income are systematically reinvested. Investors are able to redeem on a daily basis (on bank business days). Portfolio transaction costs will have an impact on performance.

Risk and reward profile
The risk rating of the Fund is 6 out of seven. The risk category of a Fund is an indicator but not a target or a guarantee and may shift over time.

Charges
Total charges depend on the time duration hold the Fund. You can find the average charges you could expect to pay, depending on the holding period, in the following table:

1 year	3 years	6 years
1.60%	1.00%	0.85%

The charges you pay are used to pay the costs of running the Fund, including the costs of marketing and distributing it. These charges reduce the potential growth of your investment.
Investors may have to pay stockbroker fees when they buy or sell on stock exchanges.

The detailed charges you pay are indicated in the table below:

Composition of costs	
One-off costs before or after you invest	
Entry cost	0.45%
Exit cost	0.45%
Ongoing costs taken from the Fund over a year	
Management fee	0.45%
Regulatory fees	0.07%
Audit fee	0.05%
Distribution costs	0.10%
Other ongoing costs	0.03%

Past performance

Performance includes ongoing charges and the reinvestment of income. It excludes entry and exit fees. Shares in the Fund were first issued in 2017. Past performance is not a reliable indication of future performance.

Baseline treatment Optimal product

2

The Fund is authorised in Ireland and regulated by the Central Bank of Ireland. OneTrust Ltd is authorised in Ireland and regulated by the Central Bank. This key investor information is accurate as at 08/09/2021

Investment Benchmarking Information Document

NRB INVESTMENT BANK

The information contained in this document is required by law to help you understand the nature and the risks of investing in this fund. You are advised to read it so you can make an informed decision about whether to invest

Product

NRB Responsibility 50

ISIN: LU1174801200

Manufacturer: NRB Bank Luxembourg
Competent authority: Autorité des Marchés Financiers (AMF), Autorité de Contrôle Prudentiel et de Résolution (ACPR)
Issuer: NRB Bank Luxembourg **Guarantor:** NRB Bank

How much money could you get back if you hold for the recommended holding period (10 years)?

	Total return in euro	Average return each year
Stress scenario	€3,274	-10.5%
Unfavourable scenario	€11,601	1.49%
Moderate scenario	€12,001	1.83%
Favourable scenario	€12,401	2.16%

Average annual costs if you hold this product for...

1 year: 4.56%
6 years: 0.77%
10 years: 0.45%

How risky is this product?

Lower risk — Higher risk
Typically lower rewards — Typically higher rewards

1 2 3 4 5 6 7

This product has a risk grade of 4 out of 7

You are about to purchase a product that is not simple and may be difficult to understand

Baseline treatment
Optimal product

What is this product?

Type

This product is a debt instrument benefiting from collateral assets with variable value (this may be nil). It is governed by Luxembourg law.

Objectives

This product provides a fixed coupon on a periodic basis during the product lifetime. If on early redemption dates the level of the reference underlying is at, or above the Early Redemption Barrier, the product will be redeemed early and you will receive: 100% of the Nominal Value, plus the Early Redemption Coupon multiplied by the number of periods elapsed since the first Initial Observation Date, minus the Fix Coupons already received. On the Maturity Date, provided that the product has not been redeemed early, you will receive a final redemption amount.

What are the risks and what could I get in return?

Summary Risk Indicator (SRI)

The summary risk indicator is a guide to the level of risk of this product compared to other products. It shows how likely it is that the product will lose money because of movements in the markets or because we are not able to pay you. We have classified this product as 4 out of 7, which is a medium risk class.

Performance scenarios

Scenarios		1 year	10 years
Stress scenario	What you might get back after costs	€6,475	€3,274
	Average return each year	-35.10%	-10.5%
Unfavourable scenario	What you might get back after costs	€8,847	€11,601
	Average return each year	-11.48%	1.49%
Moderate scenario	What you might get back after costs	€8,847	€12,001
	Average return each year	-11.48%	1.83%
Favourable scenario	What you might get back after costs	€11,321	€12,401
	Average return each year	13.14%	2.16%

This table shows the money you could get back over the next 10 years (the recommended holding period), under different scenarios, assuming that you invest EUR 10,000. The scenarios shown illustrate how your investment could perform. They are an estimate of future performance based on evidence from the past and are not an exact indicator. What you get will vary depending on how the market performs and how long you keep the product.

What are the costs?

Costs over time

Scenarios	If you cash after 1 year	If you cash after 6 years	If you cash after 10 years
Total costs	€458.19	€550.64	€550.64
Impact on return (RIY) per year	4.56%	0.77%	0.45%

The Reduction in Yield (RIY) shows what impact the total costs you pay will have on the investment return you might get. The total costs take into account one-off, ongoing and incidental costs. The amounts shown here are the cumulative costs for different holding periods. The figures assume you invest EUR 10,000. The figures are estimates and may change in the future.

Composition of costs

One-off costs	Entry charge	0.45%	The impact of the costs you pay when entering your investment. The impact of the costs already included in the price.
	Exit charge	None	The impact of the costs of exiting your investment when it matures.
Ongoing costs	Portfolio transaction costs	None	The impact of the costs of us buying and selling underlying investments.
	Other ongoing costs	None	The impact of the costs that we take each year for managing your investments and the costs presented in Section II.

1

Investment Benchmarking Information Document

Capitol Bank

The information contained in this document is required by law to help you understand the nature and the risks of investing in this fund. You are advised to read it so you can make an informed decision about whether to invest

Product name: CB Sustainable Investments

Manufacturer: Capitol Bank Luxembourg
ISIN: LU5211AG4900

Issuer: Capitol Bank Luxembourg
Guarantor: CB Holdings (Luxembourg)
Competent authority:
Autorité des Marchés Financiers (AMF)
Autorité de Contrôle Prudentiel et de Résolution (ACPR)

How much money could you get back if you hold for the recommended holding period (10 years)?

	Total return in euro	Average return each year
Stress scenario	€3,274	-10.5%
Unfavourable scenario	€11,601	1.49%
Moderate scenario	€12,001	1.83%
Favourable scenario	€12,401	2.16%

Average annual costs if you hold this product for...

1 year: 5.93%
6 years: 0.97%
10 years: 0.58%

How risky is this product?

Lower risk — Higher risk
Typically lower rewards — Typically higher rewards

1 2 3 4 5 6 7

This product has a risk grade of 4 out of 7

You are about to purchase a product that is not simple and may be difficult to understand

What is this product?

Type

This product is a debt instrument benefiting from collateral assets with variable value (this may be nil). It is governed by Luxembourg law.

Objectives

This product is a fixed-term investment which is designed to generate a payoff at maturity linked to the performance of the Reference Underlying. If the Final Level of the Reference Underlying is above or at the Final Barrier, you will receive: 100% of the Nominal Value, plus the Performance of the Reference Underlying multiplied by the Participation. If the Final Level of the Reference Underlying is below the Final Barrier and above or at the Capital Barrier, you will receive: 100% of the Nominal Value. Otherwise, you will receive the Final Level of the Reference Underlying multiplied by the Nominal Value.

What are the risks and what could I get in return?

Summary Risk Indicator (SRI)

The summary risk indicator is a guide to the level of risk of this product compared to other products. It shows how likely it is that the product will lose money because of movements in the markets or because we are not able to pay you. We have classified this product as 4 out of 7, which is a medium risk class.

Performance scenarios

		1 year	10 years
Stress scenario	What you might get back after costs	€6,475	€3,274
	Average return each year	-35.10%	-10.5%
Unfavourable scenario	What you might get back after costs	€8,847	€11,601
	Average return each year	-11.48%	1.49%
Moderate scenario	What you might get back after costs	€8,847	€12,001
	Average return each year	-11.48%	1.83%
Favourable scenario	What you might get back after costs	€11,321	€12,401
	Average return each year	13.14%	2.16%

The table shows the money you could get back over the next 10 years (the recommended holding period), under different scenarios, assuming that you invest EUR 10,000. The scenarios shown illustrate how your investment could perform. They are an estimate of future performance based on evidence from the past and are not an exact indicator. What you get will vary depending on how the market performs and how long you keep the product.

Baseline treatment
non-optimal product

What are the costs?

Costs over time

Scenarios	If you cash in after 1 year	If you cash in after 6 years	If you cash in after 10 years
Total costs	€595.65	€715.83	€715.83
Impact on return (RIY)/year	5.93%	0.97%	0.58%

The Reduction in Yield (RIY) shows how the total costs you pay will reduce the investment return you might get. The total costs include one-off, ongoing as well as incidental costs. The amounts shown are the cumulative costs for different holding periods. The calculation assumes that you invest EUR 10,000. The figures are estimates and may change in the future.

Composition of costs

One-off costs	Entry charge	0.86%	The impact of the costs you pay when entering your investment. The impact of the costs already included in the price.
	Exit charge	0.00%	The impact of the costs of exiting your investment when it matures.
Ongoing costs	Portfolio transaction costs	0.00%	The impact of the costs of us buying and selling underlying investments.
	Other ongoing costs	0.00%	The impact of the costs that we take each year for managing your investments and the costs presented in Section II.

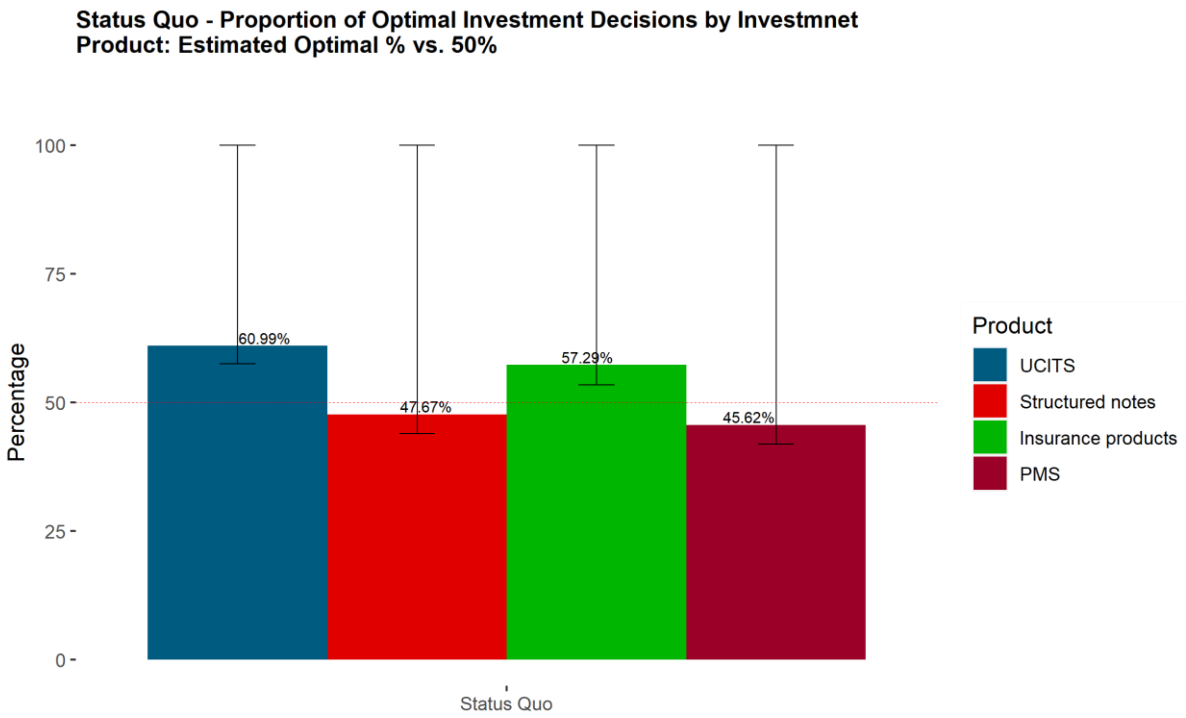
2

The figure below presents the estimated effectiveness of the status quo approach across the four investment products considered.

While the status quo disclosure practice proves to be effective for UCITS and Insurance Products, it is not effective for Structured Notes and Portfolio Management Services. For these product categories less than 50% of consumers who were exposed to them accurately chose the product with the lowest costs. This is fewer than if they were deciding randomly.

Moreover, the status quo considered proves ineffective for a very large share of potential retail investors. Across the four products, the share of investors not being able to choose the least costly product ranges between approx. 40% and 55%. This is relevant to take into consideration given that the exercise was already designed to be simpler than real- life parameters.

Figure.21 - Effectiveness of status quo disclosure by investment product



Source: Consortium, based on the behavioural experiment. (full sample of the experiment n=10,470)

The findings about the effectiveness of disclosure were also mixed in other behavioural studies:

- A behavioural experiment by the Dutch market supervisory authority (AMF) has shown that by using the KID investors were more likely to make the best investment decision between three products. That being said, not all of them did, and even though one product was clearly better than the other three, some participants still invested in both the best and the two worset products.[273]
- A 2020 behavioural experiment commissioned by the European Commission on the preferred option regarding asset performance history and future scenarios showed that while the option with probability-based future scenarios enhanced comprehension of the risks, rewards and costs of the products, it did not help the respondents in identifying the right product for them in the pair they were presented with.[274]
- In the UK, the Financial Conduct Authority commissioned a systematic literature review[275] about product disclosure which found several barriers that limit the effectiveness of

[273] https://www.afm.nl/en/professionals/onderwerpen/consumentengedrag-artikelen/trial-mandatory-investment
[274] DEVSTAT (2020) Consumer testing services - Retail investors' preferred option regarding performance scenarios and past performance information within the Key Information Document under the PRIIPs framework, for the European Commission, DG FISMA.
[275] Financial Conduct Authority (2014) Review of literature on product disclosure.

disclosure. Several of the barriers identified in this literature review are applicable to the templates used for KIDs and KIIDs: high volume of information, terminology that is difficult for the consumer to engage with, multiplicity of costs and price points, use of percentages and compounding.

Furthermore, evidence exists (Choi et al. (2010)) that even with simple products, such as index funds, people frequently fail to identify the lowest cost alternative. Furthermore Lunn et al. (2016) have found that when trying to consider more than two or three factors, the consumer's capacity to understand the comparison and make good judgement diminishes substantially.[276]

The extent to which the "status quo" disclosure is more or less effective for some retail investors compared with others

After evidencing the limited effectiveness of the status quo disclosure across the products, we assessed whether it is more effective for some retail investors and less so for others and, if that is the case, which investor characteristics lead to this outcome. To address this question, we carried out a logistic regression on the experiment participants randomly allocated to the status quo disclosure, testing the extent to which factors such as their socio-demographic characteristics, investment experience and attitude towards risk, together with the products themselves, can explain the outcome of the investment task they were asked to perform in the experiment.

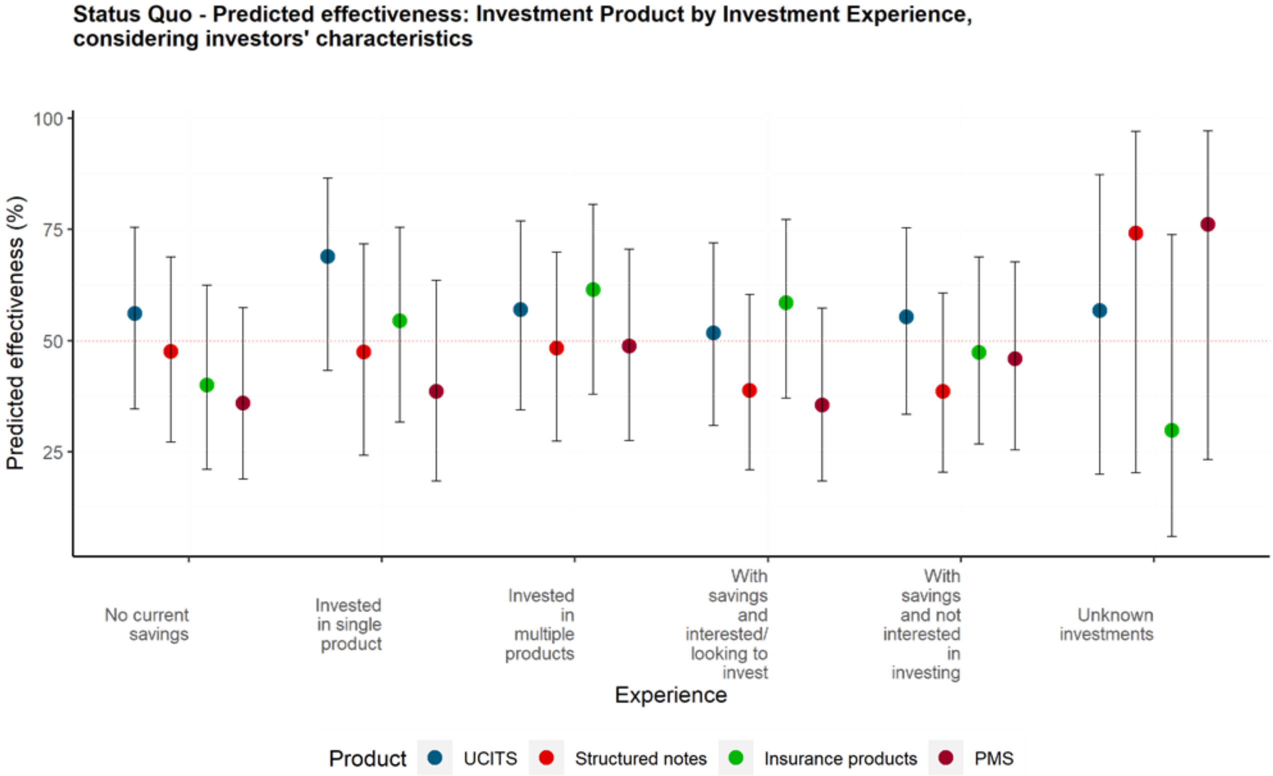
The results show that in the case of the status quo disclosure, two main features explain, in a statistically significant manner, the effectiveness of disclosure: the products themselves and the investment experience.

Using the results of the regression model, the figure below presents the predicted level of effectiveness of the status quo disclosure by type of product and investment experience, considering the remaining potentially relevant socio-demographic characteristics of the retail investors.

It shows that overall, the differences between product types are even bigger than the differences between investor profiles. The status quo disclosure documents perform somewhat better for consumers who have at least one past investment or are interested/looking to invest. However, this is not systematically the case.

[276] P Lunn, M Bohacek, J Somerville, AN Choisdealbha & F McGowan, PRICE Lab: An investigation of consumers' capabilities with complex products, report, Economic & Social Research Institute, May 2016.

Figure.22 - Predicted effectiveness of status quo disclosure by investment product, in the context of the retail



Source: Consortium, based on the behavioural experiment.

Another explanatory factor considered was the extent to which the consumers rated the status quo disclosure as easy to understand, containing useful information, containing the appropriate amount of numeric information and having an appropriate layout. Each respondent was asked to provide this subjective rating of the disclosure documents they were presented with after the experimental task. Overall, in the case of the status quo disclosure, these ratings do not affect in a statistically significant manner the effectiveness of disclosure.

The extent to which alternative presentations/disclosures work better than the status quo

For each of the investment products considered, in addition to the status quo approach, the experiment tested the effectiveness of five (four, in the case of UCITS) alternative approaches towards providing retail investors with the required pre-contractual information. The treatments for the experiment are presented in Figure.**23 - Experiment treatments used for UCITS products (all examples include the "optimal product")**

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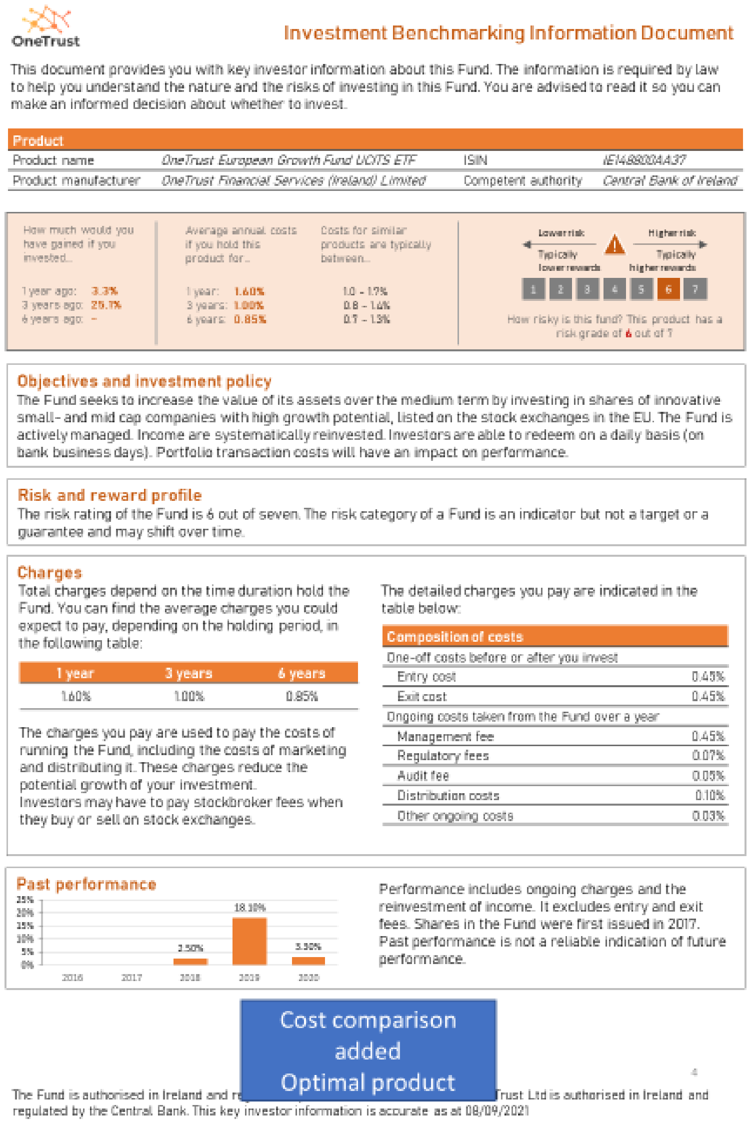
The design of the treatments represents variations along the lines of what can be considered typical ways in which pre-contractual information is provided to retail investors in real-life situations. As in the case of the status quo approach, the treatments were defined as one-page "information benchmarking documents".

The treatments used were:

1. **Treatment A. Standard dashboard**: the information benchmarking document contains the minimum amount and content required to be presented to investors during the pre-contractual stage for each type of product. This information was provided as a product-specific dashboard.
2. **Treatment B. Dashboard removed**: this treatment manipulation consists in removing completely the dashboard of the one pager key investment benchmark information document. This made it possible to test the efficacy of the dashboard.
3. **Treatment C. Personalised costs**: in this version of the dashboard, we presented figures in line with the amount invested by the character. This completely personalised the costs, thus removing some of the burden of calculation.
4. **Treatment D. Cost Comparison**: adding a direct cost comparison will draw attention to the headline figure (the summary costs, RIY) and highlight the relative market position of the product in terms of its costliness. This may also trigger social norms and nudge the consumer towards getting "normal" costs, i.e. to shy away from high-cost products. In this manipulation, the cheaper items were within the range of comparable product costs while the others were just outside of this range. In the case of this treatment, it was expected that the respondents would be less likely to be influenced by the slightly higher yield of the more costly product, as this manipulation put more emphasis on costs.
5. **Treatment E. Cost Simulator**: this consisted in providing participants with a very short spreadsheet comparing the two products, thus replicating to a lesser extent the way in which simulators help retail investors.
6. **Treatment F**. **Cumulative costs removed**: this consisted in removing cumulative EUR cost, and only keeping the RIY. It could be posited that, for long-term investments, the very high cumulative costs may seem frightening, dissuading investors – although the expected yield after costs would make the investment worthwhile. This treatment was not applied to the UCITS product as its information benchmarking document did not include such cumulative costs in the first place.

The figure below shows the four additional variations (excluding the baseline which is shown above) of treatments for UCITS (in each case for the "optimal product").

Figure.23 - Experiment treatments used for UCITS products (all examples include the "optimal product")



OneTrust

Investment Benchmarking Information Document

This document provides you with key investor information about this Fund. The information is required by law to help you understand the nature and the risks of investing in this Fund. You are advised to read it so you can make an informed decision about whether to invest.

Product			
Product name	*OneTrust European Growth Fund UCITS ETF*	ISIN	*IE1488004A37*
Product manufacturer	*OneTrust Financial Services (Ireland) Limited*	Competent authority	*Central Bank of Ireland*

How much would you have gained if you invested…

1 year ago: 3.3%
3 years ago: 25.7%
6 years ago: –

Average annual costs if you hold this product for…		Costs for similar products are typically between…
1 year:	1.60%	1.0 - 1.7%
3 years:	1.00%	0.8 - 1.4%
6 years:	0.85%	0.7 - 1.3%

How risky is this fund? This product has a risk grade of 6 out of 7

Objectives and investment policy

The Fund seeks to increase the value of its assets over the medium term by investing in shares of innovative small- and mid cap companies with high growth potential, listed on the stock exchanges in the EU. The Fund is actively managed. Income are systematically reinvested. Investors are able to redeem on a daily basis (on bank business days). Portfolio transaction costs will have an impact on performance.

Risk and reward profile

The risk rating of the Fund is 6 out of seven. The risk category of a Fund is an indicator but not a target or a guarantee and may shift over time.

Charges

Total charges depend on the time duration hold the Fund. You can find the average charges you could expect to pay, depending on the holding period, in the following table:

1 year	3 years	6 years
1.60%	1.00%	0.85%

The charges you pay are used to pay the costs of running the Fund, including the costs of marketing and distributing it. These charges reduce the potential growth of your investment.
Investors may have to pay stockbroker fees when they buy or sell on stock exchanges.

The detailed charges you pay are indicated in the table below:

Composition of costs	
One-off costs before or after you invest	
Entry cost	0.45%
Exit cost	0.45%
Ongoing costs taken from the Fund over a year	
Management fee	0.45%
Regulatory fees	0.07%
Audit fee	0.05%
Distribution costs	0.10%
Other ongoing costs	0.03%

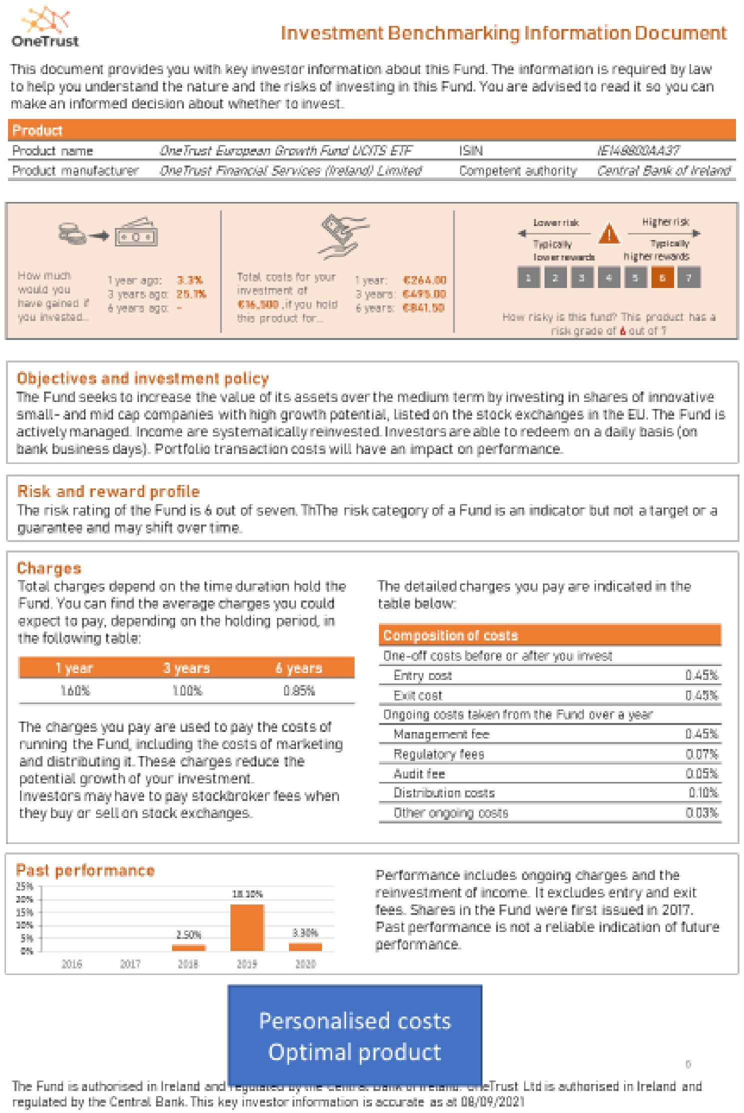
Past performance

Performance includes ongoing charges and the reinvestment of income. It excludes entry and exit fees. Shares in the Fund were first issued in 2017. Past performance is not a reliable indication of future performance.

Cost comparison added
Optimal product

4

The Fund is authorised in Ireland and r… …rust Ltd is authorised in Ireland and regulated by the Central Bank. This key investor information is accurate as at 08/09/2021



OneTrust

Investment Benchmarking Information Document

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Product			
Product name	*OneTrust European Growth Fund UCITS ETF*	ISIN	*IE1488004A37*
Product manufacturer	*OneTrust Financial Services (Ireland) Limited*	Competent authority	*Central Bank of Ireland*

How much would you have gained if you invested…

1 year ago: 3.3%
3 years ago: 25.7%
6 years ago: –

Total costs for your investment of €16,500, if you hold this product for…

1 year: €264.00
3 years: €495.00
6 years: €841.50

How risky is this fund? This product has a risk grade of 6 out of 7

Objectives and investment policy

The Fund seeks to increase the value of its assets over the medium term by investing in shares of innovative small- and mid cap companies with high growth potential, listed on the stock exchanges in the EU. The Fund is actively managed. Income are systematically reinvested. Investors are able to redeem on a daily basis (on bank business days). Portfolio transaction costs will have an impact on performance.

Risk and reward profile

The risk rating of the Fund is 6 out of seven. ThThe risk category of a Fund is an indicator but not a target or a guarantee and may shift over time.

Charges

Total charges depend on the time duration hold the Fund. You can find the average charges you could expect to pay, depending on the holding period, in the following table:

1 year	3 years	6 years
1.60%	1.00%	0.85%

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Investors may have to pay stockbroker fees when they buy or sell on stock exchanges.

The detailed charges you pay are indicated in the table below:

Composition of costs	
One-off costs before or after you invest	
Entry cost	0.45%
Exit cost	0.45%
Ongoing costs taken from the Fund over a year	
Management fee	0.45%
Regulatory fees	0.07%
Audit fee	0.05%
Distribution costs	0.10%
Other ongoing costs	0.03%

Past performance

Performance includes ongoing charges and the reinvestment of income. It excludes entry and exit fees. Shares in the Fund were first issued in 2017. Past performance is not a reliable indication of future performance.

Personalised costs
Optimal product

6

The Fund is authorised in Ireland and regulated by the Central Bank of Ireland. OneTrust Ltd is authorised in Ireland and regulated by the Central Bank. This key investor information is accurate as at 08/09/2021

OneTrust

Investment Benchmarking Information Document

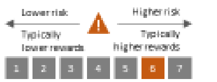
This document provides you with key investor information about this Fund. The information is required by law to help you understand the nature and the risks of investing in this Fund. You are advised to read it so you can make an informed decision about whether to invest.

Product			
Product name	*OneTrust European Growth Fund UCITS ETF*	ISIN	*IE1488004A437*
Product manufacturer	*OneTrust Financial Services (Ireland) Limited*	Competent authority	*Central Bank of Ireland*

Objectives and investment policy

The Fund seeks to increase the value of its assets over the medium term by investing in shares of innovative small- and mid cap companies with high growth potential, listed on the stock exchanges in the EU. The Fund is actively managed. Income are systematically reinvested. Investors are able to redeem on a daily basis (on bank business days). Portfolio transaction costs will have an impact on performance.

Risk and reward profile



The risk rating of the Fund is 6 out of seven. This is justified by investments focused in small capitalisation companies that are likely to be subject to a higher-than-average volatility because of less information being available, liquidity levels being lower, and greater sensitivity to changes in market conditions (social, political and economic conditions). The risk and reward indicator does not take account counterparty or liquidity risks. The risk category of a Fund is an indicator but not a target or a guarantee and may shift over time.

Charges

Total charges depend on the time duration hold the Fund. You can find the average charges you could expect to pay, depending on the holding period, in the following table:

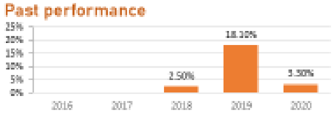
1 year	3 years	6 years
1.60%	1.00%	0.85%

The charges you pay are used to pay the costs of running the Fund, including the costs of marketing and distributing it. These charges reduce the potential growth of your investment.
Investors may have to pay stockbroker fees when they buy or sell on stock exchanges.

The detailed charges you pay are indicated in the table below:

Composition of costs	
One-off costs before or after you invest	
Entry cost	0.45%
Exit cost	0.45%
Ongoing costs taken from the Fund over a year	
Management fee	0.45%
Regulatory fees	0.07%
Audit fee	0.05%
Distribution costs	0.10%
Other ongoing costs	0.03%

Past performance



Performance includes ongoing charges and the reinvestment of income. It excludes entry and exit fees. Shares in the Fund were first issued in 2017. Past performance is not a reliable indication of future performance.

Dashboard removed
Optimal product

8

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Cost calculator

Compare the costs of the products you are interested in

Your inputs

Investment amount in EUR	16,500.00
Investment horizon in years	6

CALCULATE

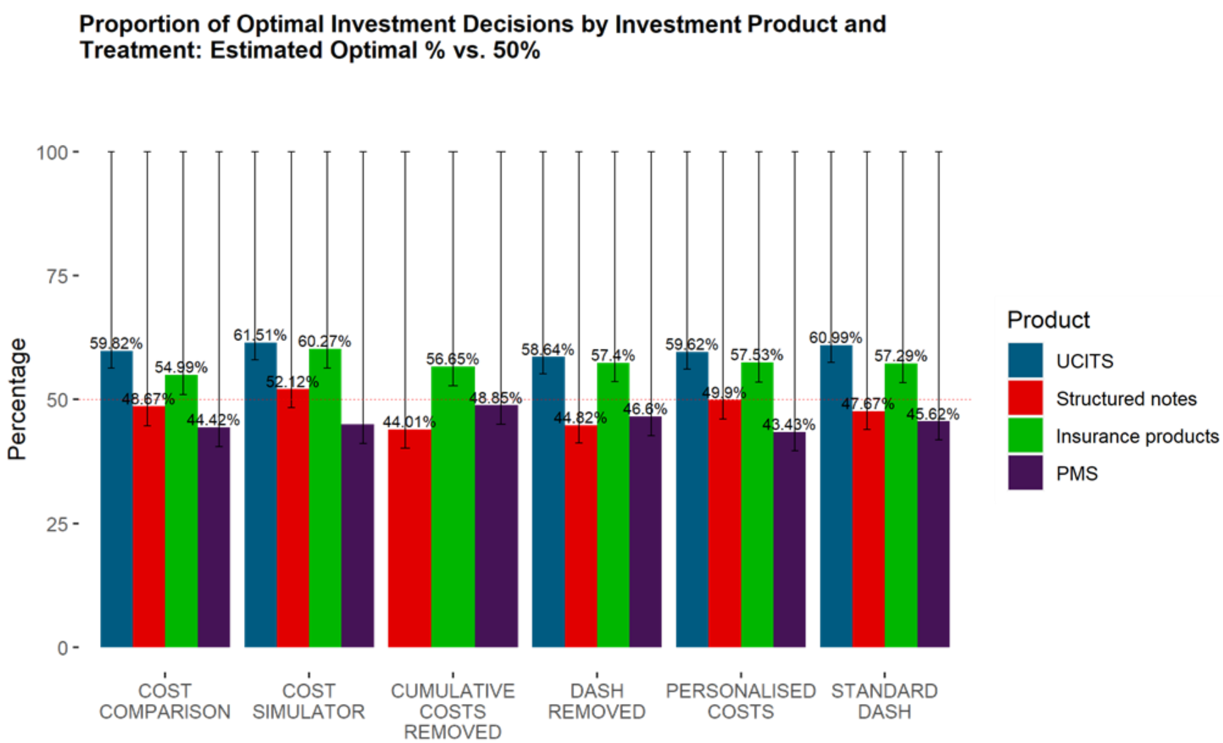
	Whitestar EurInno 100 UCITS ETF	OneTrust European Growth Fund UCITS ETF
Total costs over your investment horizon	**1,221.00 EUR**	**841.50 EUR**
Composition of costs		
Entry cost	0.00 EUR	74.25 EUR
Exit cost	82.50 EUR	74.25 EUR
Management fee	990.00 EUR	445.50 EUR
Regulatory and audit fee	69.30 EUR	118.80 EUR
Cost of distribution	59.40 EUR	99.00 EUR
Other ongoing costs	19.80 EUR	29.70 EUR

9

The analysis of the collected data shows that in fact some of the disclosure documents used are effective in the case of some of the investment products considered, while others are not. The figure presents the estimated share of optimal investment decisions together with their confidence intervals (at a 95% confidence level). Thus, if the estimate for a disclosure document - specific to an investment product - and its lower bound of the confidence interval are above 50%, we can conclude that in 95% of the cases in which the disclosure document is used for that product, the document is effective in enabling retail investors to select the product with lower costs. Moreover, the greater the distance between the estimate together with its lower bound of the confidence interval and the 50% threshold, the higher the degree of effectiveness of the disclosure document.

As highlighted in the figure below, the answer to whether the disclosure documents are effective requires more nuances to be considered. The same disclosure document formats proved to be effective in the case of some investment products but failed to be effective in the case of other products.

Figure.24 - Assessment of the effectiveness of disclosure documents in the context of the investment products considered



Source: Consortium, based on the behavioural experiment.

The assessment of the effectiveness of the disclosure documents reveals that:

- For **UCITS**, all disclosure approaches considered proved to be effective in enabling retail investors to select the least costly investment products. The most effective disclosure approaches proved to be the "Cost Comparison" and the "Standard Dashboard" (i.e. the summary of the key financial information), while the least effective one proved to be the one without the dashboard.
- Similarly, for **insurance-based investment products**, all approaches are effective in enabling retail investors to choose the least costly products. However, the most effective approach appears to be the one based on the "Cost Simulator", while the one based on the "Cost Comparison" is the least effective.
- For **Structured Notes**, the only approach that goes beyond the effectiveness threshold of 50% optimal investment decisions is the one based on the "Cost Simulator". This is the option that includes personalised costs – showing costs in absolute numbers rather than percentages. However, even in this case, the degree of effectiveness can be considered limited at best, the estimate's lower boundary of the confidence interval being below 50%. As such, this prevents us from being certain that in 95 out of 100 cases, potential retail investors, without considering any other of their potentially relevant characteristics (e.g., investment experience, financial literacy, etc.) would be able to choose the least costly Structured Note product when they base their decision on a disclosure document built around a Cost Simulator. The disclosure document without cumulative costs appears to be the least effective approach for a Structured Note investment.
- For **Portfolio Management Services** neither of the disclosure approaches tested managed to exceed the 50% effectiveness threshold. This is most probably due to the nature of the product itself. Regardless of the disclosure approach, the potential retail investors participating in the experiment had the most significant difficulties identifying the least costly version of the alternative Portfolio Management Services presented.

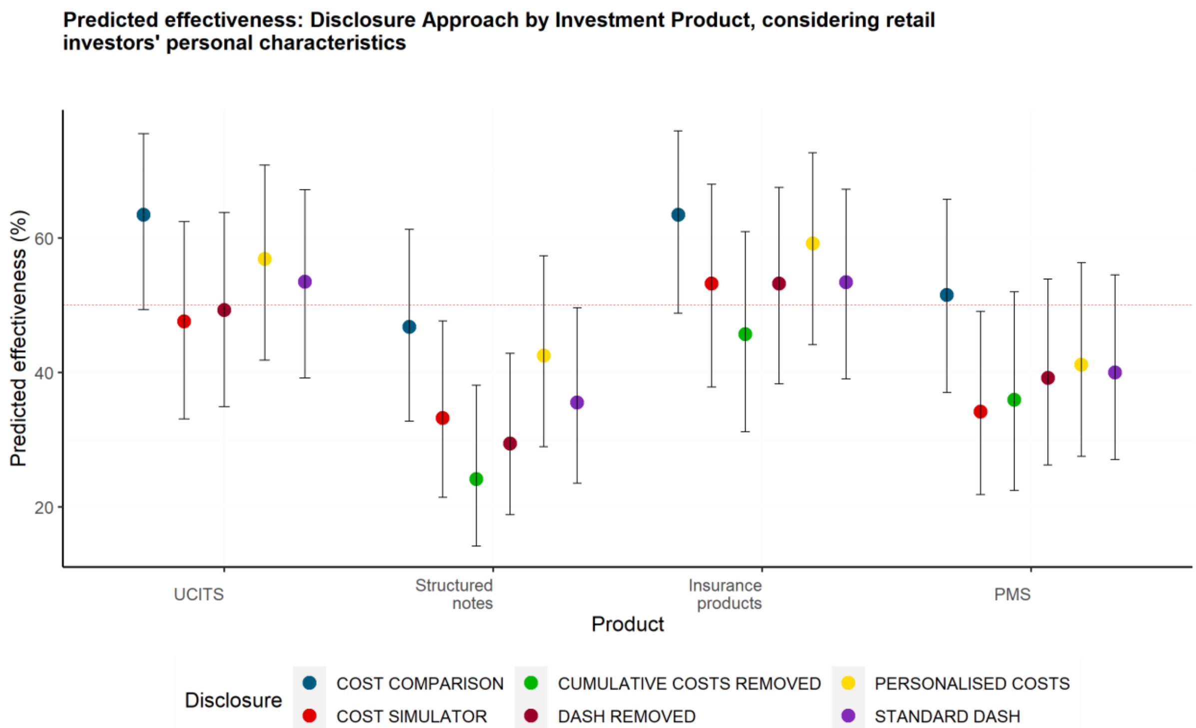
Factors influencing the effectiveness of the disclosure approaches

As shown in the previous subsection, considering the investor's personal characteristics, the results confirm that the **characteristics of the investment products** themselves affect the effectiveness of the disclosure approaches.

According to the model presented in Annex 8, on average, in the context of all factors considered, if the participants were allocated to UCITS, they had a 57.04% probability of making an optimal investment decision, while when allocated to Structured Notes and Portfolio Management Services, the predicted probabilities were only 44.81% and 43.54%. In other words, if the participants were asked to make an investment decision in the case of Structured Notes and PMS, they would perform significantly worse than if they were making the decision based on flipping a coin.

When considering the personal characteristics of consumers, overall the predicted effectiveness of each disclosure approach tends to be similar with the one observed when the consumer's background is not reflected (for details see Annex 8). This means that the importance of the product outweighs the other characteristics of the consumer.

Figure.25 - Predicted effectiveness of disclosure approaches by investment product, in the context of the retail investors' characteristics



Source: Consortium, based on the behavioural experiment.

However, there are also noteworthy differences, induced by the consumer's background:

- First, none of the confidence intervals are above the 50% effectiveness threshold. This indicates that, when considering the characteristics of the investors themselves and of the products, none of the disclosure approaches across the products considered will prove effective for 95 out of 100 retail investors.
- When it comes to UCITS, the predicted effectiveness of the Cost Comparison and the Personalised Costs is higher than that of the Standard Dashboard, however all three approaches are above the 50% effectiveness threshold.
- For Insurance products, the most effective disclosure approach, when considering the characteristics of the investors, is still the Cost Simulator which is based on a personalised calculation of costs and includes absolute numbers rather than percentages.
- The effectiveness of the disclosure approaches considered for Structured Notes and PMS is extremely limited, the characteristics of the products and services making it very challenging for all retail investors to choose the least costly ones.

To further contextualise these findings, it is also worthwhile noting that in a follow-up question to the experiment consumers were asked to state their self-perceived level of understanding of different product categories:

- Structured products had the highest share of respondents who stated that they did not know about the product (56%) while only 10% said they could explain what this product involved at least superficially.
- For portfolio management services a high share of respondents also did not know the service (36%) and only a minority said they could explain what it involved at least superficially (21%).
- The familiarity with investment funds (UCITS) or pension products was much higher.

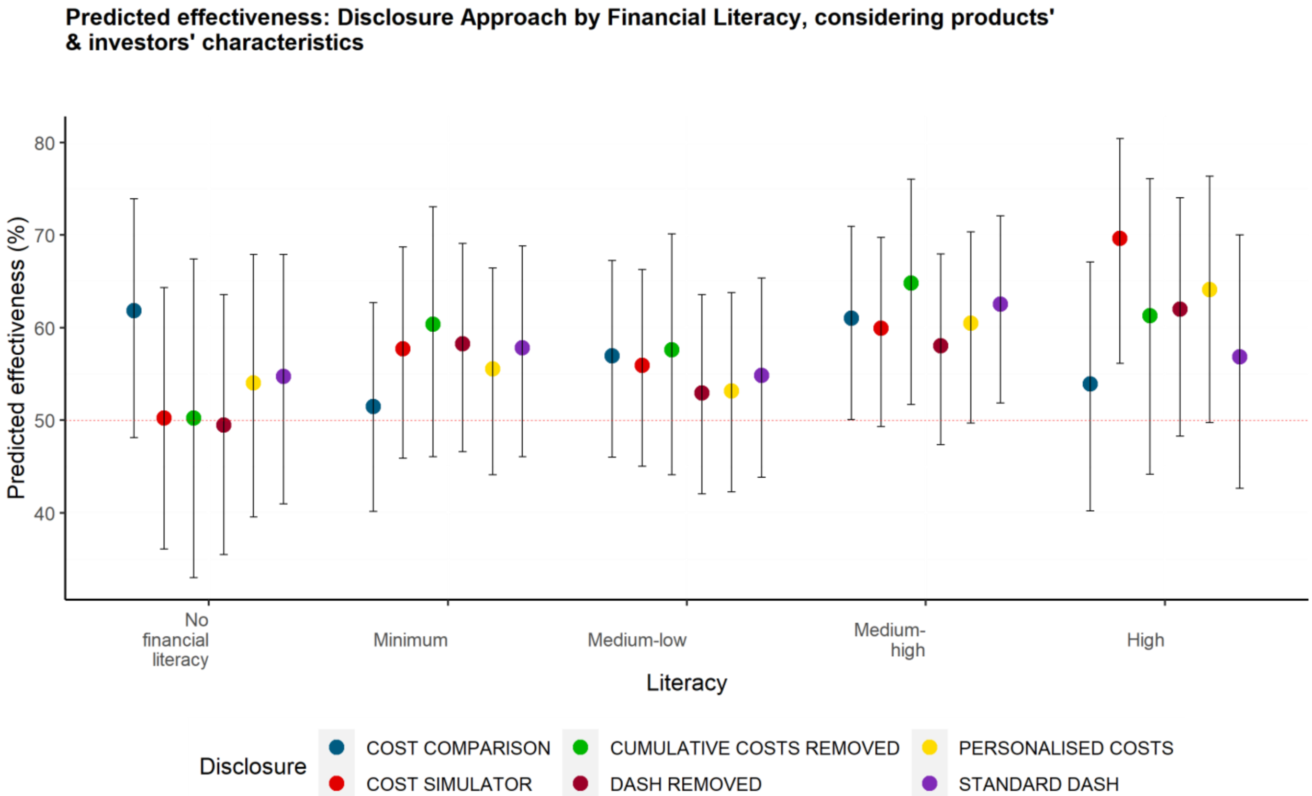
These findings show the limitations of a "one size fits all approach". Overall, the complexity of some investment products (Structured Notes) or the very particular nature of services (Portfolio Management Services) significantly reduces the effectiveness of the disclosure approaches considered. Disclosure approaches that are effective for some products largely fail to enable retail investors to select the least costly products in the case of other product categories.

AnotherAnother factor that matters in explaining the effectiveness of disclosure approaches is financial literacy.

The study findings indicate that financial literacy is the most important factor shaping the effectiveness of disclosure. As shown in the figure below, there are large differences between the effectiveness of the disclosure approaches in the case of the five financial literacy levels considered:

- For the most vulnerable retail investors, those without any financial literacy, the most effective disclosure approach is the one which allows them to directly compare costs (Cost Comparison).
- Overall, the results indicate a lack of significant differences in terms of effectiveness between retail investors with minimum and medium levels of financial literacy, while in the case of the retail investors with high financial literacy the cost simulator has the highest predicted effectiveness.

Figure.26 - Predicted effectiveness of disclosure approaches by investors' financial literacy, in the context of the products' and retail investors' characteristics



Source: Consortium, based on the behavioural experiment.

When considering both the level of financial literacy and investor experience (i.e. whether they have investments, or plan to make investments in the future), the effectiveness of the disclosure approaches is not affected in a significant manner by past experience.

Moreover, none of the remaining personal characteristics (i.e. income, education, age, gender) seems to influence in a policy-relevant manner the degree to which the disclosure approaches enable investors to choose the least costly products.

5.5. Efficiency

The assessment of efficiency involved a comparison of the findings and impacts achieved with the costs that the relevant pieces of legislation place on businesses with regard to disclosure requirements[277]. The conclusion is that overall, the disclosure of information is cost-effective.

The assessment shows that the additional costs for product manufacturer per client ranges between 0.4€ for UCITS and AIFs and 5.7€ and 5.4€ for insurance products and pension products which tend to include more detailed and personalised (and therefore costly) information.

The main adjustment and administrative costs identified for disclosure requirements cover a number of one-off costs originating in EU legislation that product manufacturers or distributors had already incurred (i.e. they are sunk costs) and do not influence the ongoing effectiveness

[277] Neither enforcement costs (for national authorities), nor costs accruing to consumers have been assessed. Furthermore, it does not cover indirect costs such as knock-on effects on the economic competitiveness of operators.

of the rules. While the PEPP regulation has only recently entered into force, we regard the one-off costs of PEPP disclosure requirements, notably the changes introduced compared to PRIIPS rules, also as sunk costs.

These one-off costs include:

- the review of regulatory requirements and relevant guidance;
- outlining roles and responsibilities and procedures within the organisation;
- the technical development of models for calculating returns in different performance scenarios and the costs, as well as writing various pieces of standard text for pre-contractual and periodic information documents;
- legal review;
- designing the documents;
- possibly developing a customised computer application to print personalised pre-contractual and periodic information documents.

While a normally efficient business would have provided similar information to their clients even without regulation, the concrete rules (incl. the methodology for modelling the performance scenario and cost categories) necessitated adjustments requiring an effort from businesses.

The 2012 Impact Assessment of the proposed regulation on KIDs[278] assessed the likely adjustment and administrative costs of the proposed requirements, based mainly on a prior study on the costs of implementation of the UCITS Key Investor Information document (KIID). It was estimated there that the one-off costs for product manufacturers introducing the KIID for UCITS products would reach a maximum of 730 million euro in the EU, but accounting for mitigating factors (such as the proportion of closed funds to open funds in the UCITS market, and the impact of transitional arrangements), the one-off costs could be as low as 290 million euro. The Impact Assessment estimated a one-off cost of 171 million euro for non-UCITS products covered by PRIIPs.

In contrast, the ongoing costs connected to producing and making available disclosure documents, as well as other ongoing costs such as the training of new staff, are rather low. The main tasks are the following:

- preparation of non-personalised pre-contractual information documents, and the regulatory cost for UCITS/AIF;
- preparation of personalised pre-contractual information documents where these are required (individually recording client data, completing template, verifying, printing for personalised KIDs);
- making information documents available to retail investors before closing the agreement;
- client engagement, e.g. responding to questions concerning the disclosed information;
- preparation of periodic/update (personalised) information documents;
- making updated information documents available, responding to questions.

The table below summarises our estimates for the costs indicating the unit costs used and key assumptions where necessary. It needs to be emphasised that these are gross administrative costs - not all of them should be considered as an administrative burden as a

[278] https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52012SC0187

normally efficient company would have information documents with content similar to KIDs, explain them to clients, and send out annual reports on performance etc. even in the absence of the regulations in the scope of this study.

Table.32 - Summary of estimated main ongoing costs of manufacturers and distributors

Cost category	Product type	Assumed duration/ Unit cost	Estimated total cost	Comments
Preparation of non-personalised pre-contractual information documents	*UCITS, AIF funds*	*7 days/fund*	*€28-56million* *(€5,600/fund)*	Assumed volume: 5-10,000 new funds launched per annum, and €100 hourly labour cost. The net cost (administrative burden) is zero, considering that using the KID templates takes less time than alternative arrangements.
Regulatory cost	UCITS, AIF funds	€2,000/fund	€10-20 million (€2,000/fund)	This covers regulatory approval and notification requirements. Assumed volume: 5-10,000 new funds launched per annum.
Preparation of personalised pre-contractual information documents	Private pensions	~5 min per new client (€7.25)	€11 million (€975/fund)*	Recording client and other relevant information, assembling template, reviewing and printing/transferring. Assumed volume: 3 million new contracts per year overall, of which 1.5 million new contracts per year are private pensions.
	Insurance products	~5 min per new client (€7.25)	€15 million (€4,100/life insurance company)	Assumed volume: 2 million relevant new contracts per year.
Making information documents available to retail investors	Private pensions, insurance products	-	-	Predominantly face-to-face meetings were assumed.
	UCITS, AIF funds	€150/1,000 copies	€8-15 million (€1,500/fund)	Preparing print copies, printing on location. Avg. of 10,000 copies per fund assumed.
Client engagement	Private pensions	~5 min per new client (€7.25)	€11 million (€975/fund)*	Going through the KID with client, responding to questions.
	Insurance products	~5 min per new client	€15 million	

Cost category	Product type	Assumed duration/ Unit cost	Estimated total cost	Comments
		(€7.25)	(€4,100/life insurance company)	
Preparation of periodic information documents **Making updated information documents available**	Private pensions	€5/client per year	€300 million (€25,000/fund)	This is assumed to be largely an automated process. Costs including pro rata general costs of preparing the documents (regular compliance review, IT costs, etc.), printing and postal costs, as well as subsequent client engagement. Calculating with all 60 million members in pension schemes (including group pension schemes) and 40 million in unit-linked life insurance.
	Insurance products	€5/client per year	€200 million (€57,000/life insurance company)	

Source: Consortium analysis based on sources and assumptions explained in the text below.

