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COVER NOTE

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Subject:	REGULATORY SCRUTINY BOARD OPINION on the Retail Investment Package

Delegations will find attached document SEC(2023) 330 final.

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REGULATORY SCRUTINY BOARD OPINION

Retail Investment Package

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EUROPEAN COMMISSION
Regulatory Scrutiny Board

Brussels,
RSB/

Opinion

Title: Impact assessment / Retail Investment Package

Overall opinion: POSITIVE WITH RESERVATIONS

(A) Policy context

The Capital Markets Union aims to ensure that consumers can fully benefit from the investment opportunities offered by capital markets. For this, a regulatory framework is necessary that ensures protection and enables well-informed investment decisions. The retail investment strategy covers a range of initiatives designed to provide the necessary level of confidence, trust and assurance for retail investors.

This initiative investigates measures for a retail investment package to provide a clear legal framework for retail investments, adapted to the profile and needs of consumers. The main focus is in three principal areas: disclosures and marketing communications, inducements and value for money.

(B) Summary of findings

The Board notes the additional information provided and commitments to make changes to the report.

However, the report still contains significant shortcomings. The Board gives a positive opinion with reservations because it expects the DG to rectify the following aspects:

(1) The report does not clearly present the scope and scale of the problem and the number of affected markets, actors and consumers in the retail financial services ecosystem.

(2) The report does not clearly outline the key policy choices and does not sufficiently distinguish between the options and the flanking measures.

(3) The level of quantitative analysis is not proportionate to the scale of the problem and the expected impacts. The report does not sufficiently analyse and quantify the impacts, including distributional impacts and impacts on Member States. The impact of the ban on inducements is not adequately quantified in terms of compliance costs for the financial sector as well as the reduction of consumer detriment.

(4) The report is unclear on the overall costs and benefits of the preferred option package.

This opinion concerns a draft impact assessment which may differ from the final version.

Commission européenne, B-1049 Bruxelles - Belgium. E-mail: regulatory-scrutiny-board@ec.europa.eu

(C) What to improve

(1) The report should more clearly describe the scope of the initiative and its significance for the existing financial regulatory landscape. It should set out in more detail the existing retail investment market, available products, and market actors. This description should pay particular attention to the current inducement regime and the cost effects on the households. Based on a clearer explanation of the market context, the report should better outline the scale and magnitude of the problems identified, such as low level or retail investors' interest in financial products. Based on the lessons learned from existing measures, the problem analysis should clearly indicate the urgency to act now, and which issues are the most pressing to solve. The report should explain better why and how a high level of retail investment in the EU would contribute to more integrated and efficient financial markets.

(2) The report should include a clear and concise description of the flanking measures (with the main body of analysis remaining in the annexes). It should better justify how they are complementary to the main options and how they work in conjunction with the key policy choices. The report should also improve the content description of the options, for example by clarifying the functioning of the various benchmarks under the value for money options or explaining how 'vital information' in marketing communication is determined. Concerning benchmarks, the report should also explain the role and expected impact of secondary legislation. It should explain whether variants of the inducement ban option (potentially differing in terms of product scope, conditions, etc.) have been considered, and if so, explain why these were not retained in the analysis. It should also explain more clearly which measures are taken in the present initiative and which will be adopted later based on implementing legislation, subject to which supporting analysis.

(3) The report should provide a more in-depth economic analysis, with a better assessment of the distributional impacts. The analysis should make clear what the benefits for the consumers and the costs for the affected industry actors would be. This analysis should assess the extent to which Member States will be differently affected. The report should provide an accurate overall picture of costs and benefits, including aggregate costs and cost savings from flanking measures such as cross-border supervision, as well as suitability and appropriateness assessment. It should also more clearly distinguish between adjustment and administrative costs under the 'One-in, one-out' approach. It should assess impacts on SMEs more thoroughly in a SME test.

(4) Given the scale of the initiative, the impact analysis needs to quantify further the expected (distributional) impacts, in particular of the inducement ban. The level of quantification should be proportionate to the level of expected impacts, in particular regarding reduction of consumer detriment and increase of industry one-off and recurrent compliance costs. The analysis should better build upon the experiences from the United Kingdom and the Netherlands, while acknowledging the related uncertainties. The report should provide overall quantified estimates of the expected EU-wide costs and benefits of the ban while clearly accounting for assumptions and data limitations. If full quantification is not possible, the reasons should be clearly explained and the report should specify the order of magnitude of the expected EU-wide costs and benefits.

