Retail investor package

OVERVIEW

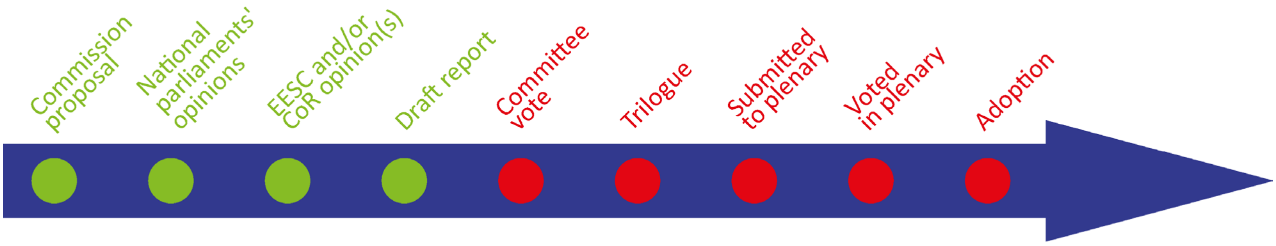
On 24 May 2023, the European Commission put forward a package of two proposals to amend existing directives and a regulation with a view to fostering retail investor information transparency and ensuring that investment decisions are best for investors. The objective is to enhance trust and confidence, thereby increasing retail investor participation in financing the economy. The package is mostly concerned with clarity in communication and the prevention of misleading marketing. It also seeks to mitigate potential conflicts of interest for advisers and increase retail investments' value for money.

In the European Parliament, the file has been referred to the Committee on Economic and Monetary Affairs (ECON). The rapporteur published her draft report on 2 October, to be discussed and amended in committee. The Council has also started its discussions.

Proposal for a regulation of the European Parliament and of the Council amending Regulation (EU) No 1286/2014 as regards the modernisation of the key information document and

Proposal for a directive of the European Parliament and of the Council amending Directives (EU) 2009/65/EC, 2009/138/EC, 2011/61/EU, 2014/65/EU and (EU) 2016/97 as regards the Union retail investor protection rules

Committee responsible:	Economic and Monetary Affairs (ECON)	COM(2023) 278 COM(2023) 279 24.5.2023
Rapporteur:	Stéphanie Yon-Courtin (Renew, France)	
Shadow rapporteurs:	Ralf Seekatz (EPP, Germany) Eero Heinäluoma (S&D, Finland) Claude Gruffat (Greens/EFA, France) Denis Nesci (ECR, Italy) Marco Zanni (ID, Italy)	2023/0166(COD) 2023/0167(COD) Ordinary legislative procedure (COD)
Next steps expected:	Vote in committee on draft report	(Parliament and Council on equal footing – formerly 'co-decision')



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Introduction

On 24 May 2023, the Commission tabled a retail investment package comprising two proposals: a proposal amending a number of directives – the proposed 'omnibus directive' on the one hand, and an amending regulation proposal, on the other.

The proposed omnibus directive (2023(COM) 279) would amend the following directives regarding EU retail investor protection rules:

- Directive 2009/65/EC on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (**UCITS**);
- Directive 2009/138/EC on the taking-up and pursuit of the business of insurance and reinsurance (**Solvency II**);
- Directive 2011/61/EU on Alternative Investment Fund Managers (**AIFM**);
- Directive 2014/65/EU on Markets in Financial Instruments (**MiFID**);
- Directive 2016/97 on Insurance Distribution (**IDD**).

The second proposed regulation (COM(2023) 278) would amend Regulation (EU) 1286/2014 on key information documents for packaged retail and insurance-based investment products (**PRIIPs**) as regards the modernisation of the key information document (**KID**).

The objective of the package of proposals is twofold. Firstly, it would provide clearer and more relevant information to (prospective) retail investors. This would help them make optimal financial decisions that match their risk profile. Secondly, by mitigating potential conflicts of interest and misleading marketing, the package would promote trust and confidence in EU capital markets, allowing (prospective) retail investors to benefit from the wide EU capital markets, while broadening the investment basis and capital available to EU firms.