The estimated gross administrative costs use seven days of work input for a new KID (€5,600 per new UCITS KIID), which is consistent with the 2012 IA. Stakeholder interviews undertaken for this study indicated, however, that using the KID templates generally takes less time than the product manufacturers' own marketing materials, especially considering that the templates and methodologies behind them do not change and that staff moving from one company to another do not need to familiarise themselves with new documents. This means that currently, as the industry knows the template and the new methods, the production of KIDs does not involve net costs to manufacturers, compared with the scenario in which the KID templates did not exist. Industry statistics provided by the European Fund and Asset Management Association (EFAMA)[279] show that the total number of UCITS funds in the EU27 was 29,057 at end of 2021, and the number of AIF funds was 26,986.[280] The number of new funds launched in a year is not known but may be around 5-10,000 (an average lifetime of 5-10 years for funds), resulting in a total cost of 28 to 56 million euro.

Regulatory costs for each KIID under UCITS (specific approval and notification requirements) of about €2,000 ought to be considered as well. Considering the same number of new UCITS and AIF funds, the regulatory costs for the industry are estimated at 10-20 million euro.[281]

Distributors also need to familiarise themselves with the documents and respond to client questions, but the effort required is lower than what would be necessary if several types and formats of information material existed in the absence of regulation. This was therefore not considered as a significant cost that needed to be quantified.

With regard to personalised pre-contractual disclosure documents for pension schemes, and unit-linked insurance, the manufacturers and/or distributors of the investment products do incur noteworthy ongoing administrative costs – as documents have to be compiled, transferred (and sometimes explained) individually. Time is needed to select the correct template, to populate it with client data, to check and present/print it, as well allowing time for the client to read and understand it when contracts are concluded. Indications on the typical duration of this process vary considerably, from five to 30 minutes or more. The preparation of the document itself often only accounts for about five minutes of this time. But

[279] https://www.efama.org/node/501
[280] Data is missing for Estonia, Latvia and Lithuania.
[281] Regulatory costs were estimated to reach an average of 2,000 euro; this is higher than the 1,500 euro used in the 2012 Impact Assessment.

allowing the client sufficient time to read it and answering any questions has more significant time implications (0-25 minutes). The duration depends significantly on the complexity of the product and especially the client's willingness to study the document in detail.

The industry association Pensions Europe reports that the pension funds covered by its national member associations (17 countries of the EU27) had about 44 million members in their private pension funds under pillar 2 (these are to a large extent group pension schemes), as well as about 10 million members in complementary pillar 3 schemes (there is a significant overlap between members in the two pillars).[282] Growth in membership between 2013 and 2018 was about 5% per annum. This suggests about 60 million members in private pension schemes and a minimum of three million new contracts per year – group and individuals combined. This estimate is somewhat higher than our findings from the consumer survey, where 7.6% of respondents indicated that they had a pension investment. This would correspond to about 27.3 million EU residents holding such a contract – although this presumably does not include most group pension schemes contracted by the employer. The number of new individual pensions contracts taken out annually (whether by Europeans not yet having any private pension contract or by Europeans signing a new contract) is only a fraction of the stock, and a fair assumption of 5% of new contracts would produce an annual volume of new individual private pension contracts of about 1.5 million. We have used the survey-based estimate of about 30 million for the stock of individual pension schemes in the calculations.

Assuming that preparing the disclosure document for pension products and discussing it with new clients would add an average of 10 minutes (between five and 30 minutes) over the no-regulation scenario, we can calculate an administrative burden of 22 million euro.[283] There were about 110,000 pension funds in the EU - 12,000 without France and Ireland which both have an atypically large number of funds - hence the average cost per fund would amount to about €3,700 per fund (without France and Ireland). The total cost for preparing and sending out periodic information documents, including client engagement, would amount to €300 million (€25,000 per fund).

Insurance Europe's statistics for 2020 indicate an overall contract volume of 171 million for life insurance products in the 14 Member States of the EU27 covered – multiple contracts for one person are possible; indeed the number of life insurance products per capita is around 1.5 in the statistical data provided by Insurance Europe (this can be extrapolated to 250 million contracts at EU27 level).[284] This includes individual and group contracts, although the data suggests that a large majority of contracts are individual contracts. On the other hand, only about one-fifth of the contracts are unit-linked (resulting in an estimated 50 million). In the consumer survey 8.4% of respondents said that they have a life insurance (presumably individual contracts), which would correspond to 30 million contract holders in the EU27. If we make a calculation with about 40 million contracts, and 2 million new contracts per annum which require pre-contractual screening, the administrative costs of pre-contractual information document may reach 29 million euro per year. In 2019, there were a total of 3,177 life insurance companies in 17 Member States covered by Insurance Europe's statistical publication (we assume 3,500 companies for the whole EU), thus the average ongoing costs for one company would amount to around €8,200 euro. The costs of producing and distributing periodic information documents to 40 million clients are calculated to be €200 million (€57,000 per life insurance company).

282 Pension Funds Statistics and Trends.
283 This is calculated with a labour cost of 87 euro used in the 2020 EIOPA Impact Assessment on PEPP, https://www.eiopa.europa.eu/sites/default/files/publications/eiopa-20-504_pepp_impact_assessment.pdf (this is considerably higher than the average labour cost of 29.1 euro in the EU27 in 2021).
284 https://www.insuranceeurope.eu/statistics

Comparing the costs estimated above with the potential benefits resulting from better informing retail clients and thus indirectly avoiding mis-selling of financial products, the efficiency of the regulations seems to be high. The total net assets of UCITS and AIF funds in the EU reached about 19.7 trillion euro at the end of 2021.[285] Based on available partial data and the share of respondents to our consumer survey who said that they held investments funds we calculate that there are about 50 million holders of investment funds in the EU. Private pension funds held about 2.9 trillion euro in 2019, and had an estimated 60 million clients.[286] The total investment portfolio managed by insurers in Europe was ca. 10.4 trillion euro, with about 50 million clients for unit-linked life insurance.[287]

On the basis of a calculation with these numbers, the estimated ongoing administrative burden from information documents accounts for only a small amount per client, and only a minuscule fraction of the net assets managed (see table below). The benefits from avoiding mis-selling products are thus highly likely to exceed the costs by multiple magnitudes.

The analysis shows that the costs of non-personalised disclosure are substantially lower than those of personalised pre-contractual disclosure. However, personalised disclosure has additional benefits for clients that go beyond what generic/non-personalised disclosure can achieve in terms of clarity of expected gains and comparability. Therefore, the somewhat higher costs of personalised disclosure can be considered to be off-set by the additional benefits to the clients.

Table.33 - Estimated total and unit costs

Product type	Estimated total ongoing costs	Number of clients	Assets managed	Estimated cost per client	Estimated cost per net assets
UCITS, AIF funds	€18-35 million	~50 million	€19.7 trillion	€0.4-0. 7	0.0001-0.0002%
Private pensions	€322 million	~60 million	€2.9 trillion	€5.4	0.0111%
Insurance products (life insurance)	€229 million	~40 million clients	€10.4 trillion	€5.7	0.0022%
TOTAL	~€580 million	~150 million clients	€33 trillion	€3.86	0.00175%

Source: Consortium, based on multiple sources.

5.6. EU added value

The main EU added value of rules regarding disclosure and information documents are:

- Standardisation of the categories of information that have to be disclosed in pre-contractual disclosure. This means that across the different products and to an extent also across product types (see section on coherence and effectiveness) the same types of items have to be presented in information documents. Such standardisation is a precondition for comparability.
- Beyond the standardisation of information categories, the rules about disclosure also standardise, for certain product categories (see section on coherence), the way in which the risk level is to be calculated and presented and compared to rewards using

285 https://www.efama.org/sites/default/files/files/Quarterly%20Statistical%20Release%20Q4%202021.pdf
286 Pension Funds Statistics and Trends
287 https://www.insuranceeurope.eu/publications/689/european-insurance-in-figures-2019-data/download/EIF+2021.pdf

a standardised summary risk indicator. Having a common anchoring element (a common scale) for risks and rewards across all products falling under PRIIPS and across the EU is a major element of EU added value. This feature is crucial in simplifying product comparison.

- For cost calculation and cost presentation the legal framework ensures that the same types of costs are calculated and disclosed to potential clients across all products within the scope of the legal frameworks. There are differences for costs calculation and presentation across product categories as discussed in the sections on coherence and effectiveness. The costs calculation and presentation within product types are largely comparable and comparability within a product category (but across product types) is relatively good as well. However on costs, the EU added value is somewhat hindered by the existing inconsistencies in the presentation of costs between pension and insurance products and other investment products (see section on coherence and effectiveness). The EU added value of the standardisation of costs is also somewhat hindered by the fact that the cost that matters the most to the client is the total cost (ideally a personalised one). The legal framework currently presents detailed breakdowns of costs into a (sometimes high) number of sub-categories. These require consumers to make complex calculations if they are to understand their total expected cost. The experiment shows that even when presented with only a small number of cost items expressed in percentages, a significant share of consumers (nearly half) are not able to identify the most advantageous product for them. This means that while the current standardisation of costs disclosure has important added value for market transparency, it has limited added value when it comes to facilitating cost comparisons for, consumers.
- The fact that these rules apply at EU level ensures cross-border standardisation, which has benefits for consumers wishing to compare products from different countries as well as for businesses operating in multiple EU countries.
- The fact that disclosure rules are applied across the EU implies that consumers benefit from the same level of protection arising from disclosure across all EU countries.

The EU added value for the legal framework regarding disclosure stems primarily from the standardisation of key information documents across all EU countries and across product categories. The information documents across the EU countries covered are highly standardised and adopt the same content categories in line with the PRIIPs, UCITS, PEPP and other legal requirements discussed in this analysis. Harmonisation of the risk indicator as well as other content categories makes products more comparable across borders. This creates market transparency and enhances consumer protection through detailed and clear disclosure.

MiFID II and IDD, although less prescriptive in the disclosure standards than PRIIPs UCITS and PEPP, have also ensured the same levels of consumer protection through disclosure during the product selection process. To that end, consumers all across Europe enjoy the same standards and levels of protection when investing, albeit with small changes in the case of investing in insurance and non-insurance products.

In the absence of an EU legal framework, it is likely that countries would have adopted diverging requirements for disclosure both in the information sheet and in the wider advisor's/intermediary's disclosure practices. It is possible that not all countries would have adopted equally stringent disclosure rules. Furthermore, national rules would most likely differ. The differences would not necessarily arise in terms of the types of content categories – i.e. items such as risk, past performance, expected future performance, holding period, etc. However, the anchoring tools used, such as a common risk indicator or the types of costs to be disclosed, would vary. Subsequently the formats would also diverge. Therefore, the divergence would most likely not affect the main principles of what should be disclosed for each product but it would affect in a substantive way the ways in which this information would be presented, the calculation methodologies for risks and costs as well as other details of information disclosed.

Fragmentation of disclosure requirements would lead to differences in the level of consumer protection. It would also imply that manufacturers and distributors operating in multiple countries and selling products in multiple countries would have to comply with different sets of rules which would increase the costs of producing and updating disclosure documentation.

6. Inducements and investment advice

6.1. Introduction

As will be shown later in this section, **professional advice is a key source of influence in retail investment decision-making**. However, advice is also marked by strong information asymmetries between the advisor and the potential investor which puts consumers in a vulnerable position. This vulnerability can be further worsened through the inducements and remuneration mechanisms between product manufacturers and advisors which can result in product mis-selling. The EU legal frameworks covered by this section therefore aim to improve investor protection through rules regarding advice and inducements. The main legal texts concerned by this section are MiFID II and IDD, as they contain the relevant definitions/concepts and specific rules on inducements. Furthermore, MiFID II, IDD, UCITS, AIFMD and PEPPs set out the duty of care obligation. Solvency II/IDD, MiFID II, UCITS and AIFMD contain rules to avoid conflicts of interest, such as continuous organisational rules and remuneration policies. The legal frameworks concerning inducements in the context of investment advice[288] covered in this chapter aim to:

- minimise advisor conflicts of interest so as to ensure the advice delivered to prospective clients is in their best interest;
- inform prospective clients whether the advice given is independent or non-independent and whether the advisor receives an inducement for the sale of a given product so that consumers are aware of the relationship between the product manufacturer and the distributor and take it into account when making their investment decision;
- more generally improve the quality of advice, ensure that advisors meet minimum requirements in terms of knowledge and competence and more generally reinforce the duty of care of retail financial product distributors, as well as to make sure that clients are well informed and understand the advice.

The following principles and practices are covered by these legal frameworks:

- the principle of a duty of care for entities providing investment advice;
- rules for managing conflicts of interest;
- governance of which products can be sold through execution-only services and which products have to be accompanied by advice;
- rules regarding when inducements are permitted and when they are prohibited and associated tests;
- requirement for disclosure of the independent or non-independent status of the advice and disclosure of inducements.

6.1.1. Summary of the relevant legal provisions and the scope of their application

This section provides a high-level overview of the legal provisions related to inducements and advice under MiFID II and IDD. A more detailed analysis of the legal framework is presented in the section analysing coherence.

The **scope of application of MiFID II and IDD differs per type of distributor**, where the MiFID II inducement regime relates to investment firms and the IDD inducement regime relates to insurance intermediaries or undertakings distributing insurance-based investment

[288] This chapter focuses is focussed on the inducements in the context of investment advice. For a detailed discussion on the advice provision of advice to the clients, please consult Chapter 7 "Suitability assessments, demands and needs tests".

products. In the table below we have mapped out the inducement regimes per type of product. As it is shown in the table, both IDD and MiFID II could be applicable to personal pension products

Table.1 - Inducement regime per product

Products		MiFID II	IDD
Securities	Listed shares	✓	
	Bonds	✓	
Investment funds	Retail UCITS	✓	
	Retail AIFs	✓	
Insurance & pension products	Insurance-based investment products (IBIPs)		✓
	Personal pension products	IDD or MiFID II	
Other products	Structured products	✓	
	Derivatives	✓	

Source: Consortium, based on the legal research.

All the products mentioned in the table above could potentially include the payment of inducements.

There are certain **sectoral divergences** in the inducement regimes under MiFID II and IDD, due to the different scopes of application. Under MiFID II, inducements are provided where investment firms pay or are paid any fee or commission or provide or are provided with any non-monetary benefit to or by any party except the client or a person on behalf of the client[289]. Pursuant to IDD, inducements are provided in connection with the distribution of an IBIP, to or by any party except the client involved in the transaction in question or a person acting on behalf of that client[290].

Under MiFID II, inducements are banned for independent advice as well as for portfolio management. A ban on commissions is the rule for investment firms pursuant to MiFID II. Under IDD, a ban on inducements is an exception.

6.1.2. Intervention logic of the measures concerning inducements and advice

The legal frameworks covered in this section do not have an intervention logic that would specifically focus on rules related to advice and inducements. The impact assessment accompanying MiFID II contains an overarching intervention logic for the full set of provisions covered[291] but it does not specifically state rules related to advice and inducements. The IDD impact assessment does not appear to contain an explicit intervention logic[292]. The main objective that advice is expected to address in that impact assessment is formulated very generally – i.e. consumer protection.

Therefore, in the absence of a pre-existing intervention logic, the figure below summarises the re-constructed objectives of the provisions examined in this section as well as their

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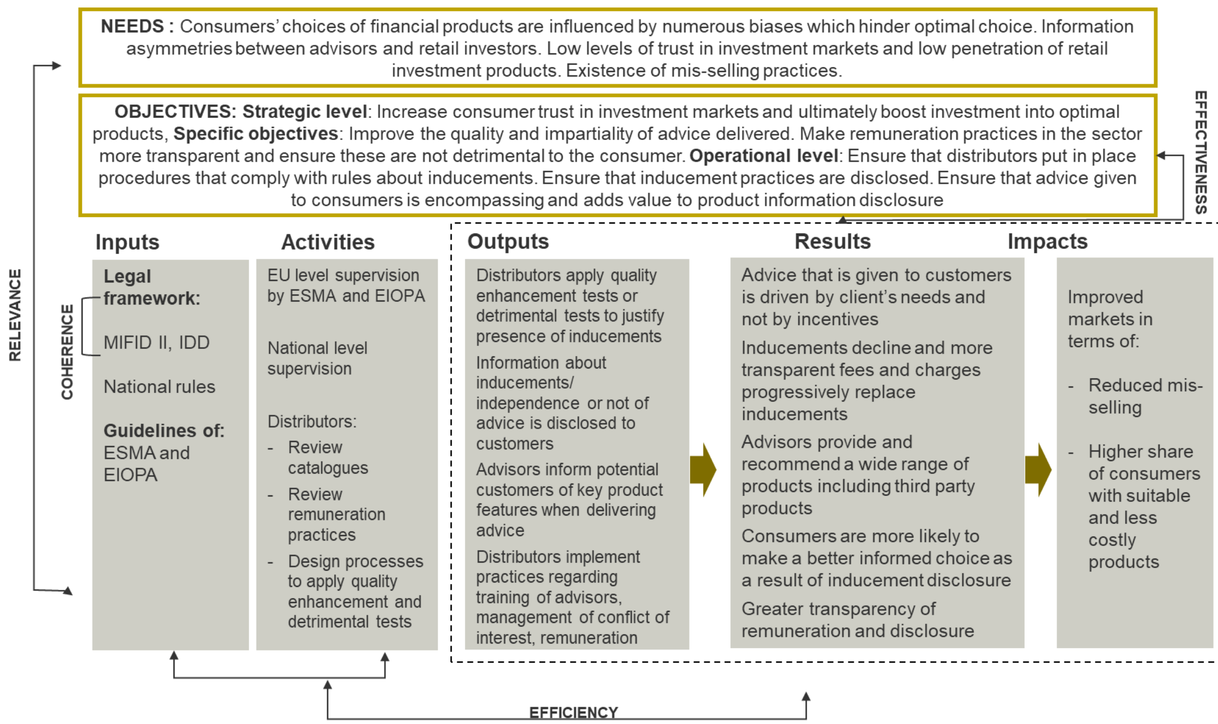
289 For further details please refer to address Article 24(9) MiFID II.
290 For further details please refer to address Article 2(2) IBIPs Regulation.
291 See COMMISSION STAFF WORKING PAPER IMPACT ASSESSMENT Commission staff working paper Impact assessment Accompanying the document Proposal for a DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on Markets in Financial Instruments financial instruments [Recast] and the Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on Markets in Financial Instruments financial instruments
292 COMMISSION STAFF WORKING DOCUMENT IMPACT ASSESSMENT Accompanying the document Proposal for a Directive of the European Parliament and of the Council on Insurance Mediation.

expected outputs, results and overall impacts. It is to be noted that the overall impacts are the same as for disclosure, suitability assessment, demands and needs tests.

It also shows the relationship between the different elements of the intervention logic and the evaluation criteria. These items were used to guide the analysis presented in the following sections.

Figure.1 - Reconstructed intervention logic



Source: Consortium.

6.2. Professional advice as part of the investor journey

Independent advisors are a source of professional advice for more than a quarter of respondents in the consumer survey (28%). Another 45% of respondents got their advice through distributors that they do not consider independent. Most of the remaining, about of quarter of respondents (24%), state that they always followed the financial advice they received. There are large differences in the shares of independent and non-independent advice.

Based on the analysis of product catalogues, banks and insurance companies in practice distribute products under various regulatory regimes and licences. For example, nearly all banks (94%) in the sample are distributing retail UCITS under MIFID II, the majority of the banks (58%) also distribute IBIPs under IDD through bancassurance, exclusive partnerships, and third-party distribution models. Similarly, three-quarters of insurance companies (77%) distribute IBIPs under IDD own distribution channels or third-party distribution models while almost one-fifth distributed retail UCITS (19%) under MIFID II. Fund supermarkets and robo-advisors as well traditional platforms and online brokers qualify for the provision of independent advice or execution only services.

The payment of inducements, either directly or indirectly, by retail investors, stems from the relationship between manufacturers and distributors/advisors. In execution only channels, no advice is provided, but inducements can still be present. The concept of "advice gap" is multifaceted and the link with inducements needs to be better substantiated by regulators and supervisors in MiFID II, IDD and PRIIPs.

6.2.1. Key consumer trends and attitudes related to advice

Before our analysis of the rules and provisions covered by this section, we first present an analysis of key consumer trends and attitudes related to advice based on the survey of 10,500 consumers undertaken in 10 countries[293] covered by this assignment.

Based on a segmentation of the survey results we were able to identify **five main categories of consumers** according to their confidence in making financial investment decisions, their trust in financial advisors and their financial literacy. These main segments are presented in the figure below.

Figure.2 - Characteristics of the five main segments of consumers in relation to attitudes to investment and advice, financial literacy

Struggling consumer	Disinterested in investment	Vulnerable (potential) investor	Cautious investor	Experienced and confident investor
This is the group of consumers who do not have any savings or very little	Consumers who have savings but who state that they are not interested in making financial investments	Consumers who either already have invested in financial products or are interested/ considering doing so. Low/ medium confidence in making financial investment decisions. They also tend to have low to medium level of financial literacy. Medium trust in advice.	Consumers who either already have invested in financial products or are interested/ considering doing so. Who have medium confidence in making investment decisions on their own. Medium to high level of financial literacy and the same when it comes to trust in advisors	Consumers who typically have invested in financial products. Have high confidence in making investment decisions. High level of financial literacy. Mixed trust in advice
Status regarding investments				
No savings	Not interested	Has invested /is interested	Has invested / is interested	Has invested
Confidence in making a decision about financial investments				
Low	Low	Low to medium	Medium	Medium to high
Financial literacy				
Various	Various	Low to medium	Medium to high	High
Trust in advice				
Medium	Rather low	Medium	Medium to high	Mixed

Source: Consortium, based on the behavioural experiment.

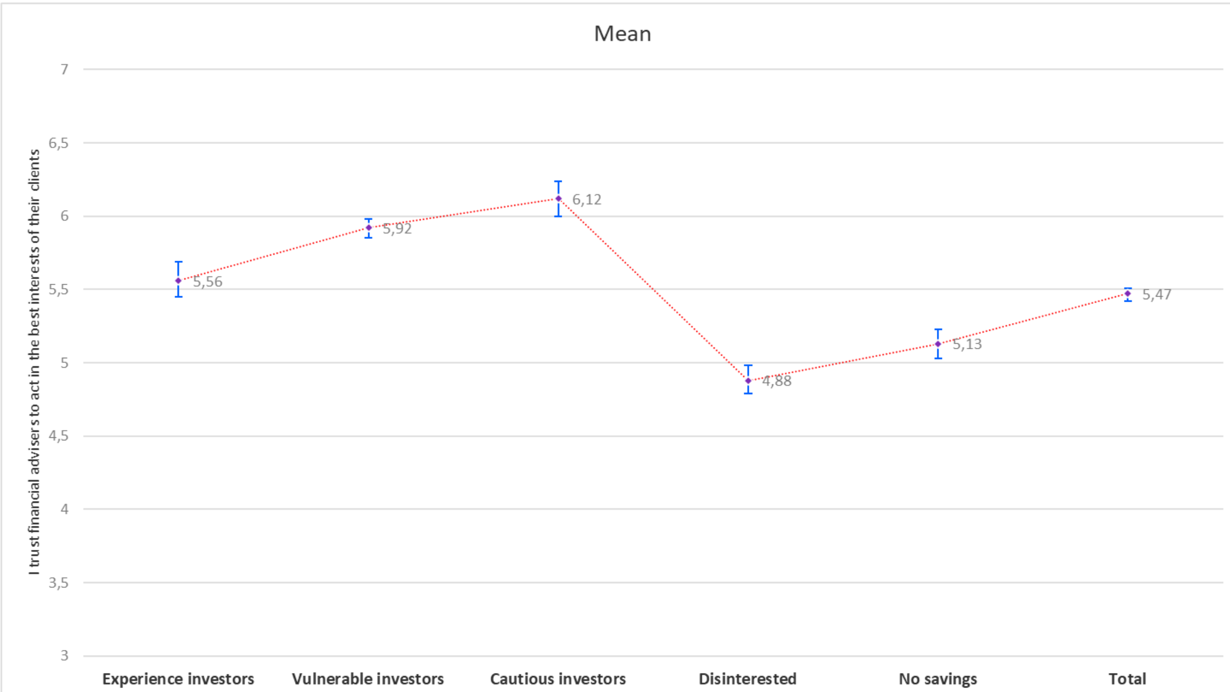
These segments are relevant for this study for several reasons:

- First, the segment of **disinterested consumers** (who have savings but are not interested in investing) is a key target group for the retail investment strategy. These are people who are likely to have money in savings account and who are not investing them in the economy through investment products. The segmentation shows that trust in banking and trust in advice are not the main reasons why this group of people is not interested in investing. Their levels of trust in financial services according to the survey data are not necessarily low. The majority of them state that they tend to trust advisors to act in the best interests of investors and similarly they state that they tend

293 DE, ES, FI, FR, EL, IT, NL, PL, RO, SE.

to trust banks and financial institutions.[294] They are in fact even somewhat more trusting than the experienced investors.

Figure.3 - Mean values of trust in banks and financial institutions by consumer segments



Source: Consortium, based on the behavioural experiment.

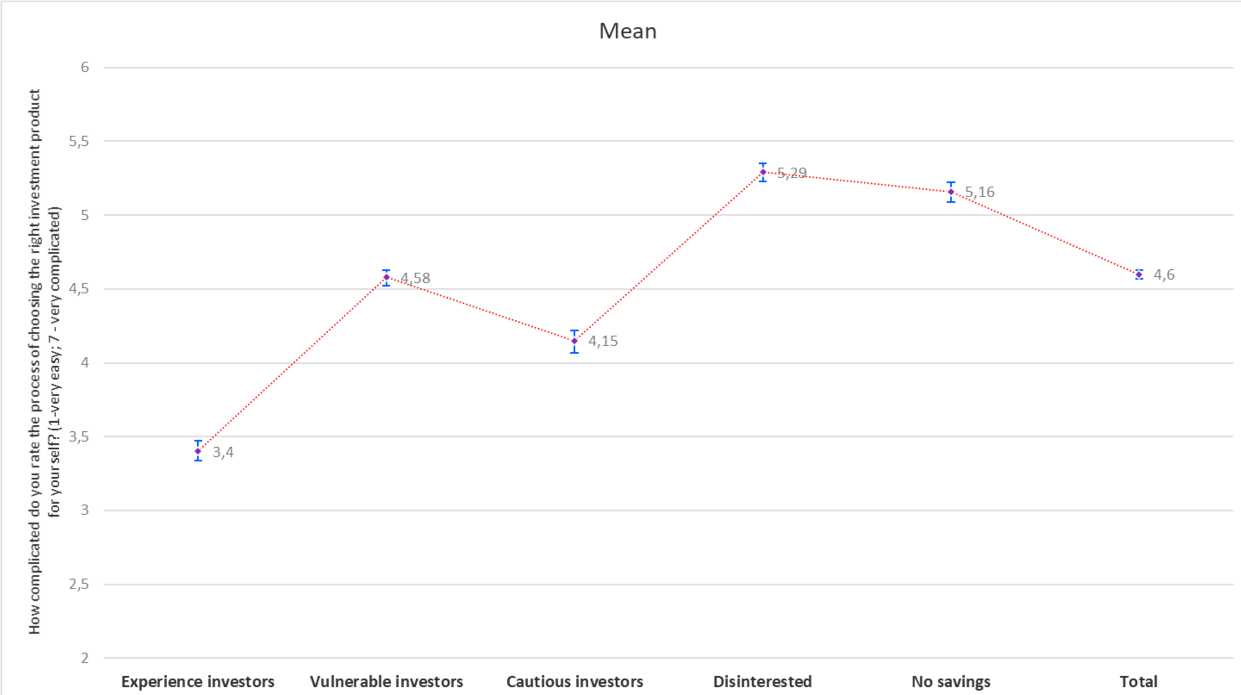
Therefore, to activate this group of consumers, trust in financial services is not likely to be the only lever for their decision. We see that this group of consumers has rather low confidence in their own ability to invest their money successfully in financial products[295]. They are also much more likely to consider that **choosing the right financial investment product is complicated**[296].

[294] The results from ANOVA show that the differences between the mean values for trust in advisors for the consumer segments are statistically significant (F = 107.769, with 4 degrees of freedom and a p value < .001).)

[295] The results from ANOVA show that the differences between the mean values for the ability to invest one's own money successfully in financial products for the consumer segments are statistically significant (F = 123.411, with 4 degrees of freedom and a p value < .001).)

[296] 24% of those with savings but not interested in investing say choosing the right product is very complicated and another 19% say it is complicated, compared with. They are only 3% and 7% respectively to say so among those who have invested in at least one investment product.

Figure.4 - Mean values for ease of choosing the right investment product by consumer segments



Source: Consortium, based on the behavioural experiment.

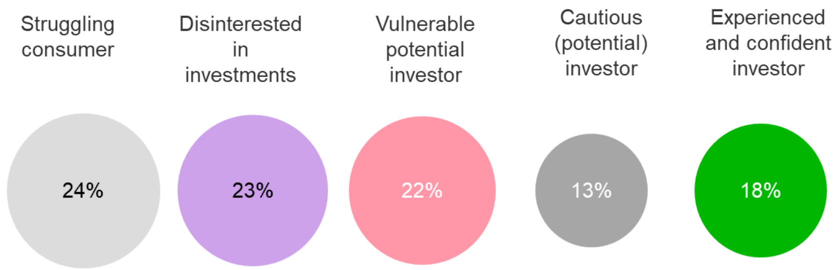
- There is also a **gender dimension** as disinterested consumers are more likely to be women[297]. Finally, it is interesting to note that these disinterested consumers do not have significantly different levels of financial literacy than consumers who have savings and do not yet have products but are interested in investing[298]. This suggests that factors other than trust and financial literacy, more related to self-perceptions of investment ability and more generally willingness to spend time exploring investments, would need to be addressed for these consumers to consider investing.
- Secondly, the **vulnerable segment is a group that is of key concern from a consumer protection perspective**. Because of their rather low or medium level of financial literacy, low confidence in making investment decisions but medium trust in advisors, they are likely to follow advice according to the self-reported data[299]. This was also confirmed in the analysis of the data from the behavioural experiment presented in the section on effectiveness which showed that the vulnerable segment was also more likely to decide in line with the advice they received in form of a letter.
- **Cautious investors are rather more trusting of distributors, but they are also rather confident in making their own decisions**. They are relatively comparable with experienced investors (see below) even though they do not yet have multiple investing experience.
- Finally, the group of **experienced investors** is also interesting from a policy perspective as these are investors who are likely to make their own decisions and

[297] With a chi-square value of 324.897, 8 degrees of freedom and a p-value <0.001, the relationship between gender and the consumer segments is statistically significant.
[298] However – the group of respondents who have invested in one or multiple products does tend to have higher financial literacy than the other segments.
[299] When asked: Did you follow the investment advice received? They tend to respond "yes in all cases" more often than other subgroups.

navigate the supply of investment products with **relative autonomy**. They have high financial literacy and high trust in making financial investment decisions.

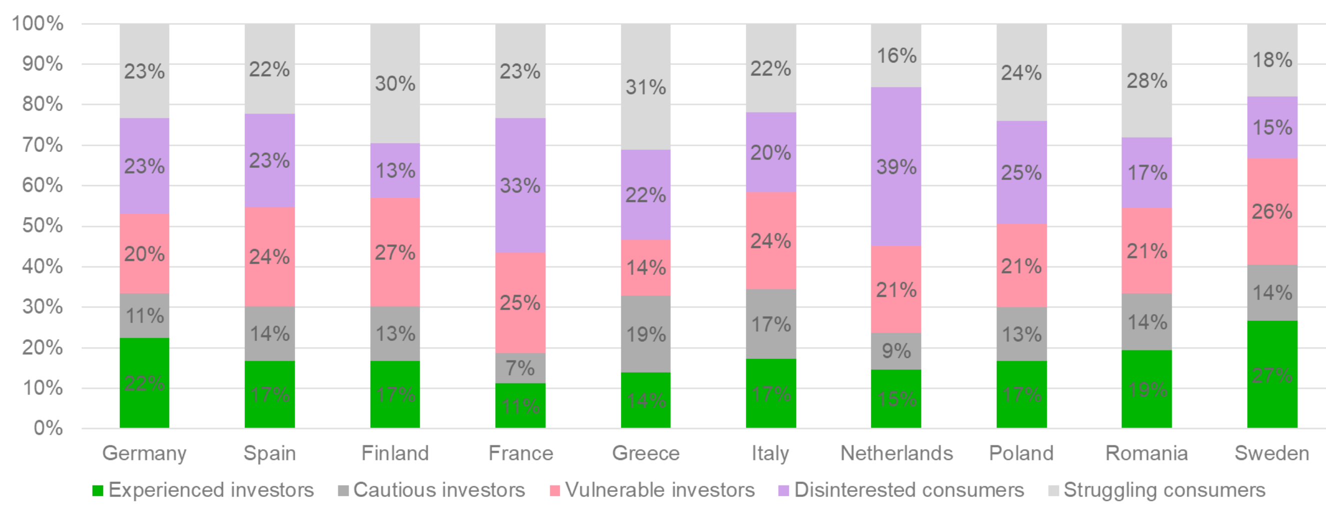
The figure below shows that all five groups represent a sizeable proportion of consumers. It shows that Sweden and Germany are the countries in our sample with the highest share of experienced and confident investors. Netherlands and France have the highest segments of disinterested consumers.

Figure.5 – Size of each segment: share of consumers who fall into a given segment across the 10 countries



Source: Consortium, based on the consumer survey[300], n=10,470

Figure.6 – Size of each segment: per country



Source: Consortium, based on the consumer survey[301], n=10,470

The core focus of the remainder of this section is on **professional advice delivered by investment firms or insurance distributors**. Advice delivered through digital means is also addressed but to a lesser extent as the mystery shopping exercise carried out covered only robo-advisors and did not cover other execution-only platforms. As contextual information it is relevant to provide a review of the different sources of advice that consumers receive. As shown in figure 6.7 below, professional advice (whether through traditional means of face-to-face or telephone meetings or through digital means) is only one type of advice.

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300 The sample covers banked consumers – i.e. who at least have a bank account.
301 The sample covers banked consumers – i.e.., who at least have a bank account.

Many people receive **informal investment advice** (28% of respondents). Family, friends or peers represent an important source of influence on investment decisions. As also shown below, advice via these informal channels is also often followed. It is also noteworthy that 43% of consumers who are investing or have already invested (i.e. hold at least one investment product) received no advice[302]. In fact, 23% of investors invested without receiving advice[303]. The share of respondents who have made one of multiple investments without receiving any advice is rather high in the Netherlands (34% of investors in our sample state not having received advice). It is also higher in Sweden, Greece and Spain[304].

Another notable fact in the figure below is the **role of digital advice**. Some 14% of respondents stated that they had received digital advice. When asked about the more granular sources of advice, we see that 12% say they received advice or guidance through a robo-advisor, web-comparator or equivalent. In other words, while digital advice (or digital means to search and select products) remains in a minority it is not negligible as today more than 1 in 10 investors/ aspiring investors use it. The share of consumers using digital sources to select products is particularly high in Poland (22%) and Romania (19%) while it is low in Italy (7%)[305].

Independent advisors[306] are a source of advice for more than a quarter of respondents in our sample (28%). On the other hand, 45% of respondents got their advice through distributors that are not seen by them as independent[307]. The countries where consumers most frequently got advice from an independent advisor are Greece (36%) and Poland (34%)[308]. The countries where, on the contrary, the product manufacturer was also most often the one giving the product advice are Spain (37%), Germany and Finland (35% in both countries)[309].

When looking at the share of investors in our survey (excluding aspiring investors) according to the channel through which they invested we see that: **61% have invested through a bank, 15% through an insurance company and the same share through portfolio management services, and 7% through a robo-advisor or a digital platform**. There are also some country specificities. In Finland the predominance of banks is even higher (73%). In Greece on the other hand less than half of investors invested through a bank (48%). In Greece on the other hand 23% of investors invested through an insurance company. The share of investors who used portfolio management services is high in the Netherlands (20%), and the share of people using robo-advisors or digital investment platforms is high in Poland (11%) and Greece (10%)[310].

Finally, the data below also shows that people tend to trust and follow the advice they receive. A quarter of respondents (24%) state that they always followed the financial advice they received. This is important as it shows **the vulnerability of consumers to advisors**. While this group that always followed the advice received is a minority, it is nevertheless a sizeable minority. The share of people who said they always followed the advice they received is

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302 With a chi-square value of 150.871, 3 degrees of freedom and a p-value <0.001, the relationship between not receiving advice and the investment experience groups is statistically significant.

303 29% of people who invested in a single product never received any advice and 20% of people who invested in multiple products did so without advice.

304 With a chi-square value of 78.868, 9 degrees of freedom and a p-value <0.001, the differences noticed between the countries in terms of the share of respondents not receiving advice are statistically significant

305 With a chi-square value of 61.107, 9 degrees of freedom and a p-value <0.001, the differences noticed between the countries in terms of the share of respondents receiving digital advice are statistically significant.

306 In the survey these were defined as: independent advisor - a broker that sells a range of financial products but does not assemble/ manufacture any of them.

307 28% of respondents got advice from distributors that are also manufacturers and 17% from distributors offering them a third- party product.

308 With a chi-square value of 37.229, 9 degrees of freedom and a p-value <0.001, the differences noticed between the countries in terms of the share of respondents receiving independent advice are statistically significant.

309 With a chi-square value of 60.780, 9 degrees of freedom and a p-value <0.001, the differences noticed between the countries in terms of the share of respondents receiving advice from the manufacturer are statistically significant.

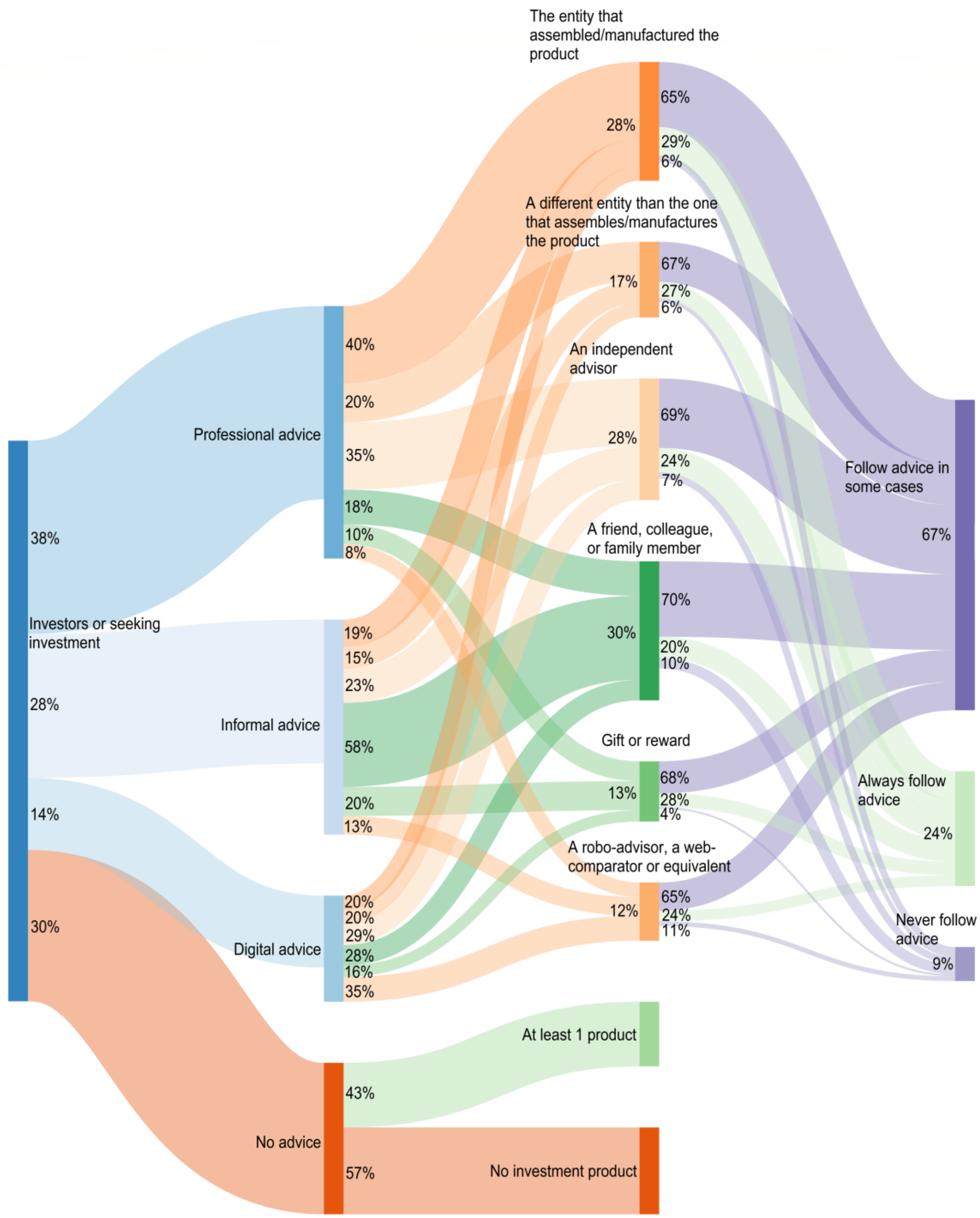
310 With a chi-square value of 134.184, 36 degrees of freedom and a p-value <0.001, the differences noticed between the countries in terms of the share of respondents that were provided with the investment opportunity by different entities are statistically significant.

particularly high among those with a low level of education, lower income groups and with very low to low financial literacy[311]. This is also in line with the fact that people with low education, lower income groups and low financial literacy are somewhat more likely not to have compared products but to have invested in the first product they found or was recommended to them[312]. The fact that the group of people who are particularly trustful when receiving financial advice also tends to be vulnerable in terms of financial literacy and income losses further enhances the need to ensure that when they receive advice, the advice is in their best interest.

[311] 46% of respondents who invested or were interested in investing said having always followed the advice and they were 35% of those with low financial literacy. 32% of people with low equivalised income said that they always followed the advice they received on investments they received.

[312] 14% of investors in the sample made no comparisons and got the first product they found or were recommended as an investment.16% of women did not shop around while there were 13% of men. 25% of those with only a basic level of education and 16% of those with secondary education did not shop around compared while they were 13% of those with tertiary education. 17% of those with low, and 16% of those with medium equivalised income did not shop around (13% of those with high income). 18% of those with low literacy levels vs 14% of those with high literacy levels fall into this category.

Figure.7 – Sources of advice and the extent to which consumers follow advice (the base are respondents who are interested in investing, looking to invest or already have at least one product)



Source: Consortium, Survey of consumers (n=5,546 people who have savings and have either already invested or are actively looking to invest or are interested in investing).

Financial advisors and financial services companies as well as insurers are important triggers for influencing investment decisions. When asked what triggered their decision to invest (question only put to those who have invested in at least one product) the most commonly mentioned trigger was low interest rates (54% of investors in our survey), but this was followed by a suggestion from a bank or a broker (23%)[313]. Another 10% stated that their banking app or website made it attractive and 4% saw an advertisement. The other factors, outside of the financial service sector were: influence of peers (people around me talk about it) – 16% - and the complexity of the real estate market (11%).

There are notable country differences when looking into the influence of financial advisors or brokers on the investment decision. In Italy, Spain and France the share of investors who decided to invest as a result of a recommendation by an advisor or broker is rather high (38%, 33% and 31%). In the Netherlands, Poland and Sweden on the other hand it is low (12%, 13% and 16% respectively)[314].

6.2.2. Current practices and trends regarding product distribution and the provision of independent and non-independent advice

Building on the picture presented above about retail investor exposure and the take-up of advice (the demand side), in this section we discuss the supply side of product distribution and provision of advice.

At present, **non-independent advice remains the prevalent model for most distributors of retail investment products**. Among banks, asset/fund managers and insurance companies active in the EU non-independent advice is more commonly used than independent advice to distribute products (see Table below). In the US and the UK, there has been an organic development and growth of disintermediated advice. In contrast, only a small share of independent financial advisors (IFAs) are emerging in countries such as Germany, Spain, Italy, the Netherlands, where their capacity to penetrate well-established markets is lower. Fund supermarkets and robo-advisors, where the retail investor is charged the fee separately, also qualify for the provision of independent advice. Traditional platforms and online brokers provide only RTO (reception, transmission and execution of orders) without advice.

Table.2 - Prevalent advice across distributors

Independent advice	Non-independent advice
Independent financial advisors	Banks
Robo-advisors	Insurance companies and intermediaries
Fund supermarkets	Asset/ fund managers
Trading platforms (no advice)	
Traditional/online brokers (no advice)	

Source: Consortium.

Across all countries covered, independent advice is deemed not significant in the overall provision of advice according to the interviewees. In the Netherlands where inducements are banned no advice execution-only is prevalent, independent advice now represents 45-65% for IBIPs and other complex products.[315] In Luxembourg, the national supervisor Commissariat aux Assurances (CAA) notes the disproportion between 7000 agents and only 117 independent brokers.

313 Multiple choice question.
314 With a chi-square value of 126.560, 9 degrees of freedom and a p-value <0.001, the differences noticed between the countries in terms of the share of respondents that decided to invest following the recommendation of a bank/broker are statistically significant.
315 NL insurance trade association 1.

The reasons mentioned for the limited market share of independent advisors in these countries are the following:

- The cost of advice: the common argument made was that consumers prefer to get their advice "for free" 316. In most markets it is noted, especially by the authorities and the consumer associations that people do not see the immediate benefits of having independent advice for which they have to pay.
- The minimum amount of money to invest: independent advisors often establish a minimum threshold for investments.
- A lack of awareness about the service.
- A lack of understanding of what an independent advisor is and the potential benefits of taking their advice.
- An already crowded market was also mentioned in some cases as a barrier to the development of independent advice.

The table below summarises the **main characteristics of selected markets covered** in this study in terms of the provision of advice. This is based on a review of national studies as well as stakeholder interviews.

Table.3 - Main characteristics of selected markets in terms of independent and non-independent advice

Country	Predominant model	Additional explanation
Austria	Non-independent advice	Retail investors have limited willingness to pay for independent advice. Fee-based advisors (Honorarberater) represent a negligible proportion, execution-only has also increased.
Czechia	Limited advice	The advice that is provided in connection with the service, usually with no extra charge (non-independent advice). Independent advice is present but there is limited demand from retail investors.
Germany	Non-independent advice	The non-independent advice model linked to turnover/sales of products remains prevalent, with only a small part being replaced by quality-enhancement inducements.[1] Independent advice is provided at a small scale by around 1,700 fee-based advisors (fixed hourly rate) registered with the industry association.
Greece	Non-independent advice	Execution-only is the predominant model for securities and mutual funds and non-independent advice for insurance and pension products. Advisory and portfolio management services (independent) are mainly provided to private banking clients (over EUR 200k).
Italy	Non-independent advice	Non-independent advice is the dominant model, even insurance brokers and local agents usually offer products from a single manufacturer, with an exclusivity or quasi exclusivity clause. Most retail investors are not willing to pay a direct fee for investment advice. According to a survey in Italy in practice only 32% of surveyed households are willing to pay for overall advice.[2]

[316] However, the advice is not really for free, the costs are only less easily visible for the consumer/investor.

Country	Predominant model	Additional explanation
		Independent advice is provided on a small scale by about 250 providers.
Finland	Non-independent advice	The demand for independent (fee-based) investment advice is rather limited. The threshold for independent personal advice has increased, with smaller retail clients losing access altogether or turning to execution-only platforms. Since 2008 there is has been a ban on commissions for insurance brokers, guaranteeing independence beyond IDD.
France	Non-independent advice	The main distribution networks are captive - banks and insurers - with the role of advisors considered indispensable.[3] To date, there have been few authorisation applications for purely independent advisors. Few advisors comply with the obligation to state whether the advice given is independent or non-independent, according to the AMF, the competent authority in France.
Ireland	Non-independent advice	The use of independent advice is highly regulated through an addendum to the consumer protection code[5]. A shift from inducement-based non-independent advice model towards discretionary or execution-only models has been observed in recent years.
Latvia	Limited advice	The demand for paid investment advice is limited; mostly private banking for wealthy individuals. Non-independent advice is mainly provided by retail banking groups. Independent brokers work mostly with non-life insurance products.
Luxembourg	Non-independent advice	Many domestic retail investors have accounts with five banks, primarily with non-independent advice. A shift to private portfolio management (independent) or execution-only, but no longer retail advice. For insurance products, the market counts 7,000 tied-agents compared with 117 brokers that give independent advice.
Poland	Non-independent advice	A 2020 survey found that none of the investment firms (mainly banks) provided independent advice. The network of distributors that are independent from banks is small. The development of fund supermarkets with no active investment advice is welcomed by retail investors.
Romania	Limited advice	The provision of advice is rather limited, execution-only or guidance services for retail investors are dominant in banks. For life insurance products, advice - mostly non-independent - is mandatory.
Netherlands	Limited advice	Retail investors almost exclusively invest on an execution-only basis as inducements are banned. Independent advice is common for some insurance and pension products for which fee-based independent advice is mandatory. Independent advice is available for wealthier investors (over EUR 75k).
Spain	Non-independent advice	Independent advice by banks is largely targeted at wealthier clients with one-time, non-independent advice for retail investors.

Country	Predominant model	Additional explanation
		Outside the banks, independent financial advisory companies (EAF) manage around 35% of retail investor assets. Retail investors are not accustomed or willing to accept being billed directly for independent advice. However, in practice a retail investor could pay EUR 200 for independent advice, while with retail banks this could easily be doubled, according to the Organisation of Consumers and Users (OCU).
Sweden	Non-independent advice	Retail investors are reluctant to pay direct fees for independent advice, even though it is common to switch between distributors.

Source: Consortium, based on the country desk research and stakeholder interviews.

Looking across product groups, shares and bonds are usually provided without advice, through independent platforms or the brokerage services of in-house/third-party distributors (see table below). In some instances, bonds are sold under advice and subject to the inducements regime. The advice for investments funds is primarily non-independent (i.e. with payments of inducements) or limited (i.e. execution-only or simply the provision of information within open and/or closed distribution models). Insurance and pension products are offered through own distribution channels (direct distribution, bancassurance or tied agents) but also through networks of insurance intermediaries with or (in most cases) without independent advice. In general, independent portfolio management and/or advisory services are available to private/wealth management clients and not to retail clients. Structured products and derivatives are available on execution-only platforms and on the basis of non-independent advice in traditional distribution channels.

Table.4 - Prevalent advice across product groups

Independent advice	Non-independent advice	Without advice (execution only)
Shares and bonds	Shares and bonds	Shares and bonds
Investment funds	Investment funds	Investment funds
Insurance and pension products	Insurance and pension products	
	Other products	

Source: Consortium, based on the country desk research and stakeholder interviews.

Inducements

The payment (or not) of inducements, either directly or indirectly, by retail investors, stems from the relationship between manufacturers and distributors/advisors, as represented in Table 6.5 below. Manufacturers, banks, insurers, asset/fund managers and pension funds/schemes work either with:

- their own in-house advisory/distribution channels (banks, insurance/pension distributors, asset/fund managers, fund supermarkets, financial advisors) with direct payment of inducements; or
- third-party distributors/advisors with indirect payment of inducements (retrocessions).

In execution-only channels, no advice is provided but inducements could still govern the relationship between manufacturers and distributors (for example, PFOF or funds managers paying distributors to present their funds to potential clients).

According to EFAMA[317], in Europe, on average fund managers retain 41% of the total recurring fees while distributors/advisors are paid 38% through retrocessions. Around 21% is used to cover operational services such as custody/depository, administration and transfer agency duties. The answers to ESMA's survey[318] on UCITS indicate that distribution costs are either part of entry charges or direct fees paid by investors in Austria and Portugal. In other jurisdictions, including Belgium, France, Germany, Ireland, Italy, distribution costs are included in direct fees, such as management fees, and indirect fees. In Finland, Greece, Spain distribution costs are included in the management fees that are part of the ongoing costs. In several cases fees are shared between the UCITS manager and the distributor. Therefore, investors are indirectly affected.

As described in EIOPA's Thematic Review[319], monetary incentives from asset managers to insurers are very widespread in the industry; 81% of participating insurance undertakings received monetary incentives and remuneration from investment managers. The monetary incentives and remuneration received by insurance undertakings participating in the survey totalled EUR 3.7 billion. The estimate (outstanding business) for the entire market is EUR 5.2 billion in 2015 For those undertakings that engage in these monetary practices, monetary incentives and remuneration received represent a median value of 0.6% of Assets under Management (AUM) and 46% of fund management charges. Monetary incentives are predominantly recurring in nature. The follow-up analysis implemented on the same sample in 2018 shows an increase in the amount of monetary incentives between 2015 and 2018 at a compound annual growth rate of 8.5%. Overall, for almost 90% of participants that receive monetary incentives and remuneration, total remuneration is less than 1% of AUM. In the case of insurance products, distributors receive on average 46% of fund management charges (ranging between 25% and 75%).

Table.5 - The relationship manufacturer-distributor/advisor – retail investor

Manufacturers	In-house or third-party distributor/advisor (with inducements)	Inducements (being passed on to retail investor)
Banks **Insurance companies** **Asset/ fund managers** **Pension funds/schemes**	Banks Insurance/pension distributors Asset/ fund managers Fund supermarket Financial advisors	Direct/Indirect Direct /Indirect Direct Direct Direct
	Execution-only (without advice)	
	Banks Traditional/online brokers Robo-advisors Trading platforms/brokers	No/Indirect No/Indirect No/Indirect No/Indirect

Source: Consortium, based on the country desk research and stakeholder interviews.

6.2.3. Product distribution according to distribution channels

In the table below, the distribution channels are presented from the retail client perspective, considering the presentation of the distributor to the retail client rather than

[317] EFAMA (2021). Perspective on the cost of UCITS, Market Insights, September. Available at:https://www.efama.org/sites/default/files/files/Market%20Insights%20Issue6%20costsUCITS.pdf

[318] ESMA (2021). Annual Statistical Report - Performance and Costs of Retail Investment Products in the EU, 21 April 21. Available at: https://www.esma.europa.eu/sites/default/files/library/esma_50-165-1710_asr_performance_and_costs_of_eu_retail_investment_products.pdf

[319] EIOPA (2017). Report on Thematic review on monetary incentives and remuneration between providers of asset management services and insurance undertakings, 26 April 26. Available at: https://register.eiopa.europa.eu/Publications/Reports/16.%20EIOPA-BoS-17-064-Report_Thematic%20review%20on%20monetary%20incentives%20and%20remuneration.pdf

the license. Indeed, especially banks and insurance companies often present themselves as entities to retail investors, but in practice distribute products under various regulatory regimes and licences. For example, many banks in the sample (94%) distributed retail UCITS under MIFID II, while a majority of banks (58%) also distribute IBIPs under IDD through bancassurance, exclusive partnerships, and third-party distribution models. Similarly, the large majority of insurance companies (77%) distributed IBIPs under IDD own distribution channels or third-party distribution models as well as a minority of insurance companies (19%) distributed retail UCITS under MIFID II.