(5) When analysing the impact of this initiative, the report should present the impact of the entire option package with the flanking measures included (also in the annexed quantification tables). It should make sure to present clearly the synergy effects between the policy options and flanking measures.

(6) When justifying the preferred package, the report should clarify whether it assessed alternative combinations of options (including variants of certain measures), given the differences in views of stakeholders and the likelihood that these may feature in further discussions.

The Board notes the estimated costs and benefits of the preferred option(s) in this initiative, as summarised in the attached quantification tables.

Some more technical comments have been sent directly to the author DG.

(D) Conclusion

The DG must revise the report in accordance with the Board's findings before launching the interservice consultation.

If there are any changes in the choice or design of the preferred option in the final version of the report, the DG may need to further adjust the attached quantification tables to reflect this.

Full title	Retail Investment Package Package of measures aimed at implementing the retail investment strategy
Reference number	PLAN/2021/12340
Submitted to RSB on	19/12/2022
Date of RSB meeting	18/01/2023

ANNEX: Quantification tables extracted from the draft impact assessment report

The following tables contain information on the costs and benefits of the initiative on which the Board has given its opinion, as presented above.

If the draft report has been revised in line with the Board's recommendations, the content of these tables may be different from those in the final version of the impact assessment report, as published by the Commission.

SUMMARY OF COSTS AND BENEFITS

I. Overview of Benefits (total for all provisions) – Preferred Option		
Description	***Amount***	***Comments***
	Direct benefits	
Reduction of bias in financial advice for investments and better alignment of interests between intermediaries and investors (main beneficiaries: retail investors)	Unquantifiable, but this benefit is expected to be significant, given the significant role of financial advisors in the distribution of investment products and major role of inducements as a factor leading to bias in the provision of investment services.	The ban on inducements would impact the ties between investment product providers and distributors that exist as a result of commission payments. If financial intermediaries (advisors) were paid by their client rather than through commissions, the interests of intermediaries and clients would be better aligned and there would be a stronger incentive to recommend and offer products based on their benefits for the client, rather than based on the relative size of commission income from different products. Overall, a shift towards independent financial advice (including through portfolio management) and execution-only is expected, as discussed and evidenced in section 6.2 and Annex 7.
Greater transparency on costs, performance and the ESG profile of investment products (main beneficiaries: retail investors, potentially also investment products which are cheaper or have better ESG characteristics)	Unquantifiable benefit	The annual cost and performance statement under MiFID and IDD and the EU template on costs, would improve transparency on costs and performance, enabling all retail investors to better consider the impact of all the costs on their investment decisions and to better monitor the net performance of their financial products. Changes to PRIIPs KIDs would give greater visibility to key information about the products in scope including on their costs and ESG profile. Indirectly, both measures could contribute to a consumer shift towards cheaper and more sustainable investment products.
Better understanding of investment products (main beneficiaries: retail investors)	Unquantifiable benefit	Improving the presentation of PRIIPs KIDs would make it easier for retail investors to understand key characteristics of the investment product they are considering. Including vital information in marketing communications would provide important context to marketing messages and would thus also contribute to better understanding of key elements of investment products. The annual cost and performance statement would provide retail clients in one single document with an overview of the performance of their portfolio, together with the total or detailed amount (upon request) of all the costs borne and payments received. This would facilitate the comprehension of the cost impact on the performance. The use of EU templates for costs reports, whether on an ex-ante or ex-post basis, would also facilitate comparison and favour more competition.

