

Milan, 7 August 2023

European Commission

Prot. n. 56/23
MFE/gc

Re: ASSOSIM contribution to the European Commission about “Retail Investment Strategy – new package of measures to increase consumer participation in capital markets”

ASSOSIM¹ welcomes the opportunity to provide comments on the European Commission’s package of proposals on the Retail Investment Strategy (RIS)² as better detailed here below.

The European Commission’s package of proposals on RIS aims to amend the existing MiFID, IDD, UCITS, AIFMD, Solvency II and PRIIPs regulatory framework in order to increase the participation of retail clients in the EU capital markets, enable more informed investment choices on the basis of easily understandable and comparable information, and improve the manufacturing and distribution process of financial products with regard to conflicts of interest and product costs.

However, in Assosim’s opinion, the above objectives are not always properly reflected in the texts published by the EC. In this regard, Assosim’s main remarks and preliminary proposals concern the following aspects:

1. Proposal of an Omnibus Directive:

- a) *Inducements: partial ban and best interest test*
- b) *Value for money - PRIIPs*
- c) *Plain-vanilla bonds: exemption from POG*
- d) *Suitability and appropriateness: amendments to the current regime*
- e) *Clients’ classification: amendments to Annex II, section II.1 MiFID (professional clients on request)*

¹ Associazione Intermediari Mercati Finanziari - ASSOSIM is the Italian Association of Financial Markets Intermediaries, which represents the majority of financial intermediaries acting in the Italian markets.

² Such package includes the proposal of the so-called “Omnibus Directive” and the proposal of a Regulation amending the Regulation No. 2014/1286 (PRIIPs Regulation).

Member of ICSA – International Council of Securities Associations

- f) *Overloading of information on costs and charges*
- g) *Knowledge and competence: duration of the training period*
- h) *Transposition and implementation*

2. Proposal of a Regulation amending the PRIIPs Regulation:

- a) *PRIIPs perimeter – KID availability*

1. Proposal of an Omnibus Directive

a) Inducements: partial ban and best interest test

Assosim welcomes the EC's decision not to introduce a full ban on inducements. As known, such possibility has triggered an intense debate involving institutions, the financial industry and relevant associations, including Assosim.

However, certain amendments to the inducement framework have been proposed by the EC, firstly by introducing the so-called "partial ban" on non-advised services (execution only), and secondly by conditioning the possibility of paying and receiving inducements to the new "best interest" principle.

With reference to the partial ban, Assosim notes that in Italy its impact would essentially be limited to online trading, as Italian intermediaries have generally adopted a business model combining non-independent advice with execution services.

Nevertheless, Assosim recognises that execution services play an essential role in the EU capital markets and is concerned that the partial ban could jeopardise competition between different investment firms/business models to the detriment of retail clients, who on the contrary benefit from competition in terms of greater choices and lower costs.

Furthermore, Assosim considers appropriate to draw the attention of the EC to the need for the exemption to cover the full scope of the investment advice (generally the client's portfolio), as regulated in the contract. In other words, the exemption should cover advised execution services on both a transaction and portfolio basis.

The partial ban would not apply to commissions or other forms of remuneration received/paid from/to an issuer in connection with the provision of placement services to retail clients, even when non-advised (Article 24a, paragraph 4 of the Omnibus Directive). This exemption would not apply to PRIIPs. Therefore, primary market transactions on bonds could be caught by the prohibition, as such instruments are often qualified as PRIIPs even in the absence of packaged structures (as better detailed under paragraphs 1c) and 2a) below). This would adversely affect issuers' ability to raise funds, which is contrary to the CMU's objective of encouraging greater use of capital markets as an alternative to bank financing.

With regard to portfolio management, the EC proposes to replace the current prohibition of payments/non-monetary benefits received by portfolio managers, provided for in Article 24, paragraph 8, MiFID, with a full prohibition including payments/non-monetary benefits made/provided by the portfolio manager as well as set out in the new Article 24a, paragraph 1 of the Omnibus Directive. On

the contrary, the content of the inducement ban on independent investment advice is supposed to remain unchanged, implying that the ban would continue to apply only to payments/non-monetary benefits provided to (and not to payments/non-monetary benefits provided by) the investment firm acting as an independent investment advisor. Given the above, and to avoid inconsistencies between portfolio management and independent advisory, Assosim proposes to keep the current content of the inducement ban in relation to portfolio management (i.e., not applicable to the inducements paid/provided by the portfolio manager).