Table.6 - Share of distributors that contain a product category in their catalogues

Product group	Product category	Banks	Insurance companies	Independent financial advisors, robo-advisors	Fund supermarkets	Traditional/ online brokers	Trading platforms	Asset/fund managers
Securities	Equities	84%	3%	20%	0%	100%	100%	14%
	Bonds	77%	1%	20%	0%	81%	20%	14%
Investment funds	UCITS	94%	16%	100%	100%	100%	90%	93%
	AIF	72%	2%	20%	67%	50%	10%	64%
Insurance & pension products	Insurance-based investment products	58%	78%	0%	0%	6%	0%	7%
	Personal/ individual pension products	70%	77%	40%	0%	25%	10%	21%
Other products	Structured Products	63%	0%	20%	0%	88%	10%	7%
	Derivatives	51%	0%	20%	0%	88%	20%	7%

Note: The table should be read by columns – i.e. 84% of banks distribute equities.

Source: Consortium mapping of product catalogues

When looking at the consumer survey data we see that the majority of consumers have invested or have taken advice to invest from a bank (61%), followed by insurance companies and portfolio management services (15% of respondents in both cases), while 7% invested or sought to invest through robo-advisors or digital platforms. A cross-tabulation between products owned by survey respondents and the distribution channels they used shows that[320]:

- in the case of the people who invested in a pension product many more say that they invested through a bank (62%) than through an insurance company (17%);
- similarly among the people who have life insurance products, a far higher share say they invested through a bank acting as an insurance intermediary (60%) compared with a standalone insurance company (20%).

Looking at the data the other way around we see that the people who say they invested through a bank are most likely to have invested in the following products: investment funds, listed shares, life insurance. People who say they invested via an insurance company/insurance intermediary/investment firm registered under MiFID II/IDD are most likely to hold life insurance, pension products and investment funds. People who have

[320] This data combines answers from two independent questions: a) In which of the following financial product or service did you invest in (multiple-choice)? and b) Which of the following types of institutions provided you with the opportunity to invest? These questions were not asked one after each other and the question about institutions was asked in general and not per investment product.

invested through robo-advisors or digital platforms are most likely to have invested in crypto-assets, listed shares, investment fuds or ETFs.

6.2.4. Main trends regarding advice

At present, **independent advice tends to be the exception**. Non-independent advice remains the dominant model as shown above. The main differences across countries, distributors and products stem from the savings rates/available capital of EU households, the development of capital markets and the diversity of distributors at national level. In terms of asset allocation, the move towards passive, low-cost solutions, such as index-linked or ETFs, is expected to continue in the coming years. In terms of the provision of advice, the interviewed stakeholders indicated that this is currently largely skewed towards the segment of wealthier investors and not the retail segment covered in this report. Digitalisation and sustainability are horizontal themes in financial services, also affecting retail investments.

Stakeholders indicated in the interviews that over the last three years investment decisions relying on advice have remained stable or are even growing. The **low interest rate environment has also increased the interest in alternatives to bank saving products**. These alternatives are more likely to require the provision of advice. However, many distributors have also decided to move to a discretionary model or execution-only model, creating an advice gap for investors with smaller amounts of capital to invest, according to industry representatives. For certain segments for whom advice provision can no longer be supported through cross-subsidisation, the intermediaries might consider the advice provision as not economically interesting enough. Therefore, public and private efforts to enhance financial education/literacy may not be sufficient to tackle this problem.

Another trend is the gap between those wanting advice and those able to receive it - called **advice gap**. Independent and/or online-driven advice is expected to partially fill this gap in the coming years (see the box on robo-advice in the next page), but there is not enough evidence to ascertain this at this stage. Nevertheless, the move towards execution-only may be a conscious choice of investors, or it may be involuntary and lead to consumers deciding not to invest or to suboptimal investment decisions.

Insufficient financial education/investment experience, the lack of objectivity in advice or mis-selling practices, limited products considered (e.g. only bank or insurance products from a limited number of providers) were indicated as the main reasons for **suboptimal investment decisions** based on investment advice. Some best practices were reported. For example, Consob has required distributors to offer advisory services also for brokerage activities in order to enhance consumer protection. In Spain, advisors at some institutions have put in place multi layered warning systems, including with regard to complexity, when the products are not suitable for the potential client.

In Germany, a study undertaken by the Ruhr Universität Bochum[321] found that investors have a **high degree of trust in their advisors**. The vast majority declared that they completely trust their advisors with their investment decision and that they do not need any additional documents. In this context, the same majority would prefer not to receive any further information about the process, or at least to be able to opt out of such information.

In terms of recommendation for more complex products, it is interesting to note that most companies issue warnings, but none block the investment.[322] This is further treated in the suitability assessment section (see section 7.4.6).

[321] MiFID II/MiFIR und PRIIPs-VO: Effektivität und Effizienz der Neuregelungen vor dem Hintergrund des Anleger-undVerbraucherschutzes; Februar 2019, p. 16; available at: Auswirkungsstudie MiFID II/MiFIR und PRIIPs-VO:Effektivität und Effizienz der Neuregelungen vor dem Hintergrund des Anleger- und Verbraucherschutzes

According to the Consejo General de Economistas[323], most complaints about investment advice were made to banks (84%) in Spain as the main distribution and advice channel.

Box.1 The development of robo-advice

In the last five years, robo-advisors have entered the retail investor market offering cheaper products, lower barriers for access to advice and more personalised product choices compared with existing distributors. Nevertheless, disruption in the current distribution models by stand-alone robo-advisors is not yet evident due to the high cost of client acquisition. However, retail banks and asset managers have developed new robo-advice in-house or partnered with/acquired financial technology companies in order to increase popularity among the existing client base or using it to acquire new target groups. The target group is currently primarily young, tech-savvy investors with limited means to invest. From a regulatory perspective, these providers are covered by the MIFID and IDD. Like other distributors, robo-advisors can operate under different frameworks: execution-only, investment advice and discretionary advice.

Germany leads in terms of current user adoption of robo-advice (and AUM), followed by Spain, Italy and France. According to BVI, Germany's share of the EUR 13 billion EU robo-advisor market is almost 60%, with over 300,000 clients in the country, equivalent to 1.1% of German retail client assets. Robo-advisors primarily advise on ETFs and other index-linked funds, in some instances they also advise on shares (Netherlands), mutual funds (Spain) and life insurance products (France). In Germany, a recent development in obtaining investment advice is the use of robo-advisors that have a minimum investment amount of EUR 5,000 to EUR 10,000, much higher than in the past. In Spain, the success of robo-advisors has been attributed to delivering better returns as a result of lower costs relative to other financial institutions for their investment funds. In the Netherlands, the growth in do-it-yourself (DIY) and new semi-automated portfolio management has accelerated - in addition to robo-advisors - as a result of the ban on inducements. From a regulatory standpoint, these providers are tech neutral, being either regulated under MiFID II or IDD. In Sweden, there are a few actors that are fully independent, but this is relatively common among robo-advisors.

Source: Stakeholder interviews

In terms of availability, **face-to-face and domestic remain the predominant model of advice** compared with automated advice which can be delivered cross-border with greater ease. Brokers/trading platforms, fund supermarkets or robo-advisors operating cross-border provide no-advice, i.e. execution-only services. Robo/digital platforms are not expected to progressively replace face-to-face in the countries reviewed.

The **cross-border provision of financial products[324] is limited**, except for investment funds passported through distributors at national level. Luxembourg and Ireland are global distribution platforms. For Austria, Germany and France, the balance between domestic funds and those also marketed abroad is fairly even. Fund domiciles such as Italy and Spain market products mostly domestically. However, round trip funds are significant for Italy where domestic funds represent only a small part of the retail market.

In the Netherlands, the authorities have expressed **concerns over zero-commission/neo-brokers operating under passports**, in particular not acting in the best interest of clients and the type of inducements, such as payment for order flow (PFOF) or kick-backs from product manufacturers. The Commission has proposed a ban on PFOF as part of the MiFID II Review.

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[323] Empresas de Asesoramiento Financiero en España (2019), Consejo General de Economistas, https://economistas.es/Contenido/Consejo/Estudios%20y%20trabajos/Estudio%20El%20sector%20de%20las%20Empresas%20de%20Asesoramiento%20Financiero%20en%20Espa%C3%B1a%202019.pdf?_t=1577979356

[324] Amariei, C. (2020). Asset Allocation in Europe: Reality vs Expectations, CEPS-ECMI Task Force Report, Brussels, 24 April 24. Available at: https://www.ceps.eu/ceps-publications/asset-allocation-in-europe/

Box.2 Gamestop and implications for Europe

In the context of the "GameStop case", several implications for retail investors in the EU have been highlighted in the public debates with EU representatives[325]:

- In Europe, limited room for coordinated/concerted strategies to buy and sell under certain conditions and at a certain point in time by retail investors (not beyond national border, a certain interest in IPOs, less liquid).
- Both short selling (covered and naked) as well as securities lending are more tightly regulated in the EU than in the US.
- Monitoring the increased interest in certain stocks not underpinned by fundamentals.
- Access to simple and complex derivatives for retail investors – the adequacy of appropriateness tests.
- Sudden exclusion of retail investors from trading platforms (no large margin calls in the EU CCPs) – investor protection – gates.
- Reliability and quality of that information from social media and other unregulated trading platforms/also disseminating information.
- The phenomenon of zero-commission trading, and specific aspects of brokers' business models (selling the retail trading flow to market makers) that may incentivise the adoption of risky short-term trading strategies by retail investors.
- The payment for order flow (PFOF) practice assessed against the MiFID II requirements on conflicts of interest, best execution and inducements (already prohibited in some EU MS).
- Other views: a "two-sided" market is a market whereby the platform subsidises free access for one side (retail) with a fee on the other side (institutional) not necessarily damaging.
- Scrutiny of the gamification of investment - trading apps, MiFID II technology neutral (fintech and incumbents).

In July 2021, ESMA[326] issued a statement to warn firms and investors about the risks arising from payment for order flow and the business models of zero-commission online brokers. The statement outlines a number of investor protection concerns raised by PFOF connected to the requirements on conflicts of interest, best execution, inducements, and cost transparency. Other concerns, not directly linked with GameStop, include the broad availability of risky and complex products, margin trading with such products, the use of gamification elements to steer clients to trade these products or to trade too often and misleading marketing communications.

In its Call for Evidence released in October 2021, ESMA[327] sought to gather stakeholders' view and to collect additional evidence in the area of online platforms, withwith a focus on PFOF and online brokers, but also on the impact on retail investors` behaviour of information shared on social media and the effectiveness of warnings in ensuring sufficient protection for retail investors when accessing "non-advised" services (MiFID II).

When an investor buys or sells a stock or ETF, the broker typically sends the order to a market maker to execute the trade. In exchange for that order flow, the market maker kicks back a portion of its fee to the broker, thus eliminating the need for the broker to charge a commission. The fee comes from the bid-ask spread, or the difference between what it costs to buy (ask) and sell (bid) a stock or ETF.

[325] ECON Committee (2021). GameStop and similar recent market events: Exchange of views with representatives of the European Commission and the European Securities and Markets Authority, 23 February 23. Available here

[326] ESMA (2021). Statement on episodes of very high volatility in trading of certain stocks, February. Available at: https://www.esma.europa.eu/document/episodes-very-high-volatility-in-trading-certain-stocks

[327] ESMA (2021). Call for evidence on the European Commission mandate on certain aspects relating to retail investor protection, October. Available at: https://www.esma.europa.eu/press-news/esma-news/esma-seeks-stakeholder-input-shaping-advice-retail-investor-protection

PFOF is banned in the Netherlands, but there is no control over the cross-border dimension. There are brokers based in the Netherlands that sell retail flows information to other EU Member States. The Dutch supervisor AFM argues in favour of a European "playing field" in which PFOF is prohibited. The same view is shared by the French supervisor AMF[328].Trade associations, such as the Federation of European Stock Exchanges (FESE)[329] indicate that PFPF is however detrimental for the investor as it may increase bid-ask spreads, distort competition, and make the price formation process less transparent and efficient. On the contrary[330], some academics have indicated if that if retail brokers lost this important source of revenue due to a ban, it is more likely that they would seek to cover costs by increasing trading fees for investors and reintroducing brokerage commissions. As part of the Review of the Markets in Financial Instruments Regulation (MiFIR), a ban on PFOF is being considered at EU level together with the consolidated tape.

6.3. Relevance of rules about advice and inducements

According to the Better Regulation Guidelines, relevance is about the extent to which the policy objectives of the intervention meet policy needs and the needs of key stakeholders. In the case of this assignment the focus is on (potential) retail investors and therefore the assessment of relevance looks specifically at the extent to which the policy objectives of the legal framework meet the current needs of retail investors.

In this section we assess the relevance of the rules concerning inducements and advice. The main analysis is developed in the following subsections and summarized below.

6.3.1. Summary of main findings

The section first assesses the overall relevance of the objective of the legal framework analysed to foster quality of advice and enhance consumer trust in financial markets by improving the impartiality of advice, which in turn is expected to lead to higher levels of investments. It subsequently assesses the relevance of more specific features of the legal framework notably:

- relevance of rules which define for which types of products advice is or is not compulsory;
- relevance of the sectoral distinction between IDD and MiFID II in view of the market structure and developments; and
- relevance of rules regarding disclosure of inducements.

The existence of cases of **mis-selling** of financial investment products prior to the introduction of MiFID II, but also in the more recent period as shown below, supports the need for clear rules to ensure that advice given to consumers is in their best interest rather than being driven by the financial interest of advisors or other market players. Because of the information between advisors and clients which can prove to be highly detrimental for the client and also in view of the importance of maintaining a high level of trust in advice, it is highly relevant for the regulatory authorities to address practices that could lead to inappropriate advice. **Consumer trust in advice** and more generally in the financial markets is correlated with willingness to invest. Thus, trust is one of the factors driving up retail investor participation. However, trust is also associated with a higher likelihood that consumers will follow the advice they are given. The higher the trust consumers demonstrate, the more likely they are not to question the advice they receive and to follow it. This further reinforces the need to make sure that the advice is appropriate. Considering that an important aim of the Commission's planned Retail Investment Strategy will be to

[328] Available at: French watchdog chief calls for ban on 'payment for order flow' in EU stock market
[329] Available at: https://www.fese.eu/app/uploads/2021/05/The-issue-of-payment-for-order-flow.pdf
[330] Available at: https://www.ft.com/content/983bc6c2-7894-4f25-b040-c03832808b1a https://www.bloomberg.com/opinion/articles/2021-09-13/personal-finance-banning-payment-for-order-flow-would-be-a-mistake

increase consumer participation in financial markets, building consumer trust is a necessary precondition. For that trust to be sustained, the quality of advice is important.

The aim of the rules about which products can be sold through **execution-only services** and thus without suitability assessments is to ensure that only consumers who have the capacity to make an informed choice about complex products as well as sufficient ability to bear losses are recommended complex products and only when suitable. The demands and needs test is always required for the sale of insurance products under IDD, even in the case of execution-only sales. There is a general consensus among the stakeholders interviewed about the relevance of this distinction. The survey data also shows that indeed complex products such as derivatives or structured products are the least understood by consumers. At the same time, the data shows that these products represent only a very small share of household assets and that only a very small share of consumers have invested in them. While the market continues to develop more complex products, there is agreement that only relatively clear products, in respect of which can be easily understood, should be available through execution-only.

The two areas where the relevance of rules being examined in this section is less clear-cut concern:

- The **sectoral differentiation between IDD and MiFID II in terms of inducement regimes**; and
- The **rules about the disclosure of inducements**.

The latter ensure that by being informed about inducements consumers would be made aware about the gains the advisor may have from the sale of a given product and thus contribute to a better informed choice. This however is partially questionable as **most consumers do not understand the concept of inducements** (see section 6.5.4). They are also primarily concerned with the overall product costs and not the costs of selling the product (inducements) that are being passed on to them. Disclosure of inducements does not appear to make a substantial contribution to the consumer's informed choice (see also effectiveness). That however does not mean that this disclosure is not relevant. Instead of its effects on the consumer's choice (which are minimal), the disclosure of inducements is relevant to improve the market because:

- The transparency it can provide increases competition between manufacturers and distributors and should ultimately lead to lower prices; and
- It constitutes a basis which allows consumers to seek redress if they consider that they received advice that was inappropriate.

6.3.2. Overall relevance: focus on fostering the quality of advice

The underpinning rationale for introducing rules that aim to increase the quality of advice was the concern over inadequate advice being delivered to prospective retail investors[331]. Investors were frequently being sold products that were either inappropriately labelled in terms of risk[332] or products that were inappropriate for the investor profile[333] [334].

Challenges regarding inadequate advice have continued to exist in the past decade as shown by the studies mentioned below:

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[331] See the Impact Assessment for MiFID II COMMISSION STAFF WORKING DOCUMENT IMPACT ASSESSMENTCommission staff working paper Impact Assessment - Accompanying the document Proposal for a Directive of the European Parliament and of the Council: Markets in Financial Instruments and the Proposal for a Regulation of the European Parliament and of the Council: Markets in Financial Instruments.;
See also the section about the pre-crisis regulatory approach to financial products in Kern Alexander (2018) Marketing, Sale and Distribution Mis-selling of Financial Products for European Parliament.

[332] See examples cited in Kern Alexander (2018) Marketing, Sale and Distribution Mis-selling of Financial Products for European Parliament – notably footnote 12.

[333] Synovate research reinvented. (2011). Consumer market study on advice within the area of retail investment services- final report.

[334] In a 2010 mystery shopping exercise, the Italian consumer association Altroconsumo noted that 70% of the advisory services provided pushed in the direction of suboptimal products for the consumers.". 'Investimenti: cosa consigliano le banche", , Altroconsumo, 1

- In Belgium in 2015, FSMA conducted a mystery shopping exercise that indicated that advice offered to clients was not in line with their profiles in 40% of the cases, and in 43% of cases the information received was incomplete.[335] The consumer protection association Test-Achats had conducted a similar exercise with mystery shoppers presenting themselves as risk-averse.[336] Yet 50% of the advisors pushed them towards risky investments, in an effort that was described as more motivated by the sale of products than consistency with the consumer's profile.
- Through a mystery shopping exercise at 20 branches of the five biggest banks in the country in 2017, the Portuguese consumer protection association noted that the advice given was not in line with the shopper's profile, regardless of the amount invested, but was driven by the sales objectives of the bank's employees given the profitability of those funds for the banks.[337]
- Between 2014 and 2015, the German consumer association federation (VZBV) analysed the offer of products in the country's major banks. After an evaluation of 835 consumers portfolios (containing 3,502 investment products), 45% of them were deemed inappropriate as they lacked flexibility and cost-effectiveness compared with other products offered. By analysing 362 new contracts, they found that 95% of them were unsuitable for the consumer as they were too costly, inflexible or risky.[338]
- In 2015, the German consumer association Stiftung Warentest conducted a mystery shopping exercise in 23 banks, which revealed that only three of them gave good advice, with most of the banks recommending unsuitable or suboptimal products.[339]

Furthermore, BEUC's dashboard "price for bad advice"[340] lists cases and investigations of mis-selling of financial products to retail investors across the EU. At the time of writing this report the dashboard listed 54 cases across the EU, UK and Norway. It is to be noted that most of these cases are not individual but collective actions. While most of the cases are from the period prior to 2018, there are cases on the site which concern the period post-2018 (after adoption of MiFID II), suggesting the ongoing relevance of these. Furthermore, considering that most of these are collective cases which take time, it is not surprising that there has not been a high number of cases registered recently, and it cannot be interpreted as a clear sign of any decline in the occurrence of mis-selling.

These examples show the continued need for the regulatory authorities, on one hand, to require advisors and organisations delivering advice to put in place measures that enhance the quality of advice and, on the other hand, to continue monitoring the quality of advice actually delivered.

Another argument that supports the past and ongoing relevance of rules that aim to enhance the impartiality of advice is the fact **that consumers tend to trust advisors** and follow their advice and are therefore exposed in cases of inadequate advice. This is discussed at length in the effectiveness section when analysing data from the survey-based experiment. Other studies that support this argument are:

November 2010, https://www.altroconsumo.it/soldi/conti-correnti/news/investimenti-cosa-consigliano-le-banche-il-videocon-telecamera-nascosta-soldi-diritti-115, (accessed 18 May 2018).

335 FSMA (2014) Annual report 2014; and Trends tendances (2015) Le "très mauvais" bulletin du secteur bancaire, June 12th 2015, le Vif.

336 Test achats (2014) Mon banquier, ce piètre conseiller, published on 6 May 6th 2014 [consulted on 29 October 29th 2020].

337 DECO (2017) Senhor bancário, onde devo aplicar o meu dinheiro?, Analysis [consulted on 29 October 29th 2020].

338 VZBV (2015) Erhalten Verbraucher bedarfsgerechte Anlageprodukte?

339 Stiftung Warentest (2016) Nur 3 von 23 Banken beraten gut.

340 https://www.thepriceofbadadvice.eu/#

- German consumers indicated in a survey that their main reason for not reading the information disclosure was that they trusted their advisors (49% of the 42% or respondents who did not read the disclosure).[341]
- An A 2019 study undertaken by the Ruhr Universität Bochum found that investors have a high degree of trust in their advisors. The vast majority declared that they completely trust their advisors with their investment decision and that they do not need any additional documents. In this context, the same majority would prefer not to receive any further information about the process, or at least be able to opt out of such information[342].
- Academic literature notes that while following investment advice is not systematic, it is extremely likely, especially when advice is not provided by default343.
- In a study by Consob (2020), most advised investors declared that they followed the recommendation given by their advisor, which remains the main point of reference also when the advice is not understood.344

It is because of this trust that investors place in advisors that the quality and impartiality of advice is indeed crucial.

6.3.3. Relevance of rules regarding advice with a view to improving consumer trust

Part of the rationale for the introduction of rules presented in this section is the assumption that a market without conflicts of interest and with clear transparency rules would result in higher trust among (potential) investors. **Trust in the financial system** plays a crucial role in financial decision-making. Indeed, past research has found that trust is an important predictor of the purchasing of shares but also, for those that do own shares, trust is correlated with the value of the amount held in equities[345]. A study conducted in the US found that lower levels of trust increased the propensity of individuals to opt-out of automatically enrolled pension savings[346]. In the survey carried out for this assignment we also see that a smaller share of consumers who have low levels of trust in financial services and in advisors have already invested in financial products than among those who have high levels of trust[347]. In other words there is a positive relationship between the willingness to invest or the fact of having already invested and levels of trust. Therefore, it appears relevant to aim to increase trust so as to foster increased consumer investment.

Figure.8 - "I usually trust that banks and other financial institutions act for the investors 'best interest" (1- Fully disagree, 10 – Completely agree) – Mean values by type of retail investor[348]

[341] BaFin (2019). Umfrage: Wie wirken sich die neuen Finanzmarktregeln MiFID II und PRIIPs-VO auf das Verbraucherverhalten aus? Die Ergebnisse. https://www.bafin.de/SharedDocs/Downloads/DE/dl_Umfrageergebnisse_MiFIDII.html

[342] Ruhr Universität Bochum; „MiFID II/MiFIR und PRIIPs-VO: Effektivität und Effizienz der Neuregelungen vor dem Hintergrund des Anleger- und Verbraucherschutzes; Februar 2019, p. 18; available at: https://die-dk.de/media/files/Auswirkungsstudie_MiFID_II_MiFIR_und_PRIIPs-VO_Effektivitae_und_Effizien.._.pdf

[343] Gino, F. (2008). "Do we listen to advice just because we paid for it? The impact of advice cost on its use." Organizational Behaviour and Human Decision Processes, 107(2), 234-24

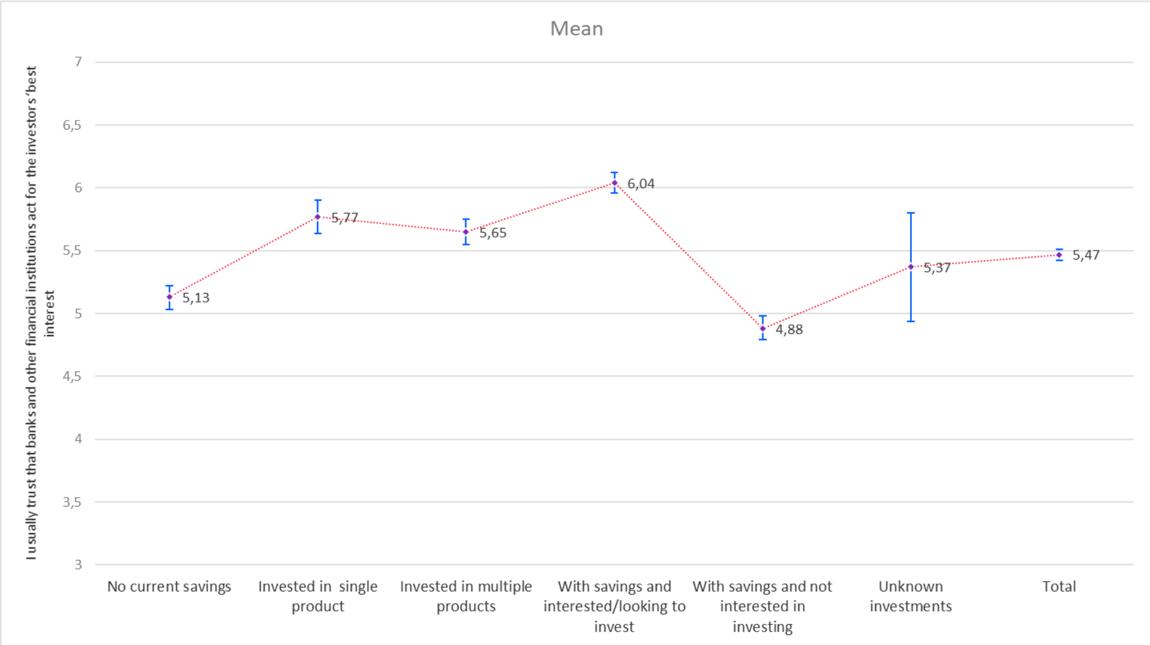
[344] https://www.consob.it/web/consob-and-its-activities/report-on-investments-households

[345] Gusto et al (2008), Trusting the stock market. See: https://onlinelibrary.wiley.com/doi/abs/10.1111/j.1540-6261.2008.01408.x

[346] Agnew et al. (2012) Trust, plan knowledge and 401(k) savings behavior. See: https://www.cambridge.org/core/journals/journal-of-pension-economics-and-finance/article/abs/trust-plan-knowledge-and-401k-savings-behavior/E27E07438D4F696DDC6A8DA6A0267149

[347] 33% of those who tend to believe that financial advisors act in the best interest of their clients has invested in one or multiple products while investors are 26% of those who tend not to agree with this statement. 30% of those who don't trust advisors are also disinterested from investing even though they have savings. They are only 16% in this situation among those with trust.

[348] A one-way ANOVA shows that the differences between groups are statistically significant with a p-value < 0.001



Source: Consortium, based on the behavioural experiment.

At the same time, the rules around impartiality of advice are also relevant because, as shown earlier in section 1.2, there is a non-negligible share of consumers who tend to follow advice without necessarily questioning it and without shopping around and comparing products. Furthermore, this group of consumers tends to include a higher share of vulnerable persons because of either financial literacy levels or income levels.

The main trends in the consumer survey across 10 EU countries show that:

- Consumers are more likely to trust than not to trust financial advisors to act in the best interest of their clients (36% vs 26%). However, one-third of respondents (32%) are neutral about this[349] suggesting there is still room for improvement.
- Among the countries covered, trust was lowest in Germany and Sweden (34% and 35% disagree that financial advisors act in the best interest of clients) and highest in Romania (43% trust), Spain (43% trust), Finland (42%) and Netherlands (40%).
- People with high financial literacy are less trustful of financial advisors than those with lower levels of financial literacy (30% of people with higher levels of financial literacy disagree that financial advisors act in the best interest of their clients versus 20% with lower levels of financial literacy).
- People who made at least one investment or are interested in investing are more trusting than those who have savings but are not interested in investing (44% vs 25% tend to trust)
- We also asked a question about trust in financial services providers[350]. The trends are very similar to those described above regarding trust in advisors.

As shown above, trust in the financial services market is a factor that is positively related to willingness to invest (even though it is not the only one and other personal factors such as confidence and interest are also important). In section 1.2 we also showed that advisors and brokers are an important trigger in influencing an investor's decision to invest in a financial product[351]. While the consumer surveys show that respondents tend to trust

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349 The study was conducted only among banked consumers who have at least a current bank account. 6% selected did not know.
350 To what extent do you agree or disagree with the statement "I usually trust that banks and other financial institutions act for the investors "'best interest".
351 What triggered your decision to look for a financial product in the first place? 23% said that their bank or broker had suggested investing to them.

rather than distrust financial advisors as well as financial services institutions, there continues to be room for improvement in enhancing that trust, as shown by the high share of people with a neutral opinion and also the significant differences between countries. Therefore, the policy objective of enhancing consumer trust continues to be relevant in view of the current context as well as the policy objectives of the Retail Investment Strategy.

6.3.4. Relevance of rules regarding when advice is required and when it is not considering the market structure and nature of products

Another key feature of the legal framework under consideration is that it **sets rules about when advice is or is not required**. Depending on the complexity of the investment products, the distributor assesses the client's knowledge and experience through tests that are analysed in the chapter on suitability assessment, demands and needs tests.

The verifications that have to be undertaken to demonstrate that the product can be considered as non-complex and therefore can be offered through execution-only were not the focus of this study. The study focuses on legal clauses directly intervening during the consumer journey (rather than all the clauses affecting the market).

Nevertheless, it can be said that the stakeholder interviews showed **support for this distinction** between complex and non-complex products and generally welcomed the introduction of rules that ensure that complex products are only sold through advice and/or following an assessment of the client's profile and needs (see section on suitability assessments, demands and needs tests). In the Netherlands it was mentioned that the national authority actively encourages distributors not to sell complex products to the majority of retail investors and to instead prefer directing them towards simpler, often execution-only products. For example, derivatives and structured products are only shown to clients once an assessment has been performed that indicates that such products would be deemed suitable. Moreover, the products are not actively shown in the product overviews, i.e. qualified retail investors need to search for them in the product catalogue. In Sweden interviewees also stated that complex products have been removed from retail catalogues by many distributors.

The initial considerations for more tightly regulating the sale of complex investment products were based on the risk that these products were more likely to be detrimental to retail investors because of the difficulty of making an informed choice and often larger potential losses due to leverage. This was driven by the complexity of product structures which are assumed to make it difficult for retail investors to "understand the risks, costs and expected returns of some complex products and/or the drivers of risks and returns"[352]. Considering that the financial literacy of Europeans remains a concern[353] this argument continues to be relevant. This is also supported by the survey data which shows that the self-perceived understanding of these products by consumers is the lowest among all of the products they were asked about[354].

The **data from the product distribution mapping suggests that indeed complex investment products remain exceptional among retail investors** (even though it is not possible to fully disaggregate the data for investment funds and insurance products to provide a clear-cut assessment). In the consumer survey only 4% of those who hold investment products stated having structured products and only 3% of investors stated having derivatives. Those investors in our sample holding these products tend to be in the high-income category, have high financial literacy levels and hold multiple products.

[352] See for example ESMA (2014) MiFID practices for firms selling complex products.

[353] The 2020 OECD survey on financial literacy covered 13 EU countries. Their average scores ranged between 10.3 and 14.7 out of at he maximum score of 21. OECD (2020) *International Survey of Adult Financial Literacy.*

[354] When asked: Are you familiar or have used any of the following financial products or services? 56% respondents stated they did not know the product for structured products and 51% for derivatives. Only 10% and 11% stated they could explain what these products were about. This shows substantially lower levels of understanding than for all the other product categories mentioned.

On the other hand, while the survey data does not allow us to disaggregate the data about investors holding insurance products to differentiate IBIPs and other insurance products, the interviewees did refer to a growing trend of selling IBIPs in several markets.

To summarise, there is support for and a consensus about the continued relevance of requirements that ensure that complex products should be sold following a suitability assessment, demands and needs test and subsequently accompanied by advice.

6.3.5. Relevance of rules regarding inducements considering the market structure and nature of products

Under both MIFID II and IDD the objective is to address the need of retail investors for unbiased high quality investment advice, where the distributor acts in the best interest of the retail investor and not in its own.

Under MiFID II, the regulatory regime of independent advice has two levels: i) inadmissibility of receiving incentives related to the investment advice provided and ii) the assessment of a sufficient variety/range of financial instruments.

An independent advisor is not allowed to accept any payment or benefit from third-party product providers and must charge its fees to the client directly. In contrast, third-party inducements may still be paid where products are distributed by a tied sales force or where the range of products on which advice is provided is insufficient to qualify as independent.

In contrast with quality enhancement under MIFID II, distributors under IDD must ensure that inducements do not have a detrimental impact on the quality of the relevant service provided to the client. The different approach to inducements is becoming more troublesome now that some products under IDD (e.g. IBIPs) contain an individual and/or mix of funds as an underlying investment that could come, in theory, with their own set of inducements under MiFID II.

Within the total financial assets of EU households, insurance and pension products represent around 35% compared with only around 8% held directly in investment funds. The move towards IBIPs compared with traditional policies (with guarantees) raises the question of whether the distinction in conduct rules between insurance and investment is still relevant. In this case, retail investors bear the entire investment risk. A typical example would include an IBIP and mutual fund, with a similar asset allocation, recommended holding period and investment risk, but under different inducements regime. From an investor's perspective it would be sensible to harmonise the inducement rules for these products.

6.3.6. Relevance of rules regarding disclosure of inducements and of the extent to which the advisor is independent or non-independent

Finally, in relation to relevance, the rules analysed here also require the disclosure of inducements in information documents, disclosure of inducements during the advice process and disclosure of the relationship between the advisor and product manufacturer (notably absence of independence). The assumption is that through this transparency, the (potential) client would become aware of the commissions and inducements. By making them aware that the advisor receives remuneration from the products sold, investors would be encouraged to critically assess the extent to which they should or should not follow the advice they receive. In another words these disclosure requirements should act as red flags and encourage consumers to look into the information about inducements that is being disclosed to assess whether it could potentially be detrimental to their own interests.

This reasoning assumes that consumers understand the concept of **inducements**. However, the **survey data collected through this study shows though that they do not**. In the experimental module (see section on effectiveness), consumers were shown letters which referred to inducements being received by the advisor. We subsequently asked them about their understanding of what inducements are[355]. Only one-third (36%) answered correctly that it is "An incentive the bank receives from the manufacturers of investment products to promote their products". A quarter (26%) said they did not know and over one-third (38%) said it was either a fee charged to the investor or a fee charged both to the investor and the manufacturer. In Italy, Germany and Greece consumers have a somewhat better understanding of this concept than in other countries. Respondents with higher levels of financial literacy as well as experienced investors are also better informed about this practice. An older survey of the Irish Central Bank also showed that even among people who hold investments there is not a high level of understanding of the commissions being received by distributors[356].

It also assumes that **consumers attach importance to the commissions between advisors and manufacturers**. The consumers who hold a product or are interested in investing were asked in our survey about the product characteristics to which they would pay the most attention when deciding to invest. Risk level was the most frequently mentioned feature (67%), followed by potential returns (63%) and total costs (56%). Commissions ("costs related to the selling of the product") came only after past performance and exit conditions. Some 26% of respondents said they would pay attention to this feature. In other words, consumers care more about the total cost of the product to them rather than how costs are shared between the distributor and the manufacturer.

Therefore, **consumers appear neither to understand nor be aware of transparency about inducements**. It is not information that they will be looking for and closely scrutinising when making investment decisions. This does not mean that the disclosure of inducements is not in the consumer's favour. Even if it is not directly taken into consideration by many consumers in the process of choosing a product, it still adds transparency to the market and improves competition between market players. It is however unlikely to be a sufficient guarantee that consumers will choose the product that offers the best value for money for them. The section on effectiveness discusses the relationship between disclosure of inducements and the likelihood of consumers to follow advice. It also analyses effectiveness in terms of the clarity of the information on inducements being provided to consumers.

6.4. Coherence of rules about advice and inducements

Coherence is defined in the Better Regulation Guidelines as the analysis of the extent to which the different elements of the intervention work well together (existence of synergies and absence of gaps) towards common policy objectives.

The assessment of the coherence of the rules about advice and inducements as presented here focuses on:

- internal coherence of the legal framework being analysed in this study – i.e. existence of potential gaps between primarily IDD and MiFID II, but also UCITS, AIFMD and PEPP; and
- external coherence of legal frameworks – i.e. existence of potential gaps between the EU legal framework and national rules.

6.4.1. Summary of main findings

The legal frameworks described in this section cover multiple facets of advice with a view to ensuring that product recommendations are in the client's best interests. Distributors have to ensure that they identify and avoid conflicts of interest or, as a minimum, that such conflicts of interest are disclosed. Cases where inducements are allowed are regulated (albeit the specificities different between MiFID II and IDD as explained above). The disclosure of inducements and remuneration is also covered. As it follows from the

355 The letter received from the bank mentions the fact that the bank receives **inducements.** Which of the following reflects best what inducements are?

356 Central Bank of Ireland (2017) *Consumer Understanding of Commission Payments.*

"provision-per-provision" comparison, there is a significant "**alignment**" between the IDD and MiFID II rules on inducements (e.g. similar definition/concepts, presence of specific tests, conduct of business and conflict of interest rules), many differences between the regimes persist:

- The **MiFID II regime** in principle **prohibits inducements**, because inducements are seen as not fulfilling an obligation to act honestly, fairly, and professionally in accordance with the client's best interests. Thus, inducements are **allowed** under **MiFID II rules as an exception**. The **IDD** regime in principle **allows inducements to be received** as long as they do not jeopardise an obligation to act honestly, fairly, and professionally in accordance with the client's best interests. IDD is a minimum harmonisation directive, which means that Member States may impose stricter requirements on the acceptance of inducements. Therefore, the inducements regime under IDD is "laxer"[357], because (i) inducements are allowed and (ii) IDD is a minimum harmonisation framework. As such, the difference in the approaches to the inducements taken in MiFID II and IDD does not represent a problem, because these different approaches are justified by sectoral differences and are consistent with the sectoral approach applied for insurance and investments. In fact, investment and insurance products are different products in its nature and, due to such differences, need different regulatory approach to ensure that investors are not harmed by conflicts of interests resulting from inducements.
- The **IDD** conduct of business rules are **minimum harmonisation rules**, whereas the MiFID II conduct of business rules are **maximum harmonisation rules**. Thus, national implementation rules of the IDD conduct of business rules may deviate even more from those of another Member State.

Furthermore, as it follows from the comparison of definitions present in MiFID II and IDD, the **MiFID II** framework makes an explicit and well-defined **distinction between retail and professional investors**, which **IDD does not**.

The rules on the inducement **disclosure** are largely coherent in the **IDD** and **MiFID II**. Nonetheless, there is an **important nuance** in the **presentation of inducements** to the client pursuant to **UCITS** KIID and **PRIIPS** KID, where inducements are included in the total **product costs**, whereby in the **MiFID II** costs and charges disclosures must be presented as **service costs**.

6.4.2. Internal coherence of the legal framework

Overall, inducements can be defined as any fee, commission or non-monetary benefit provided by or paid to a service provider in connection with the provision of a financial service to or by any party except the client[358]. Such payments could potentially be a source of conflicts of interest and pose a real risk of presenting a service provider with an incentive to promote/sell certain products or services over others in order to benefit from an inducement, or from a higher inducement, rather than acting in the client's best interests.

To prevent such conflicts of interest, at EU level, the legislative answer to deal with such problems is threefold:

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[357] This term was first used in Colaert V. "Draft: MiFID II in relation to other investor protection regulation: picking up the crumbs of a piecemeal approach" (2016), KU Leuven, p.27

[358] For the definition of "inducement" under IDD, please refer to Article 2(2) of Commission Delegated Regulation (EU) 2017/2359 of 21 September 2017 supplementing Directive (EU) 2016/97 of the European Parliament and of the Council with regard to information requirements and conduct of business rules applicable to the distribution of insurance-based investment products (IBIPs Regulation); For the concept of "inducements" under MiFID II, please refer to Article 24(9) of Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU. In 2021, Article 24 of MiFID II was supplemented by Article 24(9a), which was added by Directive (EU) 2021/338 of the European Parliament and of the Council of 16 February 2021 amending Directive 2014/65/EU as regards information requirements, product governance and position limits, and Directives 2013/36/EU and (EU) 2019/878 as regards their application to investment firms, to help the recovery from the COVID-19 crisis (OJ L 68, 26.2.2021, p. 14–28).

- Establishing inducement-specific rules and definitions.
- Establishing a duty of care obligation.
- Establishing clear rules to avoid conflicts of interest, such as continuous organisational rules and remuneration policies.

Inducement-specific rules and definitions

At EU level, a clear **definition** of "inducements" is present in IDD, whereas MiFID II contains only a **concept** of "inducement"[359]. Nevertheless, pursuant to IDD and MiFID II, inducements are **understood in the same manner** – as any fee or commission, or any non-monetary benefit. The IDD inducements rules apply only to insurance intermediaries and undertakings in relation to the distribution of insurance-based investment products and not to other life insurance products.

Due to sectoral divergences following from their scope of applicability, the MiFID II inducement regime relates to investment firms in connection with the provision of an investment service or an ancillary service. The IDD inducement regime relates to an **insurance** intermediary or undertaking.[360]. Under the MiFID II, there is a possibility to combine an investment product with funds and an insurance element (the so-called "insurance wrapper").[361] As an insurance product, it can only be distributed by insurance intermediaries or undertakings. Such cases with the aim of circumventing certain legislation are an instance of "regulatory arbitrage".[362] The main problem is whether all the disclosure rights of retail investors would be respected when dealing with UCITS and AIFs that are included in the IBIP – hence following (only) the IDD regime. The theoretic answer would be that the level of investor's protection in such cases is jeopardised because the strict MiFID II rules on inducements would not be followed.

As stated above, banks, independent financial advisors or asset managers selling IBIPs are **registered** as insurance intermediaries and acting as such under the IDD rules.

The **core difference** between the MiFID II and IDD regimes is that, under the **MiFID II** regime, inducements are banned unless allowed[363], and under the IDD regime inducements are allowed as a rule[364]. Under the MiFID II regime, for inducements to be allowed, a **quality enhancement test** for the inducement regime has to be passed. Only if the test can demonstrate that the quality of the relevant service to the client is enhanced, an inducement can be applied[365]. Under IDD, inducements are allowed unless a

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[359] IDD also contains a definition of inducement scheme – a term that is tacitly included within the MiFID II concept of inducement. The definition of inducements under IDD and the concept of inducements under MiFID II are comparable, but not identical.

[360] Within this study – an insurance intermediary or undertaking in connection with the distribution of an insurance-based investment product or life insurance products.

[361] The scored IBIPs/PPPs rarely disclose separately the KIID of the underlying investment funds (at least on the online search). There is also no cost standardization between KIID and KID or inducements. But from January 2023, also UCITS will have to prepare KID instead of KIIDs.
An example concerns the unit linked/hybrid IBIS with multiple options. The practices can range from 3-4 investment scenarios or selection from 10-20 different funds, with different generation of personalized offers, KIDs and KIIDs (common or individual). In particular, costs concerning MOPs may not be precise because sometimes options are UCITS funds investment for which different disclosure requirements under UCITS are in place. In many instances, there is a generic cost information disclosed as a range in the PRIIPs KID while option level costs are disclosed pursuant UCITS. Even in preparing their own reports, EIOPA has undertaken data quality checks, 'conversions' between UCITS disclosures - KIIDs and equivalent reduction in yields (RIYs) from KID and the explicit data collection of 'wrapper costs' - costs that are not at the option level but are ultimately paid by consumers because part of the insurance product as a whole. These costs, when the information is disclosed as range in the generic KID may not always be easily identifiable.
The main objective should be cost standardization and disclosure under MiFID II and IDD for all cost items, and especially inducements - a horizontal regime - for product comparability.

[362] For instance, several cases of the regulatory arbitrage are well described in "European Commission, 'Open Hearing on Retail Investment Products'" (2008), indicating that such cases took place in the Netherlands. Also, several cases of regulatory arbitrage are described in "European Commission, Impact Assessment Accompanying the Proposal for a Regulation of the European Parliament and of the Council on key information documents for investment products (SWD (2012)187, 3 July 2012).

[363] Under MiFID II a ban on inducements exists for independent advice and for portfolio management.

[364] Under IDD, inducements are banned as an exception.

[365] Article 24(9) MIFID II, recitals 21-23 and Art. 11 MiFID II Delegated Directive as well as ESMA Q&A on MiFID II and MiFIR investor protection and intermediaries topics: Q1-2, Q1-12, Q1-7.

detrimental impact test demonstrates that inducements would have a negative effect on the quality of the relevant service to the client[366].

Quality enhancement test (MiFID II) and Detrimental impact test (IDD)

As it will be demonstrated in the subsequent paragraphs of this sub-chapter, the nature as well as the conditions of the quality enhancement test under MiFID II and the detrimental impact test pursuant to IDD are different.

The **quality enhancement test** under MiFID II sets forth a number of criteria which have to be fulfilled for the test to be passed.[367]

The MiFID II regime sets forth the following conditions to justify the provision of an additional or higher level service to the relevant client:

- the provision of non-independent investment advice as well as access to a wide range of suitable financial instruments including instruments from a third party;"[368]
- the provision of non-independent investment advice combined with either: (a) an offer to the client to assess the continuing suitability of the financial instruments; or (b) with another on-going service about the optimal asset allocation of the client; or"[369]
- the provision of access to a wide range of financial instruments that are likely to meet the needs of the client, including instruments from third-party product providers.[370]

For the **detrimental test**, pursuant to the IDD regime, the following criteria have to be met[371]:

- whether the inducement could provide an incentive to the insurance intermediary/undertaking to offer/recommend an insurance product/service to the client despite the fact that another insurance product or service would better meet the client's needs[372];
- whether the inducement is mainly based on quantitative commercial criteria/ whether it takes into account appropriate qualitative criteria (such as compliance with applicable regulations, the quality of services provided, client satisfaction)[373];
- the value of the inducement paid in relation to the value of the product/service[374];
- whether the inducement is paid at the conclusion of the contract or is extended for the whole term of that contract[375];
- the existence of a mechanism for reclaiming the inducement[376];
- the existence of any form of contingent threshold unlocked by "attaining a target based on volume or value of sales" [377].

The above differences are legally justified by the nature of the product offered and the logic of MiFID II, where inducements are exceptionally present, whereby under IDD

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366 Article 8(2) IBIPs Regulation and EIOPA Q&A: Q 1634, Q 1623, Q 1631.

367 These criteria are as follows: (a) the inducement should be justified by the provision of an additional (or higher) level of service to the client; (b) an inducement should not directly benefit the recipient firm (its shareholders or employees included) without tangible benefit to the relevant client and (c) it is justified by the provision of an on-going benefit to the client (Article 11(2) MiFID II Delegated Directive).

368 Article 11(2) MiFID II Delegated Directive.

369 Article 11(2) MiFID II Delegated Directive.

370 Article 11(2) MiFID II Delegated Directive.

371 Article 8(2), second subparagraph of IDD Delegated Regulation.

372 Article 8(2), second subparagraph of IDD Delegated Regulation.

373 Article 8(2), second subparagraph of IDD Delegated Regulation.

374 Article 8(2), second subparagraph of IDD Delegated Regulation.

375 Article 8(2), second subparagraph of IDD Delegated Regulation.

376 Article 8(2), second subparagraph of IDD Delegated Regulation.

377 Article 8(2), second subparagraph of IDD Delegated Regulation.

inducements are commonly present. Such differences are stemming from the sectoral approach applied for insurance and investments. Investment and insurance products differ significantly due to their nature. Hence, different regulatory approaches are needed in order to ensure that investors are not harmed by conflicts of interests resulting from inducements. Yet, from a retail investors' perspective, the sectoral differences and inducements regime should not matter.[378]

Disclosure of inducements

Both IDD and MiFID II contain requirements regarding the **disclosure** of inducements and, in both cases, **clear information** on inducements has to be disclosed prior to providing the service as well as on a yearly basis during the provision of the service. In this regard the legal frameworks are largely coherent.

Differences exist however regarding what information needs to be disclosed and in how much detail. There is an important nuance in the presentation of inducements to the client. In the UCITS KIID and PRIIPS KID, inducements are included in the total product costs. In the MiFID II costs and charges disclosures, they must be presented as service costs. In its technical advice, ESMA[379] indicated that inducements may be paid by the investor as part of the product costs, but they are ultimately received by the distributor and therefore correspond to a fee indirectly paid by the client. Industry representatives argued that the presentation of inducements linked to the sale of a product should be harmonised across the MiFID II costs disclosures, UCITS KID and PRIIPS KID. This difference represents an inconsistency which could lead to some misunderstanding by retail investors, who are buying products which fall within the scope of different legislation. For instance, in Germany, a bank recommended a product for an investment of EUR 10.000, showing product costs of EUR 246.28 or 1.38% per annum in accordance with PRIIPs Regulation. However, the cost of the same product was EUR 111.27 or 0.56% per annum as calculated under MiFID II. This inconsistency is a result of inconsistent calculation requirements under PRIIPs Regulation and MiFID II. It was reported that such differences are difficult for clients to understand[380]. As such, there is no justification for this reported inconsistency.

MiFID II[381] requires an investment firm to inform clients about the inducements that they may receive from execution venues. This information must **specify the fees** charged by the investment firm to all counterparties involved in the transaction. In cases where the fees vary depending on the client, the information must indicate the maximum fees or range of the fees. If more than one participant in a transaction is charged, the firm should inform its clients of the value of any monetary or non-monetary benefits received by the firm. Costs and charges, including inducements, should be presented as service costs[382].

As regards the type of information which needs to be disclosed to clients, MiFID II stipulates that information on the existence, nature and amount of the inducement received or paid, and where the amount of payments cannot be ascertained, the method of calculation of the inducement, should be provided *ex-ante*. After the provision of a service, where an investment firm is unable to ascertain the amount of an inducement received or paid prior to providing the service, and discloses the method of calculating that amount instead, an investment firm must provide information of the exact amount of the inducement received or paid on an *ex-post* basis. If ongoing inducements are received by

378 This actually caused great difficulties in the research for scoring the products (UCITS, AIFs, IBIPs, PPP).
379 ESMA (2020). Technical Advice to the Commission on the impact of the inducements and costs and charges disclosure requirements under MiFID 2, 1 April 1. Available at: https://www.esma.europa.eu/press-news/esma-news/esma-advises-european-commission-inducements-and-costs-and-charges-disclosures.
380 EBF response to ESMA's call for evidence: Impact of the inducements and costs and charges disclosure requirements under MiFID II, p.13.
381 Article 66(6) and (7) MiFID II Delegated Regulation.
382 Article 50(2), second indent and Annex II MiFID II Delegated Regulation; ESMA's Q&A 9.7 on investor protection.

an investment firm in relation to its services, the investment firm should provide information about the actual amounts received or paid on a yearly basis.

The disclosure requirements for inducements under IDD are much ""laxer"[383]. Under the IDD regime, prior to the conclusion of a contract, information to clients or potential clients should be disclosed about all costs and related charges. The insurance intermediary or insurance undertaking should provide the client with a periodic report on a durable medium, containing information on the services provided and transactions undertaken on behalf of the client on a yearly basis. This means that inducements should normally be presented as part of the total costs related to services and transactions[384].

Principle of duty of care

The provisions regarding the duty of care are set out in the conduct of business rules applicable when services are provided to the client. All the relevant legal frameworks IDD[385], MiFID II[386], UCITS[387], AIFMD[388] and PEPP Regulation[389] contain such provisions. The reason for this is that the conduct of business rules are transversal. The rules apply to all aspects of business and not only to the inducement regime or advice.

Overall, MiFID II, IDD, UCITS, AIFMD and PEPP Regulation contain the duty of care requirement with similar wording. In UCITS, this requirement is formulated *a contrario* (i.e. what should not be regarded as "acting honestly, fairly and professionally"). Nevertheless, the meaning of the duty of care requirements is identical in all of the legislation analysed.

Table.7 - Duty of care obligation

	MiFID II	IDD	UCITS	AIFMD	PEPPs
Obligation to act honestly, fairly and professionally in accordance with the client's best interests	Yes Level 1	Yes Level 1	Yes Level 2 *formulated a contrario*	Yes Level 1	Yes Level 1

Source: Consortium, based on the legal research.

Conflicts of interest

Solvency II/IDD, MiFID II, UCITS and AIFMD contain rules to avoid conflicts of interest, such as **continuous organisational rules** and **remuneration policies**. In the context of the provision of advice and inducements, this means that a financial gain at the expense of a financial loss to a client should be avoided and that financial or other incentives favouring the interest of, say, another client over the interests of the particular client concerned should be avoided.

Under the MiFID II and IDD regimes, there is an obligation to **identify conflicts of interest** in the course of service provision. The MiFID II regime[390] makes it mandatory to identify conflicts of interest between investment firms, including their managers, employees and tied agents, or any person directly or indirectly linked to them by control

[383] This term was first used in Colaert V. "Draft: MiFID II in relation to other investor protection regulation: picking up the crumbs of a piecemeal approach" (2016), KU Leuven, p.27.
[384] Throughout the interviews it was revealed that the approach was changed in Austria last year and inducements are now included as a separate position in annual costs disclosure.
[385] Please refer to Article 17(1) IDD.
[386] Please refer to Article 24(1) MiFID II.
[387] Please refer to Article 29 UCITS Implementing Directive.
[388] Please refer to Article 21(10) AIFMD.
[389] Please refer to Article 22 PEPPs.
[390] Article 16(3) and Article 23 MiFID II.

and their clients, or a conflict between one client and another that arises in the course of providing any investment and ancillary services, or any combinations of aforementioned persons, including those caused by the receipt of inducements from third parties, or by the investment firm's own remuneration and other incentive structures. The IDD regime[391] makes it mandatory to identify conflicts of interest between insurance intermediaries and insurance undertakings, including their managers and employees, or any person directly or indirectly linked to them by control and their clients, or between one client and another.