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Reduced risk of misleading information (main beneficiaries: retail investors)	No estimate available	Inclusion of vital information in marketing communications would ensure that crucial information to help retail investors understand the product are always mentioned and presented in a prominent and balanced way. Changes to the PRIIPs KIDs would also (indirectly) make this document more attractive and help retail investors to pay more attention to it relative to marketing communications. Ensuring that marketing communications (including advertisement and associated persuasive techniques), whether made directly or indirectly by a firm (e.g. through social media), clearly appear as such and are bound by all rules on marketing communications, would avoid misleading communication and would help to avoid misinformation of retail investors.
Removal of products which do not deliver or deliver poor value for money due to undue costs (main beneficiaries: retail investors, product manufacturers or distributors with more cost-competitive investment products / distribution systems)	Level of benefits is difficult to quantify as it depends on many factors: invested amount, asset class, performance, etc.	Enhancing VfM within product governance rules, which in practice means adjusting the cost of products to their quality (expected returns, level of risk and value added by additional products features, like biometric risk coverage) would bring benefits to investors, as high costs undermine expected returns.
Indirect benefits		
Strengthened market oversight (main beneficiaries: supervisors, retail investors, broader society)	No estimate available	Some of the measures, notably providing clarity on the scope of the definition of marketing communications as well as the introduction of an EU template for costs, the annual cost and performance statement and the development and use of benchmarks for assessing value for money, will make it easier for supervisors to fulfil their supervisory mandates. Due to the ban on inducements, supervisors will no longer have to check quality enhancement and detriment tests.
Cheaper and better quality investment products for retail clients, more competition and innovation (main beneficiaries: retail investors, broader society)	The size of the impact of value for money and other measures has not been quantified due to insufficient data. However, the ban on inducements is expected to lead to a significant cost reduction, as the UK and NL markets, where bans were first introduced, demonstrate significantly lower management fees for retail investment products (around 40%)[1].	Multiple measures included in the preferred option would indirectly contribute to making investment products more affordable for retail investors, fostering competition and innovation in the market. The ban on inducements would contribute to a reduction in costs paid by retail investors and increase in quality of services and products distributed to them: i) by aligning incentives and making financial advisors much more likely to recommend more cost-efficient and higher quality products, and ii) by encouraging more competition in investment product distribution (also across the EU single market). Strengthening product governance requirements for manufacturers and distributors (Value for Money) would help eliminate from the market those products that are likely to present investors with poor value for money (both directly as captured above and indirectly, by fostering more comparison of products and thus stronger competition), while shifting the overall product mix towards cheaper (and likely more simple and higher quality) investment products.

[1] Meanwhile service fees increased to a certain amount, depending on provider and services offered.

		Other measures, such as ex-post statements on costs and performance could also contribute to a reduction in costs as they would improve client awareness about the ongoing cost and performance of products.
Digital shift in financial product distribution (main beneficiaries: retail investors, innovative players in the financial sector, and broader society)	Unquantifiable benefit	The ban on inducements in particular might accelerate an already ongoing trend towards digitalisation and increased innovation of the value chain, in particular at the distribution level.
Possible increase in retail investment participation (main beneficiaries: retail investors, financial sector, non-financial companies and broader society)	Unquantifiable benefit	A combination of the benefits mentioned above (better understanding of products, lower risk of being misled, aligning incentives and cheaper products) resulting from the different measures in this initiative would likely over time lead to increased trust levels among retail investors and through this, potentially their greater participation in the market for investment products. This benefit could thus also be reflected in greater business volumes for asset managers and other providers of retail investment products in the long run[2] and to some extent in potentially more funding for companies.
More effective accumulation of capital for retirement and other objectives (main beneficiaries: retail investors/households and potentially state budgets)	This benefit would be very difficult to quantify, as it depends strongly on the size of the expected shift towards cheaper products. Given the underlying compound interest mathematics, even small savings on annual costs could translate into a large long-term benefits for retail investors.	Reduced costs of retail investment products would improve after-fee performance, allowing invested capital to accumulate at a higher rate. A possible increase in retail investment participation would also lead to more people being able to accumulate more capital for their retirement and other life objectives.
Administrative cost savings related to the 'one in, one out' approach *		
Saving on existing requirements on inducements such as disclosures and quality enhancement / no detriment test (main beneficiaries: financial sector)	No estimate available [3]	Where inducements are applied, this currently has to be appropriately disclosed. Firms also need to comply with other regulatory requirements for the payment of inducements (e.g. ensuring that inducements satisfy the quality enhancement (under MiFID) and no-detriment (under IDD) tests). A ban on inducements implies such requirements would no longer apply, and savings on related administrative burdens.
Investor categorisation (main beneficiaries: retail investors, financial sector)	Benefit expected, but rather small and difficult to quantify	Existing criteria for professional clients on request would be adapted to accommodate those investors with appropriate knowledge, experience and ability to bear losses, who should hence be able to benefit from regulatory alleviations

[2] In the short run, a decline might be seen, in particularly in the advised segment of the market.