The package responds to the second key objective of the Commission's 2020 capital markets union action plan – 'make the EU an even safer place for citizens to invest in the long term'.[1] The strategy seeks to give a higher profile to retail investors, ensuring the development of a regulatory framework that empowers them to take informed financial decisions and provides adequate protection.

Existing situation

The capital markets union (**CMU**) was launched in 2015, with the objective to promote the flow of financial investments across the EU that benefit consumers, investors and companies, regardless of their location. Progress has been made, for instance in terms of harmonisation of stock market rules and insolvency laws, and homogenisation of private equity funding. Investor protection rules are currently set out across sector specific legislative instruments, especially the aforementioned MiFID, PRIIPs Regulation, UCITS Directive, AIFMD, Solvency II, and IDD. However, the rules may vary across financial instruments, creating inconsistencies and confusion for investors. Digitalisation has also given rise to new forms of distribution and marketing models.

Based on Eurostat figures, the Commission argues[2] that the EU's retail investment in securities was relatively low compared with other comparable economies. In 2021, approximately 17 % of EU household assets were held in financial securities,[3] amounting to €5 610 billion and representing 38.6 % of the EU's gross domestic product. In comparison, households in the United States held around 43 % of their assets in securities. In addition, according to the 2022 Eurobarometer, EU retail investors' top three sources of information for managing personal finances are recommendations from financial advisors (45 %), specialist product comparisons (36%), and recommendations from friends or family (35 %).[4]

Parliament's starting position

In its 2020 resolution on further development of the CMU, the European Parliament calls for further action enabling retail investor participation in capital markets. In particular, the resolution points out that the CMU requires a developed investor base with suitable investment options for retail investors, paired with improved disclosure and the ability to compare key information. They call for a more horizontal, harmonised approach to consumer and investor protection in EU financial services legislation, adapted to the green and digital transitions, to ensure effective and consistent levels of protection for financial products and providers. Finally, the resolution emphasises that the CMU should be a key contributor to the transition towards a sustainable, competitive and resilient economy, complementing public investment and in line with the EU Green Deal. The text also points out that the EU competes for capital in a global market. The efficiency and resilience of its capital markets are therefore critical to protecting EU economic sovereignty.

Preparation of the proposal

Studies and advice

In a study published in August 2022, following a request by the Commission, the Centre for European Policy Studies (CEPS) finds that disclosure provides a necessary but insufficient support to retail investors in making their choice. In their study, based on a consumer survey, 76 % of those who hold at least one investment product make comparisons before taking decisions – 40 % compare products of the same type, 36 % compare different types of products. The types of content that the legal framework requires disclosure documents to include are also highly relevant for consumer choice, and prospective investors are especially interested in the description of the product, the risk, the past and expected future performance, costs and holding period. As regards consumers who are not considering financial investments, the current formats of KID, which are dense, long and complex, could be a deterrent.

In May 2022, the European Supervisory Authorities (ESA)[5] published technical advice on the review of the PRIIPs Regulation to serve as input for the Commission's development of the retail investment strategy. The ESAs recommend significant changes focusing on the quality of the presentation of the information and tools, to help retail investors compare financial products. The main recommendations are that:

- the information could be presented in a 'layered' format, with, e.g. the 'vital information' to be included in the first layer. Navigating between different layers should be straightforward, but it should also be easy to navigate back to the initial screen summary information in the first page and further details in consecutive pages;[6]
- the scope of the regulation should be further specified but not broadened;
- different approaches for different types of products should be allowed if this helps retail investors understand the specificities of the products;
- more flexibility on the information provided in the performance section of the KID would be provided, including as regards past performance;
- the rules for 'multi-option insurance products' could be modified to facilitate cross-investment product comparison;
- a new section be introduced in the PRIIPs KID to highlight the sustainable objectives.