Continuous organisational rules and administrative arrangements

Under the PEPP Regulation, insurance undertakings and investment firms should comply with the regime set out in either IDD or MiFID II, in accordance with the national implementation of PEPP Regulation. The MiFID II and IDD regimes contain continuous organisational rules, regardless of whether or not services are provided. In accordance with these rules, service providers, once licensed, should take all appropriate steps to (a) identify and to (b) prevent or manage conflicts of interest between a client and themselves (including service providers' managers, employees, tied agents, or any other person linked directly or not directly by control).

Overall, the MiFID II and IDD regimes are **consistent** in applying comparable regimes to prevent conflicts of interest in the context of continuous organisational rules and administrative arrangements.

In cases where organisational or administrative arrangements for preventing conflicts of interest are not sufficient to ensure that risks of damage to client interests are prevented, such conflicts of interest should be clearly disclosed to the client. In other words, it is only in case the distributor considers that there is a potential conflict of interest (notably due to inducements) that the distributor is required to disclose this information to the prospective investor.

Disclosure of conflicts of interest

The rules on the disclosure of conflicts of interest under MiFID II and IDD are consistent and contain:

- an obligation of disclosure of conflicts of interest under condition of last resort;
- the rules on how disclosure should be made (e.g. on a durable medium);
- the rules covering the content of such disclosure, such as:
    - sufficient details,
    - consideration of the nature of the client allowing the client to take an informed decision in the context of which the conflict of interest arises,
    - description of the conflict of interest,
    - organisational and administrative arrangements established to prevent or manage conflicts of interest, as well as
    - a specific description of the conflict of interest,
    - the general nature and sources of conflicts of interest,
    - the risks to the client that arise as a result of the conflicts of interest,
    - the steps undertaken to mitigate these risks, and
    - the level of detail to enable that the client would take an informed decision.

Remuneration policies and disclosure of remuneration

Remuneration policies aim to **reduce the risk** that a financial service provider's remuneration and incentive practices could give rise to conflicts of interest with its clients. Such policies should prevent sales targets or other arrangements that could provide an incentive to recommend a particular financial instrument when the financial services

[391] Article 27 and Article 28 MiFID as well as Article 6 of IBIPs Regulation.

provider could otherwise offer another financial instrument more appropriate to the client's needs.

The remuneration rules take different approach**es** in the EU legislation analysed. Under UCITS and AIFMD regimes, a prudential approach is followed which is aimed at staff who have influence over the entity's prudential risks[392]. The MiFID II regime is aimed at staff **affecting** compliance with the rules of conduct[393]. It could be the case that both, for example, the UCITS Directive and MiFID II rules apply to the same person when that person manages a fund portfolio and also carries out marketing tasks.

The remuneration policy rules set forth in MiFID II[394], Solvency II/IDD[395], UCITS [396] and AIFMD[397] are consistent in applying remuneration rules as regards components of remuneration, purposes of remuneration policy, design of remuneration policies, as well as functions of the management body for remuneration policies. Nevertheless, MiFID II, Solvency II/IDD, UCITS and AIFMD contain a slightly different scope of coverage, due to their sectoral divergences, of the categories of staff covered by the definition of remuneration policies. The difference in scope does not represent any potential gap or inconsistency, because the difference is justified by sectoral divergences.

As regards the disclosure rules for remuneration policies, the rules set forth in AIFMD[398] and UCITS [399] are similar, whereas MiFID II and Solvency II/IDD do not contain such rules. Instead, the PRIIPs Regulation[400] contains the relevant provisions on disclosure regarding remuneration. In the same manner as in the UCITS KIID, the PRIIPs KID is a short, standardised document, where key information on the investment product should be provided in a clear and understandable language.

Concerning the type of information on remuneration which needs to be disclosed, there are differences pursuant to UCITS Directive, AIFMD and PRIIP Regulation. The main differences are in the types of documents in which remuneration is to be disclosed (i.e. in prospectus, KIID/KID and/or annual report) as well as the way in which the remuneration should be disclosed (e.g. details in a remuneration table, a statement, total remuneration broken down by certain categories, etc.).

Table.8 - Disclosure of remuneration policies

	Prospectus	Information document (KIID/KID)	Annual report
UCITS	**Yes** *details of the remuneration policy itself, or a summary of that policy and a statement where the details can be found should be disclosed*	**Yes** *a statement on remuneration policy should be included*	**Yes** *the total remuneration paid broken down by category of employees or other staff members as well as a description of how the remuneration and benefits have been calculated should be prepared*
AIFMD	**Yes** *remuneration policies are disclosed as part of the annual*	**No**	**Yes** *the total amount of remuneration for the financial year, split into*

392 For further details please refer to Annex II, point (2) of AIFMD and Article 14b(3) of UCITS Directive.
393 For further details please refer to Article 9(3)(c) of MiFID II.
394 Article 24(10) MiFID II; Article 27 MiFID Delegated Regulation and ESMA – Guidelines on Remuneration policies and practices (MiFID), Ch. II – Definitions and Ch. III and point 21 – Purpose.
395 Article 1(2) of IDD and Article 2(1)(9) of IDD; Article 275(1) of Solvency II Delegated Regulation.
396 Article 14b of UCITS.
397 Article 13(1); Annex II, points (1) and (2) AIFMD.
398 Article 22 and Article 23 AIFMD.
399 Article 69 and 78 UCITS Directive.
400 Annex III, points 48 and 51; Annex VI, point 4 letter (b) and point 5 letter (o); Annex II points 28 and 32 PRIIPs Delegated Regulation.

	Prospectus	Information document (KIID/KID)	Annual report
	report integrated into the prospectus		*fixed and variable remuneration as well as the aggregate amount of remuneration broken down by senior management and members of staff should be prepared*
MiFID II	**No**	**No**	**No**
IDD/ Solvency II	**No**	**No**	**No**
PRIIPs	**No**	**Yes** *for IBIPs, a one-off costs, or the remuneration of any party connected with it or providing services to it, the recurring costs, or the remuneration of any party connected with it, or providing services to it, should be prepared for other than investment funds - one-off costs or the remuneration of any party connected with it or providing services to it as well as recurring costs or the remuneration of any party connected with it or providing services to it should be prepared*	**No**

Source: Consortium, based on legal research.

6.4.3. External coherence of legal frameworks with the rules that are applied at Member State level

Both MiFID II and IDD allow Member States to impose additional requirements. Pursuant to MiFID II, Member States are allowed to impose additional requirements on investment firms in exceptional cases, subject to a notification requirement to the European Commission. Pursuant to IDD, Member States have the option to limit or prohibit the acceptance or receipt of inducements paid or provided to insurance distributors in relation to the distribution of insurance products in general. Furthermore, IDD allows stricter rules to be imposed in relation to the provision of the investment advice. Lastly, sectoral rules are set at all three levels of MiFID II and IDD, notably Level 1 framework legislation (directives, regulations), Level 2 implementing measures (such as delegated acts, regulatory/implementing technical standards) and Level 3 measures (guidelines and recommendations from the European Supervisory Authorities).

There are indeed some differences between the legal frameworks at EU level and those at national level. One clear case is the fact that while all other Member States follow MiFID II and IDD rules regarding when inducements are and are not allowed, the Netherlands has implemented an inducement ban. The Dutch inducement ban is discussed in greater detail in the section on effectiveness below (together with evidence from the UK which has also implemented such a ban).

Only two Member States covered by this study – Spain and Sweden – have imposed additional requirements pursuant to Article 24(12) of MiFID II[401]. For **Spain** these requirements refer to the provision of advice rather than to inducements. There are three specific types of warnings which must be issued by an investment firm when selling financial instruments to clients: (a) warnings about particularly complex investment instruments which are not appropriate for retail investors, (b) warnings about financial instruments that are also capital instruments or liabilities within the scope of the bail-in tool, and (c) warnings of cases where there is a significant difference between the price and the current value of certain financial instruments. For **Sweden**, additional requirements for securities firms' ratings are imposed. In order to ensure investment advice on an independent basis, a large and diversified selection of financial instruments available on the market should be assessed to ensure that the client's investment objectives can be adequately met.

As pointed out in ESMA's Technical Advice to the Commission on the impact of the inducements and costs and charges disclosure requirements under MiFID II[402], different interpretations on the quality enhancement criteria set in Article 11(2) of the MiFID II Delegated Directive exist. National-level research confirms this finding.

As regards the Member States covered by the scope of this study, the national-level analysis has shown that there are no specific guidelines on quality enhancement tests in Austria, Italy, Latvia, Luxembourg, Poland, Romania, Sweden and Spain. The quality enhancement test criteria in these Member States are set out in the national laws and no further guidelines have been developed in these countries. In other words, it is likely that all these Member States will follow the harmonised approach as set out in the ESMA Q&A.[403]

In **Romania**, a set of two Q&As on certain aspects related to inducements and the development of the distribution activity were published in 2019[404].

Specific guidelines for the quality enhancement test have been developed by the competent authorities only in **Germany**. The BaFin has established the rulebook that deals with quality improvement for the enhancement test[405]. It is intended to ensure that clients receive investment advice in accordance with their best interests and does not go beyond the rules set in the MiFID II Delegated Directive. Following the rulebook, the inducement must "be designed to enhance the quality of the relevant service provided to the client". In order for the inducement ban not to apply, the inducement must be designed to improve the quality of the service provided to the client. When providing investment advice, a quality improvement can, for example, consist in the fact that the client is advised on the basis of a wide range of suitable financial instruments from providers that are not closely connected to the investment services firm. The bank should also check at least once a year whether all financial instruments that their clients have acquired based on their recommendation are still suitable for them. Advice on the optimal structuring of client assets that goes beyond the recommendation of a single financial instrument can also be seen as improving quality. However, the advisor should also take into account the

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[401] The full list of Member States that have imposed such additional requirements can be found here: https://ec.europa.eu/info/law/markets-financial-instruments-mifid-ii-directive-2014-65-eu/implementation/implementation-eu-countries_en

[402] ESMA's Technical Advice to the Commission on the impact of the inducements and costs and charges disclosure requirements under MiFID II – Final Report

[403] ESMA, Questions and Answers On MiFID II and MiFIR investor protection and intermediaries topics, pages 112-115, available at: https://www.esma.europa.eu/sites/default/files/library/esma35-43-349_mifid_ii_qas_on_investor_protection_topics.pdf. See also: https://www.esma.europa.eu/document/esma-provides-implementing-rules-mifid-ii; https://www.esma.europa.eu/sites/default/files/library/esma35-43-2126_technical_advice_on_inducements_and_costs_and_charges_disclosures.pdf; https://www.esma.europa.eu/sites/default/files/library/2015/11/07_228b.pdf; and https://www.esma.europa.eu/sites/default/files/library/guidelines_on_certain_aspects_of_mifid_ii_compliance_function_requirements.pdf

[404] Q&A: https://asfromania.ro/uploads/articole/attachments/60378fe7c5a44603195811.pdf

[405] Inducements - Ban with an exception: tighter rules for commissions and other benefits; Circular 05/2018 (WA) – Minimum Requirements for the Compliance Function and Additional Requirements Governing Rules of Conduct, Organisation and Transparency

individual willingness of a client to take risks, the investment purpose and the investment horizon of clients in order to create appropriate added value for them.[406]

Finally, although **Denmark** is not part of the country selection for the present study, the stakeholders with whom the interviews were conducted stressed the fact that quality enhancement test requirements introduced in Denmark by the Danish banks in their business models could serve as a good example for the enhancement test practices. The Danish Financial Supervisory Authority (FSA) has prepared a study on the practices for the enhancement tests applied by seven Danish banks, which the Danish banks have performed in line with MiFID II requirements. These methodologies should not be seen as "self-regulation", but the practical implementation of enhancement tests pursuant to MiFID II requirements. The FSA has selected seven banks which are different in size, and have different cooperation agreements with different investment associations. The study performed by the FSA has identified best practices for enhancement tests, which could be applied by other banks in practice. Therefore, the FSA has prepared a compendium of best practices in a form of recommendation.

The Danish FSA points out that only those services that are both relevant and create added value can be considered as quality enhancing. In addition, there must be a quality-enhancing service at a higher level or an extra service that is linked to the investment service provided. The FSA also finds that institutions must be able to document the extent to which a service improves quality across forms of distribution, if one or more quality-improving services are used across several distribution channels. Regarding proportionality for client segments, the FSA finds that it is within the framework of the regulation to interpret proportionality at client segment level rather than at individual level, provided that the client segment is relatively homogeneous. Consumers should be categorised based on expected third-party payments. Regarding proportionality for fund types, the FSA finds that there should be adequate procedures in place to ensure that third-party payments do not give rise to conflicts of interest. They should also be able to prove that clients trading fund types with a higher commission rate receive a higher quality of service [407].

In the insurance sector, optional provisions under Article 22(3) IDD set out the options for limiting or prohibiting the acceptance or receipt of inducements paid or provided to insurance distributors in relation to the distribution of insurance products in general. This option was chosen by a number of the Member States covered by this study as shown in Table 6.9.

[406] Inducements - Ban with an exception: tighter rules for commissions and other benefits

[407] Temaundersøgelse om kvalitetsforbedrende service (Thematic survey of quality improvement services for investment clients): https://www.finanstilsynet.dk/Nyheder-og-Presse/Pressemeddelelser/2019/Temaundersoegels[…]valitetsforbedrende-services-til-investeringskunder-050219

Table.9 - Option chosen under Article 22(3) IDD

Country	Option chosen	
AT	n/a	
CZ	✓	An insurance undertaking or insurance intermediary should provide advice to the client as to the suitability of such legal actions for the client.
DE	n/a	
EL	✓	An insurance intermediary is not permitted to authorise any third parties to collect any premiums without the insurance undertaking's written consent.
FI	✓	An insurance broker or ancillary insurance broker may only receive remuneration from the entity that gave them the assignment.
FR	n/a	
IE	n/a	
IT	n/a	
LV	n/a	
LU	n/a	
NL	✓	A financial services provider does not provide or should not receive, directly or indirectly, any commission for intermediating or advising (ban on inducements).
PL	n/a	
RO	n/a	
ES	n/a	
SE	✓	The provision of advice to a client is based on an impartial and personal analysis which prohibits from receiving any remuneration in connection to that service from a third party.

Source: Consortium, based on the legal research and stakeholder interviews.

Article 29(3) of IDD allows Member States to impose stricter rules in relation to the provision of the investment advice. This option was chosen by a number of the Member

States covered by this study as shown in Table 6.10, notably by Austria, Czechia, Finland, France, Italy, the Netherlands, Poland, Romania and Sweden.

Table.10 - Option chosen under Article 29(3) IDD

Co-un-try	Option chosen	
AT	✓	Additional information requirements in relation to IBIPs. The provision of advice is mandatory for insurance undertakings. The provision also allows for the waiving of the use of advice by the client under certain, restricted conditions.
CZ	✓	Advice by distributors should be provided on the basis of (a) analysis of risks which the client may be exposed to throughout the term covered by insurance contract and (b) on the basis of other products of the financial market which are applicable to the client.
DE	n/a	
EL	n/a	
FI	✓	Insurance brokers and ancillary insurance brokers are obliged to provide a fair analysis of a sufficiently broad range of insurance contracts available on the market, unless explicitly agreed otherwise.
FR	✓	The insurance intermediary or the insurance undertaking or capitalisation firm recommends and provides advice for a contract that is consistent with the requirements and needs of the prospective subscriber or prospective member and specifies the reasons for this advice.
IE	n/a	
IT	✓	The rules ensure uniformity in the rules applicable to the sale of insurance investment products regardless of the distribution channel and the overall consistency and effectiveness of the system of supervision of insurance investment products.
LV	n/a	
LU	n/a	
NL	✓	A financial services provider should, prior to the provision of a financial service relating to a financial product, provide the consumer or, in the case of insurance, the client, with a service document relating to the service requested, which specifies whether the analysis is objective.
PL	✓	An obligation is established to receive information from the client using the questionnaire. Based on the information received, the insurance undertaking should prepare the proposal with an insurance contract for the client that is most appropriate to their needs.
RO	✓	Stricter additional requirements might be imposed, such as prohibiting or restricting the offering or acceptance of fees, commissions or non-pecuniary benefits from third parties in connection with the provision of insurance advice.
ES	n/a	
SE	✓	An insurance distributor may not offer or receive remuneration from a party other than the client in connection with distribution of insurance-based investment products or ancillary services.

Source: Consortium, based on the country legal desk research and stakeholder interviews.

6.5. Effectiveness of rules about advice and inducements

Effectiveness is defined in the Better Regulation Guidelines as the extent to which the objectives of the intervention have been met.

In line with the reconstructed intervention logic, this section differentiates between the outputs, results and impacts (intended and unintended) of the provisions about inducements and advice. The paragraphs below present the summary of the findings developed in the dedicated sections further down.

6.5.1. Summary of main findings

In terms of outputs the study found that the legal provisions regarding the disclosure of inducements are not being fully implemented:

- The information documents analysed rarely contain explicit information about inducements. It is necessary to search for information about inducements in other types of documents and even there this information is not provided in a clear and direct manner.
- Inducements are also frequently not disclosed during client conversations as observed during the mystery shopping exercise.

When it comes to implementation of rules about the qualifications and training of advisors, stakeholders in general report that changes made by distributors are aligned with requirements. Similarly, they also report that changes have been made to remuneration practices implementing the EU level provisions.

In terms of results in the market, interviewees report that the **EU rules have triggered varying changes at the level of distribution channels and product catalogues**. Large distributors or manufacturers have been able to accommodate the regulatory changes more easily, while small or medium-sized intermediaries have been faced with more drastic changes. This also applies to distributors in larger versus smaller capital markets in terms of compliance with the new rules. The evidence collected by ESMA [408] also does not show a clear-cut trend. While some distributors report that their product offering has not changed, others report rationalisation of the product catalogue.

In terms of effects on the types of advice being available to consumers, except in the Netherlands where independent advice has a strong market share, in other countries **the trend remains largely non-independent advice.** In other countries independent advice remains relatively confidential and tends to focus on high-net-worth clients. The introduction of MiFID II or IDD rules on advice does not appear to have triggered a shift towards more independent advice or increased the market share of independent advice.

Looking at the impact of rules about disclosure of inducements (tested in the form of an online survey-based experiment) we see that:

- The financial advice about products received which includes **a statement about inducements is only marginally likely to influence consumer perception**s of the products and their information documents. When consumers received advice (good or bad) which included a product recommendation and a warning about inducements, they were in fact slightly less likely to go back and review the product information documents than they were in the experimental module which was purely about inducements. In other words, the mention of inducements does not appear to make them more cautious about the advice they received.
- The **probability of respondents opting for the optimal product was significantly lower in the group that received bad advice** (as some followed the bad advice), and significantly higher in the group that received good advice. This suggests that people do tend to follow the advice they receive even though in all cases they received at least some warning about inducements which should have encouraged them to question the advice provided.
- **People do tend to follow the advice they are given even when the advice is incorrect**. The experiment tested the effect of advice received in form of a simple letter – thus a very impersonal form of advice. It is likely that with in-person advice other relational elements come in to play, which could further strengthen

[408] ESMA (2020). Technical Advice to the Commission on the impact of the inducements and costs and charges disclosure requirements under MiFID 2, April 1. Available at: https://www.esma.europa.eu/press-news/esma-news/esma-advises-european-commission-inducements-and-costs-and-charges-disclosures

the likelihood of following advice. However, these were not examined in this assignment. This reinforces the conclusions in the relevance section whereby measures that aim to enhance the quality of advice and its impartiality are crucial, as advice influences people's decision-making. **Vulnerable consumers and women are in particular more likely to make their choice in line with the advice** they receive despite the more or less visible warning about inducements.

- When comparing three different forms of disclosure about inducements, we see that the **effects of different formats are not very significant**. However, the format which provides a salient disclosure of inducements, but without reassuring the consumer about the fact that the institution has to have rules about conflicts of interest, performs the best in terms of the likelihood of the client rejecting inappropriate advice. However, the results of the analysis are not strong enough to allow inferences on the certainty of the potential gains from changing disclosure warnings.
- Finally, the correlation showed that the more salient the disclosure message, the more the consumers are going to distrust the advice. This urges for caution as it could backfire and make consumers disregard good advice.

The study also looked at the effects of the legal regime on the advice that consumers receive. We looked at the extent to which the advice encompasses all the key product features and the extent to which it is aligned with consumer needs. This was assessed through mystery shopping. We found that in terms of completeness of the information provided during the advice interview, **there were gaps across all areas (risks, past performance, potential gains, etc.)**. Many advisors covered only some of the key product features. When looking at the products that were recommended to mystery shoppers, we see that overall these were aligned with their level of wealth and investment objectives. Only a small number of clearly misaligned offers were found.

The analysis of information documents also allowed us, for a sample of products, to extract information about the level of inducements. However, where inducement values were made clear, it appears the **value of inducements was significant**. On average, inducements for the products in the sample are equivalent to about 40% of the total product costs charged to the retail investor. The application of inducements is reflected in higher costs for the retail investor. Nearly all the cost of paying inducements seems to be passed on to retail investors, noting that the products on which inducements are paid are – on average - about 35% more expensive than those investment products on which no inducements are paid. In other words, the rules implemented under MiFID II have not (yet) resulted in a market where consumers receive better value for money thanks to lower inducements.

Finally, on the basis of the summarised evidence of the effects of the inducement ban in the Netherlands and the UK, the most notable effects noted are:

- Product costs in these markets have declined, thus providing better value for money for clients.
- There has been a shift towards more execution-only products, as access to advice has declined.
- However, there is no negative trend in terms of levels of retail investors.

6.5.2. Outputs: the extent to which the requirements regarding advice and inducements are implemented

Disclosure of inducements and remuneration in information documents and during the advice process

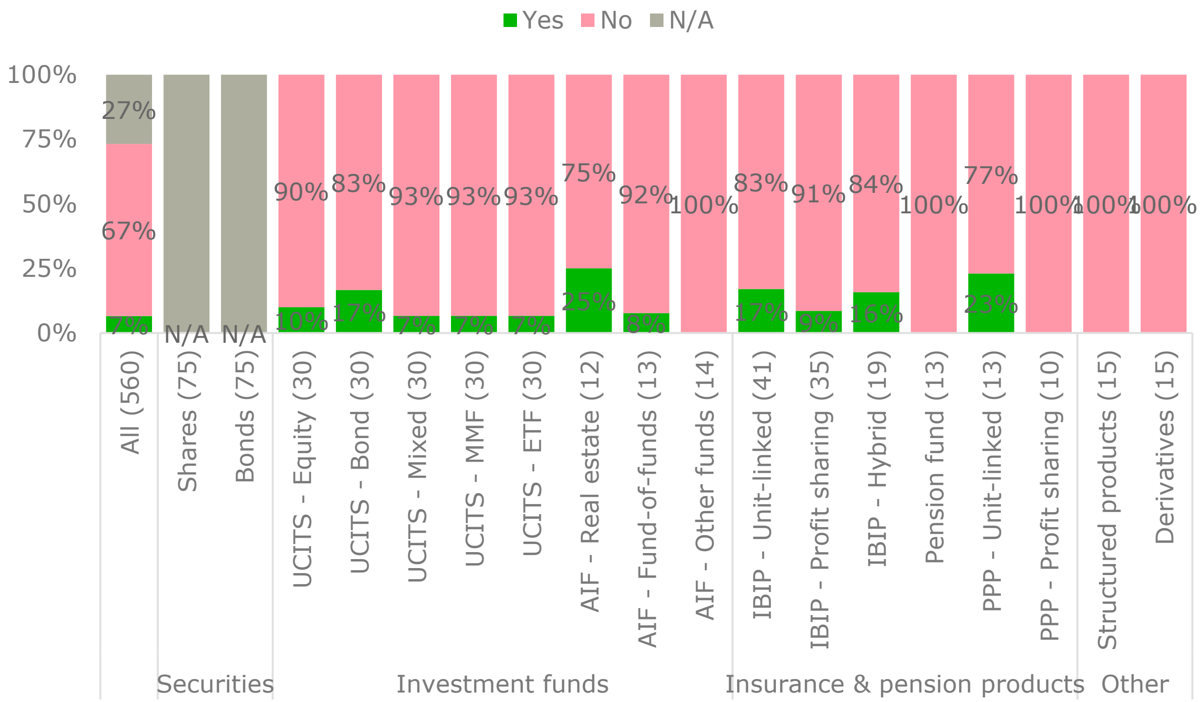
The objective of disclosure requirements for inducements is to inform investors what they are paying for; there are up-front and pay-as-you-go inducements in the market.

This section looks at the extent to which information about inducements was disclosed in information documents and how clearly. This is than followed by information on the disclosure of inducements during the process of giving advice as gathered through the mystery shopping exercise.

The detailed findings of the information documents analysis are presented in the chapter on disclosure (effectiveness of costs disclosure more specifically). With regard to the disclosure of inducements, the section shows clearly that this is not implemented adequately in the pre-contractual documents. The main findings relevant for this section on inducements are as follows:

- The **pre-contractual information explicitly mentioned inducements (see Figure.9) for only a very few of the products assesse**d (see Figure 6.9). For most products across all product groups assessed, the main information documents did not contain any indication of inducements. This might mean that no inducements were paid to the distributors, but not necessarily. For these products, no confirmation of inducements (or confirmation that inducements are not applied) was included in the pre-contractual information.
- In some **cases the inducement costs were indicated in the supporting documents (prospectus, terms and conditions, central tariff sheets, etc.),** while the main information documents contained a rather implicit indication of inducements being paid (e.g. "Indicated costs include costs of marketing and distributing the product").
- **Real estate AIFs as well as unit-linked IBIPs and PPPs are the products for which inducements are more frequently mentioned**. For about a quarter of the products in these categories, the main information documents clearly indicated that total costs included costs of selling the product. Additionally in a number of cases the main information document clearly stated that distributors do not receive any financial incentives from the manufacturers to promote the product. This was also considered as a clear indication of inducement information.
- **Austria is the only** country of the 15 where product information documents were analysed, **where the clear disclosure of inducements is more common** (indicated for 10 of the 30 products). On the other hand, product information documents from France (out of 33), Italy (48), Luxembourg (35), Romania (35) and Sweden (35) had no cases where inducements were clearly disclosed.

Figure.9 - Inducement information is explicitly disclosed in information documents (% of assessed products)



Note.: UCITS - Undertaking for the Collective Investment in Transferable Securities; MMF – Money Market Fund, ETF – Exchange Traded Fund, AIF – Alternative Investment Fund; IBIP – Insurance-Based Investment Product; PPP – Personal Pension Product. Number of sampled products – n=560, Inducement information is not applicable for shares and bonds

Source: Consortium, based on the product scoring.

There is also a clear disconnect between the information given above and the information conveyed about the disclosure of inducement practices by the stakeholders interviewed. Generally, the stakeholders interviewed were of the opinion that inducements were being disclosed adequately as shown in table below. They did however agree that the granularity of the information disclosed about inducements and remuneration remains limited and needs to be improved. The main differences are in the presentation at the pre-contractual phase and during the advice process, whether or not at the request of the investor or as a mandatory requirement for distributors/providers.

Table.11 - Disclosure practices according to interviewees

Country	Disclosure practices reported
Austria	• information on inducement is published in the ex-ante cost statement and in the assessment proposal by the advisor • there is national guidance and requirements for funds to explicitly disclose detailed information about the compensation for distributors
Czechia	• up-front commissions are a standard and the amount of the cost attributable to the compensation of distributor is disclosed as part of pre-contractual and contractual documentation
Finland	• in practice, inducements are considered like any other cost item, for example the management fee or transaction cost or brokerage fee, and presented separately in the cost and charges annually reported
France	• the practice is for the client to be informed of the existence of an incentive payment to the distributor • the intermediary (especially in the insurance sector) has to declare to the investor whether it is remunerated by way of commission or fee or a mixture of both • information about advice and the nature of remuneration is generally included in pre-contractual documents, as well as in the special conditions of the contract, and in the annual information document of the contract
Germany	• the client has to be informed that the advisor receives inducements, regardless of whether the advisor is a non-independent or independent advisor • in practice, inducements for most products are historically paid upfront for the acquisition of a product, but increasingly inducements are paid on an ongoing basis during the holding period, bundled with other costs
Greece	• inducements are disclosed as a separate line of a table together with all other costs in the pre-contractual phase, but also in the annual reporting to investors
Italy	• inducements are reported as costs of service following the template table designed by ESMA (total costs, product costs, service costs (of which inducement costs) • indicative inducement costs are provided at the pre-contractual stage, but the actual costs on inducements are disclosed annually • Consob will undertake mystery shopping, to evaluate, among other things, the quality of the explanation on inducements given by financial advisors
Ireland	• investors are broadly aware that the intermediary is paid through inducements • in practice their primary interest is often simply the total cost, rather than its individual components
Luxembourg	• no additional requirements are reported
Netherlands	• according to national guidance, there is only passive transparency, in which the advisor must be transparent about commission if the client asks about it (where a ban on inducements does not apply) • the Dutch supervisor AFM favours active instead of passive transparency of inducements, mandated by law in the future
Poland	• in practice, inducements may be different depending on the distributor and are not included in the documents produced ex-ante, i.e. not a specific amount or percentage in the KIDs • detailed information about inducements is provided, however, in the annual reports (ex-post) that each distributor is obliged to provide to the retail investors
Romania	• in practice there are execution-only services for all products, except for insurance and pension products, where commissions/inducements are paid and advice is mandatory
Spain	• entities inform clients ex- ante and ex-post about the inducement process for the services and instruments in the scope of MiFID II

Country	Disclosure practices reported
	• for insurance products, industry representatives indicated that in practice clients prefer to pay the inducement as part of the final premium, instead of being charged a fee separately
Sweden	• in practice the overall costs were only indicated in a line with separate information on inducements

Source: Consortium, based on stakeholder interviews

We also asked mystery shoppers to provide information about the disclosure of information about inducements and of the relationship between the advisor and manufacturer. The mystery shoppers were seeking advice on investment products following a predefined set of profile characteristics. Two profiles were used as explained below in the section about the effectiveness of advice. The following was observed regarding disclosure:

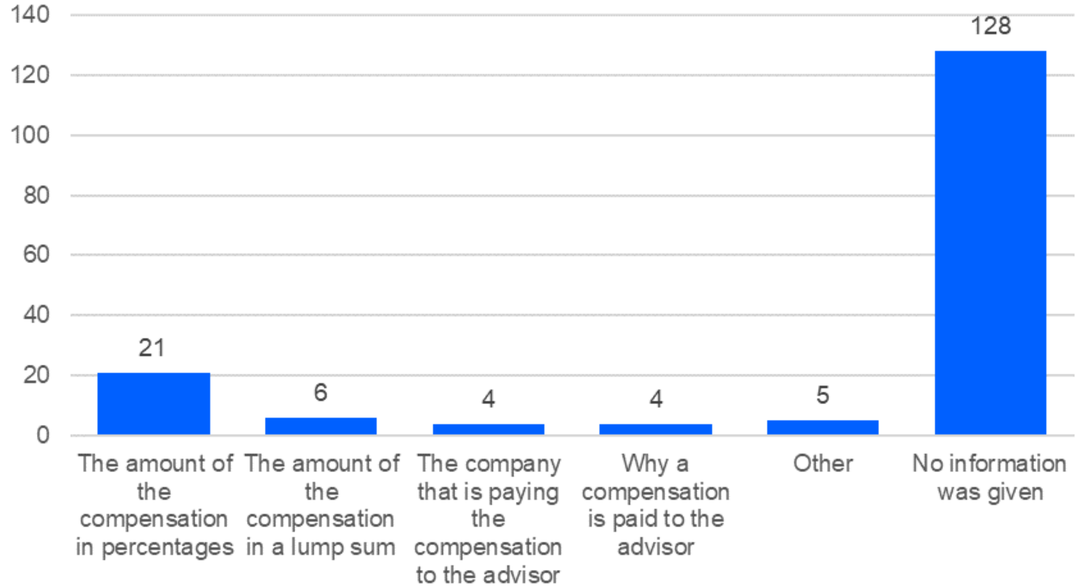
- In 45% of cases where mystery shoppers did receive information about specific products, no information was given about the relationship between the distributor and manufacturer.
- In only one-third of cases (32%) was this information given clearly. Most often the advisors said they were part of the same group as the manufacturer (27%). Only in 9% of cases were the advisors independent and this was stated clearly.
- There are no notable differences between insurance distributors and different types of financial investment firms covered in the sample: 41% of insurance distributors made no mention of their relationship with the manufacturer and 43% made no such mention in the case of investment firms.
- The situation noted was worse when it comes to disclosure of information about remuneration between the advisor and the product manufacturer. In the vast majority of cases where the mystery shoppers received product recommendations, no information on incentives or remuneration between the manufacturer and advisor was given (128 cases out of 158 i.e. 81%). When some information was provided, this was mostly stated as a percentage. The mystery shoppers were informed that an inducement was paid for the advice in only two cases. There are no notable differences between advisors from insurance companies and brokers and advisors from financial investment firms.

As explained in the section on suitability assessments, demands and needs tests the mystery shopping exercise did not go as far as the contract signature process. It concerned only the first contact when clients were shopping around for potential investments. It is possible that advisors might have disclosed more information at a later stage in the consumer journey, closer to contract signature. However, at that stage the consumer's decision has already been made and therefore disclosure would only be a formality.

The robo-advisors reviewed provided clear and structured information about costs including breakdowns but not on inducements which is most likely due to the fact that no inducements were applied. This is also supported by the findings of the study by Better Finance, which also found no evidence about robo-advisors receiving inducements[409].

[409] Better Finance (2020) *Robo-advice: Can consumers trust robots?*

Figure.10 - What information about the remuneration of the advisor was disclosed? (n=158 – i.e. shoppers who received advice out of all 240 observations)



Source: Traditional mystery shopping

Both datasets show that information about inducements is rarely disclosed in practice – whether in pre-contractual information documents or during conversations with advisors. It is more common for advisors to disclose their relationship with the product manufacturer, but this is also often not covered at all and frequently only superficially.

This confirms findings from research in France. A two-wave mystery shopping study[410] conducted by the AMF found that few advisors comply with the MiFID II obligation to state whether the advice given is independent or non-independent.

Furthermore, as explained in the section on relevance, consumers have a low level of understanding of what inducements are. They are primarily interested in total product costs rather than in the inducements and commissions.

Information provided during conversations when informing about or advising about a product(s)

The ultimate aim of the legal framework covered by this review is to ensure that advisors act in the consumer's best interests, including providing them with product recommendations that match their profile and providing them with the information they need so as to make the optimal decision about product in which to invest.

This section analyses the main findings about information that advisors did or did not provide during the mystery shopping conversations in view of supporting the consumer's choice. A detailed overview of the results of the mystery shopping can be found in Annex 3.

First, it should be noted that none of the items covered by the enquiry (risk level, past performance and related warning, expected gains, costs or the key information document itself) were systematically covered in all conversations with advisors when advisors

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[410] AMF (2019). Results of the two "risk- averse" and "risk-loving" mystery shopping campaigns conducted under MiFID 2. Available at: https://www.amf-france.org/sites/default/files/contenu_simple/rapport_etude_analyse/epargne_prestataire/Results%20of%20the%20two%20%27risk-averse%27%20and%20%27risk-loving%27%20mystery%20shopping%20campaigns%20conducted%20under%20MIFID%202.pdf

suggested concrete products to consumers. While robo-advisors featured a number of items more systematically, they rarely contained warning messages related to past or future performance and very rarely contained key information documents.

Information that was frequently provided to the consumers concerned:

- **Product risk** – this was discussed in most conversations during the traditional mystery shopping and was systematically shown on robo-advisor platforms.
- In the case of robo-advisors other items covered almost systematically were **past performance**, potential returns and a clear breakdown of costs.
- Potential returns were also frequently discussed during conversations with advisors, albeit less systematically than for robo-advisors.
- **Explanations about how the products suggested match the investor's profile were discussed with advisors** and also present with robo-advisors.
- **When a KID was provided during the conversation (see below), most advisors emphasised the need to read it or otherwise encouraged consumers to do so**. This feature was not present with robo-advisors.
- Over two-thirds of advisors also provided consumers with **additional documentation** other than the KID. It should be noted however that this is not necessarily a positive action, as it could actually increase the information overload and lower the prominence of the KID among other, often voluminous, documents.

On the other hand the following information aspects were less often covered:

- The provision of KIDs during the first conversation with the advisor or via email after the conversation in the case of a conversation via telephone or a digital video conference. **Only 41% of mystery shoppers** to whom advisors suggested one or several products **received a KID**. It could be that these documents might be handed to the client at a later stage in the journey. However, that would be too late to influence decision-making. When it comes to robo-advisors, KIDs were hardly ever presented or linked on the platform.
- An **explanation on how a product matches the consumer's past experience was also rarely provided** during the traditional mystery shopping. This item was not covered via robo-advisors.
- **Product past performance was only discussed in around half the cases.**
- A **presentation of costs was only given in around half the traditional mystery shopping conversations** and the advisors actually explained costs spontaneously in less than one-third of cases. In other cases, the mystery shoppers had to prompt advisors to get the information.
- A **weakness of robo-advisors is the relative absence of warnings.** This concerns both a warning that past performance does not guarantee future returns, and a warning that future forecasts are not guaranteed returns. The latter shortcoming was observed by the assessment of robo-advisors carried out by Better Finance[411].

The 2018 study carried out by Deloitte for DG FISMA also contained a large mystery shopping data collection. In terms of the information provided by advisors during the conversation, the 2018 study analysed only the provision of information about risks and information about costs. It gave a more positive picture of the situation than the findings presented in this study. However:

- At least some of the differences could be due to the mode of mystery shopping conversations. Deloitte's study involved exclusively face-to-face mystery shopping visits while for this study we used a mixed model combining telephone/teams as well as face-to-face conversations. This was due, on one hand, to the pandemic

[411] Better Finance (2020) Robo-advice: can consumers trust robots?

but, on the other hand, it was also intended to reflect the fact that consumers are searching for advice and information about products from home and are not necessarily willing to make physical appointments during the product "shopping around" phase.

- Even the 2018 study found notable gaps. Costs and charges were not discussed in a significant minority of cases and in some cases risks were also not covered.

Mystery shoppers were also asked to assess the clarity of the information provided about risks, past performance and expected future performance. When such information was provided, it was considered to be very or somewhat clear in the majority of observations. For robo-advisors as well the information provided about the products and their match with investor profiles was considered as rather clear.

The overall assessment of the provision of information during the advice sessions covered by this assignment (whether in the case of traditional channels or robo-advisors) is that the most important products features are not systematically covered. However when they are covered by the advisors, the information is seen as rather clear.

Figure.11 - Summary overview of items covered by advisors during first conversations about products and robo-advisors

Traditional distribution channels*	Items covered by advice	Robo-advisors
54% of advisors discussed past performance	Product past performance	Nearly all provided information
Of those who discussed past performance 77% made a warning	Warning that past performance does not guarantee future performance	None
63% discussed potential returns	Potential returns (forecasts of scenarios)	Nearly all
Not covered in mystery shopping	Warning about the fact that future forecasts are not guaranteed returns	None
74% of advisors discussed it	Risk level	Nearly all
60% of advisors explained	Explanation how product matches objectives	Most robo-advisors presented an explanation
30% of advisors discussed this	Explanation how it matches past experience	n/a
41% of advisors provided KIDs during the 1st conversation	Key information document was provided	Only a small minority of robo-advisors contained links
Of those who provided KIDs, 67% took action to encourage reading them	Encourage KIDs are read	n/a
67% provided other material in addition to KID	Other material	n/a
56% advisors provided information on costs (though only 32% actually explained)	Presentation of costs	Most had clear costs breakdown

Note: The % shows the share of conversations during which the items were discussed. This does not take into account disclosure in information documents.

Source: Traditional mystery shopping (n=240 visits of which 158 led to product suggestions) and robo-advisors mystery shopping

Implementation of rules regarding advisor profiles and qualifications as reported by stakeholders

Both MiFID II and IDD include articles on standards for training and testing obligations for investment advisors which are then detailed in the guidelines (e.g. the 2015 ESMA guidelines).[412] In practice, only ESMA has published definite guidelines setting minimum standards for the application of the training and testing. They include a

[412] MiFID article 25(1)

set of knowledge and understanding criteria the advisors have to demonstrate (both on the products and overall financial markets), requirements on internal assessments for the financial firms, and transparency requirements for the public authorities.[413] Such a document could not be found for EIOPA, which also included in a report, a state of play on the training and assessments requirements showing varying national practices with some countries having no requirements on training and assessment prior to giving financial advice (Estonia and Denmark) and other countries having varied sets of requirements.[414]

In practice, the interviewees mostly referred to the **national guidelines and generally did not make a difference between the ones on insurance and other investments**. These rules have contributed in part to standardising the framework of competences required for advisors at the national level, except in the countries where they do not exist. It can be positioned they contributed to the improvement of their activity, but as reported by the interviewees across the board, but the differences in national requirements may have created divergence across borders. The box below summarises the training requirements for advisors discussed during interviews.

Box.3 Qualification requirements

In Spain, certain qualifications are required in order to provide advice, with a list of entities authorised by the supervisor to issue certificates.
In France, vocational training and certificates from supervisors are required for advisors.
In Italy, depending on the professional qualification, authorities require additional training in order to be allowed to work autonomously with clients.
In Germany, there is a basic proficiency test by the Chamber of Commerce, regular in-house training, and development from specialists to general advisors. However, more complex products still require specialised distributors, with advanced training.
In Austria, training involves a two-stage system: legal requirements at the level of financial entities regarding the number and qualification of advisors, then control through the financial market supervisory authority.
In Greece, advisors are required to undergo training, participate in seminars and pass exams to obtain certificates from supervisors.
In Ireland, advisors are required to hold certain qualifications that have been recognised by the supervisor and complete ongoing professional training every year.
In Finland and Sweden, there is a more market driven approach through self-regulation by recognised institutes.
In CESEE region, the Guidelines from ESMA and EIOPA have been translated at national level. For example, in Romania there are also requirements regarding the period during which a person has to carry out their activity under the supervision of another person who performs the same activity when providing investment advice, especially with regard to complex vs non-complex financial instruments.

The interviewees were also asked to provide feedback on possible developments in this area. Given the rather positive assessment of the situation on advisors' qualifications, a label was not seen as a priority by the stakeholders across the board. The industry players expressed some worries over the potential additional red tape this could create, while at the same time noting the promotion of equalised standards of qualifications across the union and a potential marketing argument. The national authorities saw it as one of their prerogatives. Some consumer protection bodies also argued that this could further blur the line between independent and non-independent advisors and create confusion. Subject to a positive impact assessment carried out in the context of the reviews of IDD by Q1 2023 and MiFID II by Q4 2021, the Commission will introduce a requirement for advisors to obtain a certificate that proves that their level of knowledge and qualifications is

[413] ESMA (2017) Guidelines for the assessment of knowledge and competence. Available at: https://www.esma.europa.eu/sites/default/files/library/esma71-1154262120-153_guidelines_for_the_assessment_of_knowledge_and_competence_corrigendum.pdf
[414] Annexes I-VIII to the Report on the application of the IDD

sufficient to access the profession and shows that they receive an adequate level of continuous training. This aims to maintain a satisfactory level of advisor performance. In addition, by Q1 2022 the Commission will assess the feasibility of setting up a **pan-EU label for financial advisors**, which can be used to comply with the requirement to obtain a certificate[415]. The EU-label for financial advisors is generally perceived as positive by the stakeholders as long as it meets objective criteria and is issued by an independent body. Consumer associations argue that, irrespective the qualifications, advisors should not act as salespeople and this can only be avoided through the elimination of conflicts of interest in distribution networks.

Implementation of rules regarding remuneration

Product-neutral, sales or quality-based inducements seem to be main income streams for distributors, where advice is provided. Stakeholders in several Member States have broadly indicated that the remuneration agreements between manufacturer and distributors were amended with the implementation of MiFID II and IDD. Large distributors or manufacturers have been able to accommodate the regulatory changes more easily taking into account business considerations while small and medium-sized intermediaries have been faced with more drastic changes. This also applies to both distributors in smaller and larger capital markets in terms of compliance with the new rules.

Box.4 Remuneration schemes

In France, the rules on inducements have had a large impact, particularly on agreements between manufacturers and distributors, in the form of group standards, standard contracts, or a collective process on a contract-by-contract basis. The advisor's remuneration for insurance products is linked to the suitability of products, in order to avoid mis-selling or the early termination of contracts.

In Germany, the remuneration of the advisors consists of a fixed salary, a basic commission, quality-dependent inducements (for all-round advice), bonuses and additional benefits. Every client can give feedback on the advice received. They give advisors a net promoter score, which is assessed by an independent institute. Some companies also carry out mystery shopping exercises internally.

In the Netherlands, there is a cap on the maximum variable remuneration for employees in the financial sector, with bonuses capped at 20% of their fixed remuneration. There are also bonus caps for at least bank employees at EU-level.

In Italy, advisors are both employed by the manufacturers, which are also distributors, and agents. The advisors employed by the manufacturers receive a basic salary plus part of the inducements. The remuneration of external agents is based on the volume of business intermediated.

In Spain, the remuneration policy for advisors is agreed within the financial group or with external partners (manufacturer, distributor and agent). The bonuses usually depend on the quality of the service as measured by internal indicators.

In Austria, inducements are monitored and collected company-wide, with in-house departments overseeing the remuneration agreements.

In Czechia, inducements are monitored according to product structure and distribution channels. The remuneration scheme is set out in a contractual agreement with each distributor.

In Finland, distributors conclude agreements with a range of fund managers or other manufacturers of financial instruments, with a volume-based distribution fee. A distributor

[415] European Commission (2020). Communication on A Capital Markets Union for people and businesses - new action plan, Available at: https://eur-lex.europa.eu/resource.html?uri=cellar:61042990-fe46-11ea-b44f-01aa75ed71a1.0001.02/DOC_2&format=PDF

maps the amount of inducements received and the rate of the distribution fee included in the agreement, then allocates it among their advisors on the overall consumer base and the remuneration as such is product neutral, in the sense that the remuneration of advisors is not impacted by whether they recommend product A or product B.

In Romania, there is an overall fixed commission for the sale of funds based on the distribution contract of the in-house asset manager with the banking group. For insurance and pension products, the advisors of manufacturers which also distribute the products receive a fixed salary. In addition to the initial commission, some companies offer performance-based bonuses to their tied agents/consultants.

6.5.3. Results: the effects of rules on advice and inducements on the market

Effects on distribution channels and product catalogues

No significant changes with regard to the number and type of distributors were reported by the interviewees except for direct competition from trading platforms. **In practice, most large banking and insurance groups separated their business lines, namely manufacturing and distributors/advisors.** This triggered similar changes with their business partners.

Irrespective of regulatory developments, **the product range is adapting due to the changing market and economic conditions**. For example, fewer products with a guaranteed return and complex investment products were sold to retail investors. In Sweden, complex products have been removed from the product catalogue. In the Netherlands, manufacturers responded to the request of their distributors, driven by changes in retail demand, and adapted their product catalogues accordingly. In Italy, the IBIPs sold by banks (around 90% of the retail market) already applied the inducements rules under MIFID II, even prior to IDD.

The respondents to ESMA's Call for Evidence[416] indicated that their product offering has not been amended nor has the range of products offered been reduced. Others signalled the creation of more clean share classes of investment funds in tandem with independent investment advice. The product governance framework was also mentioned as driver for changes in the product offering and not MiFID II inducements regime.

Under IDD, the applicable rules on inducements are less stringent. In response, a much wider and myriad of share classes in funds has been created by asset managers, to distinguish between with/without inducement, retail/institutional investors, currencies, etc. A definitive trend towards sales of traditional life products instead of unit-linked products, because of a lower regulatory burden, cannot be established at this point in time from the interviews with stakeholders. However, the market trends do show a move towards IBIPs where the investment risk is borne by the policyholders.

[416] ESMA (2020). Technical Advice to the Commission on the impact of the inducements and costs and charges disclosure requirements under MiFID 2, 1 April 1. Available at: https://www.esma.europa.eu/press-news/esma-news/esma-advises-european-commission-inducements-and-costs-and-charges-disclosures

Box.5 Effects of inducement rules

Jurisdictions that had already introduced an inducement ban (the Netherlands and the United Kingdom) or significant limitations on the permissibility of inducements (e.g. Finland) were not impacted by the MiFID II rules. Increased transparency, namely the disclosure of inducements, both ex-ante and ex-post, and an increase in investment advice were reported in France, Spain. In Belgium, some manufacturers have reduced the management fees for distributors providing independent advice or compensated for the costs of research. In Germany, manufacturers are increasingly providing products without distribution fees built into the product costs, leaving it to the distributors to charge retail investors directly for their advice. The supervisor in Luxembourg reported that there are no specific requirements for funds on how to disclose detailed information about compensation for distributors.

Effects on the provision of advice and third-party products

As explained in the coherence section (section 6.4), one of the criteria to satisfy **the quality enhancement test** as a precondition for inducements is that distributors offer a wide range of products (e.g. third-party products). Subsequently in this section we analyse the **feedback from stakeholders about practices** regarding the distribution of third-party products as well as the mystery shopping evidence about the extent to which third-party products are actually being offered to consumers.

With respect to the impact of the inducements regime, stakeholders discussed two situations:

- the promotion of exclusively in-house products; and,
- widening the catalogue with third-party products.

The provision of in-house and/or third-party products varies across distributors. Independent distributors indicated that in-house products usually have relatively higher inducements or other incentives for advisors. If a distributor is a large banking or insurance group, which is also a manufacturer, then the question is whether the advisors will primarily promote their own products. Banks/insurers that do not have a fund management company within their group recommend third-party products to retail investors by definition. The offer of third-party products has increased in open architecture models, with for example the emergence of platforms dedicated to other providers. Most importantly, the provision of third-party investment funds across the EU by large banking groups has been facilitated through the passporting regime. Fund supermarkets, even though not widely developed across the EU, offer mainly third-party funds.

This study shows that inducements make up about 34% of the total product costs for third party products, compared with 42% for in-house products (see the Annex 6 on product costs analysis).

The experiences at national level vary significantly. In France, retail investors primarily invest in in-house products, as a direct result of banks promoting primarily or exclusively their own manufactured products (both insurance policies and investment funds). In Italy, there are more intermediaries with open architecture, with banks offering a wider portfolio of in-house and third-party products, in particular mutual funds in contrast with life insurance products with an exclusivity clause. National rules on omnibus accounts in Spain reduced the offer of third party products; only the distributor has information on the retail investor, which is not passed on to the manufacturer.

Beyond the structuring and management of in-house funds for the domestic market, Luxembourg is also the domicile for the passporting of cross-border funds. In Ireland, third-party products are predominant among all types of distributors, while in-house products are largely offered by insurance companies.

In the Nordics, distributors offer both in-house products and third-party products; this has been an indirect effect of the quality enhancement test and the stringent criteria to be a non-independent advisor. Automated matching or clustering of product is used by certain providers. Warning systems, blocking IT or internal mystery shopping are also gaining traction.

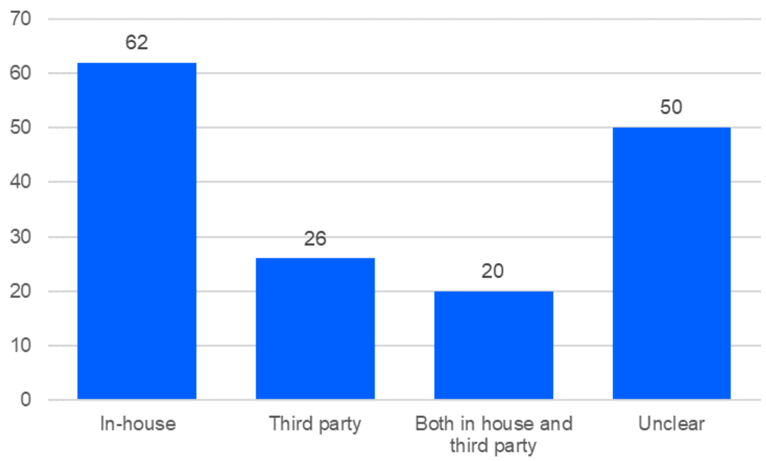
The mystery shopping data collection activities looked at the extent to which retail investors were **offered third-party products**. However, it should be noted that the differentiation between an in-house and third-party product is not that straightforward, as in a high number of observations the mystery shoppers could not determine if the product was an in-house or third-party product.

Across the traditional channels' mystery shopping**, a large share of products that were recommended to the shoppers involved in-house products.** In 62 of the 158 recommendations[417], shoppers were advised exclusively on in-house products. Third-party products were found in 26 recommendations and a mix of both was proposed in 20 instances. Half of the products suggested by banks were only in-house products and in a quarter of cases both in-house and third-party products were offered by banks. It is also noteworthy that the instances where banks suggested only third-party products were in more than half the cases in Italy. It should be noted that this is in line with an observation made during the interviews that Italian banks have recently turned largely towards third-party products. In all other countries involved in the mystery shopping exercise third-party products were rarely recommended by banks (one or two observations per country). On the other hand, the banks in Romania hardly ever recommended third-party products.

Insurance distributors predominantly offered in-house products[418] (however the quality enhancement tests and the incentives to offer third-party products do not apply to this sector).

It is worth noting that in 50 cases it was unclear to the shopper whether the product was manufactured in-house or by a third party. This is partially due to the fact that the shoppers were not systematically provided with an information document as shown above.

Figure.12 - Product manufacturer Q: Who is the manufacturer of the recommended product?



Source: Consortium, based on the traditional mystery shopping, (n=158 who received a product recommendation out of 240 observations)

417 This represents 39% of observations where at least one product was recommended. However it represents 57% of cases where the mystery shoppers were able to identify whether the product was in-house or third- party.

418 In-house products were offered in 31 of the 44 observations where for the insurance sector it was clear to the mystery shopper whether an in-house or third- party product was being offered.