As for the new best interest test, which replaces the quality enhancement assessment, Assosim notes that the new test appears to be largely cost-driven, thus sharply changing the current perspective based on quality elements. This could jeopardise the possibility of best meeting clients' needs that are not solely represented by cost-saving demands. For instance, ESG preferences do not seem to find a place in the proposal regarding the best interest principle.

Moreover, such principle could encourage new distribution models mainly based on cost compression, with a consequent impoverishment of the range and quality of the products offered and the distribution channels used.

Finally, the new best interest test would benefit the largest intermediaries, which can take advantage from economies of scale on both the manufacturer and distributor side, as well as manufacturers acting also as distributors of their own products. In this respect, there is a risk that many investment firms will adopt solutions based on internalising parts of the value chain that are currently managed by other investment firms, in order to increase critical mass and achieve greater cost efficiency. This consolidation process would affect the competitive structure of the financial industry and would not benefit investors.

In light of the above, Assosim believes that the main aspects of the quality enhancement test provided by Article 24, paragraph 9, MiFID (which the Omnibus Directive proposes to delete) are to be reinstated because they require investment firms to provide additional services which are of a paramount importance to retail clients. Without quality enhancement, service levels would be very poor and investors would lack of important information and tools having investor protection purposes.

With reference to the best interest test, Assosim highlights what is stated in the General Guideline no. 9 "*Costs and complexity of equivalent products*" under "*ESMA Guidelines on certain aspects of the suitability requirements*". In such General Guideline, ESMA provides that "*Suitability policies and procedures should ensure that, before a firm makes a decision on the investment product(s) that will be recommended, or invested in the portfolio managed on behalf of the client, a thorough assessment of the possible investment alternatives is undertaken, taking into account products' cost and complexity.*". The cost-efficiency criterion is therefore already part of the suitability assessment carried out at the point of sale. As a consequence, Assosim proposes to amend the provision on the best interest test to include the content of the above mentioned ESMA Guideline in Level 1 framework (i.e., Omnibus Directive). In addition, Assosim suggests deleting the content of letter c) of the best interest provision (i.e., new paragraph 1a., Article 24, MiFID) as it (i) refers to an assessment (cost assessment) already made during the suitability test (i.e., equivalent products), and (ii) may mislead the investor with a further investment proposal (i.e., "*a product or products without additional features that are not necessary to the achievement of the client's investment objectives and that give rise to extra costs*").

Finally, with respect to the revision clause under Article 24a, paragraph 8 of the Omnibus Directive, Assosim believes that the timeframe for proposing a more far-reaching review of the regulatory

framework (3 years starting from the entry into force of the Omnibus Directive) is too short and that such review should not depend on the degree of diffusion of independent advice. Indeed, this type of advice is struggling to take off because clients, especially retail clients, are unwilling to pay an ad-hoc fee for it. Therefore, the proposed revision clause seems biased against other forms of advice and investor preferences themselves.

In light of the above, Assosim proposes to extend the 3-year review clause to 5 years and to delete the reference to the wider use of independent advice.

b) Value for money – PRIIPs

The EC's proposal includes a review of the product governance for PRIIPs, based on the clear identification and quantification of all relevant costs and charges, and on the justification and proportionality of these costs in relation to the characteristics, objectives, strategy and performance of such instruments ("value for money"). According to the proposal, the pricing process must include the comparison of costs and performance with a benchmark, if published by ESMA.

Assosim believes that it is not possible to make a conclusive assessment of the EC's proposal on value for money as it does not specify the methodologies underlying the construction of the benchmark (to be defined in subsequent delegated acts), nor the cases in which it will be available for comparison. This latter element may lead to an unlevel playing field between products and consequently between investment firms.