Commission impact assessment

The package of amending proposals is accompanied by an impact assessment report. The latter mainly identifies two factors explaining the comparatively low retail investor financial participation: (a) complexity and opacity of the financial products,[7] (b) unsatisfactory investment with low outcome, unfit to fulfil retail interests, objectives, needs and preferences.[8]

The drivers of these two problems identified by the Commission's impact assessment are:

1. Informational issues:
   (i) Some of the information provided is useless or irrelevant for investors' decisions,
   (ii) Retail investors tend to be excessively influenced by appealing marketing communications through digital channels and misleading marketing practices;
2. Manufacturing and distribution process of the investment product:
   (i) Some retail investment products incorporate unjustifiably high levels of costs and/or do not offer value to retail investors,
   (ii) Conflicts of interest caused by the payment of inducements[9] for financial intermediaries in the distribution process negatively affect the quality of investment products offered and investment advice.

The impact assessment formulates two options (Table 1) around three areas – disclosure and marketing communications, inducement, value for money – besides Option 1 – 'Do-Nothing'.

Table 1 – Policy options for the three key areas of action, besides Option 1 – 'Do Nothing'

	Disclosure and marketing communications	Inducement	Value for money
Option 2	Targeted changes to disclosure rules to improve their relevance for retail investors	Maintain current system allowing payment of inducements, but improve/harmonise sector-specific disclosures relating to inducements	Strengthen product governance rules for manufacturers by requiring comparison of products to relevant 'manufacturer benchmarks' and justify any departures from the benchmarks
Option 3	Targeted changes to address informational deficiencies relating to marketing communications	A ban on inducements	In addition to strengthening product governance rules for manufacturers (Option 2), strengthen the rules for distributors by requiring comparison of products to relevant 'distributor benchmarks' and justify any departures from the benchmarks to limit fees in distribution.

Source: European Commission Impact Assessment (Section 5).

The changes the proposals would bring

The proposed omnibus directive

The proposed amending directive is aimed at tackling a number of aspects of retail investment communications and product distribution.[10] First and foremost, the **presentation of the information** to (prospective) retail investors would be simplified and the content standardised. In particular, investment firms and insurance intermediaries would have to display risk warnings for particularly risky products in a clear and concise fashion. Member States would ensure that domestic competent authorities impose the use of risk warnings consistently with the concepts and technical standards that would be developed by the European Securities and Markets Authority (ESMA) and European Insurance and Occupational Pensions Authority (EIOPA). The two authorities would provide guidelines on the disclosure of information in electronic format.

Secondly, to address **misleading marketing**, the proposal would introduce the definitions of 'marketing communications' and 'marketing practices' to MiFID and IDD. This then 'clarifies' that investment firms and insurance distributors are responsible for their marketing communications, including those using digital-based channels and relying on third parties.

Thirdly, to tackle the **bias in the advice process** highlighted by the Commission, the proposal suggests a ban on inducements paid from 'manufacturers to distributors in relation to the reception and transmission of orders, or the execution of orders to or on behalf of retail clients'. This would come on top of the existing ban on inducements regarding independent advice and portfolio management in MiFID. Similarly, amendments to IDD introduce a ban on inducements paid from 'manufacturers to distributors in relation to non-advised sales of insurance-based investment products (IBIPs)'.[11] Moreover, IDD amendments introduce a differentiation between advice on products given on an 'independent' and 'non-independent' basis in alignment with MiFID, which will have to be mentioned to the retail investor.

The proposed amending directive would also introduce provisions requiring investment firms and insurance undertakings to assess the 'best interest' of the customer using criteria shared by the two directives.[12] Financial advisors and insurance firms and intermediaries would therefore be obliged to:

(i) base their advice on an assessment of an appropriate range of financial products,
(ii) recommend the most cost-efficient financial product from the range of suitable financial products,
(iii) offer at least one financial product without additional features unnecessary to the achievement of the client's investment objectives and giving rise to additional costs.