In the robo-advisor mystery shopping exercise, special attention was paid to identifying when robo-advisors mentioned selling third-party products. Apart from three cases where the brand of the product was chosen from the start, in no instance did robo-advisors mention their relationship with the manufacturers of the product they recommend in the list. The only (limited) information available for clients to gain insights about the manufacturers of the products they were buying was given in the list of products. Indeed, in some cases the name of the manufacturer was in the name of the product. Therefore it is not possible to clearly identify to what extent the products offered by robo-advisors reviewed are third-party products.

The mystery shopping data shows that while the quality enhancement test requirements may in some countries have resulted in the inclusion of a higher number of third-party products in catalogues, the products proposed to clients are in half of the cases only in-house products and in a quarter of cases a combination of in-house and third-party products. Some consumer protection bodies also noted that the inclusion of third-party products in catalogues did not necessarily result in these being actively to clients. Italy seems to be an exception as it is a country where third-party products are relatively frequently offered.

The number of distributors providing third-party products is likely to increase further in the coming years, with the enhanced importance of open banking, robo-advice, and the importance of ETFs.

To complement these findings, some stakeholders also commented on the effects of the quality enhancement tests. Several consumer protection bodies questioned the level of enforcement of these tests and their supervision. One interviewee mentioned the Norwegian case where, after carrying out an assessment of national banks, the supervisor discovered that the quality of the service offered by most firms was insufficient to pass the test. Since the threat to prohibit inducements for these firms, there has been an important shift towards direct fees charged to clients instead of inducements, which is now reported by the interviewee to be the case for 70% of firms.

Other stakeholders noted that the quality enhancement test is "fuzzier" than the non-detrimental advice test of IDD. This argument was then used by the insurance sector to defend the different inducement rules set out in IDD to indicate that contrary to some perceptions they are not looser than MIFID II ones.

Effects on the costs of products to clients

The section on costs disclosure explains the analysis we carried out not only of what costs are displayed but also of the actual cost of products being sold in the 15 countries analysed. This analysis was carried out using the sample of 560 products for which information documents were reviewed. However, information on the different cost items was not clearly displayed for all the products.

The table below shows the average costs for different product categories available on the market in the 15 countries studied.

Table.12 - Average entry, ongoing, exit and total costs (per product category)

Category	Sub-category	Product	Entry cost (% of NAV Y0)	Ongoing cost (average per annum)	Exit cost (% of NAV Y5)	Total costs (average per annum)	Total
Securities	Listed shares	Shares	0.4%	0.2%	0.4%	0.3%	70
	Bonds	Bonds	0.5%	0.2%	0.4%	0.4%	75
Investment funds	Retail UCITS	UCITS - Equity	0.9%	2.1%	0.1%	2.3%	30
		UCITS - Bond	0.6%	1.3%	0.3%	1.5%	30
		UCITS - Mixed	1.1%	1.9%	0.1%	2.2%	30
		UCITS - MMF	0.7%	0.7%	0.2%	0.9%	30
		UCITS - ETF	0.5%	0.6%	0.3%	0.8%	30
	Retail AIFs	AIF - Real estate	0.9%	2.4%	0.4%	2.6%	12
		AIF - Fund-of-funds	1.4%	2.6%	0.2%	2.8%	13
		AIF - Other funds	1.4%	2.8%	0.8%	3.2%	14
Insurance & pension products	Insurance-based investment products	IBIP - Unit-linked	0.4%	1.9%	0.0%	2.0%	40
		IBIP - Profit sharing	0.3%	1.9%	0.0%	1.9%	32
		IBIP - Hybrid	0.9%	2.2%	0.1%	2.4%	18
	Personal/individual pension products	Pension fund	0.9%	1.0%	0.1%	1.2%	11
		PPP - Unit-linked	0.7%	1.3%	0.0%	1.4%	11
		PPP - Profit sharing	0.0%	1.8%	0.0%	1.8%	6
Total							452

Source: Consortium analysis, based on product scoring.

The analysis presented in the cost disclosure section shows that:

- Manufacturers of securities (generally) do not charge costs to investors, and hence direct distribution costs make up all the costs of securities.
- For investment funds, the share of direct distribution costs depends on the complexity of the product. UCITS Money Market Funds and UCITS ETF come with higher direct distribution costs as a share of total costs compared with more complex or actively managed UCITS Mixed and UCITS Equity products.

Table.13 - Direct distribution costs per annum as a share of total costs per annum (%, per product category)

Category	Sub-category	Product	Direct distribution cost	Total costs	Distribution as share of total	N
Securities	Listed shares	Listed shares	0.3%	0.3%	100.0%	70
	Bonds	Bonds (investment/non-investment grade)	0.4%	0.4%	100.0%	75
Investment funds	Retail UCITS	UCITS - Equity	0.4%	2.3%	16.7%	30
		UCITS - Bond	0.4%	1.5%	27.3%	30
		UCITS - Mixed	0.4%	2.2%	18.7%	30
		UCITS - Money market funds	0.4%	0.9%	45.9%	30
		UCITS - ETF	0.3%	0.8%	43.4%	30
	Retail AIFs	AIF - Real estate	0.3%	2.6%	12.5%	12
		AIF - Fund-of-funds	0.7%	2.8%	25.8%	13
		AIF - Other funds	0.7%	3.2%	20.8%	14
Total						334

Note: Insurance and pension products are excluded

Source: Consortium analysis, based on the product scoring.

Indirect distribution fees (i.e. inducements) were collected alongside direct distribution costs. The standardised product information sheet often indicated the existence of indirect distribution fees, but did not indicate the amounts involved. The indirect distribution fees were only collected for investment funds. For just over half of investment funds the exact indirect distribution fee charged was provided[419]. For the remainder, only the presence of indirect distribution fees was indicated[420]. For insurance and pension products no indirect distribution fees were collected since they are not disclosed in the product information documents.

Investment funds with indirect distribution fees on average come with higher costs than investment funds without such fees. This result holds true for the majority of countries studied. More specifically, the average annual total costs of investment funds with indirect distribution fees (1.9%) are 25% higher than those without such fees (1.5%). This is partially explained by a difference in the composition of the product categories, with cheaper UCITS ETFs and UCITS Money Market Funds being overrepresented in the sample of investment funds without inducements.

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[419] For 94 out of 189 investment funds it was indicated that there was no inducement fee or the exact inducement fee was specified.

[420] The prospectus mentions an inducement or a maximum inducement being charged, without providing the exact fee.

Table.14 - Comparison of total costs for products with and without indirect distribution fees (% of NAV per annum, per country)

Country	No indirect distribution fees	Indirect distribution fees	N (no indirect distribution fees)	N (indirect distribution fees)
Austria	0.7%	2.4%	3	10
Czechia	0.8%	1.6%	2	11
Finland	1.5%	1.6%	1	12
France	1.6%	2.2%	1	12
Germany	1.6%	1.2%	5	8
Greece	1.4%	1.8%	1	10
Ireland	1.2%	2.5%	4	9
Italy	NA	1.9%	0	13
Latvia	1.0%	2.1%	6	7
Luxembourg	3.6%	1.5%	2	8
The Netherlands	NA	NA	NA	NA
Poland	NA	2.1%	0	13
Romania	NA	2.1%	0	12
Spain	0.6%	1.8%	1	12
Sweden	0.9%	1.5%	1	12
Average / Total	**1.5%**	**1.9%**	**27**	**149**

Note: Insurance and pension products are excluded. All entries for the Netherlands are marked as not applicable since inducements (indirect distribution fees) are banned in the Netherlands.

Source: Consortium analysis, based on the product scoring.

6.5.4. Impacts: effects of the inducement disclosure rules on retail investors

This section presents the findings of the second module of the survey-based experiment. This module investigated how different formats for disclosing information on the presence of inducements – commissions paid to distributors of financial products for selling these to their clients - would impact client behaviour.

Participants were shown a one-page information benchmarking document on two financial products and were asked to select the product in which they considered it would be financially best to invest[421], as in the disclosure module. They were also presented with a letter from the fictitious bank featuring in the experiment's description, which advised them to invest specifically in one of the products they had previously seen. Participants in the experiment were shown a letter from the fictitious bank advising them to invest in a specific product. As the recommended product was randomly selected, the advice was "good" in about half of the cases but "bad" in the other half.

A detailed description of the experiment and the stimuli used is presented in Annex 8.

Effects of disclosure about inducements on the level of caution exhibited by respondents

The first key question is whether a warning on inducements leads clients to stop and think about their decision before accepting and following the advice. Respondents had the option in both modules to revisit the product information documents if they were not sure which one to choose. Indeed, a not insignificant 10.65% of participants did that in the inducement module. As expected, this is lower than in the disclosure module, where participants did not receive any advice (12.95%). A number of participants who were otherwise unsure about which product to choose were likely to rely on the letter giving advice. Others probably thought that the letter must have advertised the wrong product and thus decided against the advice.

Participants were evidently more likely to go back and re-examine the products when the advice communicated in the subsequent letter from the bank was "bad", i.e. recommending the product with the higher overall costs. However, this difference was relatively minor (9.30% vs. 11.96%). Those who correctly answered the survey's question on the definition of inducements were more likely to revisit the documents (13.58% vs. 8.98%), but they were equally more likely to revisit the documents of the disclosure experiment, which was not related to inducements in any way. These respondents, on average, completed the survey with more care.

Therefore, conclusion, the warning of the presence of inducements did not seem to make respondents more cautious overall. The differences measured in re-examining the letters, compared with the situation in first module where no advice was given, were marginal. If people understood the concept of inducements, they were generally more likely to carefully consider the choices presented and also more likely to re-examine the advice given, by again reviewing the information documents.

This is in line with the conclusions of the 2020 study on disclosure under PRIIPS which noted that trust in advisors was important enough to potentially trump the disclosure of information on inducements and conflicts of interest.[422]

[421] If you were in [persona]'s position and considering the information provided in the documents for the two products, which product would you consider **financially better to invest in**?

[422] DEVSTATS (2020) Consumer testing services - Retail investors' preferred option regarding performance scenarios and past performance information within the Key Information Document under the PRIIPs framework, for the European Commission, DG FISMA.

Table.15 - Proportion of participants revisiting the documents before deciding, by experiment module

Breakdown of the sample	Proportion revisiting the documents (%), by module		
	Inducement (%)	Inducement, treatment 1 (%)	Disclosure (%)
Total	10.65	11.14	12.95*
Advice received:			
- bad	11.96	12.92	-
- good	9.30	9.30	-
Difference	*-2.66*	*-3.62*	
Understanding inducements:			
- correct	13.58	15.07	15.59*
- incorrect	8.98	8.87	11.44*
Difference	*-4.60*	*-6.20*	*-4.15*

Significance test (disclosure different from inducement module): ***p < 0.1%. **p < 1%. *p < 5%

Source: Survey-based behavioural experiment (n=10,470)

There are however important demographic differences as regards the extent to which respondents revisited the product information documents. The population groups least likely to apply due care and revisit the documents are typically the same groups that are commonly seen as vulnerable consumers of financial products. The proportion of participants re-examining the documents was particularly low among the young (18-34 years-old); those with only primary education level, those with low income levels and a low financial literacy test score; as well as participants who did not have any savings. Interestingly, the respondents who had savings and were looking to invest were also less likely to go back and look at the products again. The same applies to the duration devoted to the product information benchmarking documents (measured in seconds). The reasons for not making more of an effort to review the products could be, for instance, that they were put off by the complexity of the product descriptions, or that they lacked the confidence they could successfully complete the task with more effort.

The above population groups are also less likely to answer correctly what inducements are – but are at the same time somewhat more likely to trust that banks act in the investor’s best interests. These “vulnerable” population groups therefore consistently combine the main characteristics that can make suboptimal advice facilitated by inducements especially problematic: they tend to spend less time and effort examining the products, they are less likely to understand what inducements are, while at the same time being more trustful of the distributors of financial products and financial advisors.

Table.16 - Proportion of participants revisiting the documents before deciding

Breakdown of the sample	Average exposure time (sec)[423]	Proportion of participants (%)		Level of trust that banks act for the investor (mean score)
		Revisiting the documents (%)	Understanding inducement (%)	
Total sample	83.7	10.65	36.28	5.45
Gender:				
- Male	78.5***	9.88*	36.65	5.49
- Female	89.2***	11.43*	35.81	5.42
Age:				
- 18-34 years	62.0***	8.74***	29.27***	5.77***
- 35-54 years	78.7***	11.19	36.55	5.42
- 55 years and more	103.2***	11.42	40.70***	5.29***
Education level:				
- Up to primary (1)	63.7***	7.58	24.91***	5.46
- Secondary	80.4*	10.31	33.71***	5.53*
- Post-secondary	85.1	11.52	34.48	5.48
- Bachelor's	89.7***	11.07	38.16*	5.50
- Masters or higher	83.4	10.33	41.24***	5.28***
Income level:				
- Low	72.0***	9.27	31.45***	5.47
- Medium	82.6	10.34	36.43	5.49
- High	90.2***	11.50*	39.31***	5.50
Financial literacy score:				
- Low	60.2***	6.98***	23.66***	5.70***
- Medium	82.8	11.60*	34.04**	5.51
- High	99.4***	12.34***	45.86***	5.26***
Attitude to investing:				
- Has no savings	84.0	8.98**	33.47**	5.15***
- Not interested in investing	85.4	11.98*	34.56*	4.94***
- Interested in investing	86.3	10.91	37.25	5.81***
- Looking to invest	60.2***	6.83***	27.78***	6.22***
- Already invested	90.2***	12.32***	42.78***	5.63***

Significance test: ***p < 0.1%. **p < 1%. *p < 5% ; Source: Survey- based behavioural experiment (n=10,470)

(1) sample of respondents with primary education is very low – proportionately to the population in countries covered

Source: Consortium, based on behavioural experiment.

[423] Exposure time was top-coded at 480 seconds to avoid the high leverage of a small number of exceptionally long viewing times on the analysis.

Effects of advice given on choosing the right product

A key task in the choice experiment was for consumers to choose one of two products in which it would be financially better for them to invest in. In half of the cases the letter they received recommended a product which was not the most advantageous (i.e., the consumer received "bad advice").

In this module just over half (52.59%) of the participants chose the optimal product with the lowest overall costs. This is very slightly less than in the disclosure module (53.01%). However, the two modules are not directly comparable, however, as the inducement module was built around a letter of advice that could be either bad or good. The probability of ending up with the optimal product was significantly lower in the group that received bad advice (as some followed the bad advice), and significantly higher in the group that received good advice. Altogether, 48.19% of participants went against the bad advice and chose the optimal product, while 57.37% followed chose in line with a good advice. This suggests, as also shown by more detailed analysis by sub-groups below, that people do tend to follow the advice they receive.

Table.17 - Outcomes of the experiment by module

Breakdown of the sample	Product selected by participants (%)			
	Not optimal (%)	Optimal (%)	No product selected (%)	*Total (%)*
Disclosure module	42.91	53.01	4.08	*100.00*
Inducement module	43.54	52.59	3.86	*100.00*
- **When advice was bad**	48.01	48.19	3.80	*100.00*
- **When advice was good**	38.70	57.37	3.93	*100.00*

Source: Consortium, Survey based on behavioural experiment ((n=10,470)

The fact that respondents in the experiment had a propensity to follow the advice given is also confirmed by the feedback they provided. After they made their choice in the experimental module, they were asked to what extent the advice they received contributed to their decision (on a scale of 1 to 10). One-A third of respondents (32%) chose the top three scores which indicate that they were inclined to follow the advice, while only 13% chose scores indicating they did not take the advice into consideration. Most of the respondents (55%) chose middle values. However, if we aggregate the top four scores of agreement, we see that 54% leaned towards following the advice.

Through another follow-up question they were asked to imagine that they were in the same situation as the persona in the vignettes they have seen. They were asked whether they would follow the advice received: 9% said they would certainly follow the advice and 43% said they were likely to follow the advice. Thus, in total 52% were likely to follow the advice in a real- life situation, while. Some 28% chose a neutral answer and 20% said they tend not to follow advice. Those with high trust in banking were overwhelmingly likely to follow the advice (82%).

Other characteristics and behaviours than the advice also explain differences in the respondents' choices made by respondents, as discussed below.

In general, a higher degree of care by the participants – i.e. reading the product documents and letter of advice a second time, as well as looking at the product information documents for longer – did have a positive impact on the decision made. Although the proportion of respondents re-visiting the documents and who chose the optimal product was lower than amongst those deciding outright (51.13% compared with to 54.11%), the proportion taking a bad decision was drastically lower – as many opted to take no decision at all.

More careful behaviour thus helped respondents finding the optimal product. However, as seen earlier, there was no indication that the warnings on inducement led to more careful behaviour. Furthermore, this does not necessarily suggest that measures to encourage potential investors to pause and think would automatically result in better choices. A recent UK experiment carried out by the Financial Conduct Authority tested the extent to which adding friction to the consumer journey on a web-based investment platform would result in a better decision. They found that adding questions that would encourage the participants to pause, read, and reflect did not in fact have the assumed effect and did not lead to better outcomes[424].

Table.18 - Outcomes of the experiment based on decision-taking behaviour and exposure time

Breakdown of the sample	Product selected by participants (%)			
	Not optimal (%)	Optimal (%)	No product selected (%)	*Total (%)*
Full sample	43.54	52.59	3.86	*100.00*
Decision-making behaviour:[425]				
- **revisiting documents**	33.21	51.13	15.67	*100.00*
- **taking outright decision**	45.89	54.11	-	*100.00*
Exposure time:				
- **At least 100 sec**	38.11	57.29	4.60	*100.00*
- **Less than 100 sec**	45.63	50.79	3.58	*100.00*

Source: Consortium, based on behavioural experiment (n=10,470)

There are several noteworthy patterns with regard to which groups tend to make better or worse decisions.

Women were significantly less likely to find the optimal product, while slightly more likely to follow the advice. Their weaker performance is in fact explained by their higher propensity to follow the advice when that was bad. Women were not less likely, in contrast, to find the optimal product when the advice given was good. Further analysis showed that the lower proportion of women identifying the optimal product is almost entirely explained by their somewhat lower levels of financial literacy. When controlling for financial literacy in a logistic regression model, the effect of gender all but vanishes (see below).

A study by the French AMF also showed that women might be more likely to trust the advisor blindly, as 29% of them said they implemented their advisor's suggestion, compared with 20% for the overall population.[426]

Table.19 - Outcomes of the experiment, by gender

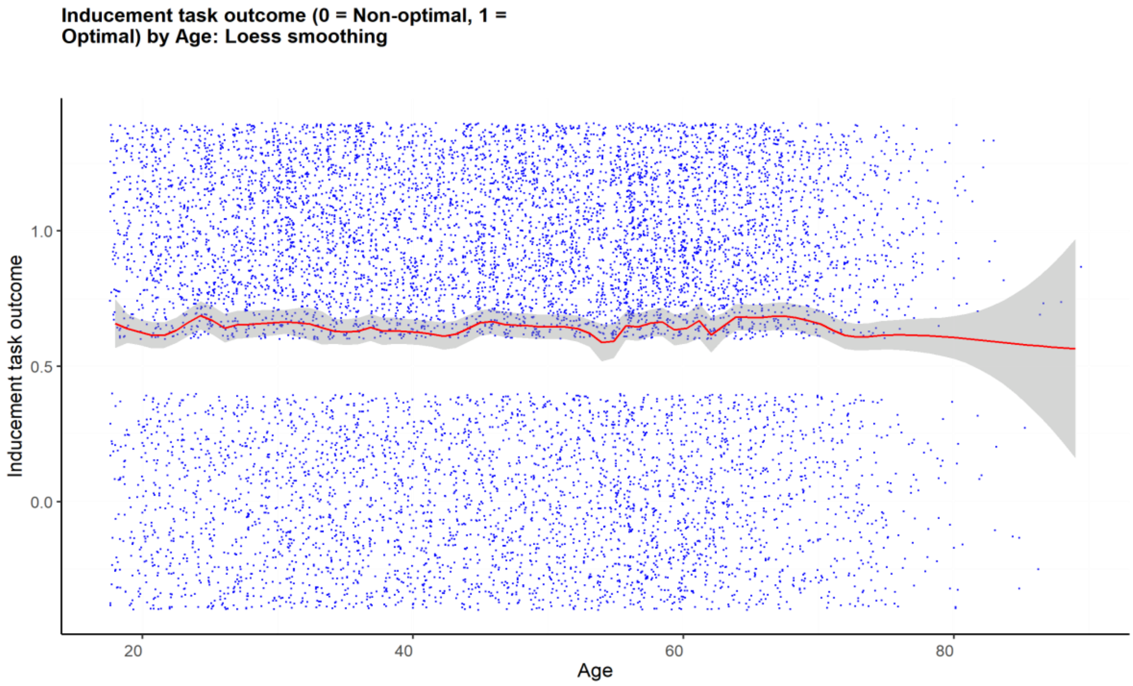
Breakdown of the sample	Product selected by participants (%)			Choice in line with advice	
	Not optimal (%)	Optimal (%)	No product selected (%)	No (%)[427]	Yes (%)
Total sample	43.54	52.59	3.86	47.31	52.69
Gender:					
- Male	43.20	53.36	3.44	47.77	52.23
- Female	43.89	51.80	4.31	46.83	53.17

Source: Consortium, based on behavioural experiment. (n=10,470)

[424] Financial Conduct Authority (2022) *Pausing, reading, and reflecting: decision points in high-risk investment consumer journeys.*
[425] 492 observations from the soft launch dataset where respondents were not offered a visit were excluded from this calculation.
[426] https://www.amf-france.org/sites/default/files/private/2020-12/csa-pour-amf_etude-investisseurs-2020_0_1.pdf
[427] This includes respondents who did not select any product.

The ability to find the optimal product generally decreased with age, with the exception of the youngest generation (from 18 to ca. 27), who did not perform well. This is partly explained by financial literacy, which also increased first up to 25 years of age and then slowly decreased with age. For the youngest generation, the weak results can also be explained to a large extent by their limited effort (their willingness to re-read the documents, as well as their average exposure time to products which was lower). Age remains however a significant explanatory factor even when controlling for exposure time and the financial test score. The propensity to follow the bank's advice also seems to decrease with age - to about 60 years of age, when it starts to increase again.

Figure.13 - The predicted probability of choosing the optimal product conditional on age



Source: Consortium, based on behavioural experiment. (n=10,470)

Participants with a higher level of education performed better. The effects are however not statistically significant, especially when financial literacy is taken into consideration.

Table.20 - Outcomes of the experiment, by level of education

Breakdown of the sample	Product selected by participants (%)			Choice in line with advice	
	Not optimal	Optimal	No product selected	No[428]	Yes
Total sample	43.54	52.59	3.86	47.31	52.69
Education level:					
- **Up to primary (1)**	44.91	50.88	4.21	49.47	50.53
- **Secondary**	44.49	51.25	4.26	47.60	52.40
- **Post-secondary**	44.25	51.82	3.94	47.06	52.94
- **Bachelor's**	42.64	53.74	3.62	45.91	54.09
- **Masters or higher**	42.28	54.30	3.41	48.43	51.57

(1) The sample of respondents with primary education is very low – proportionately to the population in countries covered

[428] This includes respondents who did not select any product.

Source: Consortium, based on behavioural experiment. (n=10,470)

Income categories do not play a perceptible role in influencing performance. While higher income categories seem to be associated with slightly better performance when the advice is good, there is no detectable relationship between the two when bad advice is received. A statistical proportion test does not show any significance even in the case of good advice. Any small positive effect would be explained by higher financial test scores.

Financial literacy, as expected, is a strong explanatory variable. Financial knowledge helped respondents identify and therefore not follow bad advice. On the other hand, there was no statistically significant relationship between the financial test score and making the optimal decision when the advice given was good. Respondents with low scores tended to listen more to the bank's advice. When the advice was good, this counteracted the otherwise bad performance of low-score participants. When the advice was bad, following such advice exacerbated the relatively poor performance of these groups. Moreover, further statistical analysis confirmed that the test results did not have explanatory power when the advice was good, but were statistically highly significant in the opposite case.

Table.21 - Outcomes of the experiment, by financial literacy

Breakdown of the sample	Product selected by participants (%)			Choice in line with advice	
	Not optimal	Optimal	No product selected	No[429]	Yes
Total sample	43.54	52.59	3.86	47.31	52.69
Financial literacy score:					
- **Low**	46.73	49.69	3.58	45.44	54.56
- **Medium**	44.25	51.94	3.81	47.00	53.00
- **High**	41.02	54.90	4.08	48.71	51.29

Source: Consortium, based on behavioural experiment. (n=10,470)

Respondents who reported not having any savings to invest were the least likely to pick the optimal product, while at the same time they were also amongst the groups most likely to follow the advice received. On the other hand, people who had already invested, and should therefore have the most experience, were not particularly successful in choosing correctly.

Table.22 - Outcomes of the experiment, by attitude to investing

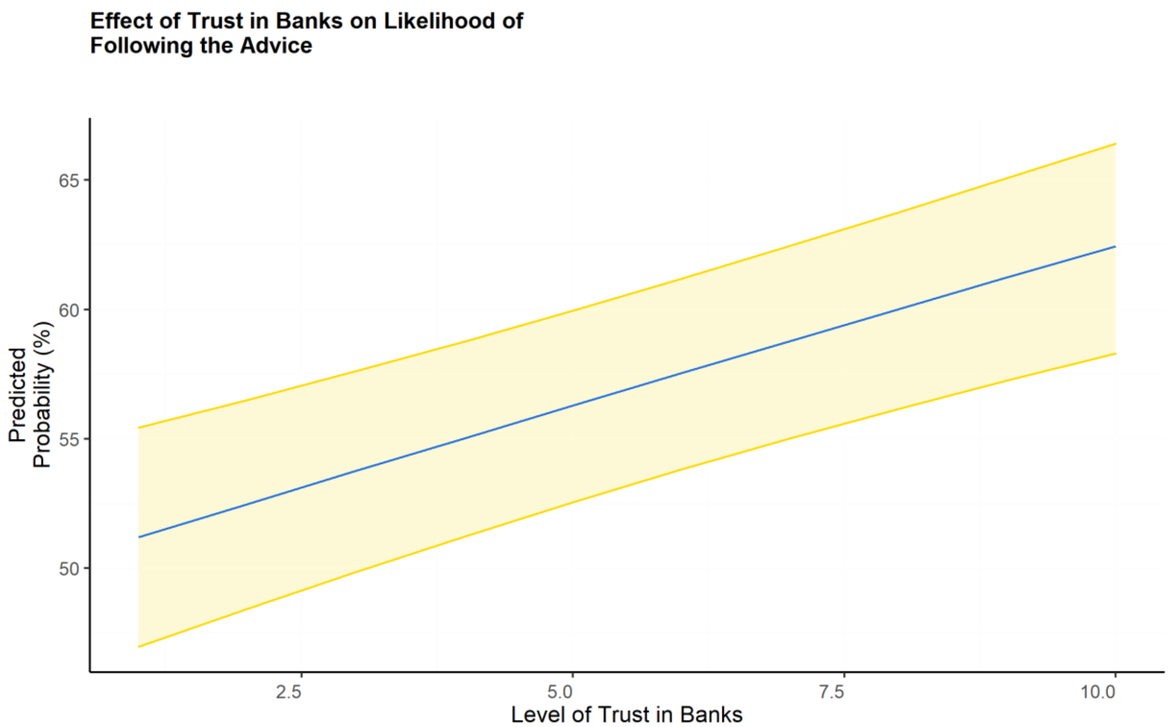
Breakdown of the sample	Product selected by participants (%)			Choice in line with advice (%)	
	Not optimal	Optimal	No product selected	No[430]	Yes
Total sample	43.54	52.59	3.86	47.31	52.69
Attitude to investing:					
- **Has no savings**	46.97	48.84	4.19	46.97	53.03
- **Not interested in investing**	43.11	51.15	5.74	49.10	50.90
- **Interested in investing**	41.77	55.87	2.36	46.36	53.64
- **Looking to invest**	45.79	52.68	1.53	45.11	54.89
- **Already invested**	41.14	55.08	3.79	47.50	52.50

Source: Consortium, based on behavioural experiment. (n=10,470)

[429] This includes respondents who did not select any product.
[430] This includes respondents who did not select any product.

A further very important, albeit subjective, explanation is the level of trust the respondents have in banks (and by extension: distributors of financial products and financial advisors) acting in their client's best interests. Participants that trusted banks were more likely to follow the advice received, which led then to select the optimal product when the advice was good, and the wrong product when the advice was bad.

Figure.14 - Probability of choosing in in line with the advice received conditional on trust in banks



Source: Consortium, based on behavioural experiment. (n=10,470)

Altogether, the segments commonly considered as "vulnerable" – young people with limited investing experience and older people with lower levels of knowledge of modern finance; people with lower levels of education; people who do not (yet) have savings to invest – were significantly less likely to identify the optimal product having the lowest total cost, and were generally also more likely to listen to advice and thus be vulnerable to inadequate advice. The income level itself did not play a role, although in practice it may be considered a useful segmentation variable when financial knowledge is not directly observable.

These groups also tended to devote less effort throughout the experiment to trying to find the optimal choice, and relied more on advice. In a world where financial intermediaries are induced to sell specific products to clients, it should normally prove worthwhile to be cautious when receiving advice. Not following financial advice, however, can easily be detrimental if the advice is adequate – even if maybe not optimal. A policy intervention targeting inducement warnings that would undermine the trust of clients in the advice given to them may lead to an unreasonable rejection of advice, investment in less adequate alternatives or inaction. The experiment showed that even good advice was not followed in many cases.

Effects of different levels of warnings about inducements

Another focus in the experiment module on inducements concerned comparing the relative effectiveness of three methods of informing clients about the presence of inducements. The letter of advice that the participants received from their fictitious bank came in three randomly assigned versions (treatments 1-3), which only differed from each other in the way they disclosed that the bank receives inducement payments from the manufacturer of the financial product they distribute.

Treatment 1 approximated the current legal baseline: the letter did refer to the presence of inducement payments, but only in the form of a paragraph inside the main text. The wording used in treatment 2 was almost identical to this, but it was displayed very prominently in a separate box. Treatment 3 also displayed the explicit warning in a box, but it also explained in addition what inducement fees are. This text was thus much longer, and it also referred to the actually existing legal obligation of distributors to prevent or manage conflicts of interest, and to act in accordance with the client's best interests.

Figure.15 - Illustration of the three treatments in the inducement module

Treatment	Description	Text
1	In-text reference	*[…]* *Please be advised that AMG Bank receives a commission fee as inducement from the manufacturers of financial products for their distribution.* *[…]*
2	Explicit warning in a separate box	*Disclosure: Please be advised that AMG Bank receives a commission fee as financial inducement from the manufacturers of financial products they distribute.*
3	Explicit warning in a separate box, with explanation	*Please be advised that AMG Bank receives an inducement fee* as commissions from the manufacturers of financial products they distribute.* **Inducement fees are monetary commissions paid by the manufacturers of investment products in order to incentivise their distributors to sell these products to their clients. However, the distributors of these investment products are legally obliged to prevent or manage conflicts of interest that may arise from such inducement fees, and act honestly, fairly and professionally in accordance with the client's best interests.*

Source: Consortium, based on behavioural experiment. (n=10,470)

The initial expectations were that the explicit warnings, with or without explanation, would make acceptance of the bank's advice less likely. Furthermore, it was expected that these treatments could also decrease the extent to which participants trusted the bank's advice, and the degree to which they relied on the advice when making their selection. Considering that treatment 3 contained a longer text, and especially as it clearly explained that banks are obliged to act in their client's best interests, it was assumed that the impacts might be different (weaker) from that of treatment 2.

At first sight, none of the three different treatments seemed to differ in their impacts on the respondent's decision. The proportion of participants selecting the optimal product was almost the same across all three treatments. This is however an outcome that was expected, even if explicit warnings "worked", making participants more mistrustful and less likely to follow advice. The advice was good in about half of the cases, so not following it more or less cancelled out the benefits of not following bad advice.

As the table below shows, there were some differences in the proportion of participants acting (or not) in line with the advice:

- those who were only exposed to an in-text reference (treatment 1) were most likely to follow the advice;

- those who received the explicit warning (treatment 2) were the least likely to take a decision in line with the advice;
- those who were also given an explanation about inducements fees (treatment 3) were in-between.

These differences were however without statistical significance.

Table.23 - Outcomes of the experiment, by treatment

Breakdown of the sample	Product selected by participants (%)			Choice in line with advice (%)	
	Not optimal	Optimal	No product selected	No[431]	Yes
Total sample	43.54	52.59	3.86	47.31	52.69
Treatment:					
1. In-text reference	43.17	52.82	4.01	46.27	53.73
2. Explicit warning	43.32	52.58	4.10	48.53	51.47
3. Warning and explanation	44.14	52.39	3.47	47.12	52.88

Note: No statistically significant difference were discovered. Further explanation available in Annex 8

Source: Consortium, based on behavioural experiment. (n=10,470)

The statistical findings suggest that treatment 2 was generally effective, i.e. it did make it less likely for participants to accept the advice they were given, with statistical significance. For treatment 3, it can be said that while its effect size is lower and it is not statistically significant, it did seem to have worked for one specific population subgroup, namely young people aged 18-34. The effects of both treatments 2 and 3 – reducing the propensity of participants to accept the advice - were statistically highly significant.

It can be surmised that treatment 3 was less effective because participants were reassured by the reference in the explanation to the fact that banks are legally obliged to prevent or manage conflicts of interest, and to act honestly, fairly and professionally in accordance with the client's best interests. Interestingly, the possible effect of increasing the overall level of understanding of what inducement fees are was not detectable. The explanation given in treatment 3 on what inducement fees are did not have any effect on the ability of respondents to correctly answer the corresponding question asked later on in the survey. Those who received the letter with the explanation were even slightly less likely to give the correct answer than those who did not.

Table.24 - Participants' understanding of what inducements are, by the type of warning ('treatment') given

Treatment	Understanding of participants of inducements (%)	
	Incorrect (%)	Correct (%)
Treatment 1: In-text reference	63.46	36.54
Treatment 2: Explicit warning	63.80	36.20
Treatment 3: Warning and explanation	63.90	36.10

Source: Consortium, based on behavioural experiment (n=10,470)

[431] This includes respondents who did not select any product.

6.5.5. Impacts on advice provided to potential retail investors

A key objective of the measures examined in this study is to ensure that the advice given to retail investors is adequate and not motivated by inducements but by the investor's interests.

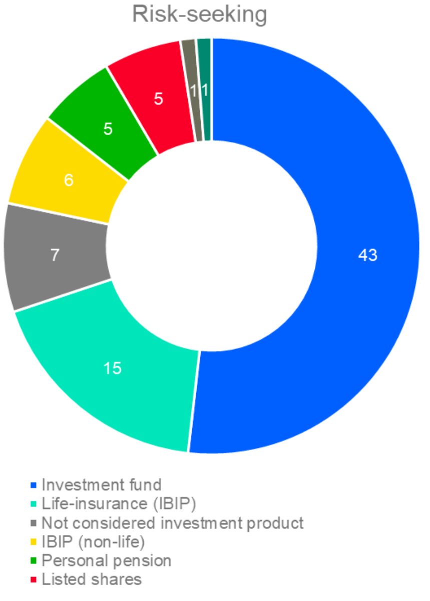
Overall, the mystery shopping undertaken for this assignment found that the products recommended to mystery shoppers were broadly in line with their profile in terms of level of risk and type of products recommended (Annex 3):

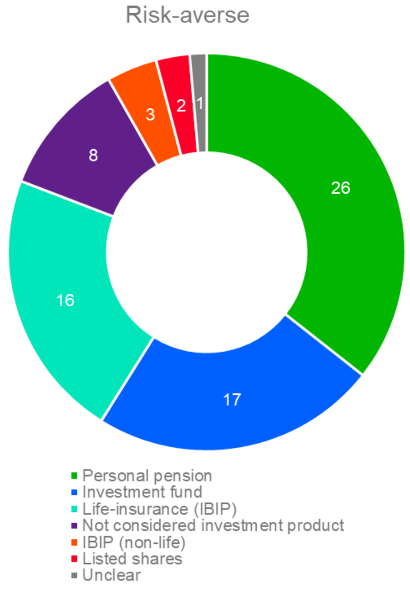
- Mystery shoppers with a risk-averse profile were recommended low or average risk products.
- Mystery shoppers with a risk-seeking and more affluent profile were mostly recommended high or medium risk products.
- Risk seekers were almost twice as often advised to invest in investment funds than investors with a risk-averse profile.
- Personal pension products were a much more common recommendation for potential investors with risk-averse profiles. When invested funds were suggested to risk-averse investors these were associated with low risk levels.

There were few instances where the mystery shoppers were recommended unsuitable products in light of their profile. Examples include offering the shopper seeking a risk associated investment vehicle an investment fund based on government bonds. In a risk-averse case a bank recommended an investment fund from a French asset management firm. Misaligned recommendations were an exception, but at the same time they were found even in the relatively small sample of mystery shopping observations which resulted in specific product proposals (158).

Most of the mystery shoppers (72%) felt that the advice they received was fully or fairly impartial.

Figure.16 - Matching of investor profiles with product categories (n=158 of the 240 mystery shopping visits)





Note: Under 'not considered investment product' we mean products that are not made for profitable investment, e.g. a savings account.

Source: Consortium, based on the traditional Distribution channel mystery shopping data

In previous (pre-MiFID II) mystery shopping studies undertaken at national level instances where inadequate advice was provided to consumers appear to have been more frequent than in the mystery shopping undertaken here (see examples below). However, the methodologies for each of the studies varied and the criteria used to assess what would be considered as appropriate advice were most likely not comparable. Examples of pre-MiFID II studies which looked at adequacy of advice are:

- In Belgium in 2015, the FSMA conducted a mystery shopping exercise that found advice not in line with consumer profiles in 40% of cases and in 43%, the information received was incomplete.[432] The consumer protection association Test-Achat had conducted a similar exercise with mystery shoppers presenting themselves as risk-averse.[433] Yet 50% of the advisors pushed them towards risky investments, in an effort that was described as more motivated by the sale of products than suitability for the consumer's profile.
- Through a mystery shopping at 20 branches of the country's five biggest banks in 2017, the Portuguese consumer protection association noted that the advice given was not in line with the shopper's profile regardless of the amount invested, but was driven by the sales objectives of the bank employees given those funds profitability for the banks.[434]
- Between 2014 and 2015, the German consumer association federation (VZBV) analysed the offer of products at the country's major banks. After the evaluation of 835 consumer portfolios (containing 3,502 investment products), 45% of them were deemed inappropriate as they lacked flexibility and cost-efficiency compared with other products offered. By analysing 362 new contracts they found that a whoppingwhopping 95% of them were unsuitable for the consumers as they were too costly, inflexible or risky.[435]
- In 2015, the German consumer association Stiftung Warentest conducted a mystery shopping exercise in 23 banks, and found that only three of them gave good advice, with most of the banks recommending unsuitable or suboptimal products.[436]

When looking at the recommendations provided by the robo-advisors:

- Nearly all robo-advisors recommended several ETFs based mostly shares and bonds;
- Comparing the differences in recommendations between the risk-averse and the risk-seeking profiles, seven of the 11 robo-advisors offered suitable recommendations in terms of potential risk and returns. Two offered identical product recommendations to the two profiles which mostly meant the recommendation for the risk-seeking and more affluent profile was somewhat over conservative. Two others also gave over conservative recommendations to the risk-seeking profile. While these are not necessarily the most optimal solutions for the risk-seeking profile, they also do not put the client with such a profile at risk with potentially over-exposure.

Overall, the advice the consumers received both through traditional channels mystery shopping and robo-advisors mystery shopping was mostly appropriate in terms of risks and types of products. However, the study was not able to compare the costs of products that were recommended to mystery shoppers. In a high number of cases the costs were not disclosed during the conversations and information documents were not systematically

432 FSMA (2014) Annual report 2014; and Trends tendances (2015) Le "très mauvais" bulletin du secteur bancaire, 12 June 12th 2015, le Vif.
433 Test achats (2014) Mon banquier, ce piètre conseiller, published on 6 May 6th 2014 [consulted on 29 October 29th 2020]
434 DECO (2017) Senhor bancário, onde devo aplicar o meu dinheiro?, Analysis [consulted on 29 o 29th 2020]
435 VZBV (2015) Erhalten Verbraucher bedarfsgerechte Anlageprodukte?
436 Stiftung Warentest (2016) Nur 3 von 23 Banken beraten gut.

provided (see section on outputs). In the remaining cases the information on costs that the mystery shoppers were able to obtain was too dissimilar to compare. It is therefore not possible to conclude how far the products recommended were also appropriate in terms of expected value for money.

6.5.6. Impacts of rules on inducements on the level of inducements in the market

As explained earlier in the section discussing the extent to which inducement information is actually provided, we have analysed the information about inducements as presented in information documents.

In nearly all instances the payment of inducements is mentioned in the product information sheets of those products on which inducements are paid (i.e. securities, mutual funds, insurance and pension products). However, the references differ across products, providers and countries. The references to inducements are often implicit (in section 1.6.1 we discussed the absence of the explicit disclosure of inducements). In most product information sheets only one line is included in the costs disclosure along the lines of: "This also includes the costs of selling and marketing the product" or "This includes the cost of distributing your product".

For the vast majority of the products in the sample, the inducements amounts paid could not be determined on the basis of the information in the main information sheet or supporting documents. In fact, only a minority of the products in the sample for which the inducement costs are provided featured in any of the disclosed documents. In nearly all instances the inducement costs were obtained from the product prospectus, the product information webpage or the distributor's website, rather than the regulated product sheets (e.g. KIDs, KIIDs, etc.).

The inducements distilled from the information documents indicate that the inducements are significant. On average, for the products in the sample, inducements are equivalent to about 40% of the total product costs charged to the retail investor. The application of inducements is reflected in higher costs for retail investors. Nearly all the inducements seem to be passed on to retail investors; it is noteworthy that the products on which inducements are paid are – on average - about 35% more expensive than those on which no inducements are paid.

In practice, the difference in costs for an average retail investor is likely to be larger than just the mark-up for inducement costs. In those countries where inducements are less common or even banned, simpler execution-only products with lower costs (e.g. securities and passive mutual funds) are relatively more popular. Indeed, retail investors are likely to shift to no advice rather than fee-based advice. The absence of inducements might foster an advice gap. However, in practice retail investors are likely to need less advice as the simpler products require less financial expertise and investors are likely to become more financially literate.

6.5.7. Impacts of an inducement ban in the UK and Netherlands and stakeholder views on the inducement ban

One of the policy options to overcome the potential conflict of interest for distributors between a higher remuneration from manufacturers and the best advice for the retail investor is a full ban on inducements. At the time of writing, such bans on inducements are in place in the Netherlands and the UK. This section presents information about the effects of the inducement ban in these two countries, as well as the views of stakeholders about a potential inducement ban gathered through the interviews.

Ban on inducements in the Netherlands

Context

In 2009, the government in the Netherlands implemented a cap on commissions, limiting how much commission a financial intermediary could receive. In 2011, the Dutch Minister of Finance argued for a complete ban on inducements at EU level, but Europe did not opt for such a ban. Deciding that this was insufficient to reduce conflicts of interests, a ban was finally implemented in January 2013 for a range of financial services products, including insurance, mortgages, complex savings products, and investment funds. In January 2014, the ban was extended to all other forms of retail investment products. In 2018, the Dutch government carried out a full review of the commission ban, following which it remains firmly committed to maintaining the ban in place.

Impact on product supply

An evaluation of the inducement ban on behalf of the Ministry of Finance[437], looking at the time period 2013-2018, concluded that the ban benefitted retail investors, without curtailing their access to financial advice. Studies[438] and position papers[439] at national level show that the ban on inducements: 1) has increased access to simpler and cost-effective products, 2) enhanced competition among manufacturers, and 3) reduced/eliminated conflicts of interest between manufacturers and distributors. Recent studies at European level from Morningstar[440] and ESMA[441] also concluded that the costs for investment funds are among the lowest, which also translates into higher yearly returns for retail investors in the Netherlands. Nevertheless, this has also to be analysed in conjunction with the introduction of rebate-free share classes by fund managers and passive funds becoming more popular with retail clients.

Impact on advice

The share of retail investors receiving investment advice in the Netherlands has decreased according to data form AFM (see figure below). The mystery shopping carried out for this assignment also shows that it is considerably more difficult for retail investors to access advice free of charge in the Netherlands compared with other countries. Indeed, advice is a service that has to be paid for in the absence of inducements. When attempting to get advice, mystery shoppers were either directed towards execution-only services or were told that the advice was only given to existing clients or clients above a certain level of wealth.

At the same time in the Netherlands the share of investors in execution-only has further increased significantly in the recent decade (see Figure below). The rise in execution-only at the expense of investment advice might be partially due to the inducement ban, but this trend had already before the introduction of the ban. Besides the ban, the introduction of new execution-only models (e.g. "guided execution-only"), automated investment advice as well as the more stringent requirements for providing advice under MiFID II may have contributed to the increased popularity of execution-only services.

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437 Hoekstra: ban on commission is effective, Available at: https://www.rijksoverheid.nl/actueel/nieuws/2018/01/23/hoekstra-provisieverbod-is-effectief

438 Directie Financiële Markten (2018). Betreft evaluatie provisieverbod, January. Available at: http://decisio.nl/wp-content/uploads/kamerbrief-evaluatie-provisieverbod.pdf ; Center Data Research Institute (2018). Consumenten en financieel advise. Consumentenonderzoek in het kader van de evaluatie van het provisieverbod, January. Available at: https://www.eerstekamer.nl/behandeling/20180123/brief_regering_evaluatie/info. Decision (2017). Zakelijker verhouding – de markteffecten van het provisieverbod, November. Available at: http://decisio.nl/wp-content/uploads/Decisio-Periscoop-Evaluatie-Provisieonderzoek-Definitief.pdf. PwC (2017). The Dutch Disadvantage?, September. Available: https://www.pwc.nl/nl/assets/documents/pwc-the-dutch-disadvantage.pdf. AFM (2017). Rapport - Naleving provisieverbod financiële dienstverlening, July. Available at: https://www.afm.nl/nl-nl/nieuws/2015/juli/rapport-provisieverbod. AFM (2015). Naleving provisieverbod financiële dienstverlening, July. AFM (2015). Marktbeeld Beleggen, July.

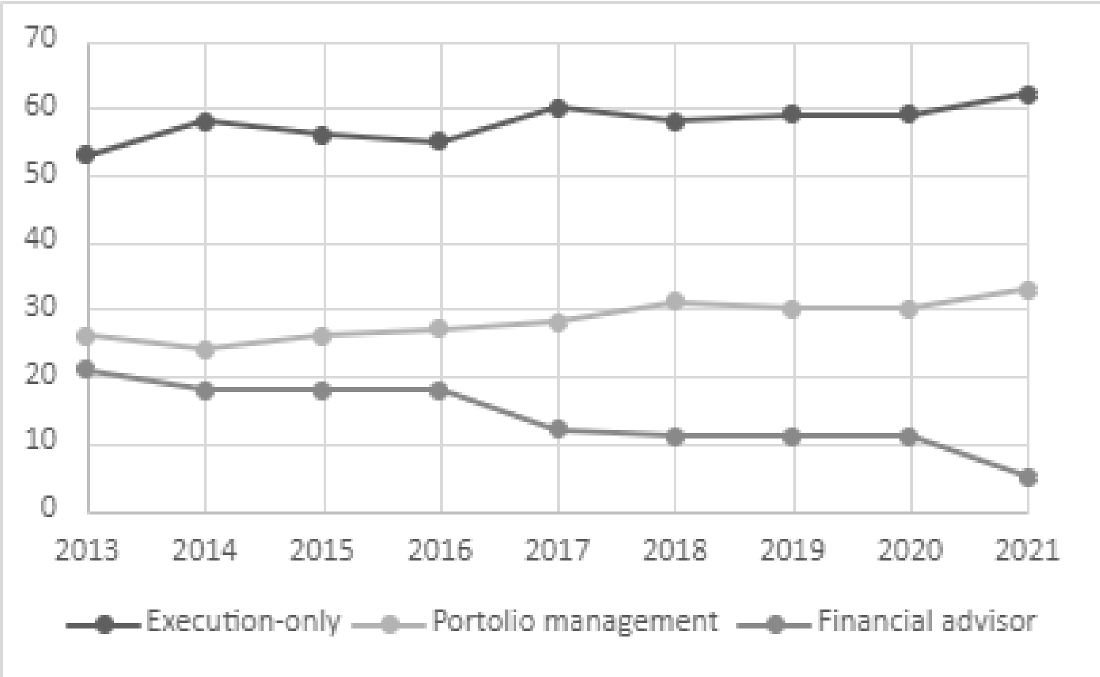
439 AFM (2020). Working towards open and sustainable capital markets in Europe that serve the real economy - next steps for the CMU, April. Available at: https://www.afm.nl/nl-nl/nieuws/2020/april/aanbevelingen-europese-kapitaalmarktunie

440 Morningstar (2021). European Fee Study. Available at: https://www.morningstar.com/en-uk/lp/european-fee-study

441 ESMA (2021). Performance and Costs of Retail Investment Products in the EU, 21 April 21. Available at: https://www.esma.europa.eu/sites/default/files/library/esma_50-165-1710_asr_performance_and_costs_of_eu_retail_investment_products.pdf

According to the Consumer Monitor of the Dutch conduct of business supervisory AFM[442], in the survey conducted in Q3 2021, 60% of the retail investors invest via non-advisory services (execution-only/do-it-yourself services), while more than 30% invest via portfolio management and less than10% via a financial advisor. In terms of assets, financial advisors are more important accounting for around 15% to 20% of invested assets.

Figure 6.17 - Main investment method (% of all investors)



Source: AFM (2021)

Taking a closer look at the investment advice delivered, in 2019 [443] the market **shares** of independent and non-independent advice **were** almost **equal**. There are distributors offering their own manufactured products but limiting their sales, for example large banks include investment funds amounting to a capped percentage of the advised (or managed) client portfolio or maximum of 5% of their own issued products. For independent advice, some banks have adopted a fee-based model, with subscription models or a fixed or variable lump fee.

The case of insurance products

In comparison with securities and investment funds, the ban on inducements for insurance products introduced in 2013 addressed a legacy issue of large-scale mis-selling of investment products with high inducements. After the inducement ban, the price ultimately paid by the consumer has halved. Advice for more complicated financial products is compulsory if the retail investor cannot prove sufficient knowledge and experience in the test conducted by the distributor. The introductory meeting with the advisor is mostly free of charge, and during this meeting the advisor is obliged to tell the investor about the cost of the advice provided. This cost must not "apparently unreasonable". Looking at the largest banks the cost ranges from between 0.6% to 1.5% of NAV and minimum fees and invested amounts may apply. In the area of independent advice there seems to be a trend towards more integrated financial advice through so-called financial planners. In insurance, tied advisors sell exclusively in-house products. The average intermediary provides advice independently from any manufacturer, namely

[442] AFM (2021) Consumer Behavior - Consumer Research
[443] Adfiz (2020), Advies in Cijfers, Available at: https://www.adfiz.nl/media/3715/2020-advies-in-cijfers.pdf

third-party products. However, there is also a grey area: "house proxies" also authorised agents that advise on both in-house and third-party products.

The inducement ban was only applicable to new products and contracts (as a form of transition), even though there are efforts to make clients aware and renegotiate their terms. The number of insurance intermediaries is trending downwards, but there does not seem to be a decline in the volume of advice provided. In their view, a new regulation by the Commission should the Dutch standards and ensure alignment between MiFID II and IDD, with the same business model based on independent advice.

Ban on inducements in the United Kingdom

Context

In the UK, the ban on commissions was introduced after a thorough review of the financial advice market in the FSA's Retail Distribution Review (RDR)[444]. It was found that merely disclosing conflicts of interest regarding the remuneration of financial advisors does not sufficiently protect investors. Most investors do not know to what degree the advice is influenced by these conflicts of interest, or even that the advice they get is not free but financed by the fees included in the price of the financial instrument. As of 1 January 2013, intermediaries can no longer receive commissions on retail investment products offered by product providers, and advisors can only be paid for their services by charging a separate fee to the client.

Following the RDR, firms providing advice on retail investment markets needed to explain whether their services are "independent" or "restricted". Independent advice should be free from any bias or restrictions and based on an assessment of the whole of market. Where firms restrict the scope of their advice to only certain products or providers, they must disclose this to the consumer and clearly explain the nature of the restriction.

Impact on product supply

In 2014, a study commissioned by the FCA[445] found that **the ban reduced conflicts of interest for advisors as well as product bias.** This was evident from a decline in the sale of products which attracted high commissions, and an increase in the sale of those products which attracted lower or no commissions before the entry into force of RDR. There was also a move towards **lower-cost products**, with advisors increasingly recommending products such as tracker funds. The study also showed an increase in price pressure, in the form of more negotiations between advisors and product manufacturers. Advisors are increasingly searching for the most cost-effective product for investors, rather than searching for the product that attracts the highest commission for them. The study concluded that "charges for retail investment products have been falling post-RDR, driven by increased pressure on providers from advisors and platforms as a result of the RDR."[446]

Impact on advice

According to the Financial Advice Market Review (FAMR)[447] in 2016, the RDR reforms have led to a higher quality of advice, and higher business standards in the financial services sector. However, an advice gap has emerged with many investors now finding investment advice unaffordable, and a significant number of banks advising high-income investors only. The FCA's FAMR 2018 baseline survey showed that 4.5 million UK adults took regulated financial advice over a 12-month period. Yet a further 18.2 million had £10,000 or more in savings and/or investments and might have needed advice – but did not take it. The UK FAMR also found evidence of a decline in the sale of investment products from highest charging share-classes. In January 2012, 60% of all gross retail flows was through

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[444] FCA (2014) Post-implementation review of the Retail Distribution Review – Phase 1, December
[445] Europe Economics (2014) Retail Distribution Review Post Implementation Review, December
[446] BEUC (2019) The case for banning commissions in financial advice, September.
[447] FCA ((2016) Financial Advice Market Review: Final report, March

the highest charging share classes. As of May 2014, two and a half years after the entry into force of the UK ban, this proportion fell to 20%. In June 2017, the FCA published a baseline[448] set of market indicators which serve as a benchmark to track changes in the advice and guidance market over time in terms of outcomes (access, affordability and quality) and key indicators (demand and supply).

