ABBL answer to European Commission – Call for evidence

Retail investment package – new package of measures to increase consumer participation in capital markets

Ref. Ares (2022)3391353 - 03/05/2022

Published: 31.05.2022

A. Political context, evaluation, problem definition & subsidiarity check

Evaluation

The EU retail investor protection framework provides a solid basis to protect retail investors when investing in capital markets. However, the fragmentation of the investor protection rules across a multitude of legal texts as well as the lack of alignment of the rules entails that some of the rules are difficult, if not impossible, to be applied by professionals and understood by consumers.

Several areas of the current investor protection framework would need to be recalibrated to avoid unintended negative consequences for professionals and clients alike.

- **De-complexification:** the immense fragmentation and proliferation of consumer and retail investor protection rules across a myriad of rules and texts constitutes a real challenge for the stakeholders
- **Interaction between different financial markets legislations:** EU authorities should proceed with a holistic review focused on the interaction between the different financial markets and investor protection rules alongside overlapping EU legislation. The fact that some of the today's key financial services rules are contradictory or misaligned does not only inhibit full compliance, but also creates undue operational risks, with legal uncertainties leading to misinterpretations, misapplications and finally increased regulatory risk for investors.

- **Opt-up conditions:** the specific upgrading conditions should be reviewed as they allow a retail client to elect to opt-up to a different client category, hence sophisticated, professional client with a different level of investment possibilities and investor protection.
- **Digitalisation:** considering the increasing rate of digitalization among the EU retail audience, information and documents should, by default, be provided on an electronic/digital basis. Information and documentation should only be provided on paper upon specific request by the client.

- **Retail investor literacy:** public authorities need to increasingly focus on the improvement of retail investor financial literacy, namely through the promotion of financial education accessible to the general population

Problem the initiative aims to tackle

The ABBL considers that the current MIFID regulatory framework to be appropriate in terms of protecting the retail investors from harmful behaviour and information. However, these rules do not currently apply to certain non-regulated firms and/or platform, including firms that are active on social media. Extending the scope of the relevant regulatory framework to all industry stakeholders, where they participate directly or indirectly in the investment decision-taking process is crucial to ensure a proper level-playing field and an appropriate protection of retail investors.

Coupled with appropriate financial education and literacy of the retail investorship alongside meaningful tools to be able to outline relevant information from fake information, the current investor protection framework will be of the highest standard.

B. Objectives and policy options

Practical need for EU action

The ABBL strongly supports a closer alignment between MiFID II and PRIIPs e.g., as regards the calculation methodology for product costs. It is confusing for clients to receive different cost information for the same instrument depending on whether MiFID II or PRIIPs is applicable. We have notably observed the following discrepancies between the frameworks in terms of cost transparency obligations, which are not only burdensome for firms, but also counterproductive to the objective of better investor protection and transparency for (retail) clients.

- MiFID ex-ante costs and charges disclosure illustrates costs expressed both as a cash amount and as a percentage, while the PRIIPs KID illustrates costs in terms of Reduction in Yield (RIY).
- Costs in PRIIPs are split in One-Off, Ongoing, Incidental, and only related to the product.
- Costs in MIFID II (Q&A nr. 13) are Service Costs, Inducements received, and Product Cost without differentiation between one-off/ongoing/incidental.

C. Likely Impacts

The ABBL considers that the introduction of an open finance approach in the field of retail investment will strongly depend on the implementation of an open finance policy across the EU and whether the initiative is limited to data banks currently hold or includes the entire dataset used in a financial context.

Where an open finance policy is not implemented as part of a broader cross-sectoral framework to enable data sharing across different types of firms, this will place existing financial services firms at a disadvantage in terms of access to data, with possible impacts on future competition and more general European competitiveness, particularly considering the growing dependence among financial service providers vis-a-vis digital platforms and ecosystems.

As a retail investors benefit could be considered the option for the client itself to manage its own finance without restrictions. For instance, to develop a holistic overview of personal financial dashboard leveraging third party API to see the overall cashflow with more accurate credit assessments.

- The technical capacity and knowledge to build data lake and data foundation will be essential in supporting the financial sector to empower their users in the use of data.
- Additionally, the data sharing and mining, must be done with the appropriate customers authorization, strict compliance of GDPR, as well as be manifested in a fair treatment among market participants.
- As of today, it would only be asked of banks to share their client's information (client's history balance information; client's investment history/transaction data; client's appropriateness/suitability profile).