The proposed amending directive also seeks to strengthen the product governance rules and the pricing process to reduce the offer of products providing retail investors with poor '**value for money**'. In particular, manufacturers would have to identify and quantify all costs and charges together with an assessment of whether these undermine the total value. Retail investors would have to be informed about the consequences for the quality of the assessment if they do not provide accurate and complete information. The suitability assessment report would have to be produced and communicated to clients sufficiently in advance to enable them to seek and receive additional clarification. The proposal also envisages that portfolio diversification must be considered in the suitability assessment, based on the information provided by the client. Independent and cheaper advice would be introduced for a range of 'diversified, noncomplex and cost-efficient financial instruments', for which the suitability assessment performed by distributors will need more limited information about the client and customers.

Additional measures would include the amendment of the criteria to determine professional clients, to include a reduction of the wealth criterion from €500 000 to €250 000, and would possibly introduce a criterion based on education or training. As regards supervisory enforcement, the proposal envisages its strengthening, particularly in the context of growing digital channels and as regards the cross-border provision of services. Finally, Member States will be encouraged to promote financial education measures at national level so that existing and prospective retail investors are able to invest responsibly.

Amending regulation proposal

The main modifications to the PRIIPs KID envisaged by the proposed amending regulation are:

- clarification that corporate bonds with 'make-whole causes'[13] are beyond the scope of the regulation;
- definition of 'electronic format' as any 'durable medium other than paper';
- introduction of a new section in the PRIIPs KID entitled 'Product at a glance', consisting of a dashboard with information about, e.g. the type of product, a summary risk indicator,[14] the total cost, the recommended holding period and whether the product provides insurance benefits;

- introduction of a new, more comprehensive sustainability section, entitled 'How environmentally sustainable is this product?' – thereby removing the environmental and social objectives of the investment product 'what is this product?' section, pursuant to Article 8(3)(c)(ii)) PRIIPs. The new section would also harmonise the set of key information provided and include (i) the minimum proportion of the investment of the PRIIP qualified as environmentally sustainable,[15] and (ii) the expected greenhouse gas emission intensity (Proposal Article 1(5)(d)).[16]

Advisory committees

The European Economic and Social Committee (EESC) is due to adopt its mandatory opinion during its plenary session on 25-26 October 2023.

National parliaments

The deadline for the submission of reasoned opinions on the grounds of subsidiarity for the proposals on an amending regulation and directive was 29 September 2023. No subsidiarity concerns were raised.

Stakeholder views[17]

During consultations, the European Consumer Organisation (**BEUC**) published a position on the reform in July 2021. BEUC welcomes the Commission's efforts to increase retail investor participation in capital markets and boosting consumer confidence in financial advice. Consumers are also more aware of the effects of climate change than in the past, and additional measures could help consumers interested in sustainable financial products. However, the main recommendation was that the payment of inducements should be banned. For BEUC, commission-based financial advice puts a 'conflict of interest at the heart of advice'.

In a joint statement of 6 June 2023, published by the European Banking Federation,[18] European financial and insurance sector associations support the objective of boosting retail participation in financial markets, and welcome the encouraging shift towards 'digital-by-default' communication, as well as the effort to streamline disclosures and to further promote financial literacy. However, the statement identifies several prohibitions on the payment of commissions in the distribution of investment products and insurance-based investment products, which they claim would have 'major disruptive consequences'. They also have 'substantial reservations' regarding the introduction of the 'best interest of the client' test, which 'disproportionately focuses on costs' and may discard products with greater total value as a result. The proposed introduction of one-size-fits-all, quantitative 'value for money' benchmarks contradicts the core goal of the investment process, which is to offer tailored solutions to different clients' needs.

Legislative process

The referral of the proposals was announced on 7 July 2023. The Committee on Economic and Monetary Affairs (ECON) is responsible for the file; the rapporteur is Stéphanie Yon-Courtin (Renew, France). The Committees on Budgets (BUDG) and on Legal Affairs (JURI) were requested to provide opinions on the proposed amending directive as regards the retail investor protection rules, (2023/0167(COD)). The Committees on Environment, Public Health and Food Safety (ENVI), on Internal Market and Consumer Protection (IMCO), and on Civil Liberties, Justice and Home Affairs (LIBE) were requested to provide opinions on the amending regulation proposal as regards the modernisation of the key information document (KID PRIIPs – 2023/0166(COD)). All five committees decided not to give an opinion.