Market share

According to the overview of the RDR/FAMR 2020 evaluation[449], the advice sector consists of a high number of smaller firms: 89% of firms have five or fewer advisors (87% in 2017). Although representing less than 1% by number of the firms in the market, firms with 50 or more advisors employ approximately 52% (50% in 2017) of all advisors in the market.

RMAR returns show that the majority (85%) of firms provide independent advice as their primary offering. This proportion has increased slightly from 83% in 2016 as shown in Table. While only 13% of firms offer restricted advice, this form of advice constituted almost 40% of advisor charge revenues in 2019. These figures have not changed significantly since 2016.

Table.25 - Type of advice in the UK after introduction inducement ban

Type of advice	2016	2017	2018	2019
Independent	83%	84%	84%	85%
Restricted	15%	14%	14%	13%
Both	2%	2%	2%	2%

Source: RDR/FAMR 2020 evaluation

Advisors usually charge a percentage-based fee on the value of assets invested. The average charges are 2.4% of the amount invested for the initial advice and 0.8% per annum for ongoing advice. This does not include underlying product and portfolio charges, such as custody and fund management. As the UK recovers from the economic effects of the coronavirus (Covid-19) pandemic, FCA will further continue its work on the consumer investments market. [450]

Stakeholder views

In their technical advice from April 2022, both ESMA[451] and EIOPA[452] recommended additional assessments for substantiating **regulatory options** regarding inducements, i.e. maintaining existing rules on inducements, further restrictions or the outright ban. At national level, there are different views among the NCAs about the preferred option.

Arguments from stakeholders in favour of a full ban indicate **increased access to more cost-effective, diverse retail investment products**, **eliminating biases between manufacturers and distributors**, **improving the quality of advice**, or **moving towards independent advice or execution-only channels.** For example, in Spain and Sweden the NCAs are in favour of an inducement ban.

The Spanish supervisor **CNMV** anticipates that the costs of the products will become clearer to the investor and the investment decision would be improved due to product

448 FCA (2017). Financial Advice Market Review Baseline report, June. Available at: https://www.fca.org.uk/publication/research/famr-baseline-report.pdf https://www.fca.org.uk/publication/research/famr-baseline-report.pdf

449 FCA (2020). Evaluation of the impact of the Retail Distribution Review and the Financial Advice Market Review, December. Available at: : https://www.fca.org.uk/publication/corporate/evaluation-of-the-impact-of-the-rdr-and-famr.pdf

450 FCA (2020). Call For Input: The Consumer Investments Market, September. Available at: : https://www.fca.org.uk/publication/call-for-input/consumer-investments-market.pdf

451 ESMA (2022). Final Report On the European Commission mandate on certain aspects relating to retail investor protection Available at: esma35-42-1227 final report on technical advice on ec retail investments strategy.pdf (europa.eu)

452 EIOPA (2022). Technical advice on Retail Investor Protection, Available at: Final Report - Technical advice on Retail Investor Protection.pdf - EN.pdf

comparability with an inducement ban. A mystery shopping exercise[453] at bank branches in 2017 and 2021 revealed that investment advice was frequently provided without it being declared as such to the client and without following relevant rules. For instance, this took the form of implicit verbal recommendations based on the client's personal circumstances. In addition, the exercise found flaws in the information provided regarding inducements, costs and fees and an over-emphasis on the product returns in relation to the risk profile.

The Swedish supervisor **Finansinspektionen** is supportive of the ban because it would remove a loophole primarily aimed at enhancing business profits, as well asavoid distributors pushing investors towards products with higher inducements. It would also differentiate between investors choosing execution-only and those who are engaged in advisory processes, independent or not.

The same views are supported by **BEUC**[454]**,** which has called for full ban to be applied to all retail investment products. This would reduce conflicts of interest (Art 23 MiFID II and Art 19 IDD), encourage the distribution of investment funds (including ETFs) while increasing competition among product manufacturers. In the same fashion, **Better Finance**[455] advocated banning commissions for independent advice, execution-only services and portfolio management in all EU retail investment products within the scope of MIFID II as well as IBIPs and PPPs in IDD.

Some national consumer associations also raised concerns over conflicts of interest adversely impacting the **quality of advice**, indicating that the payment of inducements should be banned under MiFID II and IDD. They also mentioned problematic practices in relation to the sale of unit-linked life insurance products and argued in favour of stricter cross-selling rules.

In line with Better Finance, the French supervisor **AMF** is not supportive of a full ban of inducements without the **alignment of inducements regimes between MiFID II and IDD**, also given the challenges with the take-up their own financial investment advisor model (*conseiller en investissement financier*, known as "CIF").

In turn, NCAs in most Member States remain neutral are not particularly in favour of the ban. Or at least, they want to be given flexibility to take local specificities into account in its application. For example, the EU rules should, according to these NCAs, take account of the distribution structure and consumer behaviour. For example, the commissions could be capped, monitored or regulated in other form. Additional safeguards, such as POG[456] (Product Oversight and Governance) requirements, have also been mentioned by the interviewed NCAs. Several NCAs in smaller Member States are further concerned that without inducements, alternatives to execution-only products will not emerge as much as in countries with a larger domestic market.

Moreover, industry representatives argue that both MiFID II and IDD have already sufficiently regulated inducements in order to avoid conflicts of **interest**. A full ban on inducements would, according to them, lead to a centralisation of portfolio construction and product standardisation to the detriment of **clients** that will no longer receive tailored **retail investment** advice.

Nevertheless, the most common arguments both from supervisors and industry representatives are about the **emerging advice gap** for retail investors with modest portfolios. This has been partially addressed by automated advisory systems, used as a sorting tool, recommending the cheapest product from among a range of suitable

[453] CNMV (2017, 2021). Supervisory exercise through the use of mystery shoppers, Available at: https://www.cnmv.es/portal/verDoc.axd?t=%7Be996f9bd-b7a3-41c4-abe1-6727d5e62bfd%7D

[454] BEUC (2019). The case for banning commissions in financial advice, Position Paper, Brussels, 16 September 16. Available at: https://www.beuc.eu/publications/beuc-x-2019-046_the_case_for_banning_commissions.pdf

[455] Better Finance (2022). EVIDENCE & ARGUMENTS FOR BANNING INDUCEMENTS IN RETAIL INVESTMENT SERVICES, April. Available at: RESEARCH PAPER ON "INDUCEMENTS"* (betterfinance.eu)

[456] POG refers to the systems and controls that manufacturers and distributors have in place to design, approve, market and manage products throughout the product lifecycle to ensure they meet legal and regulatory requirements.

products. Limiting access to advice is not considerable desirable outcome, in particular vulnerable investors[457] is shared by the AMF and consumer associations.

Another concern is that outright inducement ban might see a gradual **decrease in product supply**. IIn Member States with bank-centric distribution models, banks would react by reducing their product offering to only in-house products and not to offer advisory services, especially to less wealthy retail clients who they would direct to execution-only services. Moreover, they argue that if inducements were completely banned, the loss of income would have to be offset through other revenues. However, these arguments are flawed if is the **rationalisation of product catalogues** is driven by retail investors interests, and both in-house and third-party products are promoted.

Conclusion

A common argument put forward by distributors and manufacturers is the idea that an inducement ban would result in an advice gap because most consumers are not willing to pay for advice. This argument is then advanced to suggest that the result would be lower levels of investment from and participation of retail investors. The data gathered for this study shows that:

- In the UK and the Netherlands access to advice has indeed declined. However, the use of execution-only services has increased, the offer of less complex products has increased, the costs are among the lowest in the EU and investors may have higher returns;
- Furthermore, in the Netherlands there is **no evidence of a decline in the level of investing**. The data of the Dutch authorities shows no decline. The data in our surveys shows that the Netherlands indeed has a high share of people who have savings but are not interested in investing, compared with other countries. However, this can be explained by other market characteristics in the country – notably people being incentivised to repay mortgage loans. At the same time we see that the Netherlands is one of the countries with a rather high share of respondents who made their latest investment in the past 12 months (51% of respondents who made at least one investment)[458];
- The key aspect of the conclusion is the extent to which a ban or the maintenance of inducements would have an impact on consumers (benefits vs detriment). If the result is an advice gap, the consequence may be to move towards more execution-only services. Conflicted advice may no longer be offered, and ultimately the **consumer may be better off without it.**
- It is **not that clear-cut that people would not seek advice if they had to pay for such advice**. In the consumer survey, 42% of respondents stated that they either strongly or slightly agreed that they would pay for financial advice if it was affordable. The people who have savings and are considering investing are in particular the most likely to say they would pay for advice if it was affordable (54%).
- Finally, even where people do not get advice, **this does not equate to not investing**. In both the Netherlands and the UK, the market has developed towards more execution-only products. Sweden is another interesting example. Sweden does not have an inducement ban but it does apply additional requirements pursuant to Article 24(12) of MiFID II (see section on coherence). It is also a country where, based on the mystery shopping data, access to advice was in many cases gated by conditions such as being an existing client. Together with the Netherlands, it is the country where the mystery shoppers struggled the most to

[457] AMF-ACPR (2021). Marketing of financial products to vulnerable elderly people, March. Available at: https://www.amf-france.org/sites/default/files/private/2021-07/summary-report-marketing-vulnerable-elderly-people.pdf

[458] The survey was carried out in the period November-December 2021.

get access to a conversation with an advisor. At the same time it is also a country where interviewers report a shift to execution-only products in the supply. Furthermore, it is the country in our sample with the highest share in terms of people who have already invested in at least one product (44%) and also has a high share of people who invested recently (54% of those people who made an investment did so in the past 12 months).

6.6. Efficiency

The approach to assessing the efficiency of the rules regarding advice follows the same methodology as explained in the efficiency section on disclosure.

The costs reviewed in this section concern the stipulations on avoiding conflicts of interest, on disclosure requirements with regard to the advisor's independence or non-independence, and whether any inducement had been received, as well as the general training of advisors.

We do not consider one-off costs (understanding the legal requirements, designing training material and the initial training of advisors, a legal review of new rules and procedures) which were already incurred by businesses in the financial sector when the rules were introduced, and as such they no longer influence the continued efficiency of the regulations. One-off costs were estimated inter alia in the Impact Assessment for MiFiD II prepared in 2011, which estimated one-off compliance costs – including the costs related to professional advice – at between €512 and €732 million.[459]

The relevant ongoing costs include the following:

- Ongoing training of advisors (duty of care, management of conflicts of interest, rules on advice and inducements, disclosure requirements).
- Collecting regular statements from advisors, including on mandatory training, on the absence of conflicts of interest.
- Keeping robo-advisors compliant with regulations (following regulatory changes, adjusting terms and conditions, algorithms).

The cost estimates are presented in the table below.

Table.26- Main ongoing costs for distributors/advisors

Cost category	Product type	Duration/ Unit cost	Total cost	Comments
Ongoing training of advisors	Investment products (banks)	€750 per participating advisor	€45.2 million	Calculated with five hours as the time cost of participation, and with an average hourly labour cost of €87, 104,000 staff, and an additional 50% for preparation and implementation costs.
	Private pension		€6.6 million	Calculation using banks' ratio of training costs per net assets.
	Insurance-based products		€23.8 million	
Collecting statements	Investment products (banks)	~20 minutes per advisor	€15 million	Statements would normally need to be produced once a year. Hourly labour cost of €87.
	Private pension		€2.2 million	Calculated using banks' ratio of training costs per net assets.
	Insurance-based products		€7.9 million	

459 https://ec.europa.eu/info/sites/default/files/business_economy_euro/banking_and_finance/documents/111020-mifid-mifir-proposal-impact-assessment_en.pdf

Cost category	Product type	Duration/ Unit cost	Total cost	Comments
Keeping robo-advisors compliant	Robo-advisors		max. €1 million	Based on the total fee revenues of the European robo-advisor market.

Source: Consortium, based multiple sources.

As shown the above, stakeholders indicate that the continuous training obligations are the primary cost driver. The training programmes are either offered online (across the company, in different languages) or organised face-to-face for groups of advisors, normally by branch. In both cases they add up to several hours in any given year. Cost estimates are difficult to procure. Therefore, assumptions were made. We estimate, based on the cost of other types of training, that an online training module may cost an average of 10-20,000 euros per language (relevant for an internationally operating entity). It should be noted that this would often only require an update of an existing training module. Preparing and holding face-to-face training sessions would cost more; we estimate that preparing and implementing the training, aggregating both online and face-to-face training delivery would cost an additional 50% above the time cost of participating. Our calculation is based on five hours of training for new advisory staff, and the time cost of participating is calculated with an average of 87 euro hourly labour cost.[460] Banks employed about 2.6 million people in the European Union at the end of 2019[461], of which a maximum of 20% would be involved in relevant (retail) client advisory activities, and our calculations figure in a maximum staff turnover of 20% (104,000 staff). This would result in an estimated €45.2 million for the banking sector, with according to our calculations a maximum of €6.7 million and €23.9 million for private pensions and insurance-based products respectively, by setting the ratio of costs per net assets managed constant across the three product categories.

Filling in and submitting the required statements on training attendance, on the absence of conflicts of interest etc. would take only about 20 minutes per year, adding up to €15 million in the banking sector. The corresponding number would be much lower in the private pensions and life insurance sectors, given that staff numbers are significantly lower; but using relative net assets we can calculate the figure at €2.2 million and €7.9 million per annum respectively.

As for robo-advisors, the lion's share of costs involved one-off costs, which are no longer relevant for assessing the ongoing efficiency of the regulations. The ongoing costs would originate from the need to track any regulatory change and update the terms and conditions, and in some cases possibly the algorithm or AI model itself. No information is available on the amount; it is however only a small fraction of total operational costs. The size of the EU robo-advisor market is about 13 billion euro currently, according to key information interviews. Robo-advisors typically charge clients 0.3-0.8% per year of the value of the assets they manage (an estimated 40-100 million euro in the EU in total). The ongoing cost of compliance with the relevant stipulations of MiFID II should currently be below 1 million euro, which would correspond to a maximum of 1-2% of their revenues.

The benefits from the European rules on safeguards on investment advice - aiming at mitigating the chance of product mis-selling cannot be easily monetised. As in the disclosure section above, we can however calculate a cost per client for a given sector, and compare the costs with the total net assets managed by the relevant financial service providers. This is presented in the table below. The cost per client ranges from €0.2 to €1.2 per year, driven almost exclusively by the mandatory training costs. The costs as a proportion of total net assets managed are around 0.0003% for general investment products, private pensions and insurance-based investment products alike – based on the extrapolation method used. These costs are likely to be very low compared with the costs

[460] Calculated with the labour cost used in the 2020 EIOPA Impact Assessment on PEPP, see the efficiency section for disclosure.
[461] https://www.ebf.eu/facts-and-figures/structure-of-the-banking-sector

of advice and the training of advisors on items that are not due to the legal framework discussed here.

The main barriers to cost-effectiveness identified in the effectiveness section are:

- The fact that advice does not systematically cover all product features that are essential for well-informed product choice for the consumer.
- The fact that inducements are associated with higher product costs being charged to clients than in the case of products with no inducements. Nearly all the inducements seem to be passed on to the retail investor. This suggests that the market incentives go against the need of consumers which is to receive the best value for money.

Table.27 - Estimated total and unit costs

Product type	Estimated total ongoing costs	Number of clients	Assets managed	Estimated cost per client	Estimated cost per net assets
Investment products	€61.2 million*	~50 million	€19.7 trillion	€1.2	0.0003%
Private pensions	€8.8 million**	~60 million	€2.9 trillion	€0.2	0.0003%
Insurance products (life insurance)	€31.7 million**	~40 million	€10.4 trillion	€0.8	0.0003%
TOTAL	€101.7 million	~150 million	€330 trillion	€0.678	0.0003%

Notes: * Includes robo-advisors. ** Includes administrative burden in connection with producing statements

Source: Consortium, based on multiple sources.

6.7. EU added value

EU added value in relation to advice and inducements primarily originates from the harmonised set of ground rules with regard to the (i) management of conflicts of interest; (ii) stipulations on which products can be sold through execution-only services and which products have to be accompanied by advice; (iii) rules on when inducements are permitted and when banned and related tests; as well as (iv) requirement for disclosure of the independent or non-independent status of the advice and disclosure of inducements.

If legal provisions at EU level – enshrined in MiFID II and IDD, as well as Solvency II, UCITS and AIFMD with regard to avoiding conflicts of interest - were not in place, national legislation and connected guidance would likely diverge (more precisely: further diverge) in the future. Member States with more emphasis on retail consumer protection would implement stricter rules, while others with a stronger focus on sectoral competitiveness would relax the rules. Regulatory divergence would probably not affect basic principles – such as the duty of care and the obligation to detect and manage conflicts of interest – but the detailed provisions could vary in substantial ways.

There is already some **legal fragmentation in the EU**, as both MiFID II and IDD allow Member States to introduce additional legal requirements.[462] The Member State that diverges the most from the rest of the countries to date, as described in the coherence section above, is the Netherlands which has implemented an outright ban on

[462] MiFID II is a maximum harmonisation directive but contains optional provisions. IDD is minimum harmonisation directive, allowing Member States to introduce more stringent requirements; in addition, IDD also contains optional provisions.

inducements.[463] Additional legal requirements are also in Sweden with regard to ensuring that the advice given is independent. More nuances added at the national level via Q&As and best practices related to the quality enhancement test criteria for allowing inducements, pursuant to Article 11(2) of the MiFID II Delegated Directive[464] could potentially lead to fragmentation with possible meaningful consequences. Should national approaches diverge further, leading to different scopes of advice subject to the law, fair competition on the Single Market for retail financial products could be harmed.

IDD also permits Member States to limit or prohibit inducements paid or provided to insurance distributors. This is indeed the case in a few Member States, most notably the Netherlands or Sweden. The report explains above, in the effectiveness section, the impacts of the inducement ban on the Dutch market. While lower product costs as such are clearly a benefit for retail clients, the shift towards execution-only products indicates that access to advice has declined, which could lead to the misallocation of funds. The same would apply also to conflicted/biased advice. The problem would most affect vulnerable groups that would not be able to pay for independent advice or accumulate sufficient knowledge of the financial markets themselves.

A number of Member States have imposed additional rules on the provision of investment advice, pursuant to Article 29(3) of IDD, e.g. additional information requirements in relation to IBIPs in Austria; or the obligation to explicitly justify the advice in light of the client's identified needs in France. These already existing differences in regulatory interests would be aggravated by a lack of harmonised EU rules.

In general, **legal fragmentation in the absence of EU legislation would lead to clearly different levels of consumer protection within the EU**. In fact the main focus of stricter national requirements in this area, as explored in the study, is the protection of retail clients.

As for the consequences, it is debatable, and inevitably depends on the details, whether an effective restriction of inducements (via, for instance, a complete ban, or by giving stricter interpretation to the quality enhancement criteria in national legislation or guidance) leads to better or weaker consumer protection overall. It may enhance consumer protection in some scenarios. However, it may also lead to an advice gap especially for vulnerable groups that currently tend to be more dependent on free (not necessarily independent) financial advice. The advice gap might further be reduced over time depending on developments in financial literacy.

If such advice is generally adequate – even if perhaps not optimal – regulatory divergence might lead to weaker consumer protection in the Member States concerned.

Concerning the impacts on businesses, legal fragmentation would lead, on one hand, to higher transaction costs for businesses conducting cross-border business and likely non-compliance in some cases with the associated legal risk. On the other hand, more lenient legal requirements in certain Member States could hamper free and fair competition on the Internal Market. If clients can receive free investment advice from a cross-border provider, and are not informed about inducements, these providers may obtain a competitive edge solely on the basis of regulatory differences within the Single Market for retail financial products (cross-border investment is more present in some product categories, e.g. UCITS and less so, although not absent, in pension products).

[463] The United Kingdom has also put in place a full ban on inducement schemes.

[464] See ESMA's Technical Advice to the Commission on the impact of the inducements and costs and charges disclosure requirements under MiFID II – Final Report, available at: https://www.esma.europa.eu/sites/default/files/library/esma35-43-2126_technical_advice_on_inducements_and_costs_and_charges_disclosures.pdf

7. Suitability assessment and needs and demands test

7.1. Introduction

The assessment of the investor's profile is a key component in consumer protection in the realm of retail investment. As opposed to institutional investors, retail investors are non-professional investors who trade less frequently and are therefore less experienced. Retail investors are thus more prone to mis-selling. It is also worth noting that the average level of financial literacy in the EU is relatively low (although differences exist between Member States), highlighting the need for EU rules on the protection of retail investors.[465]

7.1.1. Summary of the relevant legal provisions and the scope of their application

In order to avoid cases of mis-selling, under IDD[466] and the PEPP Regulation,[467] prior to the conclusion of any insurance contract or PEPP contract by a retail investor, a demands and needs test must be performed by the distributor:

- Under **IDD**, this test is **mandatory for all insurance products**, including IBIPs[468], whether or not advice is provided.
  Similarly, under the **PEPP** Regulation, PEPP distributors or providers must, for all sales, specify the **retirement-related demands and needs** of the prospective PEPP client. The **result** of the demand and needs tests should always be a list of several products which are objectively in line with the client's demands and needs, not a personalised recommendation.
- Under **MiFID II** rules, suitability must also be assessed by investment firms when providing any type of investment advice or portfolio management.[469] The assessment of suitability aims to ensure retail investors are not recommended financial products or services that are not suitable for their (i) level of knowledge and experience in the relevant field, (ii) financial capacity, and (iii) investment objectives.

To increase investor protection in cases of "**non-advised" sales**, an assessment of appropriateness is carried out. This is the case when:

- According to MiFID II, the investment service provided is not considered as financial advice or portfolio management.[470]
- Under IDD, the insurance intermediary or undertaking must assess the appropriateness when selling IBIPs to retail investors without providing advice.
- There is no appropriateness test envisaged under the PEPP Regulation, given that advice is always mandatory for PEPPs.

The assessment of appropriateness aims to ensure clients are not recommended financial products or services that are not appropriate for their level of knowledge and experience in the relevant field. The financial capacity and investment objectives of the considered – in contrast to the information to be obtained for the suitability assessment.

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[465] The 2020 OECD survey on financial literacy covered 13 EU countries. Their average scores ranged between 10.3 and 14.7 out of the maximum score of 21. OECD (2020) *International Survey of Adult Financial Literacy.*

[466] For further details please refer to address Article 20(1) IDD.

[467] For further details please refer to address Article 34 PEPP Regulation.

[468] In addition to this demands and needs test, when advice is provided regarding an IBIP, the insurance intermediary or undertaking will, in a second step, make a personalised recommendation explaining why a particular product (out of the range of products identified through the demands and needs test) would best meet the client's demands and needs. Equally, since advice is always mandatory under the PEPP Regulation, the PEPP provider must always make a personal recommendation explaining why a particular PEPP, including a particular investment option, would best meet the PEPP saver's demands and needs. These personal recommendations are the result of the performed suitability assessment. (For further details please refer to address Article 30(1) IDD; EIOPA Q&A - QUESTION 1638 on IDD available from: https://www.eiopa.europa.eu/content/1638_en and Article 23(1)(a) PEPP Regulation).

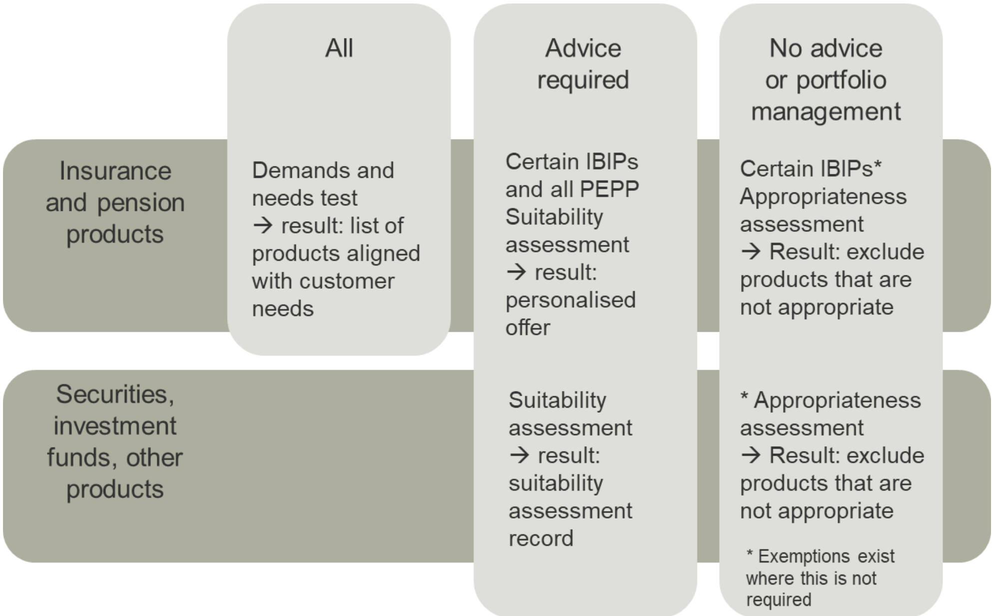
[469] For further details please refer to address Article 25(2) MiFID II and Articles 54 and 55 of MiFID II Delegated Regulation.

[470] For further details please consult Article 25(3) of MiFID II and Articles 55, 56 and 57 of MiFID II Delegated Regulation.

Finally, MiFID II and IDD provide for specific exemptions to the mandatory appropriateness assessment for "execution-only" sales. In particular, IDD allows Member States to derogate from the obligations of Article 30(2) on appropriateness where no advice is given in relation to IBIPs and where various conditions related to non-complex IBIPs are satisfied.[471] Under certain conditions detailed in Article 25(4) of MiFID II, on the other hand, firms are allowed to provide non-advised services with respect to non-complex investment products without the need to conduct an appropriateness assessment. In this case, the firm should warn the client that it is not required to conduct an appropriateness assessment and that the client therefore does not benefit from the corresponding investor protection.

The figure below summarises the scope of application of the processes described above.

Figure.1 - The scope of application of demands and needs tests, suitability and appropriateness assessments



Source: Consortium.

7.1.2. Intervention logic of the measures concerning suitability assessment and needs and demands test

As shown above, the legal provisions governing the suitability are not concentrated in one, but rather across multiple legislative pieces, some of which may have defined the intervention logic in the impact assessments and legal frameworks that underpin them, whilst for others this is not the case. However, even in the cases where an intervention logic exists, this does not focus specifically on the suitability tests and needs and demands assessment. Therefore, in the absence of a pre-existing intervention logic focused solely on them and encompassing the different legal frameworks, we have reconstructed the assumptions and logical links between the policy objectives and expected outputs, results and impacts. The result is summarised in the intervention logic figure below.

The figure also shows the relationship between the different elements of the intervention logic and the evaluation criteria. These items were used to guide the analysis presented in the following sections.

Caveat 1: *The remainder of this section focuses on the assessment of relevance, coherence, effectiveness, efficiency and EU added value of demands and needs tests and*

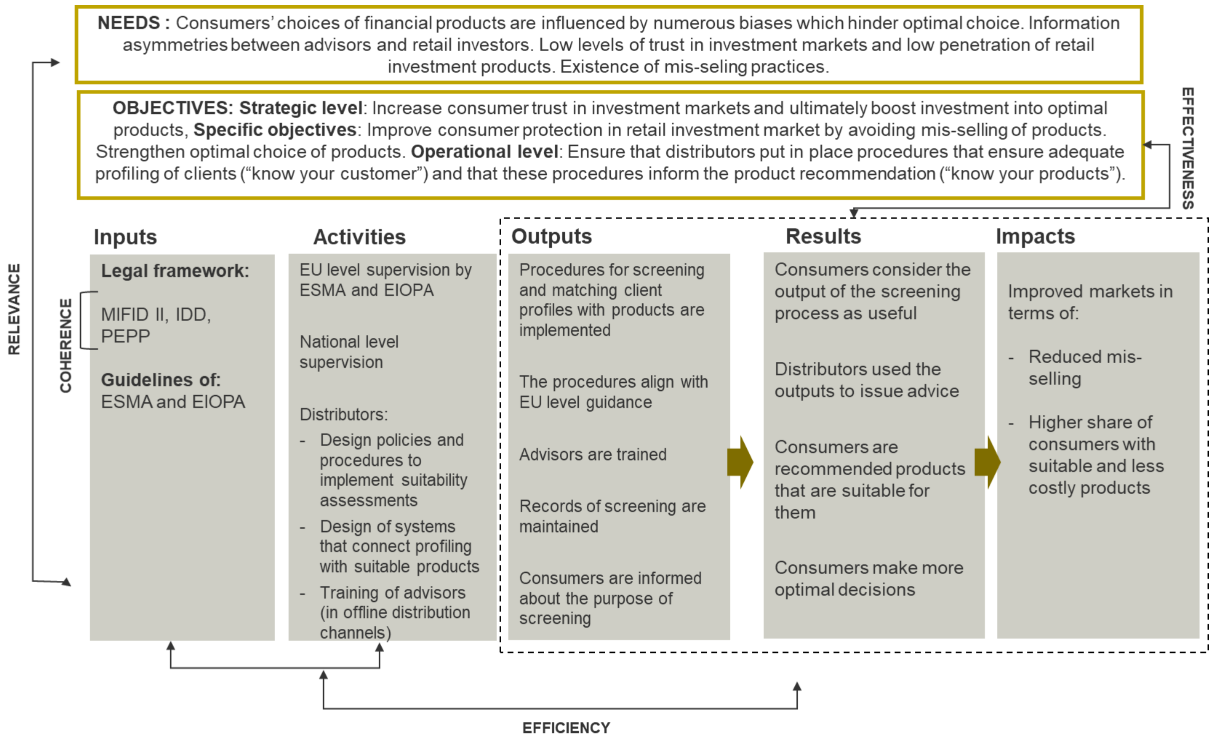
[471] See Article 30(3) of the IDD.

suitability assessments. Appropriateness assessment is only covered in the analysis of coherence. It was not covered by the research questions asked for other evaluation criteria and the primary data collection also did not focus on this process.

Caveat 2: *The primary data collection through the mystery shopping exercise and consumer survey looked at the process of client profiling in general (whether demands and needs test or suitability assessment). The reason for this is that the client does not make a distinction between these two processes. From the client perspective, they are aware of the questions that the advisor asks them, their scope, quality and depth as well as the output from the process. Therefore when discussing the data collected through these two channels the text uses the word client "screening".*

The figure below summarises the intervention logic of the rules around suitability assessments, demands and needs tests. It shows the assumed rationale for these provisions.

Figure.2 - Intervention logic for the demands and needs test and the assessment of suitability and appropriateness



Source: Consortium.

The text below assesses the state of play of the different profiling techniques currently used by advisors as well as robo-advisors. It examines the relevance, effectiveness and efficiency of these processes. It also analyses the coherence of the legal framework and finally concludes about the EU added value of these rules.

7.2. Relevance

According to the Better Regulation Guidelines relevance is about the extent to which the policy objectives of the intervention meet the policy needs and the needs of key stakeholders. In the case of this assignment the focus is on (potential) retail investors. Therefore, the assessment of relevance looks specifically at the extent to which the policy objectives of the legal framework meet the needs of retail investors.

An important share of consumers (independently of whether they do or do not have investment products already) tend to **perceive the act of choosing an investment product for themselves as rather complicated or very complicated** (52% in the countries covered by the survey[472]). Therefore, one of the key needs of (potential) retail investors is for the policy framework in place to support them in making an appropriate choice. There is also another need: protecting (potential) retail investors from being ill-advised or sold products that are not suitable for their needs, capacity to bear losses or risk appetite.

The assessment of relevance should also consider how the objectives of an EU intervention (legislative or spending measure) correspond to wider EU policy goals and priorities and respond to current as well as future problems[473].

The main objectives of the relevant legal frameworks are threefold:

- Protection of (potential) retail investors throughout the investor journey.
- Market integration.
- Safeguarding undistorted competition.

The purpose of this study covers only the first objective of this legal framework – i.e. the protection of retail investors along their investment journey. The other two objectives are not covered by this study.

Furthermore, the CMU Action Plan has for objective to **increase and support the choice of consumers with regard to investment products**. Therefore, it does not focus only on consumer needs in terms of protection, but it also aims to encourage practices that support and facilitate adequate choices. Consumer protection and support for consumers in making choices are therefore the two main needs of (potential) investors that will be discussed in this section.

In terms of relevance the study looks first at the overall relevance of having legal requirements for the client screening process prior to issuing advice and feeding into recommendations in view of facilitating choice and ensuring a high degree of consumer protection. Relevance in terms of scope of coverage is also examined, notably when it comes to product coverage by the legal framework.

The chapter subsequently focuses on the perspective of individual retail investors and the extent to which the elements of the legal framework meet their needs. This is broken down as follows:

- The relevance of the specific items covered by the demands and needs tests and the suitability assessments.
- The relevance of the timing when the demands and needs test and the suitability assessment are undertaken as part of retail investor's journey.
- The relevance of the output of the screening process ("client profile").

7.2.1. Summary of main findings

The **relevance of the legal framework on the demands and needs test and the assessment of suitability is overall high**. The rationale for the legal framework is to prevent instances of **mis-selling** which remains a relevant problem for the EU to tackle in the area of retail investor protection. The legal framework encourages responsible business conduct by requiring advisors to recommend only products that are suitable for the investor profile. The "know your client" principle and related screening processes is in this regard a mechanism that ensures that distributors take responsibility for providing retail investors with products that are suitable for them. In doing so they consider the client's financial situation including their capacity to bear losses, but also their investment objectives and risk appetite and whether the products are consistent with the client's financial knowledge. This aims to address a number of behavioural biases which can

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472 Versus 19% who consider it as easy or very easy.
473 European Commission (2021) Better regulation "Toolbox" - #Tool 47.

otherwise lead clients to invest in products that are not suitable. It also responds to the information asymmetry that exists between advisors and potential retail investors.

The **consumers surveyed** who have experience of screening interviews (suitability assessments or demands and needs tests) and who recall them, do **see this process as useful**. They also consider the suitability statement as a useful document outlining why a specific product suits their client profile.

The relevance of the screening process is strengthened by the **expectations that the distributors reflect the results of screening in their product recommendation**. Screening alone is not sufficient to guarantee the relevance of suitability assessments. It has to be a basis for the advice and recommendation. These expectations are captured in the legal framework. However, the practice, as discussed in the effectiveness section, varies. The fact that in practice the screening is sometimes very superficial or is only carried out at the point of contract signature negatively affects its relevance for the objective of preventing mis-selling, but also of influencing the decision-making of retail investors so as to guide them to more optimal decisions. Furthermore, the quality of the suitability assessment, demands and needs test process alone does not yet guarantee that suitable products are recommended. The process of questioning may be of high quality and yet result in inadequate advice and vice versa. Therefore, to ensure the relevance (and effectiveness) of suitability assessments and demands and needs tests it is important for these to:

a) be undertaken sufficiently early in the process so as to allow retail investors to form their choice based on the results; and
b) be used by the advisor for the actual selection of products that are recommended to the client.

7.2.2. Overall relevance

The overall intention of the policy framework (i.e. reducing mis-selling) remains highly relevant. The 2018 study carried out for FISMA found that consumer protection bodies do frequently receive complaints from consumers about unsuitable product recommendations and the existence of mis-selling practices[474].

When looking at the overall alignment between the policy objectives and the specific interventions (suitability assessments, demands and needs tests), the principle that the advisor needs to have sufficient information about the client prior to issuing advice is strongly relevant to the objective of avoiding cases of mis-selling and protecting consumers. The principle of **"duty of care"** of distributors towards consumers is embedded in the rules about demands and needs tests and suitability assessments. This is recognised as a core principle for consumer protection in financial markets – see for example OECD (2018)[475].

The current legal framework aims to encourage more rational decision-making based on considerations of costs, benefits and risks on the side of the investor. In particular, the performance of the demands and needs test and the assessment of suitability aims to incentivise advisors to make recommendations that are in the consumer's best interests and avoid the negative effects of the inherent information asymmetry in this market.

Behavioural economics literature (see sources in table 7.3 below) has documented that **retail investment choices are affected by multiple biases** which may hinder retail clients from making an optimal choice and can even make them vulnerable to making choices that could prove to be detrimental.

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[474] Deloitte (2018) Distribution systems of retail investment products across the European Union.
[475] OECD (2018) Task Force on Financial Consumer Protection FINANCIAL CONSUMER PROTECTION RISK DRIVERS: A FRAMEWORK FOR IDENTIFICATION AND MITIGATION IN LINE WITH THE HIGH-LEVEL PRINCIPLES ON FINANCIAL CONSUMER PROTECTION.

There are indeed major behavioural components to be considered when attempting to boost retail investment in a manner that does not endanger the livelihoods of individuals (buying products they cannot afford or being exposed to a loss they cannot afford). This is true for both the behaviour of the advisors and that of the investors. While advisors can be extrinsically motivated (i.e. inducements), they can also suffer from a panel of cognitive barriers such as overconfidence and recommend unsuitable products. On the other hand, buyers are prone to irrational thinking when it comes to making financial decisions. For example, independently of the amount of wealth, individuals may either be seeking to take large amounts of risk or looking to avoid taking risks.

Table 7.3 a few pages below gives an overview of selected behavioural biases that affect the decision-making of retail investors according to academic literature. The table shows how rules on suitability assessments, demands and needs test can be mapped against these biases. The table does not suggest that the rules have been designed with the purpose of addressing these biases in mind. It merely shows that logical linkages between the biases and the legal framework rules can be found. It should be noted that the table only contains a selection of biases that are related to these screening processes. There are other behavioural biases discussed in other parts of this report in relation to disclosure and advice.

Many potential investors are influenced in their choices by non-professionals – whether their peers or family. In the consumer survey carried out as part of this study, 28% of those who have investment products, are looking to make or are interested in making investments have received informal advice (friends, colleagues, family members)[476]. This is only slightly less than the share of those who received professional advice (38%)[477]. Furthermore, a non-negligible minority (14%) of respondents who do have investment products said that they bought the first product that was recommended to them[478]. These consumers made no comparisons between different products on the market. The share of consumers who only receive informal advice and who do not shop around for products is higher among those with lower levels of financial literacy, those who only have one product (not a diversified portfolio) and those with low or medium levels of income. The process of demands and needs tests and suitability assessments aims to establish an objective consumer and based on this to minimise the confirmation and familiarity biases which influence consumers to invest in products that confirm their initial choice or that they have heard about.

The majority of investors (76%) did compare products before making a decision. Nevertheless, **only a minority (23%) – looking at those who did invest in at least one product - consider that the process of choosing an investment product was easy**. Most see it either as complicated or neither complicated nor easy[479]. As shown in figure 7.3 below those who do not yet have any investment products are particularly likely to see the process of choosing a product as complex. This perceived complexity increases the risk of narrow bracketing bias which leads consumers to not consider important variables such as costs. The requirements for demands and needs tests and suitability assessments therefore aim to avoid situations where consumers make a choice based on only a small subset of product criteria. By screening their profiles, advisors are expected to familiarise themselves with their client's situation and only recommend products that are suitable for the client profile.

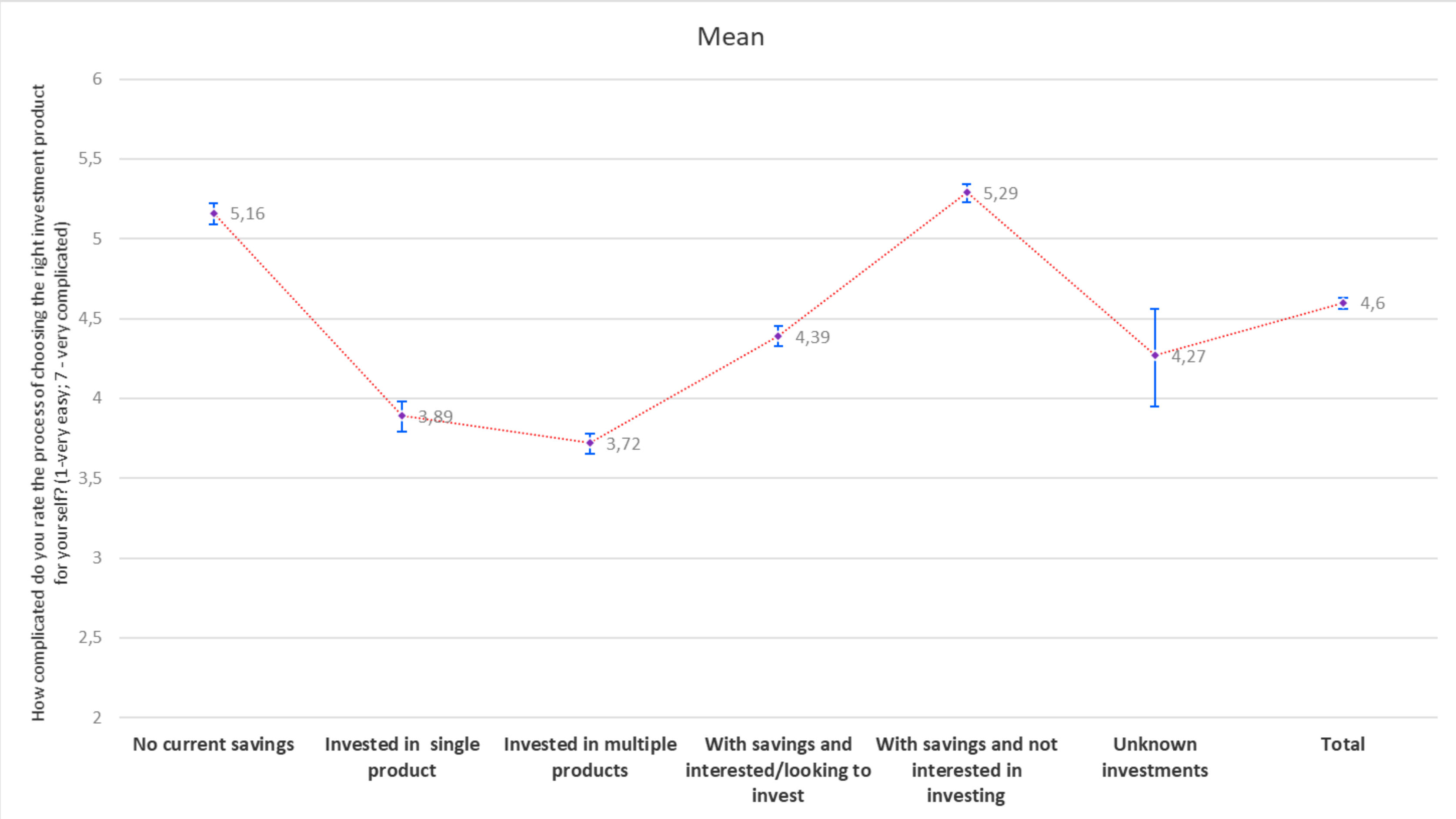
[476] With a chi-square value of 29.131, 3 degrees of freedom and a p-value <0.001, the differences between the various types of investors in terms of the share of those receiving informal advice is statistically significant.

[477] With a chi-square value of 358.389, 3 degrees of freedom and a p-value <0.001, the differences between the various types of investors in terms of the share of those receiving professional advice is statistically significant.

[478] With a chi-square value of 70.943, 6 degrees of freedom and a p-value <0.001, the differences between the various types of investors in terms of the shares of those who purchased the first product they found or that compared several different products is statistically significant.

[479] The results from ANOVA show that the differences between the mean values for ease of choosing the right investment product for the types of retail investors are statistically significant (F = 343.937.769, with 5 degrees of freedom and a p-value < .001).)

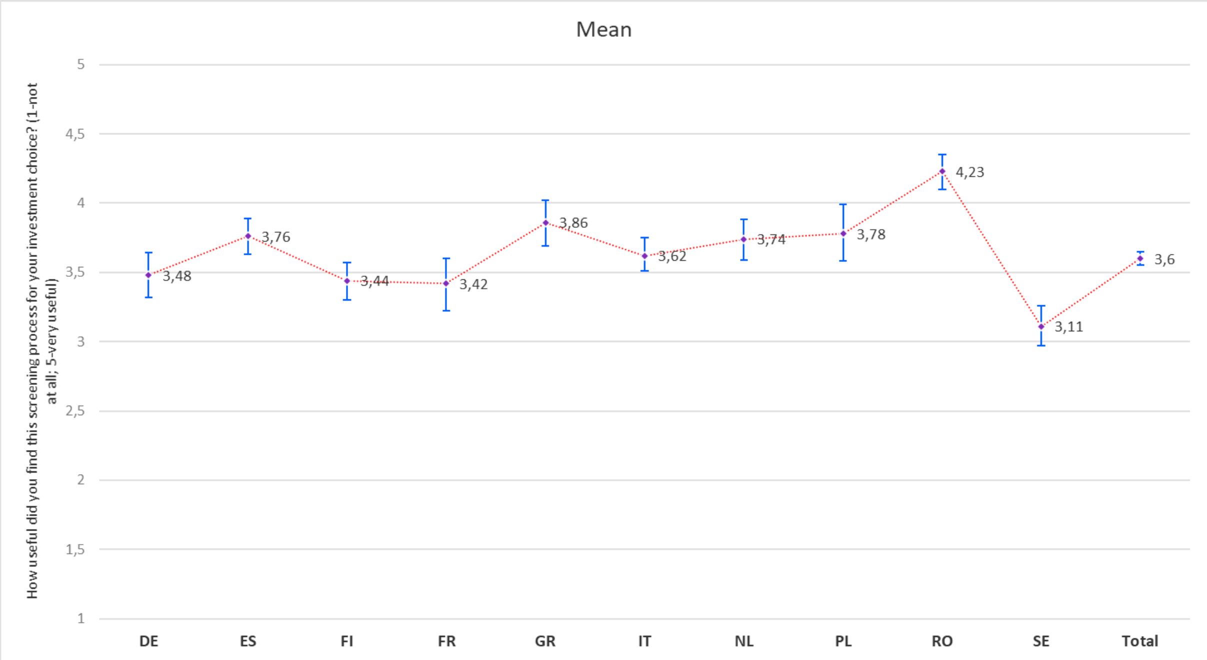
Figure.3 - Mean values for ease of choosing the right investment product by investor categories



Source: Consortium, based on the consumer survey (n=10470), the sample of persons with "unknown investments" is very low

The majority of consumers (64%) surveyed in this study who have invested in financial products or are considering doing so and received **advice considered the suitability assessment process as useful for their own choice.** There are important differences across countries as shown in figures 7.5 and 7.4 below. Except in Sweden more than half considered the process as useful.

Figure.4 – Mean values for [480] perceived usefulness of the suitability assessment by country[481]



Source: Consumer survey (n=1906 – only respondents who had at least one investment and who recalled receiving a suitability assessment were asked this question).

Further confirming the positive judgement on relevance, the stakeholders consulted as part of this study in general **support the need for distributors to ensure that they have sufficient background information about the client before issuing advice**. They also consider that the relationship between the screening process and advice is crucial. The interviewees raised no concerns over the relevance of suitability assessments as such.

However, the interviewees also underlined the fact that the screening process is not relevant when the questioning process is taken in isolation. On the contrary, the relevance of the screening process stems from the use of the screening results for the formulation of advice. If this relationship is only formal and the screening process is undertaken as a routine check without feeding into the product recommendation, then the relevance of suitability assessments/demands and needs tests is considerably diminished. For example, EIOPA undertook a mystery shopping study in Italy between two distributors and using two different profiles. The mystery shopping exercise found that while in one case the screening process was of high quality, it nevertheless resulted in mis-selling because identical products were recommended to both profiles of mystery shoppers. On the other

480 The results from ANOVA show that the differences between the mean values for perceived usefulness of the screening process across the respondents' countries are statistically significant ($F = 16.447$, with 9 degrees of freedom and a p value $< .001$).)

481 This question was only asked to respondents who answered "yes" to the question: Distributors or retail finance investment products are required to ask a series of questions about the investor to advise them on the choice of product. This covers questions related to one's financial situation, past experience with investments, attitude towards risk, etc. Do you recall being asked such questions?

hand, another distributor more systematically made tailored and suitable recommendations while their screening process was not fully compliant[482].

Finally, the relevance of the scope of coverage of the rules was also examined. As explained in the section on coherence, the EU rules analysed apply to different categories of distributors and products. While MiFID II provides rules applying to "investment firms, market operators, data reporting services providers, and third-country firms providing investment services or performing investment activities through the establishment of a branch in the Union"[483], IDD lays down rules concerning "the activities of insurance and reinsurance distribution"[484] and PEPP on the "registration, manufacturing, distribution and supervision of personal pension".

Table 7.1 below shows that the majority of persons who made at least one investment or who have received advice because they are interested in making an investment have been offered the possibility to invest through a bank. This is followed by people making or exploring investments through insurance companies and brokers and portfolio management services. Only a small share of persons made or explored making investments through robo-advisors or other online tools. Only very small numbers of respondents stated that they were invited to invest through other channels. The people who indicate that they have explored the possibility of using other channels tend to have higher financial literacy scores and medium to high income levels, thus being less vulnerable to choosing inadequate products. In light of this the overall scope of these rules does cover the distribution channels through which consumers make investments.

In terms of coverage of products however, an important share of investors in our survey stated that they had invested in crypto-assets (16% of all investors in the survey sample and 4.5% of all respondents). These assets are also attracting investors with low levels of financial literacy[485], lower levels of income[486] and there are also investors who only invest in these assets[487] and no other products, thus being exposed to risk. These assets that are considered as simple and therefore sold without advice hence only using an appropriateness assessment (possibly even without the option to apply exemptions).

482 The study was mentioned in an interview but is unpublished. It is referred to in a speech of Fausto Parente at IVASS Event which can be found here: https://www.eiopa.europa.eu/media/speeches-presentations/speech/mystery-shopping-compliance-culture-and-consumer-outcomes_en?source=search

483 Please refer to Article 1 of MiFID II.

484 Please refer to Article 1 of IDD.

485 14% of investors with the very low level of financial literacy invested in these products as did 22% of those with low financial literacy, while. While only 13% of those with very high financial literacy invested in these products.

486 15% of those investors who are in a low income category according to equivalised income invested in crypto-assets.

487 10% of those investors who only hold one type of investment product hold crypto- assets.

Table.1 - Share of persons who have at least one investment product or have explored investing and received advice by type of distributor through which they invested/explored investing (multiple choice question)

	DE	ES	FI	FR	EL	IT	NL	PL	RO	SE	Total
Bank	61%	66%	73%	58%	48%	65%	56%	62%	53%	62%	61%
Insurance company	17%	13%	6%	18%	23%	17%	14%	11%	19%	10%	15%
Portfolio management services	11%	15%	13%	17%	17%	12%	20%	14%	15%	16%	15%
Robo-advisor or other digital platform	8%	5%	5%	4%	10%	4%	7%	11%	9%	8%	7%
Other	3%	1%	3%	2%	2%	2%	3%	3%	3%	4%	3%
total number of investors in the sample	380	354	395	288	310	423	235	311	391	459	3546

Source: Consortium, based on the consumer survey (n=3546)

Table.2 - Share of persons who have at least one investment product by type of product in which they invested (multiple choice question, percentage)

	DE (%)	ES (%)	FI (%)	FR (%)	EL (%)	IT (%)	NL (%)	PL (%)	RO (%)	SE (%)	Total (%)
Investment fund	37	66	75	12	24	48	51	39	41	41	46
Pension products	21	37	16	23	34	28	21	24	35	34	27
Life insurance	29	29	17	74	30	35	15	28	32	21	30
Listed shares	43	34	42	35	33	31	33	28	34	54	38
Government bonds	6	9	2	8	8	29	5	22	26	5	11
Corporate bonds	7	4	3	6	11	18	7	4	5	4	7
Exchange traded funds (ETFs)	40	7	17	2	4	14	16	7	12	28	16
Mutual Fund	13	1	1	14	30	30	2	3	10	34	15
Structured products	4	4	6	2	4	7	3	4	1	3	4
Crypto-assets	12	17	14	6	31	10	21	13	37	11	16
Derivatives	3	3	1	3	6	2	5	4	1	2	3
Other	6	5	3	4	1	4	4	7	3	6	4
Number of investors in the sample	317	294	394	257	201	354	244	208	243	431	2943

Source: Consortium, based on the consumer survey. (n=2943)

Table.3 - Behavioural biases found in information on retail investments and how the process of suitability assessments/demands and needs test aims to address these

Bias and description	Impact	Findings from literature	Relevance of suitability assessments/demands and needs tests
Broad/Narrow bracketing **When making many choices, individuals can broadly bracket them by assessing the consequences of all of them taken together, or narrowly bracket them by making each choice in isolation.**	Broad bracketing allows people to consider all the consequences of their actions: it therefore generally leads to higher utility choices. People who fail to bracket broadly are led to take suboptimal financial decisions.	When costs are complex, individuals bracket narrowly. They focus on benefits, and ignore costs. When benefits are complex and it is the other way around and individuals do not ignore the costs. Complexity and narrow bracketing may be deeply intertwined: complexity that makes narrow bracketing cognitively easier is likely to lead to myopic choices, such as choosing complex and expensive loans, despite the presence of simple and cheaper loans.[488] Goal setting induces reference points that make substandard performance painful for the individuals. Thus, the risk of failure and the implicit painful experience of not achieving the set goals can be reduced by broadening the goal brackets. However, since in the case of broadly formulated goals, the task-based decisions and the risks can be substituted for each other, this encourages people to deviate from the established goals. Such incentives are therefore absent in the case of narrow, stricter formulated goals.[489]	Because of the complexity of financial investment products and in particular their costs, individuals are likely to bracket narrowly and thus ignore costs. Suitability assessments/demands and needs tests requirements ensure that the distributors apply a duty of care and ensure that the products are suitable in terms of risk appetite and that the consumer is able to afford them including bear potential losses, in particular given that the specific client is likely to be biased and thus overlook the costs component of products.
Confirmation bias: **It refers to the predisposition to look for evidence or interpret information in such a way that it supports existing beliefs and at the same**	As a result, investors stop gathering information when new evidence proves what they want or expect to be true, thus increasing the chance	Park et al. in 2010 have shown how individual investors in South Korea use online information and message boards to seek information that confirms their beliefs.[490]	(Potential) investors are influenced in their choices by many sources. Family and peers play a substantial role in retail investors' formation of decisions (30% of respondents who made investments and explored making them got advice through this informal channel). When

[488] (Kalaycı & Serra-Garcia, 2016).
[489] (Koch & Nafziger, 2016).
[490] (Park, Konana, Gu, Kumar, & Raghunathan, 2010).