However, while there is general agreement on the need for investors to obtain "value for money" from financial products, the comparison with a benchmark set by ESMA, and the resulting drive towards cost alignment, does not seem fully in line with the fundamental principles of the EU framework based on the market economy and free competition. Such approach indirectly encourages alignment with cost and performance levels expressed by a benchmark which is not resulting from the free deployment of market forces. Finally, the purely quantitative approach behind the envisaged benchmark does not take full account of the qualitative component of the "value" received by investors and has the same drawbacks described above in relation to the best interest test.

Therefore, Assosim suggests keeping the "value for money" approach but including qualitative features (i.e., related to both the product(s) and the service(s) provided to clients) which are of a paramount importance to investors. Assosim proposes that such an assessment be carried out (and duly documented) by investment firms without the need for a benchmark set by the Authorities. This would also have the advantage of not creating an unlevel playing field with the UK (where there is no benchmark).

c) Plain-vanilla bonds: exemption from POG

The EC's proposal incorporates the provision introduced by Directive 2021/338 (MiFID Quick Fix) concerning the exemptions from POG obligations for (i) bonds that do not contain any derivative components other than the make-whole clause, and (ii) financial instruments that are distributed or marketed exclusively to eligible counterparties.

With regard to the first area of exemption, as repeatedly advocated by Assosim, it should be extended to all plain-vanilla bonds, both for reasons of logical consistency and to safeguard the secondary market, which is already being adversely affected by the well-known lack of legal certainty about the financial instruments to be included in the PRIIPs definition.

d) Appropriateness and suitability: amendments to the current regime

The EC's proposal seeks to strengthen the processes for assessing appropriateness and suitability.

With regard to the latter, in addition to the elements already provided for in the existing framework, an investment firm would be required to take into account all investments, including those of a non-financial nature, belonging to the client (and therefore not only those within the portfolio held with the investment firm itself), and should provide advice or make investment decisions that are in line with the needs of portfolio diversification.

In this respect, a critical issue concerns the necessity to take into account portfolios that the client may also hold with intermediaries other than the one carrying out the assessment. While understanding the benefits of such comprehensive approach, Assosim notes that operational complexities and liabilities would emerge if the client does not authorise the intermediary to access, or inform/update the intermediary on, information about financial instruments/products held with third parties.

Furthermore, with regard to the reference to non-financial assets (as per recital 34 of the Omnibus Directive), Assosim would like to point out that non-financial assets respond to a very different investment rationale, require ad-hoc skills and should therefore be outside the scope of the adviser's assessment, unless the contract with the client provides otherwise.

The EC proposes to apply the suitability regime in a simplified manner (i.e., without any obligation to obtain information on the client's knowledge and experience or on the composition of the portfolio) in the case of advice provided on an independent basis to retail clients and limited to well-diversified, non-complex and low-cost financial instruments. While Assosim understands the EC's intention to promote independent advice, which has not been particularly successful to date, it believes that this simplification could lead to an unlevel playing field between different advisory models.

Accordingly, Assosim suggests that the aforementioned simplified approach on the client's knowledge and experience should also apply to non-independent advice and to portfolio management as well, as a low level of knowledge and experience may well be compensated by the professional competence of the intermediary recommending investments or making investment decisions on behalf of the client.

Regarding the appropriateness regime, the EC's proposal to include some typical elements of the suitability assessment (i.e., ability to bear losses and risk tolerance) would place a disproportionate burden on intermediaries' operational processes, requiring considerable IT/organisational investments, and would largely eliminate a distinctive feature between services not combined with investment advice (typically online trading) and services combined with investment advice. In this respect, Assosim notes that, even from a CMU's perspective, the existence of several business models with different characteristics/investors' targets/distribution models should, on the contrary, be safeguarded.

e) Clients' classification: amendments to Annex II, section II.1 MiFID (professional clients on request)

The EC's proposal revises the criteria for clients' classification, including those for professional clients on request. While agreeing with the approach taken, Assosim would like to point out that maintaining the threshold of 10 transactions in the previous quarter is not always in line with the characteristics of financial markets, which have expanded over time to include new asset classes and instruments, many of which may suffer from low liquidity. In this respect, Assosim would suggest calibrating the number of transactions according to the liquidity characteristics of the financial instrument.