The rapporteur published her draft report on the directive (retail investor protection rules) and the regulation (modernisation of the key information document) on 4 October 2023. The deadline for amendments is 26 October.

In the explanatory statement accompanying her draft reports, the rapporteur states that she fully shares the objectives of the proposal, adding that everything possible must be done to increase the use by EU citizens of financial instruments, as the rate is particularly low in the EU. Therefore, the new rules must provide for 'clear and transparent information and ensure that the financial advice is in the best interest of the retail investor'. The main points of the amendments are as follows:

- **Inducements**: Amendments remove the partial ban on inducements for execution-only services. According to the rapporteur, the introduction of a partial ban does not seem to address issues of conflict of interest, and may constitute a first step towards a full ban. The conflicts of interest should rather be addressed by means of transparency enhancement. The review period is extended to 5 years from the end of the transposition period, and its scope is extended to conflicts of interest, costs, retail participation, consumer protection and the relevance of distribution rules.
- **Best interest test**: In the 'best interest test', amendments in MiFID clarify the concept of 'cost-efficiency'. Amendments in the IDD provide that financial advice would be given on the basis of 'the performance, level of risk, costs, charges of an insurance based investment product or, where applicable underlying investment options'.
- **Value for money**: The draft report deletes the benchmarks, with a view to continuing discussions on this topic.
- **Supervision and cross-border practices**: the amendments seek to increase cross-border supervision and ensure equal protection for all consumers. Amendments introduce an obligation for companies to register in the same Member State where their head office is located 'in order to avoid forum-shopping'.
- **'Finfluencers'**: The draft report proposes additional elements to ensure 'clear, fair and no misleading marketing communications and to address concerns when it comes to financial influencers', for example, by obliging firms to sign a contract with the finfluencers in order to ensure transparency and determine responsibility. The provision regarding the 'procedure to address unauthorised activities offered through digital means' is extended to finfluencers using 'mis-selling practices'.
- **Data providers**: The draft proposes the implementation of a 'horizontal and holistic' regulation for both financial and non-financial data providers. The regulation should be accompanied by increased EU-level supervision of all data providers, including third-country providers.
- **PRIIPS**: The rapporteur welcomes the Commission's proposal on PRIIPS but sees the need to introduce further adjustments to market practices and certain adaptations to the insurance sector. She suggests erasing a new section in the key information document entitled 'Product at a glance' and will continue to further assess the alignment of the new sustainability section with the relevant existing legislation.

Discussions within the Council began on 16 June 2023 and are ongoing.

EUROPEAN PARLIAMENT SUPPORTING ANALYSIS

De Jong W., Implementing measures under PRIIP, Secretariat of the Committee on Economic and Monetary Affairs, European Parliament, February 2019.

Delivorias A., Further development of capital markets union, EPRS, European Parliament, September 2020.

Honnefelder S., Slocock B. and Chaillet G., PRIIPs: Revised DA/RTS on improved disclosure rules for retail investment products, Secretariat of the Committee on Economic and Monetary Affairs, European Parliament, October 2021.

OTHER SOURCES

Packaged retail and insurance-based investment products (PRIIPs): modernisation of the key information document – 2023/0166(COD), Legislative Observatory (OEIL), European Parliament.

Retail investor protection rules – 2023/0167(COD), Legislative Observatory (OEIL), European Parliament.

ENDNOTES

1 The package addresses Action 7 – empowering citizens through literacy, and Action 8 – building retail investor trust in the market.

2 European Commission Impact Assessment report cited hereafter. Calculations use Eurostat's sectoral national accounts, international data cooperation, NAID_10.