Bias and description	Impact	Findings from literature	Relevance of suitability assessments/demands and needs tests
time ignore conflicting information. **[links with overconfidence bias]**	of suboptimal outcomes:		reaching the distributor (whether a traditional one or an online one) they may already be influenced by previous informal recommendations and therefore less willing to change their mind. The suitability assessment is expected to give them an objective assessment of what product is suitable for them with the aim of influencing the initial assumptions.
Familiarity Bias: **The propensity to make investment decisions based on being aware of an investment option due to previous knowledge and preconceptions of the company or its products.**	Behavioural effects include overconfidence in predicting returns of familiar assets, preferring local assets to avoid regret, and viewing familiar assets more favourably due to patriotism and/or social identification.	Perhaps the most important concerns involve underestimating risk and having suboptimal portfolios due to a lack of diversification. A first explanation of the tendency to invest in familiar products is presented in the results of Heath and Tversky [1991], which show that when people perceive themselves as knowledgeable in an area, they might also feel overconfident and are more likely to take risks. Another explanation for a familiarity bias is simply a tendency to be optimistic and confident toward things with which people have a connection (Huberman [2001]). This has been demonstrated in several areas, from sport fans betting on the teams they support, to voters who assign a higher probability to their own party winning the election. [491]	Same as above
Information overload: **It is the difficulty in understanding an issue and effectively making decisions when one has**	When mandates are too detailed, both disclosers and discloses can potentially be	Chapman, et al. (2019) state that disclosure has reached the point where regulators and practitioners are having concerns that investors might be overloaded with information, reducing their ability to adequately process disclosures.[493][494]	Considering the risk of information overload in relation to disclosure documents (and other biases that are applicable to disclosure), the requirements for suitability assessments

[491] (Baltzer, Stolper, & Walter, 2015)
[493] (Radin, 2007).
[494] (Chapman, Reiter, White, & Williams, 2019).

Bias and description	Impact	Findings from literature	Relevance of suitability assessments/demands and needs tests
too much information about that issue.	affected. Disclosers may have issues putting together all the information and on the other hand individuals may not be able to absorb all the data provided. In consequence, it impedes the assimilation and analysis of the information and results in poor decision-making.[492]	Drake and Hales (2019) found that, consistent with the claims made by regulators, auditors, and preparers, a significant portion of professional financial statement users believe disclosure overload is a problem. Nevertheless, this group is in the minority, with about twice as many professional users believing that overload is not a problem and that more information should be disclosed in financial statements. This dichotomy presents a difficult challenge for regulators aiming to improve financial reporting by changing the amount of information provided in financial reports.[495]	aim to put in place safeguards that would guarantee that consumers receive a recommendation that fits their profile rather than being left with the burden of making their decision alone, while at the same time being protected from the information asymmetry that affects them.

Source: Consortium, based on a literature review.

[492] (Ben-Shahar & Schneider, 2011).
[495] (Drake, Hales, & Rees, 2019).

7.2.3. Relevance of the specific items covered by the demands and needs test and the suitability assessment

As part of the demands and needs test (IDD and PEPP), insurance intermediaries and insurance undertakings should obtain information concerning the client's needs, including, for instance, personal information (age, profession, place of residence, etc.) or information particularly linked to the type of product considered by the consumer.

For the suitability assessment, the legal framework, requires in all three cases (MiFID II, IDD and PEPP) that the following information should be covered (with some specific features): (i) client's knowledge (financial literacy) and experience of previous investments; client's financial situation and ability to bear losses; and client's investment objectives (including risk tolerance).

These requirements are **highly relevant considering the underlying problems**:

- Financial literacy rates in European Union are rather average and there are major differences across the EU countries. According to the World Bank (2015)[496]only around half of Europeans were financially literate (52%). But in some countries (Bulgaria, Romania, Cyprus or Portugal) the share of financially literate consumers is below 35%. A 2020 study from the OECD also confirms that financial literacy in the EU countries covered is middling with some countries (Malta, Romania and Italy) ranked at the bottom of countries covered[497]. One of the indicators comprising the OECD score on financial literacy is the consumer's understanding of risk diversification. This is one of the dimensions of financial literacy (knowledge component) which has the lowest results.
- Information asymmetry – the difficulty of consumers to understand the product that they are investing in and to correctly assess the associated costs and risks is a vulnerability that could result in mis-selling, in particular if associated with lower levels of financial literacy. This is in particular highly relevant for very complex products. While the number of consumers in our survey dataset who invested in complex products such as structured products or derivatives is overall rather low, some of the respondents who state that they own these assets also have low levels of financial numeracy according to our survey. Similarly, some of them have low income levels. Both categories are particularly vulnerable;
- The risk of financial hardship that could result from eventual financial losses. This proved to be a very real risk during the subprime crisis which left many people in the US in vulnerable situations as a direct result of financial investments that were inappropriate for them. While European investors were less directly affected at the time of the subprime crisis their assets were exposed as shown in the OECD study (2008[498]).
- Potential mismatch between the client's expectations – both in terms of duration of investment and risk - and the product offered which would not only undermine trust in financial markets but also lead to suboptimal results for the investor.

While these three broad criteria for suitability assessments are highly relevant to address the problem of mis-selling, their relevance can be negatively affected by the fact that these criteria do not always appear to be implemented in practice and hence they do not necessarily influence the recommendation made (see section on effectiveness).

7.2.4. The relevance of the timing when the suitability assessment is undertaken as part of the retail investor's journey

Another consideration for relevance is the **point in time at which the screening process takes place**. According to the legal framework this has to be prior to the contract signature but

[496] World Bank (2015) Financial Literacy Around the World.:
[497] OECD (2020) OECD/INFE 2020 International Survey of Adult Financial Literacy.
[498] OECD (2008) The Subprime Crisis: Size, Deleveraging and Some Policy Options. See also Colaert and Incalza (2018) Compensation of Investors in Belgium Mis-selling of Financial Products. Study for the European Parliament. The study discusses three case studies of large scale mis-selling including one related to the subprime crisis

there is no stipulation as to the specific point in time when the screening has to be carried out: at the time of the first contact or just before the contract signature?

If the suitability assessment process is to be relevant for a) the recommendation of products by the advisor and b) for supporting the choice of the investor, then the **suitability assessment should be carried out early in the process.** If, however, it is primarily intended as a safeguard against mis-selling whereby the process should exclude people who do not have sufficient financial literacy or sufficient income from investing, then carrying out the suitability assessment close to contract signature could still be considered as relevant. We understand, also in line with the OECD principles for financial consumer protection[499], that suitability assessments aim to stimulate responsible business conduct whereby distributors have to determine product suitability. Therefore, the screening process should logically precede not only the contract signature but also conversations about specific products.

The **mystery shopping carried out for this study reveals diverse situations with regard to the timing of the suitability assessment**. Many conversations with advisors included only a small number of questions about the client's profile before a specific product was discussed (see section on effectiveness). In these instances, it is possible that a more formal suitability assessment might be carried out at the stage of contract signature. However, the mystery shopping exercise did not go up to that stage. When this is the case then:

- The screening is still relevant from the perspective of protecting the consumer from investing in products that are entirely misaligned with their income levels or needs. If the product the client wishes to invest in is not suitable because of risks or investment duration they should still be prevented from making that investment at that stage.
- However, the process at such alate stage is not relevant for influencing the investor's choice. When the screening is carried out only at the point of contract signature it means that the choice has been made earlier, without having been guided by the investor's profile determined by the screening. It also means that the advisor has not considered all necessary profile characteristics before making the recommendation.

7.2.5. The relevance of the output of the screening process ("client profile")

The legal framework also includes obligations about the **output from the suitability assessment process**. The results from the suitability assessment are laid down in a specific report, called the "suitability statement" (MiFID II, IDD). The PEPP Regulation does not refer to the issuance of a suitability statement as the outcome of the suitability assessment. However, Article 23 of the PEPP Regulation provides that insurance undertakings/intermediaries should follow some of the IDD rules and that investment firms should follow some of the MiFID rules when selling PEPPs. This includes the provision of the suitability statement.

The fact that such a document is required is relevant to the objective of supporting adequate retail investment choices. It is however only relevant to this objective if, as discussed above, the screening and hence the profile document is completed at an early stage of the discussion.

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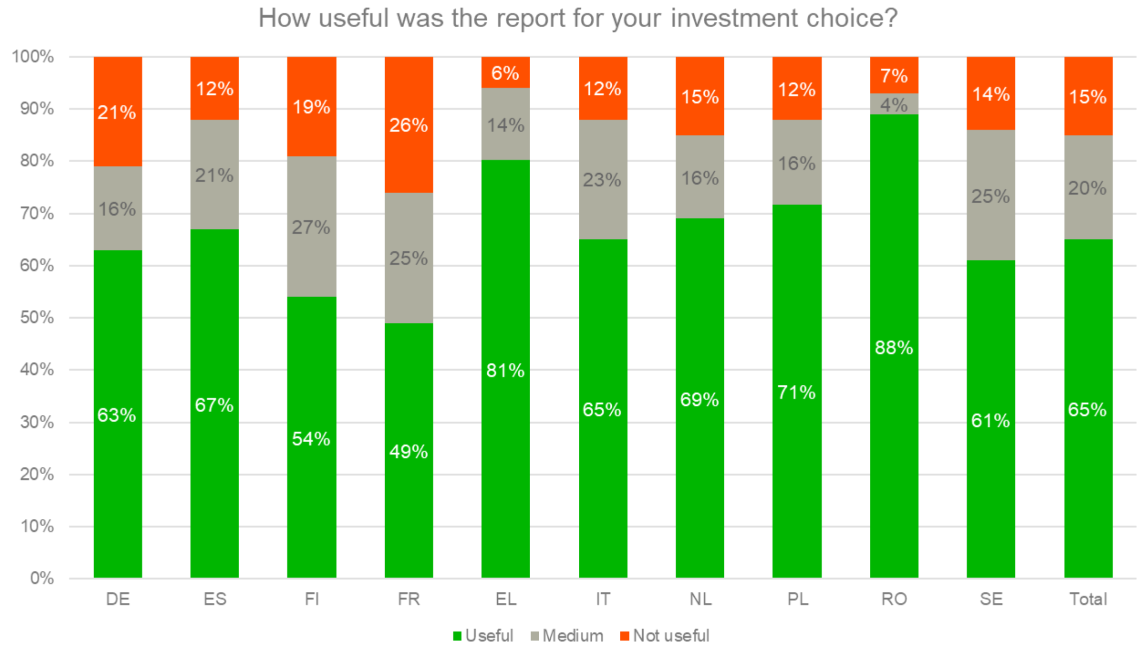
499 OECD (2018) Task Force on Financial Consumer Protection FINANCIAL CONSUMER PROTECTION RISK DRIVERS: A FRAMEWORK FOR IDENTIFICATION AND MITIGATION IN LINE WITH THE HIGH-LEVEL PRINCIPLES ON FINANCIAL CONSUMER PROTECTION.

In the consumer survey undertaken as part of this **study 65% of persons who remember undergoing a suitability assessment[500] state that they received such statement** (see also section on effectiveness). The majority of them (64%) considered the report as useful.

Figure.5 - Share of respondents who received a suitability statement according to perceived usefulness of the document



Source: Consortium, based on the consumer survey (n=1906 - only respondents who have at least one investment product and who recall the screening process were asked this question.

7.3. Coherence

The study assessed the coherence of the EU legal framework for the demands and needs test and the assessment of suitability and appropriateness as respectively provided for under IDD, the PEPP Regulation and MiFID II. As part of the legal analysis, we compared the relevant provisions of these different EU regimes, as well as the corresponding national measures, identifying the extent to which any potential gaps, overlaps, redundancies, or inconsistencies exist.

7.3.1. Summary of main findings

From a purely legal point of view, as discussed in detail below, it can be concluded that EU legal **requirements for the demands and needs tests and the assessment of suitability and appropriateness are coherent.** In particular, the standards laid down in IDD and MiFID II on the application of the suitability and the appropriateness assessment are largely identical. Although some minor potential inconsistencies and gaps have been identified through the analysis of the EU requirements for the suitability and appropriateness assessment, these mainly regard reporting obligations (e.g., the suitability statement) and recording obligations, and are therefore unlikely to have impacts on the financial decisions of retail investors.

Additionally, regarding the coherence at national level, differences obviously exist between the Member States since demands and needs and suitability and appropriateness requirements are provided by EU legal instruments of a different nature. IDD is a minimum harmonisation directive which implies that the Member States are given some leeway and, on the contrary, MiFID II

[500] This question was only asked to respondents who answered "yes" to the question: Distributors or retail finance investment products are required to ask a series of questions about the investor to advise them on the choice of product. This covers questions related to one's financial situation, past experience with investments, attitude towards risk, etc. Do you recall being asked such questions?

aims at maximum harmonisation and the PEPP is a regulation. However, national-level interviews did not reveal major concerns.

The main issue between the IDD and MiFID II regimes appears to be when it comes to the sale of non-complex products. The IDD provides for an option for the Member States in this regard. Under MiFID II, this is the **requirement**. This fact may lead to important differences in terms of the level of protection of retail investors between Member States. Additionally, it is worth underlining that the option given to Member States to make advice obligatory for certain types of insurance products (under IDD Level 3 rules) could create potential inconsistencies between insurance products across the EU.

To conclude, although sectoral differences may exist at EU level between IDD, the PEPP Regulation, and MiFID II, they are not related to the legal requirements themselves but rather to the fact that they are different regimes applicable to different products and types of distributors and providers with potential overlaps in their scope of application.

7.3.2. Demands and needs test

When insurance contracts and PEPP contracts are sold to retail investors, the distributor or the provider must perform a demands and needs test. As noted above, the main purpose of this test is to avoid cases of mis-selling.[501] In performing the demands and needs test, distributors and providers will assess the capacity of certain products and services to meet the demands and needs of the prospective client. In particular, under IDD, this implies that the insurance distributor checks the **client's** insurance portfolio to avoid double insurance, over-insurance, or under-insurance.

The relevant provisions of IDD[502] and the PEPP Regulation[503] are considered to be coherent. Under both regimes, the demands and needs must be performed "prior to the conclusion" of the contract and must rely on specific information obtained from the client. The objective is to provide the client with objective information about the product to allow that client to make an informed choice. The table below illustrates the coherence of the rules provided for the sale of insurance contracts and PEPP contracts.

Table.4 - Demands and needs

Criteria	IDD	PEPP
Contracts covered	Conclusion of all insurance contracts (including IBIPs)	Conclusion of PEPP contracts
Moment to perform the demands & needs test	"Prior to the conclusion of an insurance contract"	"Prior to the conclusion of the PEPP contract"
Person who gives information	"Information from the client"	"Information from the prospective PEPP saver"
Responsible for demands & needs test	Insurance distributor or insurance intermediary	PEPP provider or PEPP distributor
Provide the prospective client with objective information in a comprehensive form to allow the client to make an informed decision (Y/N)	Yes	Yes, and also provide the PEPP saver with personalised pension benefit projections for the recommended product
Details provided should be modulated taking into account (i) the complexity of the product and (ii) the type of client (Y/N)	Yes	No

501 Recital 44 of the IDD.
502 For further details please refer to address Article 20(1) IDD.
503 For further details please refer to address Article 34 PEPP Regulation.

Criteria	IDD	PEPP
Contract needs to be consistent with demands and needs (Y/N)	Yes, but reasons do not need to be put down in writing	Yes, taking into account the PEPP saver's accrued retirement entitlements
Provision of advice is mandatory (Y/N)	No, but MS may make it obligatory for (certain types of) insurance products	Yes
Where advice is provided by intermediary, it is based on an analysis of a sufficiently large number of contracts available on the market (Y/N)	Yes	Not specified in the legislation.
Demands & needs test is performed in relation to every product forming part of a package	Yes	Not specified in the legislation

Source: Consortium, based on the legal research.

The above also highlights **some differences between the IDD and the PEPP Regulation**. For instance, the PEPP Regulation provides more details about the demands and needs test and what the PEPP provider or distributor must specify. Article 34 of the PEPP Regulation provides that the PEPP provider or distributor must specify the retirement-related demands and needs of the prospective PEPP saver, including the possible need to acquire a product offering annuities. In addition, any PEPP contract proposed has to be consistent with the PEPP saver's retirement-related demands and needs, taking into account his or her accrued retirement entitlements.[504] On the contrary, details of the demands and needs test under IDD are more limited. It is worth underlining that the scope of the demands and needs test as provided for under IDD is not prescribed at EU level and is subject to national implementation.[505] At EU level, only minimum criteria are set for the performance of the demands and needs test and it was therefore essential to research national measures. The review of national measures was particularly relevant for IDD since it is a minimum harmonisation directive, which means that it considers the national circumstances of the Member States that can introduce additional provisions or bring additional activities into its scope of application.

The review of the **national measures on the demands and needs tests** and the rounds of interviews with national stakeholders revealed that IDD and PEPP regimes as incorporated at national level are coherent. In particular, national-level research showed that in all the Member States covered by the study, the requirements of Article 20(1) of IDD on the demands and needs test were incorporated into their respective national laws reflecting the EU requirements in a literal manner i.e. they usually do not provide more information on the scope of the test. However, interviews with national stakeholders revealed that in most of the Member States, details about the expectations for the demands and needs test can rather be found in non-legal sources, including guidelines developed by NCAs and trade associations.

Although the rounds of interviews revealed that there are **no major complaints or problems with the performance of this test**, the fact that IDD sets only rudimentary standards with regard to the demands and needs test leads, in practice, to some differences between the Member States covered by the Study regarding how the demands and needs of prospective clients can be assessed.

7.3.3. Suitability and appropriateness assessment

The demands and needs test only aims to establish if a client has valid "generic reasons" to purchase a particular product or service. It was reported that practices vary across countries and distributors between a couple questions to a 'suitability assessment light' process with a

504 For further details please refer to Article 34 PEPP Regulation.
505 EIOPA Q&A - QUESTION 1638 on IDD available from: https://www.eiopa.europa.eu/content/1638_en

more robust screening. The appropriateness assessment seeks to **achieve confirmation for the product distributor that clients have the sufficient level of knowledge and financial experience to understand the risks their investment is subject to**. The suitability assessment goes further, as it evaluates whether the product is suitable for the client based on their objectives, knowledge, experience and financial situation, taking a broader scope than the appropriateness test. The assessment of suitability and appropriateness is one of the most relevant regulatory obligations for consumer protection. The suitability assessments are performed to ensure that retail investors who generally do not have the necessary financial knowledge to make investment decisions by themselves do not face mis-buying or mis-selling risks by being offered products that are not adequate to their profile.

IDD and MiFID II differentiate between sales with advice and sales without advice. The PEPP Regulation does not, as PEPPs are always sold with advice.

When advice is provided, for the **assessment of suitability**, IDD, the PEPP Regulation and MiFID II require specific information to be obtained. This includes information about (i) the client’s knowledge and experience in the relevant field, (ii) the client’s financial situation and ability to bear losses, as well as (iii) the client’s investment objectives (including risk tolerance).

Under IDD, the suitability assessment is performed only when providing advice on IBIPs, while the demands and needs test is performed for any insurance contract. Under MiFID II rules, suitability is assessed in the case of investment advice and portfolio management and appropriateness is assessed in the case of other services. Under the PEPP Regulation, suitability must be assessed for all PEPP contracts.

Table.5 - Assessment of suitability

	Responsible for the assessment	Cases in which the assessment of suitability is performed	The following information should be obtained (Y/N):			Consequences if the information is missing
			1. Client's knowledge and experience	2. Client's financial situation (and ability to bear losses)	3. Investment objectives (including risk tolerance)	
IDD	Insurance intermediaries or insurance undertakings	When providing investment advice on an IBIP	Yes	Yes	Yes	If any of the information is missing or if none of the products are suitable for the client: the distributor may not provide any advice to client
MiFID II	Investment firms	When providing investment advice or portfolio management	Yes	Yes	Yes	If no sufficient information is received, making impossible an assessment of suitability: the investment firm will not be allowed to recommend investment services or financial instruments to the client
PEPP	PEPP provider or PEPP distributor	When advising a PEPP contract	Yes	Yes	Yes	*Not provided for in the PEPP Regulation.*

Source: Consortium, based on the legal research.

The above shows that the regimes laid down under IDD and MiFID II rules are overall consistent as rules related to cases where suitability is assessed, the information to be obtained and the consequences if the information is missing, are the similar.

To increase investor protection in cases of "non-advised" sales, **the appropriateness** must be assessed to ensure clients are not recommended financial products or services that are not appropriate for their level of knowledge and experience in the relevant field. The financial capacity and investment objectives of the client are not considered – contrary to the information provided by the suitability assessment.

Table.6 - Assessment of appropriateness

	Responsible for the assessment	Cases in which the assessment of appropriateness is performed	The following information should be obtained to determine if the product/financial instrument is appropriate (Y/N):			Consequences if the information is missing or insufficient
			1. Client's knowledge and experience in the relevant field	2. Client's financial situation (and ability to bear losses)	3. Investment objectives (including risk tolerance)	
IDD	Insurance intermediary or insurance undertaking	For the sale of IBIPs where no advice is provided	Yes	No	No	Warning stating that the envisaged IBIP is not appropriate for the client must be issued (in a standardised format)
MiFID II	Investment firm	When providing investment services other than portfolio management, and investment advice	Yes	No	No	Warning must be issued (in a standardised format) when the test shows that the investment service or product is deemed not appropriate

Source: Consortium, based on the legal research.

As reflected in the above table, **the regimes laid down for the assessment appropriateness under the IDD and MiFID II rules are overall coherent**. It is however worth mentioning that under MiFID II, suitability is assessed in the case of advice/portfolio management, while appropriateness is assessed in the case of other services and in particular in case of execution-only. The scope of the assessment is very different.

As regards the assessment of appropriateness under IDD[506], if certain conditions are met, Member States are allowed to derogate from this obligation. When the product is purchased on an execution-only basis, entirely at the client's initiative, and the product has been through a formal internal assessment process and classified as non-complex, then Member States may make use of the option of not requesting an appropriateness test. This allows insurance intermediaries or undertakings to carry out insurance distribution activities without the need to conduct an appropriateness assessment. Article 25(4) of MiFID II provides that investment firms are allowed to provide non-advised services with respect to non-complex investment products without the need to conduct an appropriateness assessment. In this case, the firm should warn the client that is it not required to conduct an appropriateness assessment and that said client therefore does not benefit from the corresponding investor protection.[507]

[506] For further details please refer to address Article 30(2) and (3) IDD.
[507] https://www.esma.europa.eu/press-news/esma-news/esma-consults-appropriateness-and-execution-only-under-mifid-ii

Table.7 - Execution-only sales

	Cases	Type of sale	Conditions				Consequences
			1. Client's knowledge and experience in the relevant field	2. Client's financial situation (and ability to bear losses)	3. Investment objectives (including risk tolerance)	4. There is no conflict of interest	
IDD	Option offered to Member States to derogate from the obligation to assess appropriateness.	Where no advice is given in relation to IBIPs ("execution-only" sale).	Yes	Yes	Yes	Yes	Intermediaries or insurance undertakings can carry out insurance distribution activities without the need to assess appropriateness and the client consequently does not benefit from the corresponding protection of the relevant conduct of business rules.
MiFID II	Member States should allow investment firms not assess appropriateness.	Investment services that consist of only execution or reception and transmission of client orders with or without ancillary services.[508]	Yes	Yes	Yes	Yes	Investment firms can provide those investment services without the need to assess appropriateness and the client consequently does not benefit from the corresponding protection of the relevant conduct of business rules.

Source: Consortium, based on the legal research.

[508] Excluding the granting of credits or loans as specified in Section B.1 of Annex I that do not comprise of existing credit limits of loans.

The analysis of the national level rules for the assessment of suitability and appropriateness revealed that the Member States covered by the study did not diverge from the EU legal requirements, nor went beyond the EU legal requirements with the exception of the IDD rules for which additional measures could be introduced if deemed necessary. National stakeholders interviewed for the study indicated that in some Member States, guidelines have been developed both by NCA and trade associations to ensure a consistent application of EU level rules and meet the objectives of protecting retail investors. For instance, in France, the NCAs have prepared recommendations for the collection of information in the context of the assessment of product suitability and, overall, there are no market segments that deviate from these recommendations. On the contrary, in Ireland and Italy, guidance has been provided rather by trade organisations. For instance, in Ireland, a trade organisation has created templates and guidance documents to assess suitability and issue statements of suitability. The same is true in **Italy** where a trade organisation has prepared and distributed several guidelines to manufacturers and distributors, including guidelines on the evaluation of product suitability.

Finally, the ESMA consultation with regard to execution-only in MIFID II revealed that there is insufficient convergence in the understanding and application of several areas of the appropriateness and execution-only requirements by firms in different Member States, and often within Member States themselves, creating problems for achieving a consistent level of investor protection in the EU.[509]

7.4. Effectiveness

The Better Regulation guidelines on evaluations and fitness checks provide for an analysis to assess under the criterion of effectiveness the progress made towards achieving the objectives of the intervention in question, together with the extent to which such progress is attributable to, or linked to, the intervention. The main drivers for not achieving the desired outcomes, as well as unintended outcomes are also assessed.[510]

As for relevance, whereas the EU Directives and Regulations set out objectives with regard to market integration in financial services and safeguarding the level playing field for operators[511], this study focused on exploring effectiveness only in connection with the primary objective of protecting the interests of retail investors.

As shown in the intervention logic, the demands and needs test and suitability assessment are intended to help **steer retail investors towards products most suited to their situation**, level of knowledge, investment objectives and personal risk preferences. This is to be achieved through communicating sufficient client information to the advisor (including in the case of robo-advisors) so that they can match the client with the most suitable product(s). The tools are also expected to contribute to the retail investors themselves gaining a better understanding their financial situation, objectives and risk appetite, as well as the relevant characteristics of the possible investment products.

A mismatch of product to client can take many forms. These include selling:

- products with too high (downside) risks over the investment timeframe;
- complex products which require a good understanding of underlying market forces, the monitoring of market developments and possible exit or other action to optimise risks and return (e.g. to cut losses); or
- products associated with high servicing/ongoing costs or high costs of a premature exit where such an exit is probable considering the client's current and expected future financial situation.

Mismatches can also include buying investment products with too little risk, and in turn too low returns over the long term.

[509] ESMA consults on appropriateness and execution-only under MiFID II (europa.eu)
[510] A possible unintended outcome in this case is that clientsare put off by the assessment questionnaire – especially lengthy ones -; and are either abandoning or postponing their investment, or go to a provider where the questions are not asked. The study was however not designed to explore this question.
[511] See, for instance, Recital 164 of the MiFID II, or Recital 16 of IDD.

The ultimate outcome sought in relation to avoiding mismatches with the help of demands and needs test and suitability assessments is that clients invest in the most suitable products. In this study we broke this down into the following effects chain:

1. The assessments are offered or required by the distributors, and undertaken by clients in the first place.
2. The assessments allow for a comprehensive, sufficiently detailed view of the client's situation, objectives and risk appetite (the right balance needs to be achieved between the coverage and depth of information on one hand, and time and effort on the other).
3. The questions are understood and answered correctly - truthfully, with sufficient effort – by the client; the answers are correctly recorded and/or processed.
4. The advisor has the knowledge and puts in sufficient effort to correctly interpret the answers to the assessment - it helps if the client also gains insights (e.g. realising the dangers of reckless risk-seeking behaviour).
5. The selection of recommended investment products is indeed steered by the – correct – understanding of the client's situation, investment objectives and risk appetite.
6. The client will choose a suitable (recommended) product.

A mystery shopping exercise carried out in eight countries[512] explored the nature, coverage and depth of the assessments undertaken by selected distributors – banks or insurance companies. The study's findings on the questions of effectiveness are primarily based on the 170 mystery shopping recommendations received, while findings from a group of mystery shoppers using robo-advisors over the internet are added where relevant.

7.4.1. Summary of main findings

The main observations regarding the effectiveness of the client profile screening processes (whether suitability assessment or demands and needs tests) with a view to assessing which products are most suitable for them are:

- **Suitability assessments and demands and needs tests are being implemented.** The majority of consumers who received advice about investment products do recall receiving questions about their profile. The majority also recall receiving a suitability assessment report.
- However, **the depth and timing of the screening process vary greatly**. As stated in the section on relevance, the legal framework only states that the suitability assessment needs to be carried out "when providing advice", while advice needs to be given "in good time before the provision of services". The suitability assessment needs to be done before the advice is given – but it is not clear when exactly this needs to take place. The mystery shopping for this study as well as national studies show that there are clear instances where the suitability assessment is carried out at the very last stage, shortly before contract signature. In our mystery shopping exercise several clients were explicitly told that this would only be done later at the contractual stage. Such late phasing of the suitability assessment means that in these instances the objective of using information about the client to provide advice is not fulfilled.
- With regard to **the depth of information covered** before a product is recommended, this **also varies greatly.** An important share of conversations that resulted in product suggestions covered only minimal or hardly any client information. The investor's knowledge appears to be least systematically covered. However, many screening conversations also did not ask any questions about family status (which is linked to capacity to bear losses) or more generally the client's wealth and assets. Supervisory authorities' reports also show that there is diversity in the quality and depth of questioning of suitability assessments. Robo-advisors use a range of questions but overall they do tend to cover all essential areas by at least one but often multiple questions.
- **Practices clearly differ considerably regarding whether and how the suitability assessment is actually linked to the provision of advice and recommendation**. Both good and bad practices co-exist as observed by our mystery shopping as well as the

512 France, Germany, Greece, Italy, Netherlands, Poland, Romania, Sweden.

national research of supervisory authorities. The quality of the suitability assessment questions does not as such guarantee good advice. There is a need for distributors to better implement mechanisms that ensure more systematic use of the suitability assessment before recommending products to clients. Supervision could play a role in enforcing these requirements. However, this study did not look into the existence and use of supervisory mechanisms. We did nevertheless note that some supervisory authorities have better evidence about market practices regarding suitability assessments in their country than others.

7.4.2. Outputs: implementation of processes for client profile screening

In line with the intervention logic, the first question to explore is whether the mandatory assessments are carried out in the first place. Given the different terminologies under the individual pieces of legislation in scope, we classify any assessment conducted with the mystery shoppers before some product recommendation was given as "client profile screening". This is because mystery shoppers could not assess whether the screening was a demands and needs test and/or a suitability assessment.

There were in fact several instances (seven cases, almost evenly distributed across Member States[513]), where no screening was performed at all, yet concrete products were discussed with clients. The products discussed were mostly pension products, life insurance products but also an investment fund. No questions about the profile of clients were asked in these instances. It needs to be highlighted again that no contract was signed by the mystery shoppers, so it is possible that a questionnaire might have been filled in later for legal compliance, if the client acquisition process had gone forward. However, the distributor did recommend investment products already at that stage; hence the main goal of the client profile screening could not be achieved. It should be noted that in the mystery shopping the shoppers used false identities and therefore these could not be instances where the distributor had prior information about an existing client.

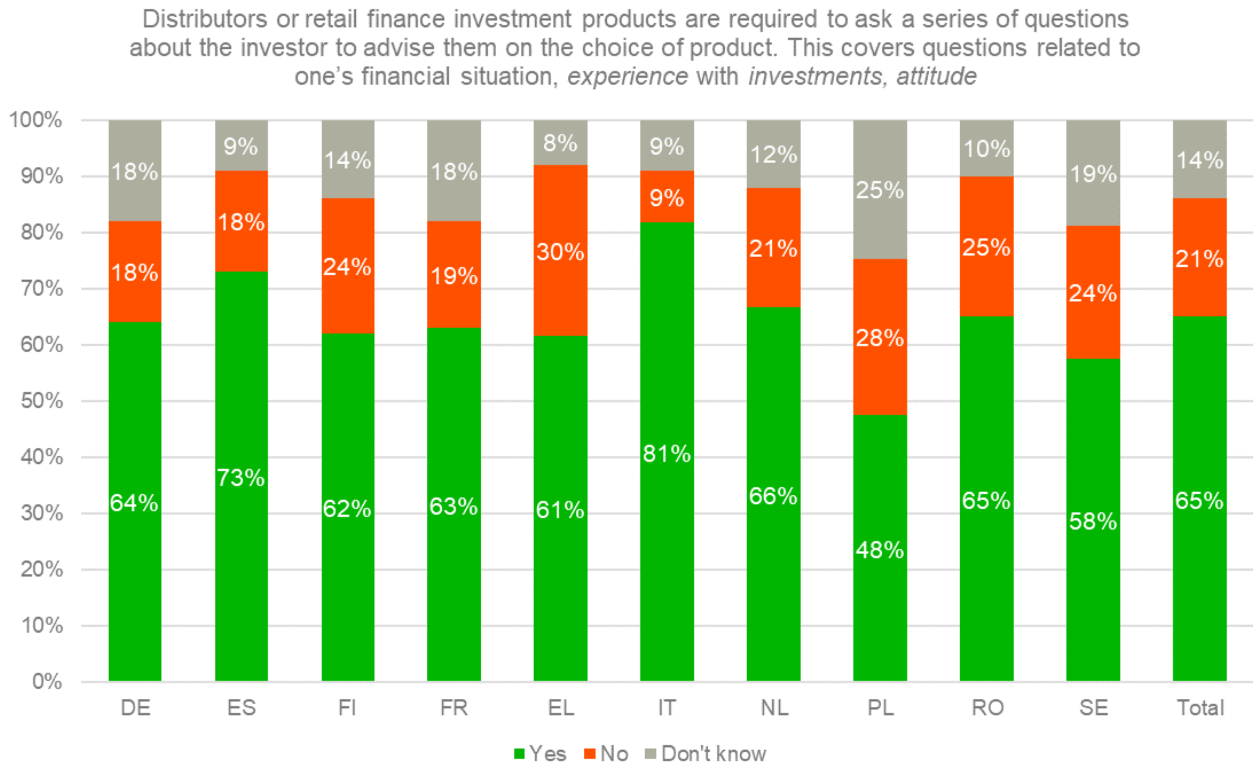
The stakeholders interviewed (see Annex 7 for detailed analysis) generally spoke about compliant practices regarding the implementation of suitability assessments. However, the discussions with distributors also showed that detailed client screening is not always carried out at the very early stage when the client expresses an interest in in investing. Several distributors interviewed said it is part of the client onboarding process which takes place close to contract signature. Others on the other hand stated that it is done at the very beginning.

We also asked a related question in the consumer survey. We asked all those who had an investment product or who were exploring making an investment and had received advice whether they recalled being asked questions about their financial situation, past experience with investments, attitude towards risk, etc. While the majority of respondents said "yes", 21% said "no" and another 14% did not know[514]. The number of respondents who recall undergoing this process varies between countries. The country with the lowest share of respondents who recall undergoing this process is Poland. In the traditional distribution channels mystery shopping exercise this is also the country where many screening conversations were very short and superficial in terms of items covered. A similar situation can be observed in Romania where a high number of mystery shoppers received product suggestions after a very short conversation covering few aspects of their profile.

[513] The quantitative analysis needs to be double-checked.

[514] With a chi-square value of 122.238, 18 degrees of freedom and a p-value <0.001, the differences across countries between the share of respondents that have been asked a series of questions to enable the advisor to advise them on the choice of product are statistically significant.

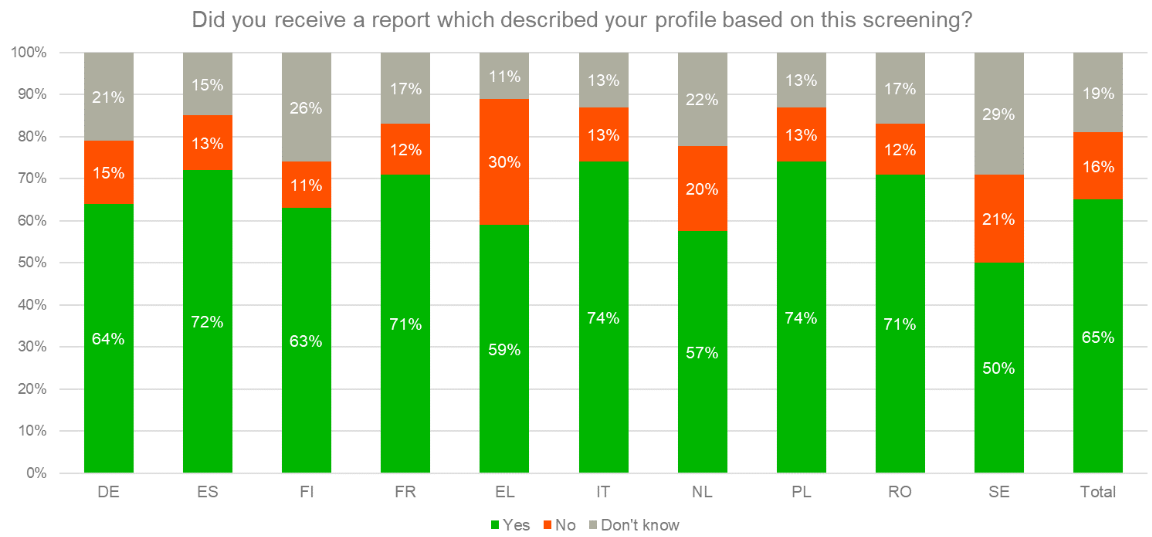
Figure.6 - Share of investors or people who received investment advice who recall undergoing a suitability assessment per country



Source: Consumer survey

Furthermore, the majority (65%) of those who recalled undergoing a suitability assessment also stated that they received a document which described their profile based on the screening.

Figure.7 - Share of investors or people who underwent a suitability assessment and recall receiving their investor profile document, per country[515]



Source: Consortium, based on the consumer survey.

[515] With a chi-square value of 86.619, 18 degrees of freedom and a p-value <0.001, the differences across countries between the share of respondents that have received a report describing their profile are statistically significant.

These instances where there appears to be very superficial or no client profiling are a minority but they show that the process of systematic client profile screening is not always respected. This finding should also be read in conjunction with the findings below on the depth and coverage of profile screening.

7.4.3. Coverage and depth of client profile screenings

In the cases where at least some screening information was collected, the coverage and level of depth of these varied wildly.

Table.8 - Issues expected to be covered by the screening process

Investment objectives	Investor knowledge	Financial Situation
Investment specification	Financial Literacy	Job and income
Approach to risk	Previous investment experience	Household composition
		Other financial commitments

Based on the guidelines and mystery shopping experiments carried out in other countries via regulatory authorities' mystery shopping exercises, we had established a list of 16 different information criteria about the client that we expected the advisors to ask (some of these can involve multiple questions). These are presented in the table below. Several of these criteria were coded as crucial and used to identify the share of mystery shopping observations during which the screening conversation did not cover crucial criteria.

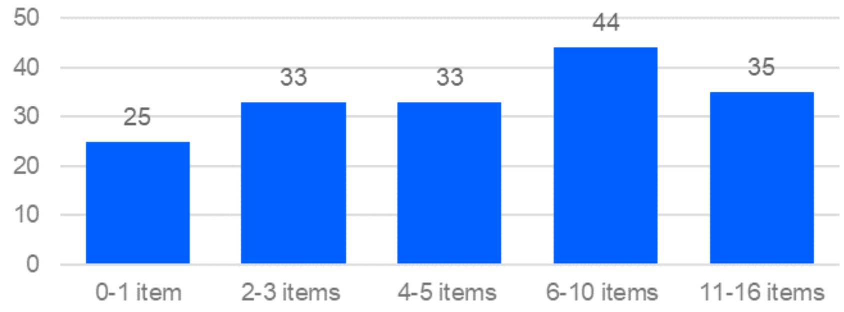
Table.9 - List of 16 key information criteria

Information category	Information criterion	Criteria considered as essential
(i) Knowledge and experience relevant to the given investment product	Financial literacy, including highest achieved level of education	Crucial
	Previous experience with (relevant) investment products	
(ii) Financial situation including ability to bear losses	Marital status	Crucial
	Presence of children	Crucial
	Age	
	Income (source, amount)	Crucial
	Extent of wealth, including housing owned	Crucial
	Profession and job security	Crucial
	Current financial commitments	
	Future financial commitments	
	Capacity to bear losses	Crucial
(iii) Investment objectives including risk tolerance	Investment objectives	Crucial
	Investment duration	Crucial
	Alternative uses for the investment	
	Ethical/sustainability concerns	
	Approach to risks	Crucial

Source: Consortium, based on desk research.

Sufficient coverage and level of depth of these information items is required in order to provide an adequate picture of the client's situation and characteristics. **The results of the mystery shopping show large variations across providers in terms of how many of these information items were discussed.** In numerous cases (44) the assessment touched upon 6 to 10 items; however, there were 33 cases where only 2-3 items, and 25 where a maximum of just one of the above items were covered.

Figure.8 - Number of suitability assessment items covered by human advisors during the screening conversations (n=170)



Source: Consortium, based on the traditional mystery shopping. (n=170)

There were no significant differences in the depth of the assessment between banks and insurers. Although the sample sizes by country were small, it is noteworthy that providers in Poland, Greece and Italy were more likely to offer only a very concise, i.e. covering few items, screening questionnaire/conversation. There were also a small number of instances where mystery shoppers underwent a screening process, but a second interview would be required in order for a product to be recommended to them.

We used the classification of items according to which items can be considered as crucial to further analyse the sample of mystery shopping observations. There were 48 observations in the total sample where no assessment was performed or not enough information was obtained during the first conversation while products were offered. On the other hand, there were only 44 observations (out of 170) where sufficient or even extensive information was collected.

The table below looks at the mystery shopping data according to the coverage of crucial questions as well as the extent to which different elements of the shopper's profile were or were not covered. As shown below there were 39 observations where information about the investor's knowledge/financial literacy was not gathered. There were also 25 observations (out of 170) where information about income was not gathered.

Table.10 - Number of mystery shopping cases where the questions labelled as "crucial" were not asked

Main category Sub-category	# cases where 0 questions of the category were asked	# cases where only 1 question of the category was asked
Financial situation	14	17
Income related	25	21
Family/ status	64	42
Wealth related	57	37
Investment objectives	11	21
Investor knowledge	39	29
All categories	4	2

Source: Consortium manipulations with traditional mystery shopping data.

The quality of the profiling for each mystery shopping observation was also analysed. Each observation was judged based on the extent to which it covered crucial items. The table below shows the criteria used to assess the depth of the profiling screening as well as the number of cases in each category. Only 16% (27 cases) of first contact and product discussion conversations were deemed as applying extensive profiling and another 10% had sufficient depth of questioning. In nearly half of the observations (46%) the minimum requirements were met and at least one question for each of the crucial criteria was asked. Therefore, overall, in 72%

of observations the crucial screening items as shown in table 6.9 above were addressed, albeit with different degrees of depth.

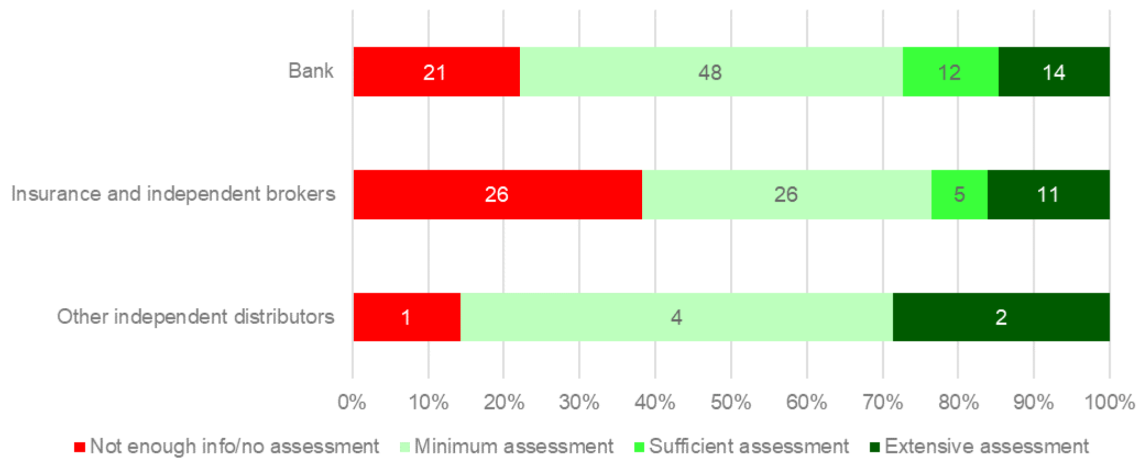
Table.11 - Number of mystery shopping cases by degree of depth of profiling

Profiling quality	Requirements	Number of cases
Insufficient	Less than one crucial criterion per category	48 cases
Minimum	At least one crucial criterion per category	78 cases
Sufficient	At least two crucial questions for the objective and knowledge categories and at least one per sub-category of financial situation	17 cases
Extensive	At least two crucial questions per category and two per sub-category of financial situation	27 cases

Source: Consortium manipulations with traditional mystery shopping data.

As shown in the figure below the **number of cases where not enough information was gathered about the investor's profile is somewhat higher in the insurance sector**.

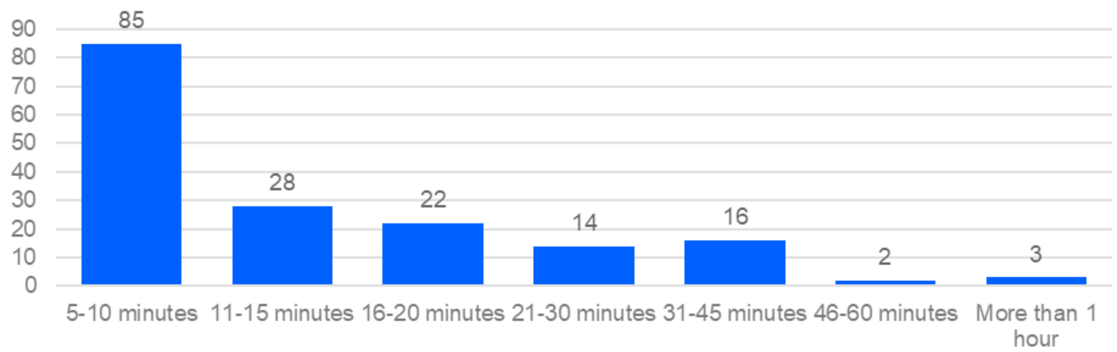
Figure.9 - Number of observations according to depth of screening per type of distributor



Source: Mystery shopping observations (n=170)

The overwhelming majority of suitability assessments – including robo-advisors with self-administered web-based assessment questionnaire - took less than 30 minutes, and around half of them took less than 10 minutes.

Figure.10 - Duration of the screening questionnaire prior to product specific conversation for traditional distribution channels (n=170)

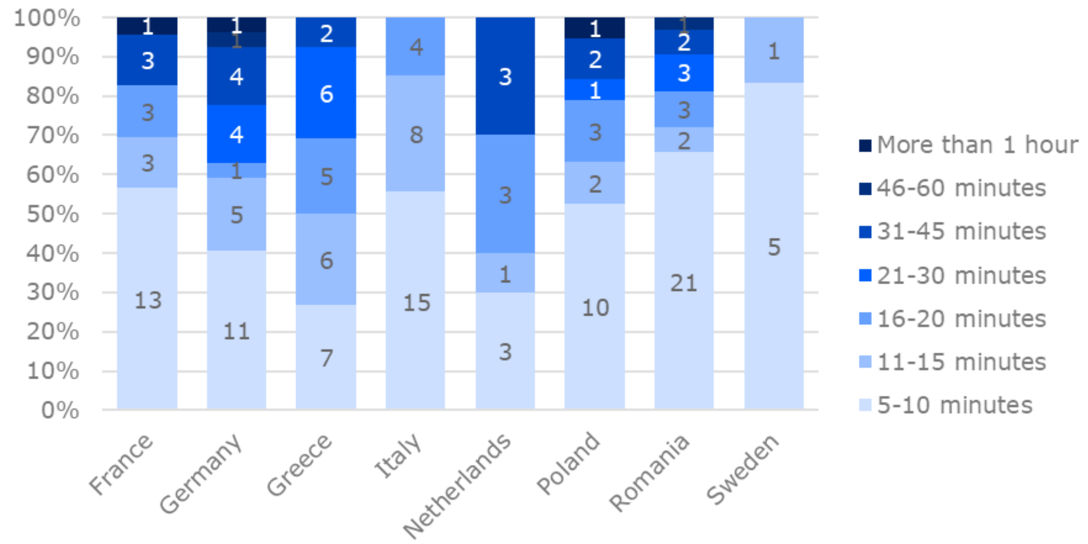


Source: Consortium, based on the traditional mystery shopping. (n=170)

There is no obvious explanatory factor for the length of the assessments conducted by human advisors. It seems to be dependent only on the distributor or the specific advisor. The amount of time spent on the profiling and suitability assessment was not correlated with the client's profile (risk-averse or risk-seeking); and surprisingly, the correlation with the number of information items addressed during the assessment was also weak. In other words, there are also cases of screenings which were short in duration but covered all required items. In 38 cases the screening lasted less than 15 minutes and all the minimum criteria required were covered. There are also 20 cases where the depth of the screening questionnaires went beyond the minimum items and which still lasted less than 15 minutes. The time taken tended to be slightly longer in assessments that did not follow a clearly defined questionnaire.

Disparities are visible across countries with advisors in Italy, Poland, France, Romania and Sweden providing consumers with product recommendations after much shorter conversations than in other countries. These differences cannot be due to exclusively the mode of interviewing as in Italy a large proportion of interviews were conducted face-to-face. In Sweden in general the mystery shoppers struggled to get advice because many distributors required ID identification which was not aligned with the mystery shopping protocol or because they only advised existing clients. A high number of contacts (26) in Sweden did not result in any product recommendations or client profiling. In Italy, the qualitative notes from the mystery shoppers clearly show that in several cases the advisors stated that the formal suitability assessment would be done at a later stage, however they nevertheless informed the clients about specific products that would fit their profile. Similarly in Poland based on the qualitative feedback of mystery shoppers they were told several times that the full profile would only be established at the contract signature stage.

Figure.11 - Duration of the screening questionnaire before a product was recommended per country for traditional distribution channels (n=170)



Source: Consortium, based on the traditional mystery shopping. (n=170)

For robo-advisors, the time needed to fill in the assessment questionnaire varied between five and 20 minutes; this was closely correlated to the number of questions asked.

While for the most part, **the most important questions for the screening** – e.g. the duration of investment, risk attitudes and the capacity to bear losses – **were asked, this is not always the case**. Furthermore, the coverage of key socio-demographic questions was uneven and questions on financial literacy were rare.

Questions about product knowledge and prior experience with relevant investments were asked in 99 of the mystery shopping exercises out of 170. As for robo-advisors, 10 (out of 13 covered) enquired about this in varying forms. Questions on investment objectives were asked in 122 instances of traditional distribution channels mystery shopping, although only by half of the robo-advisors.

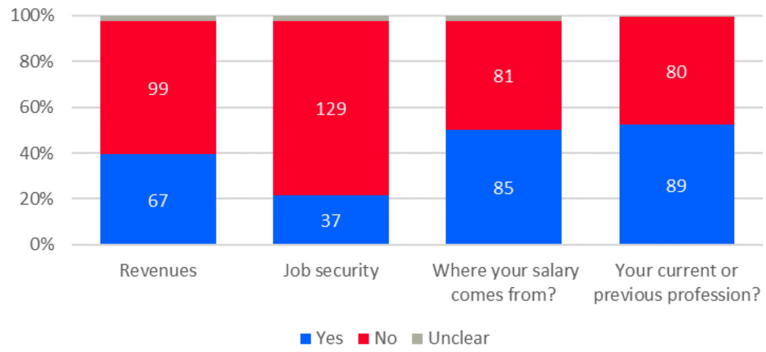
The main gap which is frequently insufficient covered concerns the client's financial situation.

The client's financial situation

The first main area of interest for the protection of investors is their **financial situation** when investing and expectations regarding their future financial situation for the time span of their investment. For example, job security and income provide a good view of how an individual could get on without the savings they have invested. Similarly, the household's composition can be very indicative regarding their potential future financial needs and obligations. The existence of previous and future financial commitments also contributes to a clear view of future potential expenses or income (mortgage or investment). All of this information provides a picture of the individual's capacity to bear losses and whether or not they are putting themselves or their household in a potentially dire situation.

Evidence from both traditional distribution channels and robo-advisors portrays **important gaps in the manner this type of information is collected**. Regarding job security and income, robo-advisors rarely collect such information (2/13 asked), while on the traditional distribution side a small majority gathered information about the potential investor's profession and related income.

Figure.12 - Number of financial situation questions present in mystery shopping activity (n=170, four different questions)



Source: Consortium, based on the traditional mystery shopping. (n=170)

Questions **about household composition were not covered by any of the robo-advisors** in the mystery shopping exercise, and in **only a small proportion of the traditional distribution channels** (37% for marital situation and 34% for children).

Questions about future and current investments were very rarely asked in traditional distribution channels (30% were asked about current investments and 15% about future investments). As expected, the shoppers that were asked about their current financial investments were mostly asked about mortgages (28/50).

A quarter (26%) of traditional distribution channel mystery shoppers were asked whether they might need some or all of the invested money within the investment period. Only a small share of robo-advisors asked about future liquidity needs (only six out of 13). The questions they used to do so varied greatly and the responses to those questions could be interpreted very differently.

Investor knowledge

Financial literacy is defined by the OECD as "a combination of awareness, knowledge, skill, attitude and behaviour necessary to make sound financial decisions and ultimately achieve individual financial wellbeing"[516].