Moreover, the reference to the average of the previous three years to determine the size of the client's portfolio raises operational issues in the case of new clients who have no investment history with the intermediary. In this respect, Assosim believes appropriate to set a EUR 250,000 minimum threshold *tout-court* (i.e., without any reference to the average during the previous 3 years).

With regard to the new parameters for clients which are legal entities, Assosim believes that it is unclear how the new balance sheet assets/net turnover/own funds criteria (together, the **Balance Sheet Criteria**) should be applied in the light of the fourth sub-paragraph and the last sub-paragraph of Annex II, section II.1, MiFID (as amended by the Omnibus Directive). In line with the current regime, such provisions make reference to the person acting as legal representative for classification purposes (in particular, for the assessment of expertise and knowledge and for the assessment of the ability of "making investment decisions in line with the legal entity's objectives, needs and financial capacity [...]"). In Assosim's understanding, the Balance Sheet Criteria would also apply to existing clients, with the consequent need for investment firms to revise their classifications. Assosim's members expect that in most cases this exercise will result in a downgrading of the client (from on-demand professional to retail). This aspect was not fully considered in the impact assessment presented by the EC. While asking the EC for further analysis in this regard, in any event investment firms should be given sufficient time to implement the new client classification and manage any resulting downgrading.

f) Overloading of information on costs and charges

The EC intends to simplify the disclosure to retail investors and make the relevant information more intelligible and comparable. However, the objective does not seem to have been fully achieved, as very detailed information is still required, which is difficult for the average investor to understand.

Assosim also notes that certain simplifications introduced by the Directive 2021/338 (MiFID Quick Fix) would be eliminated, in particular those aimed at streamlining the provision of investment services (other than advice and portfolio management) to professional clients by waiving *ex ante* and periodic disclosure requirements. Such proposals (see in particular Article 24b, paragraph 1, sub-paragraphs 6 and 7 of the Omnibus Directive) appear inconsistent with the recently adopted MiFID Quick Fix approach.

g) Knowledge and competence: duration of the training period

The EC proposal requires a minimum of fifteen hours of refresher training per year. This is a change from the approach previously adopted by ESMA, which left it up to intermediaries to determine the appropriate length of training.

In this respect, while appreciating the transversal nature of the EC's proposal and the consequent alignment of the K&C regime across MiFID and IDD frameworks, Assosim believes it is preferable to maintain the current approach³ rather than adopting a one-size-fits-all approach.

h) Transposition and implementation

Several of the EC's proposals will require significant IT developments, amendments to legal documentation, including contracts with clients, as well as changes to existing internal procedures and staff training. In order to ensure an orderly implementation and to avoid legal uncertainty, Assosim believes it is important to provide investment firms with sufficient time to adapt their business to the new requirements. Therefore, Assosim suggests that the 18-month implementation period should rather start to run from the moment the implementing provisions are finalized and known by the intermediaries, namely from the publication in the EU OJ of the Level 2 rules.

2. Proposal of Regulation amending the PRIIPs Regulation

a) PRIIPs perimeter – KID availability

The EC's proposed amendments to the PRIIPs Regulation represent a missed opportunity to provide legal certainty about the financial products to include in the PRIIPs definition.

The lack of clarity has led to negative unintended consequences especially for corporate bonds not having pre-packaged features ("plain vanilla" bonds). In fact, in most cases such bonds have been addressed to professional clients only in order to reduce the risk of non-compliance with PRIIPs obligations and in particular to avoid the burdens associated with the publication/updating of the KID. This has led to a limitation of the range of investment opportunities available to retail clients. Therefore, Assosim suggests introducing a clear exclusion of such bonds from the scope of PRIIPs.

Moreover, the provisions dealing with the possibility *i)* to make KIDs available by means of an interactive tool that enables the retail investor to generate personalised key information, and *ii)* to present the KID in a layered format, may lead to a higher cost of the KID itself, thus increasing the number of cases where a non-retail target market is chosen. At the very least, such innovative interaction tools must be clearly specified as a free choice of the intermediary.

³ Such approach does not provide for a minimum number of hours of training and rather requires to take into account the type of service provided, the characteristics of the clients and the investment products offered.

We remain available for any further information or clarification.



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