3 Financial securities considered include listed shares, bonds, mutual funds and financial derivatives.

4 Only 5 % of Europeans use information from social media and influencers to make financial decisions. Moreover, based on the Eurobarometer survey, the Commission estimates that prospective retail investor in the EU are about a quarter of all EU-27 households – i.e. about 50 million households. A large share of households' financial wealth is held as bank deposits. Interestingly, 19 % of EU households perceived their rights were breached when opening a bank account, transferring money, taking out a loan, or buying insurance contract.

5 The European supervisory authorities (ESA) is part of the European System of Financial Supervision (ESFS). The ESF was introduced in 2010 and became operational on 1 January 2011. It consists of: (i) the European Systemic Risk Board (ESRB), (ii) the three ESAs – the European Banking Authority (EBA), the European Securities and Markets Authority (ESMA) and the European Insurance and Occupational Pensions Authority (EIOPA), (iii) the Joint Committee of the ESAs, and (iv) the national supervisors.

The EBA, ESMA and the EIOPA are EU agencies with their own legal personalities and respective Chairs. The primary objective of the ESAs is to support the stability and effectiveness of the EU financial system. They act as independent authorities in the interest of the EU as a whole, and are accountable to Parliament and the Council for their actions.

6 The advice cites the supportive empirical evidence provided by R. Cox, P. de Goeij in Infographics and Financial Decisions, Network for Studies on Pensions, Ageing and Retirement (NESPAR), Design paper 148, 2020. The paper shows that infographics depicting the differences between major investment funds can help consumers with low financial literacy and little investment experience to significantly reduce avoidable fees. Such infographics have been mandatory in information documents for European investment funds since 2012.

7 The impact assessment argues that product complexity and opacity makes retail investors 'vulnerable to cognitive biases and the use of non-rational factors that may not best suit their needs'. The argument follows academic evidence in the area of behavioural finance suggesting that retail investors need 'salient, comparable and easily understandable investment product information', not 'influenced' by inappropriate marketing communications.

8 The Commission's Impact Assessment cites ESMA and EIOPA studies, both published in 2022, which find that certain products offered to retail investors have in recent years offered very low if not negative returns, especially if calculated net of fees. The ESMA and EIOPA published updated reports in 2023.

9 Inducements are any fees, commissions or any monetary or nonmonetary benefits paid or provided by any third party or a person acting on behalf of a third party in relation to the provision of the service to clients.

10 The proposed amending directive's Articles 1 to 5 contain amendments, respectively, to, MiFID, IDD, Solvency II, the UCITS Directive and AIFMD.

11 Minor non-monetary benefits not exceeding €100, or of a scale and nature such that they could not be judged to impair compliance with the duty to act in the best interest of the retail investor, are allowed if they are clearly disclosed.

[12] The best interest test would replace the 'quality enhancement' test of MiFID, and the 'no detriment' test of IDD. In MiFID, best interest is defined in Article 24 by adding a paragraph referring to the requirement that the firm must act honestly, fairly and professionally in the first paragraph. In IDD, a new paragraph 29b 'Best interest of customer' is inserted.

[13] The ESAs call for advice on PRIIPs defines make-whole clauses as a provision that allows the manufacturer to end the product early without this being to the detriment of the investor.

[14] The summary risk indicator is defined in Article 8(3)(d)(i) PRIIPs.

[15] Qualification as environmentally sustainable in accordance with Articles 5 and 6 of Regulation (EU) 2020/852 on the establishment of a framework to facilitate sustainable investment.

[16] In detail, Article 1(3)(a) of the proposal clarifies that the scope excludes corporate bonds with 'make-whole causes'; Article 1(3)(b) defines the 'electronic format'; Article 1(5)(a) introduces the new section in the KID entitled 'Product at a glance' – note that Article 1(5)(b) removes the 'comprehension alert'; Article 1(5)(d) introduces the sustainability section 'How environmentally sustainable is this product? '.

[17] This section aims to provide a flavour of the debate and is not intended to be an exhaustive account of all different views on the proposal. Additional information can be found in related publications listed under 'European Parliament supporting analysis'.

[18] The European Banking Federation (EBF) is a major voice of the European banking sector, and includes national banking associations from across Europe.

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