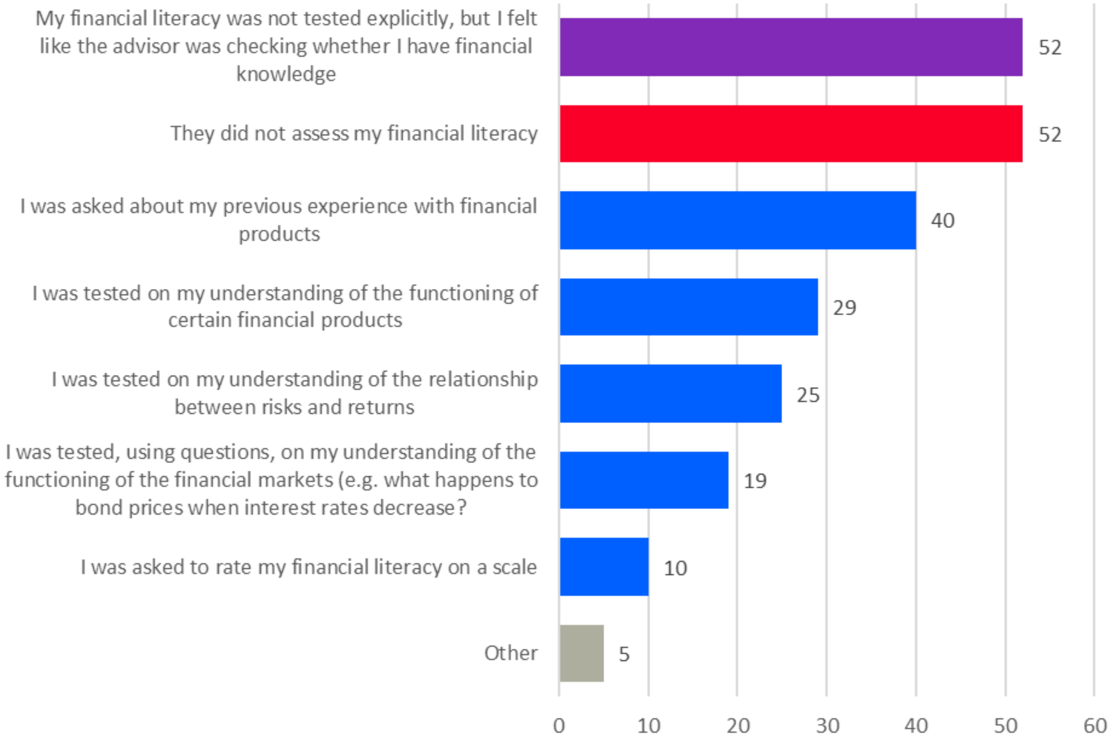
Applied to the context of retail investment products the financial literacy of potential investors should be scoped to assess their capacity to understand the products and how to use them, the financial markets, their risks and trends. Financial literacy is not necessarily correlated with the

[516] See for example OECD (2011) Measuring Financial Literacy: Questionnaire and Guidance Notes for Conducting an Internationally Comparable Survey of Financial Literacy.

level of education, unless that education involved (retail) finance. Often investment experience is more informative.

Assessing the financial literacy of clients is therefore primarily **accomplished by assessing prior investment experience**. This was asked about in 23% (40 observations) of the traditional distribution channels. It was covered by most robo-advisors. In the 2018 Deloitte study information about past experience with investments was asked about in a much higher number of cases (between 77% and 100% of observations reported being asked about this)[517]. This difference could be due to the mode of the conversation as many of the mystery shopping observations undertaken in 2021 as part of this study were carried out online or via telephone, while the 2018 study primarily collected data in face-to-face mode. Financial literacy does not seem to be addressed directly in screening processes with human advisors, at least not directly during the first conversation during which products are recommended. It could be that questions about people's understanding of interest rates or other questions directly assessing financial literacy would be seen as potentially intrusive. No financial literacy questions/testing were asked or implemented for just under one-third of mystery shoppers, and another third of traditional mystery shoppers indicated that they were not tested directly but that the advisor tried to assess their financial literacy using more implicit questioning.

Figure.13 - Assessment of financial literacy in traditional mystery shopping experience (n=170, multiple choice question)



Source: Consortium, based on the traditional mystery shopping. (n=170)

The table below shows the ways in which robo-advisors asked about financial literacy. Most asked about past experience and the other commonly used approach was to ask respondents to self-assess their level of financial literacy using a scale.

[517] Deloitte (2018) Distribution systems of retail investment products across the European Union.

Table.12 - Financial literacy assessment methods used by robo-advisors

Financial literacy:	Education Level	Profession	Investment experience	Self-assessment of financial knowledge	Knowledge through training, work, studies	Familiarity with financial services	Test questions	Offer additional information (not a question)	Number of questions
Robo-advisor 1									0
Robo-advisor 2									0
Robo-advisor 3									0
Robo-advisor 4				x					1
Robo-advisor 5			x						1
Robo-advisor 6			x	x		x		x	1
Robo-advisor 7			x						1
Robo-advisor 8				x				x	1
Robo-advisor 9			x	x	x	x			4
Robo-advisor 10	x	x	xxx						5
Robo-advisor 11			xxx	xx				x	5
Robo-advisor 12	x		xxx	x					5
Robo-advisor 13			xx				xxx		5
Total	2	1	8	6	1	2	1	3	

Source: Consortium, based on the robot-advisor mystery shopping. (n=170)

Investment objectives

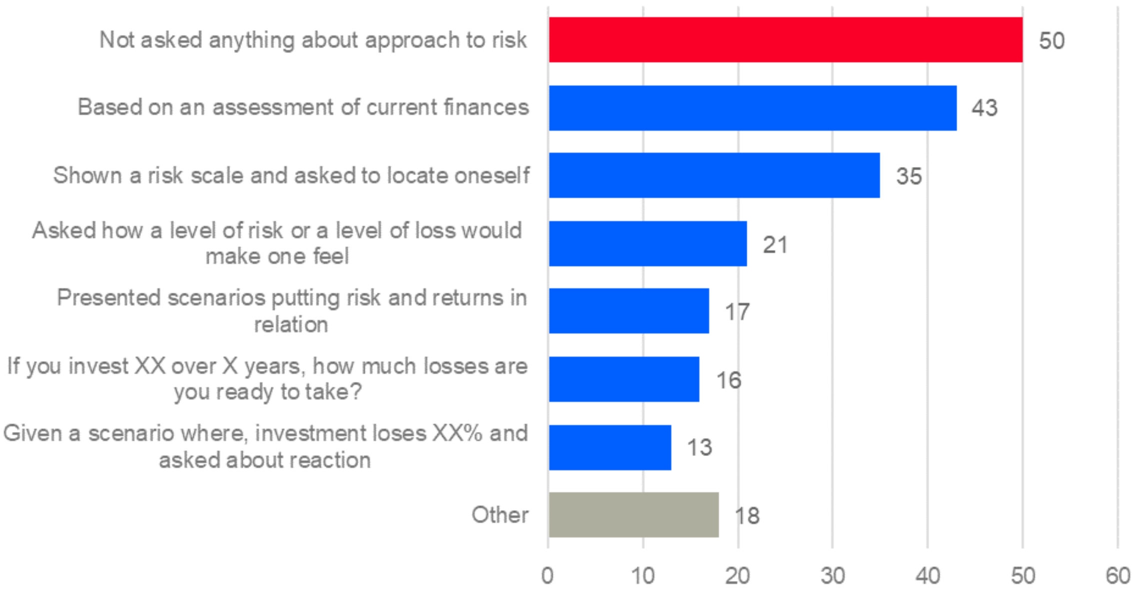
Understanding the potential client's investment goal is another crucial element of the screening process. This is usually done at the very beginning of the meeting when the shoppers give their reason for their visit. This study's mystery shopping data collection method looked for three main factors to evaluate whether the advisors collected enough information to properly assess the potential client's investment objective: investment duration, investment objective and risk approach.

While the duration and objective seem obvious items on which information needs to be gathered, **there were still 20% of traditional mystery shoppers who were not asked about them**.

We looked at the extent to which the investor's risk approach was asked about and how it was addressed. There is a stark contrast between practices of robo-advisors and human advisors in the ways in which they ask about risk taking. It is the only topic tackled systematically by all robo-advisors, and some went as far as asking eight questions solely on that topic. On the other hand, 30% of human advisors asked no questions about risk attitudes. There is a large variety of ways of asking for this information covered by the traditional mystery shopping experience.

While the approach towards risk could be derived from other factors (such as the capacity to bear losses, itself assessed on factors such as current assets, income, etc), it is quite central for the product decision and therefore, as required by the legal framework, should be part of the screening process.

Figure.14 - Assessment of risk approach in traditional distribution channel mystery shopping (n=170, multiple answers)



Source: Consortium, based on the traditional mystery shopping. (n=170)

Robo-advisors systematically asked about attitudes to risk as shown in the table below. The most commonly used types of questions concerned:

- What share of the investment would the client be willing to lose before selling?
- How does the potential investor perceive his or her type of investor profile? These types of questions can, for example, ask what the most important aspect of an investment (security versus gain) is or whether the potential investor generally expects the best or the worse outcomes to be realised.
- The risk to return ratio a potential investor finds adequate. These are always assessed using multiple choice questions and sometimes used graph/charts to represent the ratio.

Table.13 - How attitude towards risk was asked about by robo-advisors

Robo-advisor	# Questions about risk	Type of questions	% loss before selling	Type of investor/profile	Return/risk ratio	When stocks fall rapidly, what do you do	Choose a risk profile	other
1	1	multiple choice	x					
2	1	multiple choice					x	
3	1	multiple choice					x	
4	2	multiple choice		x	x	x		
5	2	multiple choice		x		x		
6	2	multiple choice	x		x			
7	2	mixed	x	x				
8	3	multiple choice		x	x	x		
9	3	multiple choice	x		xx			
10	4	multiple choice	x	x	x			
11	5	gradation	x	xx	x	x		
12	6	multiple choice	x	xxxx	x			
13	8	gradation	x	x	x	x		xxxx
	Total		8	8	8	5	2	1

Source: Consortium, based on the robo-advisor mystery shopping. (n=170)

Additional evidence

Issues with the implementation of existing provisions about suitability assessments were also found in the research of several National Competent Authorities, albeit to varying degrees:

- In Ireland, the Central Bank concluded that: "*firms have failed to establish a risk-based and client-focused approach to suitability that prioritises positive outcomes for clients and puts the necessary safeguards, procedures and controls in place to ensure clients' best interests are protected*".[518]
- In France, advisors also only performed the suitability assessments after having already provided advice in one third of the cases covered in the research.[519] Advisors might also use information that is out-of-date, from a previous assessment. The French AMF noted that in 30% of the cases, advisors were using data that was two to eight years old.[520]
- In Germany, many suitability reports were found to be incomplete[521].

One factor that could explain why some topics are not tackled during the screening questions could be that advisors have a tendency to assume some answers or derive some of them from contextual elements. This is reinforced by some of the answers of the mystery shoppers:

- "Perhaps an attempt was made to investigate, but not specifically asked" [regarding other investments].
- "The advisor must have guessed my education level based on my current position."
- "The counsellor asked no questions. He himself made some assumptions and based on them he adjusted the product."
- "The bank employee did not ask me questions to determine my investment profile. It didn't interest her."
- "The advisor didn't ask about the job situation until the very end because he seemed to have assumed the person was working."

7.4.4. Question and response quality and veracity

It is important that the client understands the questions in order to respond correctly. **A positive finding from the mystery shopping experience is that the language used by the advisors (including robots) was generally not too hard to understand**. In only four instances did the mystery shoppers find the questions unclear and in only nine instances did they find the overall goal of the questions unclear (they did not know what the aim of the questions was asked or how they were used).

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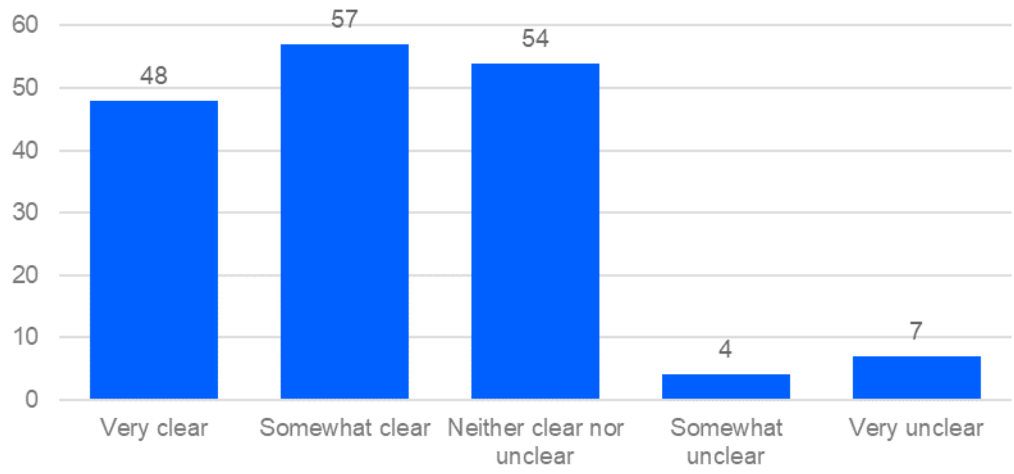
518 Central bank of Ireland (2021) https://www.centralbank.ie/docs/default-source/regulation/consumer-protection/compliance-monitoring/themed-inspections/common-supervisory-action-mifid-ii-suitability-requirements.pdf

519 AMF (2021) summary of spot inspections on compliance with MiFID II suitability provisions.

520 AMF (2021) summary of spot inspections on compliance with MiFID II suitability provisions.

521 Federal Financial Supervisory Authority (BaFin), 2019 Annual Report, p. 118, available at: https://www.bafin.de/SharedDocs/Downloads/EN/Jahresbericht/dl_jb_2019_en.pdf;jsessionid=BB2C0906605EC7E730AB7B222AAB0987.1_cid393?__blob=publicationFile&v=2

Figure.15 - How would you rate the questions asked to establish your profile in terms of: "Comprehensibility: the language the advisor used was easy to understand" (n=170 traditional distribution channels)



Source: Consortium, based on the traditional mystery shopping. (n=170)

The findings are equally positive for the robo-advisors. In terms of comprehensibility, 92% of robo-advisor questions before product recommendations were considered either very good (54%) or somewhat good (38%). The clarity of questions asked before receiving a product recommendation and 85% of the robot-advisors tested were considered either somewhat good (31%) or very good (54%).

As already indicated in the relevance question, the majority of consumers surveyed who recalled receiving a suitability statement said that this was **rather or very useful to support their choice**.

Regarding veracity, a study conducted in 2020 in 16 euro area countries found that the information provided by the client may often be unreliable.[522] Given certain socio-demographic and socio-economic characteristics, some risk-averse households are indeed predisposed to risk-taking, highlighting the need for "shaping the consumer protection regulations to some extent at the domestic level, to take into account the specificities of particular populations"[523]. A key question is whether distributors allow for incomplete assessments or make efforts to detect inaccurate information provided by the client.

An Italian study reports that at certain providers, guidelines are in place at company level to ensure that the advisors verify the veracity of the information shared.[524]

In Germany, according to the BaFin survey, in only 11.3 % of the suitability reports did the institutions explain how the characteristics of the recommended product match all of the client's requirements. In this matching process, the institution must consider, in particular, the investment term required as well as the client's attitude to risk, knowledge, experience and ability to bear losses. However, 49.4 % of cases show that the consideration of the individual criteria is not fully documented in the report[525]. Finally, the BaFin survey concludes that by 2019, the suitability reports failed to meet the legislation's objective, which is to enable investors to gain a complete overview of the reasons behind a recommendation, with 39.3% of the sample group's suitability reports merely containing vague standard phrases[526].

522 Risk-Intolerant but Risk-Taking—Towards a Better Understanding of Inconsistent Survey Responses of the Euro Area Households - ProQuest. (2020). Retrieved October 27, 2020, from Kuleuven.be website: https://search-proquest-com.kuleuven.ezproxy.kuleuven.be/docview/2438367244?rfr_id=info%3Axri%2Fsid%3Aprimo

523 Ibid.

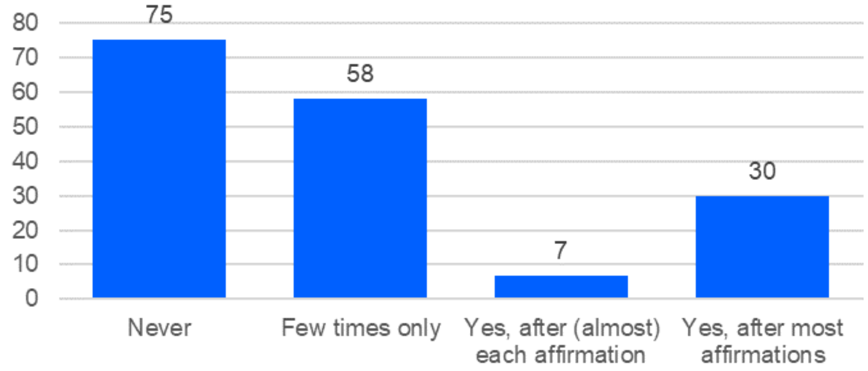
524 https://www.milanofinanza.it/news/la-rivoluzione-della-consulenza-201803161511266094

525 Federal Financial Supervisory Authority (BaFin), 2019 Annual Report, p. 118, available at: https://www.bafin.de/SharedDocs/Downloads/EN/Jahresbericht/dl_jb_2019_en.pdf;jsessionid=BB2C0906605EC7E730AB7B222AAB0987.1_cid393?__blob=publicationFile&v=2

526 Federal Financial Supervisory Authority (BaFin), 2019 Annual Report, p. 118, available at: https://www.bafin.de/SharedDocs/Downloads/EN/Jahresbericht/dl_jb_2019_en.pdf;jsessionid=BB2C0906605EC7E730AB7B222AAB0987.1_cid393?__blob=publicationFile&v=2

In the mystery shopping exercise, we explored whether the advisors attempted to verify the information they received. This was rarely the case.

Figure.16 - Traditional distribution channel mystery shopping: did the advisor make sure that the answers you provided during the questioning were accurate by asking for examples/past experiences and/or proofs? (n=170)



Source: Consortium, based on the traditional mystery shopping. (n=170)

7.4.5. Interpretation of information

The information obtained from the client needs to be correctly interpreted and transformed into an investor profile that is indeed useful in selecting suitable investment products. The mystery shopping exercise suggests however that this is often not the case.

At the end of the questionnaire, robo-advisors usually provide the potential investor with a profile that defines the type of investor he or she is, together with the justification for the recommendation. Presentations of the profile can vary considerably from one advisor to another. The number of profiles offered by the platform is not always known. All of the robo-advisors bar one were able to give a clear profile after the given set of questions. Of the 12 that displayed a profile, 10 also gave a clear-cut portfolio composition recommendation. This portfolio composition recommendation states the proposed product allocation (e.g. % of bonds, % of listed shares, etc.). The number of profiles available varies from three to ten. This could go up to 20 if accounting for sustainable options: two robo-advisors offered their ten available profiles also with the "sustainable" option hence doubling the number of profiles. Graphs representing future (forecasted) performances were also present on ten of the 13 websites monitored. Past performance information, however, was only found on six of the platforms and a detailed list of product names included in the portfolio was offered by six robo-advisors. There are four robo-advisors that required investors to select branded packages from a short list and in one of them this was done at the very start of the questionnaire. Eight of the 13 robo-advice platforms that offered a clear recommendation included a cost section detailing a variety of costs depending on the website.

The profile descriptions can comprise up to four short paragraphs, but can also be non-existent depending on the robo-advisor. These paragraphs are there to help investor understand why they have been placed in a specific category or another. Yet, the information made available in these sections tends to be slim.

7.4.6. Product recommendations being linked to the screening process

The quality of the actual advice about the product and how it fits the investor profile is discussed in the section on advice and not in this chapter.

However, as indicated above, **in some mystery shopping cases, product recommendations were given without performing any or only very limited profile screening**. Those seem to be the exceptions and overall, the advisors asked questions in order to know their clients, albeit with varying levels of depth. While the industry, especially insurance stakeholders, expressed the view that the suitability assessments, demands and needs tests are rigorously conducted and are a safe gatekeeper preventing mis-selling, the results of the mystery shopping suggest that there is not always adequate effort put into the suitability assessment to prevent mis-selling. European regulatory agencies also find the suitability assessment important, but not sufficient to prevent mis-selling.

As already mentioned earlier there is evidence both from the mystery shopping as well as from existing research[527] that in a non-negligible minority of cases **full suitability assessments are only carried out at the end of the advice process** (see 7.2.4), shortly before contract signature. Subsequently the suitability assessment does not feed the process of informing the advice given and supporting the client's choice. Interviews with distributors also show that the suitability assessments are performed at different stages of the enquiry process. While some distributors indicate that these assessments are carried out at the time of the first contact, others state they are performed when the client has expressed a clear interest in a specific product (which can be after the initial stage of the provision of product information). Some also say that they do the screening as part of the client onboarding, i.e. at a point when the choice has been made and the client is already ready to sign the contract.

The robo-advisor mystery shopping found that in two instances clients were recommended the same product despite having entered different profile information and in particular important differences about their risk profile as well as available liquidity to invest. This could be due to the products offered by the robo-advisors (mainly ETF-based) or it could be an issue related to lack of profile-based product tailoring.

Clients received an explanation of how the recommended product matched their profile in only around two-thirds of cases of traditional mystery shopping. **In a substantial minority of instances when a risk-seeking and a risk-averse profile were tested with the same distributor, clients were offered the same types of products. This was observed for 14 pairs of profiles out of 47 pairs**[528]. In these 14 cases, the advisor deemed the same type of product to be suitable for both client types. Looking further into this, we also note that three pairs of profiles received exactly the same product recommendation regardless of their profile. In the cases where investors had the same types of products recommended, it is unclear which version of the product they would actually receive at the post-contract stage.

The distributors interviewed referred to a wide diversity of practices regarding how the information from the screening process is taken into account in the product recommendation, ranging from cases where this is left to the advisor's discretion to cases where an automated process only allows advisors to recommend products that are judged as suitable. A substantial share of distributors interviewed (see Annex 7) mentioned that the process was automated in their entity. However, the leeway that advisors have in steering the client to the range of products offered varies. While in some entities the process is fully automated in others advisors ultimately make the proposal.

7.4.7. Investment decision – possibility to go against the advice

The robo-advisors mystery shopping also tested the possibility for clients to go against the advice given. It shows that in most cases this is possible and easy. While a warning is displayed, there is no difficulty for the clients to choose a different portfolio than the one recommended or to manually adjust their risk tolerance profile score so as to receive a different recommendation.

Only in a small number of traditional mystery shopping observations (11% of cases) were the clients clearly blocked from investing in one or more products because of their responses to the questions on literacy, or their capacity to bear losses. It could however be the case that this happened in more instances but just was not explicitly stated in the interview. Nevertheless, the fact that there are instances where the risk-averse client profile was recommended risky products and vice-versa suggests that the results of screening are not systematically translated into product recommendations. These instances however remain a small minority.

7.5. Efficiency

To assess the efficiency of current EU regulations on suitability assessments and demand and needs tests, we explored the main ongoing costs to conduct these activities and make

[527] AMF (2021) summary of spot inspections on compliance with MiFID UU suitability provisions or Central Bank of Ireland https://www.centralbank.ie/docs/default-source/regulation/consumer-protection/compliance-monitoring/themed-inspections/common-supervisory-action-mifid-ii-suitability-requirements.pdf

[528] In the remaining mystery shopping instances only one of the profiles was tested with a given distributor.

a broad comparison with the assets managed by the financial service providers concerned. This analysis does not differentiate between demands and needs tests and suitability assessments and treats all screening processes carried out by advisors as one.

This approach does not consider adjustment costs and additional one-off administrative costs, as these have been already paid by businesses in the past as "sunk costs". They do not further influence the current efficiency of the EU legislation. Relevant one-off costs included investigating regulatory requirements, defining internal procedures (including supervision), developing questionnaires and forms (and corresponding ICT applications), and initial staff training.

Adjustment costs would have been significant at the time of their introduction: the MiFiD II Impact Assessment prepared in 2011 estimated one-off compliance costs of between €512 and €732 million, and suitability assessments were one of the most significant elements of the framework with regard to investor protection.[529]

The ongoing costs related to conducting and processing the assessments cover the following main activities:

- Carrying out face-to-face screening interviews with the investor (explanations, responses to questions may be involved).
- Recording the answers.
- Presenting the assessment to the client, answering questions.
- Collecting and archiving signatures.
- Ongoing training of (new) advisors.

The estimates for these main cost factors are provided in the table below.

The estimates shown in the tables below are based on the assumption that currently the vast majority of investment products are bought through a traditional distribution channel. As shown below the calculations assume a certain volume of transactions per year. As it is not possible to estimate the respective shares of transactions done through execution-only or through robo-advisors, it is assumed in this document that these formats still represent only a small share of transactions and therefore would not significantly affect the administrative costs linked to the screening process. However, as it is highly likely that the share of products purchased through these means will continue to grow, this would also have an effect on the implied administrative costs. Understandably the use of self-administered automated processes (robo-advisors) or execution-only products would lower the client screening costs.

Furthermore, the assumptions about the volume of transactions per year used to produce these estimates assume that the vast majority of products bought per year required advice. Screening costs are not implied for products for which advice is not required. However, there is no data available about the share of products sold per year which do or do not require advice. In the absence of reliable data on this split we assume that screening costs are systematically applied.

Therefore, the numbers presented here are the maximum estimates and the real costs of screening are likely to be lowered by the use of robo-advisors and execution-only products.

[529] https://ec.europa.eu/info/sites/default/files/business_economy_euro/banking_and_finance/documents/111020-mifid-mifir-proposal-impact-assessment_en.pdf

Table.14 - Main ongoing costs for distributors/advisors – overview

Cost category	Product type	Estimated duration/Unit cost	Estimated total cost	Comments explaining the assumptions
Carrying out the interview with the investor	Investment products	~15 minutes per screening	€165.2 million	The estimates concern suitability assessments as well as needs and demand test. Assumed volume: 7.6 million screenings per year Assumed basis for costs: €87 avg. hourly labour cost.
	Private pensions	~15 minutes per screening	€32.6 million	Assumed volume: 1.5 million new screenings (new contracts) per year.
	Insurance-based products	~15 minutes per screening	€43.5 million	Assumed volume: 2 million screenings.
Recording the answers Presenting the assessment to the client, responding to questions Collecting and archiving signatures	Investment products	~5 min on average per screening	€55.0 million	These three activities are grouped together. Recording usually goes in parallel with the screening, but in some cases additional time is needed post-survey. Volumes assumed and cost basis are the same as above
	Private pensions	~5 min on average per screening	€10.9 million	
	Insurance-based products	~5 min on average per screening	€14.5 million	
Ongoing training of advisors	Investment products	€270 per participating advisor	€6.8 million	Calculating with 2 hours as time cost of participation for new staff (10% yearly churn), and average labour cost of €87. In addition, 50% for preparation and implementation costs.
	Private pensions	€270 per participating advisor	€1 million	Calculation using banks' ratio of training costs per net assets.
	Insurance-based products	€270 per participating advisor	€3.6 million	

Source: Consortium, based on multiple sources.

Interviews with stakeholders indicate that the time needed for a face-to-face screening procedure, i.e. carrying out the interviews (this normally goes hand-in-hand with recording the answers), for client engagement, collecting and archiving signatures – is the most significant cost factor that needs to be considered. A considerable share of screening procedures is carried out either entirely or partly using a standardised questionnaire which is automated, as part of the onboarding process. The cost of operating such systems is very small, as we do not consider the initial development costs when assessing the ongoing efficiency of the regulations. As for face-to-face screening procedures, the large majority (including the recording of answers and explaining and responding to client questions) took altogether less than 30 minutes in the mystery shopping exercise; the average was about 15 minutes. However, since many of the first meetings did not result in a full suitability assessment or needs and demand test being conducted, the average must be set somewhat higher, at about 20 minutes (15 minutes for the interview and 5 minutes for other activities).

The number of screening processes initiated each year for general investment products is estimated at about 3.8 million. This estimate is based on the results of the consumer survey using the data on the share of consumers who state having invested in new products in the past 12 months. In the consumer survey 14.2% of respondents (1,479 out of 10,470) replied that they had bought their last investment product in the past 12 months (this corresponds to a total of 50 million adults in the EU), although this includes pensions and insurance-based products. From among the products the respondents had invested in, about one fourth were pension products or life insurance, while the remainder were more general investment products (under MiFID II): investment funds, ETFs, listed shares, bonds etc. (i.e. we can calculate with about 37.5 million adults to buy generic investment products outside of pensions and life insurance). However, most of these investors were not new clients and they already had completed the screening process earlier. It was also assessed that about half of retail investors received professional advice at least once. Making the assumption that the proportion of new clients or clients that had to undergo a renewed suitability assessment would have been only 20% of the total, we estimate that 7.6 million screenings are carried out per year. This produces with an €87 hourly labour cost an estimate of €220.2 million of costs for generic investment products.

For private pensions, calculating with our previous estimate of 1.5 million new contracts concluded per year[530], the same time need would correspond to a cost of 43.5 million euro. Similarly, using the same method, the total cost for insurance-based investment products with an estimated number of 2 million new contracts annually would be around 58 million euro.[531]

New staff will usually require training to carry out the screening procedure, but feedback on duration or whether staff actually received training and not simply instructions varied. Calculating with an average of two hours training needed and further assumptions similar to those explained in the section about advice (after calculating the time cost of participation we add an additional cost of 50% for preparing and implementing training), we obtain a cost of €6.8 million for generic investment products, €1 million for private pensions and €3.6 million for insurance-related investment products.

Importantly, algorithms that are used by several financial service providers automatically restrict the possible range of products and advise certain model portfolios which may save a significant amount of time for the advisor.

As indicated in earlier sections, the total net assets of UCITS and AIF funds in the EU amount to about 19.7 trillion euro, while private pension funds manage about 2.9 trillion euro and insurers another 10.4 trillion euro. The estimated range of costs for screening processes per net assets managed is between 0.0006% and 0.0015%, €0.7 to 5.4 per client. The maximum cost per screening is around €30 on average. As stated above this cost per screening is the maximum cost which assumed that all screenings were carried using an advisor driven process (rather than an automated self-administered process using robo-advisors) and that the products sold were accompanied by advice and were not execution-only (or sold through robo-advisors).

While the maximum costs per-screening of €30 may appear high, it also needs to be noted that the time that is the basis for this assumption is not exclusively linked to screening, but part of the conversation is the standard costs of the sales process. Furthermore, this cost represents only a small part of the product costs that are passed on to the client through the various entry, ongoing and exit costs (see section on costs disclosure – under effectiveness of disclosure).

When the costs are compared with the potential benefits of the regulations, the cost-effectiveness of these rules appears positively. The benefits from the screening process are, as discussed in the effectiveness section, advice that takes into account the client's needs and situation. The section on the effectiveness of advice and inducements also showed that the product recommendations that clients receive following the advice process are broadly aligned with their needs. Subsequently it can be concluded that the estimated maximum costs of the screening process are outweighed by the benefits of the screening process to clients in terms of personalised and tailored recommendations.

[530] Estimated using figures of the industry association Pensions Europe; further elaborated in the efficiency section of the disclosure section.
[531] Assumptions based on Insurance Europe's statistics for 2020; see in the disclosure section.

The issues that could hinder cost-effectiveness of the screening process are:

- As shown in the effectiveness section, the screening alone is not sufficient to provide good quality advice. Therefore, to be cost-effective this process relies on the high quality of the result.
- Excessive searching among providers on the client side. If clients are subject to a multiplicity of advisor-led screenings with different distributors before choosing the right product the costs per screening increase.

On the other hand the drivers of cost-effectiveness are:

- Use of self-administered online processes rather than advisor-driven ones.
- The growing trend towards cheaper and often execution-only products which means that there are fewer screenings undertaken per product sold.

Table.15 - Estimated total and unit costs

Product type	Total ongoing costs	Number of clients (number of screenings per year)	Assets managed	Cost per client (per screening)	Cost per net assets
Investment products	€227.0 million	50 million (7.6 million)	€19.7 trillion	€5.43 (€30.8)	0.0012%
Private pensions	€44.5 million	60 million (1.5 million)	€2.9 trillion	€0.7 (€29.7)	0.0015%
Insurance products (life insurance)	€61.6 million	40 million (2 million)	€10.4 trillion	€1.5 (€30.8)	0.0006%
TOTAL	€333.1 million	150 million (11.1 million screenings per year)	€330 trillion	€2.22 (€30)	0.001%

Source: Consortium, based on multiple sources.

7.6. EU Added value

The main EU added value of the relevant pieces of EU legislation lies in **the harmonisation of obligations for investor profile screening and recommending suitable products**. In the absence of EU legislation, it stands to reason that the national approaches would diverge – i.e. even further diverge – and the ensuing legal fragmentation would lead to uneven levels of consumer protection across the EU, to a weaker functioning of the internal market (notably the cross-border provision of financial services involving investment advice). This would also harm fair competition within the EU. While the extent of the cross-border provision of such financial services is rather limited to date, the trend in volumes is increasing.[532]

This **legal fragmentation** is to some extent already experienced. As explained in the legal analysis on coherence there are differences in the level of harmonisation implied by IDD (minimum harmonisation) and MiFID II and PEPP (maximum harmonisation). In the area of demands and needs test, and sustainability assessments for investment products, several Member States have put in place further provisions, setting out how the assessments are to be conducted, as well as defining other process-related obligations on distributors of investment products. For the demands and needs test (which is implemented under a minimum harmonisation regime), an example is Finland, where national provisions on the demands and needs are quite detailed and describe how the test should be carried out. However, details are usually not provided in legislation. Interviews with national stakeholders have revealed that in most Member States, these can be found in various non-legal sources, including guidelines developed by NCAs and trade associations. For instance, in France, the national authorities have prepared

[532] This statement by the AMF (FR) and AFM (NL) confirms the increase. https://www.amf-france.org/sites/default/files/private/2021-12/position-paper-cross-border-afm-amf_0.pdf

recommendations for the collection of information in the context of the assessment of product suitability and, overall, there are no market segments that deviate from these recommendations. In Ireland, a trade organisation has created templates and guidance documents to assess suitability and issue statements of suitability. The same applies to Italy, where a trade organisation has prepared and distributed guidelines to manufacturers and distributors, including guidelines on the evaluation of product suitability.

In Greece, the national legislation on suitability assessments contains several additional provisions. More precisely, where clients or potential clients do not provide an insurance intermediary or undertaking with the information required under IDD, the insurance intermediary or undertaking is required to refrain from providing advice to the clients on the IBIP and warn them that, because they provided insufficient information, they are not in a position to determine whether the product envisaged is appropriate for them and to provide the suitability statement. If, despite the above warning, the client wishes to proceed and conclude the insurance contract, the insurance intermediary or undertaking must assess, based on the information obtained, whether the product concerned is suitable for the client, and if not, warn the client. In the case of cross-selling, the insurance intermediary or undertaking must also examine whether the overall package is suitable for the client.

The research for this study also seems to suggest that the efforts made by NCAs to monitor the application of the prescriptions on investor profile screening and market developments are uneven. While this was not directly assessed as part of the study questions, we did observe an uneven availability of evidence about market practices across the different supervisory bodies. It can be expected that in the absence of European legislation the extent of divergence would further increase.

8. Transversal conclusions

Each of the previous chapters contains a summary of the conclusions about relevance, coherence, effectiveness, efficiency and EU added value of the given pillar of rules analysed (disclosure, inducements and advice, demands and needs tests and suitability assessments). These are subsequently not repeated here. They are also summarised in a synthetic manner in the executive summary.

This section therefore only focuses on a set of eight transversal conclusions that arise from the study findings.

1

There are important differences between individuals in terms of their interest in financial investment products and their self-confidence in making financial investment decisions. Perception of one's own efficacy, financial literacy as well as the perception of complexity of these products are strong drivers of attitudes towards financial investments. Different segments of consumers will have very different capacities and predispositions to engage not only with disclosure documents or statements but also with advisors. While confident (potential) investors are at ease in making their own choices of products (potentially without advice), other segments are more reliant on advice but also vulnerable towards advice that is not in their best interest.

Multiple parts of the study show that the needs, experiences and reactions of consumers to investment issues vary according to their attitudes towards financial investment services and products. There is a clear divide between those, on the one hand, who are interested and/or are already experienced investors and, on the other hand, those who despite having savings are not interested in this form of putting their money to work. The first groups of investors are much more trustful of financial services, confident in their own ability to make product choices and they also believe that making an investment choice is something accessible to them. This means that they are likely to actively search for products and make comparisons even if these product comparisons require a certain degree of mental effort. They are less likely to be rebuked by the complexity of products in this market and linked to that the inherent complexity of disclosure documents.

The other group of consumers – the disinterested ones – react very differently. They consider choosing investment products as a complex endeavour a priori – even though they have not been through this process. They tend to distrust distributors and advisors whom they consider as not acting in the best interest of their clients. They also have low trust in their own ability to choose investment products. This category of investors is put off by the complexity of the market and is likely to seek other means of safeguarding or making their savings grow. Measures other than the ones studied in this assignment would be needed to make these profiles of consumers interested in and consider investing. These are not necessarily measures related to supporting a rational choice of products as those studied here, but rather measures aimed at making investments more "popular and attractive". That however was not covered as part of this assignment. Furthermore, if the consumers in this segment are to navigate the system of disclosure and advice as it currently exists, they would not necessarily benefit from it. This segment of consumers can be put off by the current measures in place regarding disclosure. As noted above these consumers apprehend the complexity. They would therefore need disclosure documents that are highly engaging, offer simplicity and focus on the most important items. This is not currently the case of the disclosure documents analysed in this assignment. In the absence of simple and engaging disclosure they are likely to simply follow the advice they receive even if the advice does not offer them the best value for money. They would not necessarily seek advice from professionals but may also go along with the advice of peers or influential people in their social sphere (the example of crypto-assets investments among people with no prior interest in investments is an example of such behaviour).

2

The EU legal framework was initially designed as a consumer protection framework. There is an inconsistency between the multifaceted objectives that the legal framework aims to fulfil. On the one hand the templates and requirements aim for transparency, standardisation and comparability so as to make the market more transparent and enable people to make a well-informed rational choice between products. On the other hand, there is also an ambition to make disclosure documents/ advisory services engaging and encourage investment, while at the same time supporting optimal choice. The first set of objectives result in a high volume of disclosure information which is in turn associated with overload and negatively affects the attention paid to disclosure and subsequently the choices made.

The legal framework analysed aims to achieve multiple objectives through the same set of rules and measures. The initial and primary objective of these rules was consumer protection. Consumer protection in simple terms aims to avoid consumers being sold products that are not suitable (too risky, too expensive, etc.). The implicit logic behind these rules is that:

- Consumers are expected to be empowered to make their own rational choices by being provided with transparent information on a multiplicity of items about products that are deemed important. To this end the rules in place emphasise disclosure and transparency and expect consumers to use the information available to them for their own decision-making.
- But at the same time distributors are required to ensure that they only recommend products to consumers which are suitable for their needs and their situation. They have a duty of care that requires them to make sure they do not sell products that are inadequate for a given segment of consumers.
- Distributors are not incentivised directly by the EU law to offer the consumer the best value for money, instead they are incentivised to avoid conflicts of interest and avoid mis-selling. Consumers are expected to search for the best value for money on their own with the information that they are expected to be provided with in a transparent manner.
- The disclosure documents and practices are also expected to provide evidence that can be used by consumers to contest or even in the case of litigation. In other words, disclosure documents are not solely in place to support choice, but they are also meant to document the product and become part of the contractual agreement.

To this initial logic of consumer protection has been added the objective of incentivising consumers to invest in financial products as formulated in the Retail Investment Strategy. There is also the expectation that consumers should be encouraged to make the optimal choice. Avoiding mis-selling and protecting consumers from it is not the only objective sought by the policy context. The policy framework also aims at making investments interesting and appealing to consumers, but also empowering consumers to choose the products that offer the best value for money.

There is a variance between these sets of objectives. If approached from the perspective of consumer protection and from the perspective of full transparency and documentation, thane disclosure needs to be detailed and subsequently also rather lengthy. However, detailed and lengthy disclosure is not engaging for the consumers who are looking for easy cues to guide their choices. A clear example of this variance is in the area of costs disclosure. The current legal framework sets out detailed requirements about what costs should be disclosed and how they should be calculated. This results in the disclosure of multiple cost items being shown in key information documents. While this detail gives an overview of all (most often maximum rather than personalised) costs of products it actually makes the process of understanding of costs rather complicated. Above all it does not help clients to identify what product offers the best value for money. A high proportion of consumers are unable to identify which of the products is financially the most advantageous for them. This was tested experimentally using largely simplified mock-ups of product information documents, Therefore, while the costs disclosure is comprehensive and transparent, and also fairly comparable, although this depends on the items to be compared and product types, it does not allow consumers to make choices easily given the absence of a simple, preferably personalised, total cost indication.

On the other hand, a positive example in the legal framework is the summary risk indicator. This results in a standardised risk and reward level scale which is applied to all products covered by PRIIPs. This does offer a clear standardised anchor to enable consumers to compare products, which does help overcome the complexity of products.

3

It is mandatory to provide information documents and carry out suitability assessments/demands and needs tests, but the legal framework does not define at which stage of the journey. This results in inconsistences in practice whereby some distributors do comply with these requirements at the time of the very first contact with potential clients, whilst others delay them until the last moment. When these steps are undertaken late in the consumer journey, they are no longer supporting the consumer's choice. They are merely documenting and confirming a choice that has already been made.

For several measures the legal framework defines what needs to be done, but it does not define at what stage of the consumer journey it should be done. This is notably the case for the provision of key information documents, the disclosure of inducements and the relationship between advisor and manufacturer as well as for undertaking suitability assessments. Subsequently there are different practices in place. While being legally compliant, these differences in practices do not lead to the same results. On the one hand, some distributors will disclose this information during the first contact and they will also immediately undertake a suitability assessment. On the other hand, others only do this close to contract signature. When performing these tasks at the contract signature stage, the objective of consumer protection can still be considered as met. Consumers would not be allowed to acquire products that they are not able to afford from the perspective of risks or which are not suitable in terms of complexity. However, the performance of these tasks at such a late stage does not help consumers in making their choices. By the time consumers are close to signing the contract their choice has been made. Therefore, giving consumer the information documents, information about inducements or the suitability records at this late stage does not help them compare and choose.

4

Disclosure does not overcome product complexity. Both experimental modules in this study showed that the product's characteristics had the strongest influence on the extent to which consumers succeeded in making the right choice. For simpler products different types of disclosure had an effect on the likelihood of the consumer making the correct choice and it was possible to see which formats were more supportive of decision-making. However, for complex products with which respondents were not familiar the effects of disclosure were not significant. The financial literacy of the respondents is a key mediating factor. The more financially literate they are the more useful the disclosure is for supporting an accurate choice.

Disclosure is at the core of the legal framework analysed. This is not only about pre-contractual disclosure in the form of information documents. It also covers disclosure during the advice process about inducements, the relationship between the advisor and manufacturer (or disclosure of conflicts of interest) or the provision of suitability assessment reports.

Disclosure is a necessary but not sufficient condition for the market of financial products to operate effectively for consumers.

Disclosure is essential for transparency. The transparency achieved through disclosure is expected to serve multiple aims. On the one hand it should directly help consumers with their choices. However, this is not the only *raison d'etre* for disclosure. It also simplifies supervision and it provides information to different market players and hence improves competition. These two areas were not covered in-depth by this study, but it can be assumed that disclosure is an essential piece of the puzzle for these two objectives.

When it comes to the effectiveness of disclosure in supporting consumer choices, limitations exist. While disclosure documents are available relatively easily, and are mostly compliant with the legal framework, and do contain the information that is important for consumers and are also fairly comparable, they do not yet systematically allow consumers to identify the products that are most optimal for them. A significant share of consumers in the two modules of experiments carried out for this study chose suboptimal products. A similarly significant share of them accepted advice that was suboptimal (i.e. it recommended investing in the product that was more costly). Product features were an important factor explaining the experiment results. The results were more favourable for less complex products with which people are more familiar than for complex products with which people are not familiar. Such limitations of disclosure were also found in a number of national behavioural studies.

The fact that disclosure does not overcome the inherent complexity of products in this market supports the need for:

- Ensuring that complex products are not sold on an execution-only basis (this is indeed covered by the current rules which require complex products to be sold after a suitability assessment and accompanied by advice).
- High-quality, independent advice. The rules studied here also aim to encourage and incentivise the quality of advice by requiring that advisors are trained on ongoing basis and by aiming to limit conflicts of interest in the market.

This therefore shows the importance of complementing rules about disclosure with other sets of rules about advice, as is the case in the current legal framework.

5

Despite EU level rules on advice and inducements there has not been an increase in use and access to independent advice in the majority of the countries analysed. Most professional advice that people receive is provided through non-independent distributors. However, digital advice or suggestions received digitally through comparators are also increasingly important. Suggestions from advisors are important drivers of investment decisions: 23% of investors decided to invest because the investment was suggested to them by their bank/broker and 10% because according to their app/bank the product was attractive. However, the most important driver by far low is interest rates which 53% of respondents mentioned as a reason for investing. In the context of growing inflation and possible increases in interest rates this is however likely to change.

The legal framework on inducements and advice aims to prevent conflicts of interest among advisors who sell investment products to clients, so as to ensure that their recommendations are based on product suitability rather than on the gains they get from selling products. There is an assumption that independent advice would be less conflicted and would grow as a result of limiting inducements.

However, the study finds no evidence of a growing market in independent advice in the countries covered. The Netherlands, where inducements are banned, is an exception where independent advice is indeed more common. This does not yet mean that independent advice is easily accessible in the Netherlands. It is often reserved for more wealthy clients or is subject to a fee that not everyone is willing to pay. The majority of clients are not served through independent advice but are rather directed towards execution-only products sold through digital platforms.

The study does show the need to encourage independence of advice. The experimental module on advice and inducements shows that people do have a tendency to follow the advice they receive. This was shown in the case of a simulated online experiment where people were merely exposed to a recommendation letter. Even this kind of rather impersonal nudge had a statistically significant effect on people following the advice – even if the advice recommended a product that was not optimal. In the context of face-to-face advice where people are exposed to the advisor this effect is likely to be even stronger.

In the remaining countries, other than the Netherlands, non-independent advice remains the mainstream model of getting professional advice. However, many consumers are also influenced in their choices of products through informal advice. The role of peers and social networks (in the sense of family/friends and not social media) in encouraging people to invest in certain products is not to be neglected. It explains why some products (e.g. crypto-assets) have become popular. Informal advice obviously cannot be covered by regulations but it can represent a certain risk for consumers who may expose themselves to risks by investing in assets that are risky or by not adopting a mixed portfolio approach and counting on a small number of volatile assets. The use of warnings to encourage consumers to “pause and think” before purchasing these products was not at the core of this study. However, it can be assumed that like disclosure, warnings on product documents and distribution sites have important limitations in encouraging people to make optimal choices. Financial literacy is a key factor in preventing this type of behaviour, as potentially are communication measures such as awareness-raising campaigns.

6

There is also no evidence of a decline in the use of inducements except in the Netherlands which has introduced a ban on them. Though MiFID II only allows inducements if a quality enhancement test is passed and hence aims to make inducements the exception rather than the rule, an important share of investment funds analysed clearly applied inducements (40%). For many other products the information was not clearly disclosed so it is possible that the use of inducements was even higher than that measured in this study.

The legal framework analysed seeks to limit the role of inducements in the market by making their legality conditional on criteria linked to product complexity which necessitate advice and where advice provides a real additional service and added value.

Except in the Netherlands where inducements are banned, there is no evidence in the data analysed that inducements are on the decline.

The study found that inducements are not always clearly disclosed in information documents, making the analysis challenging and requiring consumers to search for this information in other product information materials. Ultimately, however, where inducements are present they are associated with higher product costs for consumers. Where inducement values were made clear, it appears that the value of inducements was significant. On average, for the products in the sample, inducements are equivalent to about 40% of the total product costs charged to the retail investor. The application of inducements is reflected in higher costs for the retail investors. Nearly all the inducements seem to be passed on to the retail investor, it being noted that the products on which inducements are paid are – on average - about 35% more expensive than those investment products on which no inducements are paid. In other words, the rules implemented under MiFID II have not (yet) resulted in a market where consumers receive better value for money thanks to lower inducements.

7

The study found the following main challenges in the practical implementation of the legal frameworks analysed:
- Insufficient compliance with existing rules when it comes to the disclosure of inducements in information documents and during client conversations when delivering advice; the same applies to disclosure of potential conflicts of interest.
- Inconsistency in costs disclosure in information documents which not only hampers comparability, but also makes the assessment of the client's overall cost complex.
- Inconsistency in rules regarding the emphasis placed on digital, interactive and layered disclosure that is engaging (PEPP) versus the static, comprehensive and often paper-based provision of disclosure documents (PRIIPs).
- Inconsistency in practices regarding:
    - when information documents are provided to customers;
    - at what stage of the journey suitability assessments are undertaken;
    - which items are covered in suitability assessments, demands and needs tests: the depth and breadth of questioning varies greatly not only for traditional distribution channels but also for robo-advisors.

The main drawbacks in the implementation and results of the legal frameworks that the study found are:

- Certain key information is not disclosed systematically:
    - Only 54% of mystery shoppers received a key information document or were referred to one online when they were simulating the first contact with an advisor. It is possible that the KIDs/KIIDs might be provided at a later stage, close to contract signature. However, that would come too late for clients to use it to compare products.
    - The pre-contractual information explicitly mentioned inducements for very few of the products assessed. Often this information had to be sought elsewhere or deduced from other cost items.
    - In 75% of mystery shopping conversations during which products were recommended to clients, no information at all was provided about inducements. It could be the case that such information would be provided

at a later stage, when the client decides to purchase the product. However, that would mean that clients do not have this information when making their choice.

- Costs disclosure rules and practices are complex and sometimes inconsistent and make comparison and use of this information challenging.
  - For the vast majority of product information documents reviewed in this study, the document showed multiple cost items to the client. While the average is around three cost categories per document (depending on the product), it can go up to six, seven or 11 depending on product types. Given that these documents do not show absolute fees (as the disclosure is not personalised) but maximum percentages depending on the value invested, it requires a substantial mental effort for clients to assess what the cost of a given product would be to them. Consumers primarily care about the total cost rather than individual cost items.
  - Cost comparability was rated as lowest of the categories on which product information documents were scored. Similarly, the volume of figures and data presented in (simplified) information documents was rated as middling (6.5 on a scale of 1 to 10 whereby 1 is very bad and 10 is very good) by consumers in the experiment.
  - The experiment showed that even when using simplified information documents, a significant share of consumers were not able to choose the most financially advantageous product for them.
- The emphasis on disclosure through a static information document under PRIIPs (durable version or a digital pdf file) contrasts with the approach to disclosure in PEPP. The latter aims to encourage disclosure that uses layering of information and a certain interactivity to enable users to engage with it according to their needs. The information documents reviewed as part of the study, while being complete and mostly compliant, were not engaging for users and this is highly likely to limit their use. The engaging nature of disclosure has been demonstrated as being a precondition for the usefulness and effectiveness of disclosure by numerous other behavioural studies which were reviewed and analysed in this report. PEPP disclosure documents are expected to represent better practice in terms of user engagement through disclosure.
- The abovementioned lack of clarity regarding the point in time in the consumer journey at which key information documents are to be provided, suitability assessments are to be carried out, and other information is to be disclosed means that practices are inconsistent.
- The level of depth and detail covered in client screening processes (demands and needs tests and suitability assessments) varies greatly. Both good and bad practices co-exist as observed by our mystery shopping exercise as well as national research of supervisory authorities. While the majority of screening processes observed during the mystery shopping exercise were compliant (in that they covered all essential items at least through one question), only about a quarter of observations went into greater depth.

  Furthermore, the quality of the suitability assessment questions does not as such guarantee good advice. There is a need for distributors to better implement mechanisms that ensure more systematic use of the suitability assessment before recommending products to clients. Supervision could play a role in enforcing these requirements. However, this study did not look into the existence and use of supervisory mechanisms.

8

On a positive side the study showed that:

- The availability of information documents is good and for the majority of products these are easy to find. Information documents are less easy to collect for some non-complex products notably simple shares or bonds. While this can be seen as non-compliance in practice there is no shortage of easily available digital information on these products.
- Compliance of information shown in information documents is also high.
- Comparability of most information items is also high except as stated above for costs disclosure. The standardisation of the risk indicator is highly relevant as it constitutes a common anchor for consumers comparing products.
- The advice that mystery shoppers received as part of the study was aligned with their profiles and objectives and can therefore be considered as being of good quality. However, this does not mean that the products being recommended represent optimal solutions in terms of value for money.

The study also highlighted a number of positive items:

- Disclosure documents are available relatively easily online and therefore users searching for information will find them. It is easier to find information documents for more complex products than for the simple ones such as shares and bonds. This is unlikely to pose a practical problem for users as there is typically a wealth of information available about these simple products online and consumers will have no difficulty in finding how given shares and bonds performed and what their cost is.
- Disclosure documents are also largely compliant with the legal framework regarding the types of items that they need to contain.

  These two findings are important because, as noted previously, disclosure is a necessary condition for an efficient market with financial products. While it does have limitations, these should not overshadow the transparency that standardised disclosure brings to the market.
- Except for costs, disclosed items tend to be:
  - highly comparable for products of the same type;
  - highly comparable for products of different types but within the same product category; and
  - rather comparable across product categories.

  In terms of comparability the use of standardised summary risk and reward indicators is a key strength of the legal framework. It makes it relatively easily for consumers to compare products across product types. The study shows that the majority of consumers do search for and compare multiple products. Therefore, this feature of PRIIPs represents a major added value.
- Overall the advice that mystery shoppers received during the study was aligned with their profiles and objectives:
  - mystery shoppers with a risk-averse profile were recommended low or average risk products;
  - mystery shoppers with a risk-seeking and more affluent profile mostly were recommended high or medium risk products;
  - risk-seekers were almost twice as often recommended to invest in investment funds than investors with a risk-averse profile;
  - personal pension products were a much more common recommendation for potential investors with risk-averse profiles. When risk-averse investors were recommended investment funds these were associated with low risk levels.

  The majority of mystery shoppers were given an explanation as to how the product matched their objectives. The majority also found the information provided clear and understandable. Overall, the mystery shoppers found no evidence that the advice given would be of low quality when it comes to matching products to mystery shopper profiles, even though the degree of detail provided to mystery shoppers about the products varied greatly across individual distributors.

- The majority of investors surveyed (i.e. those consumers who had at least one investment product) recalled having to undergo a screening process suggesting that these processes are being implemented. Most of them also found that the results of the screening were useful for their decision-making.

9. Annexes

See separate document

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Open data from the EU

The EU Open Data Portal (http://data.europa.eu/euodp/en) provides access to datasets from the EU. Data can be downloaded and reused for free, for both commercial and non-commercial purposes.

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