[3] In addition to the actual saving compared to the baseline, there is a potentially substantial saving compared to the alternative option considered in this impact assessment, which would require strengthening disclosures on inducements in order to safeguard interests of retail investors. (As regards quantification, it is not possible to determine approximate magnitude of the saving, as the evidence gathered points to potential non-compliance with the existing requirements, which would likely make any estimations unreliable).

		offered to professional investors, reducing information overload for this new investor category. This also implies that after checking who belongs in this category, product manufacturers and distributors would be able to save resources dedicated to assessing clients' needs and objectives and providing information to them.

II. Overview of costs – Preferred option							
		Consumers (retail investors)		**Businesses (financial product providers and financial advisors)**		**Supervisory authorities**	
		One-off	**Recurrent**	**One-off**	**Recurrent**	**One-off**	**Recurrent**
Disclosures and marketing communic-ations	Direct adjustment costs	none	none	The costs for adapting/updating existing (automated) systems to provide an annual statement on cost and performance, under MiFID and IDD, the total EU-wide cost could be estimated in a range of EUR €19 – 67.5 million[4]. The costs for adapting existing (automated) tools to incorporate the EU template on cost disclosures under MiFID and IDD and adjust internal policies, would depend	Investment firms will incur new ongoing costs in relation to the annual statement on costs and performance for clients who currently do not receive annual information on costs (e.g. clients with whom the firm is not considered to have "an ongoing relationship"). The estimate of these costs is EUR 5 per client/per year[5]. It was not possible to quantify the number of "new" clients that would be covered by this[6].	None	none

[4] It should be noted that it was not possible to estimate the number of new clients under MiFID who at present do not receive annual information on costs, nor was it possible to gather data on the number of clients under portfolio management who already receive information on costs and performance, to be able to deduct these costs from the estimated one-off costs (see Annex 4).

[5] Based on the Retail investment study (page 217).

[6] Considering the divergent interpretation and practices of the investment firms and Member States on the qualification of "ongoing relationship" in the context of costs disclosure, it is not possible to estimate the number of new clients under MiFID who at present do not receive annual information on costs (see Annex 4).

				on how the format is developed. This will be assessed while developing the relevant level 2 acts. Update of PRIIPs KIDs to comply with the new rules: very limited cost. Adapting marketing communic-ation templates and internal policies and procedures on marketing communic-ation: likely limited cost, but difficult to quantify.	Negligible for PRIIPs[7] and marketing communic-ations.		
	Direct administrative costs	none	none	none	none	none	none
	Direct regulatory fees and charges	none	none	none	none	none	none
	Direct enforcement costs	none	none	none	none	none	Enforcement of the obligation to include vital information in marketing documents and providing annual statements: low cost implications expected.
	Indirect costs	none	Possible cost pass-through to clients: likely limited by the small size of the additional cost	Possible costs related to application of digital features in KIDs (voluntary, but companies may face competitive pressure to provide more appealing KIDs)	none	Acquisi-tion or develop-ment of supervisor y tools and training for staff to control the extended scope of marketing communic-ations (NCAs).	Further costs to supervise a larger range of marketing techniques under the extended definition. This is difficult to quantify as it would depend on volume of identified issues and intensity of supervision selected by NCAs.

[7] Sustainability information in KIDs will also be updated, but this will be done based on information already collected and disclosed under the SFDR. This is not expected to change the frequency of updates. With regard to the annual cost and performance statement under MiFID and IDD, no significant additional costs in cases where clients already receive annual information.

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						Other measures: slightly adapting supervision to the new approach	Disclosures: negligible supervisory cost impact[8]
Inducem-ents	Direct adjustment costs	none	none	Change in business models of distributors[9] (including changing contracts, new billing systems): not possible to quantify but large impact expected.	Similar or lower ongoing compliance costs compared to the baseline scenario.	none	none
	Direct administrative costs	none	none	none	none	None	none
	Direct regulatory fees and charges	none	none	none	none[10]	None	none
	Direct enforcement costs	none	none	none	none	None	Costs of enforcement of the ban (NCAs).
	Indirect costs	none	Retail investors would have to pay upfront for investment services, including financial advice, as these costs would no longer be incorporated in the overall fees. The upfront payment for the investment service is however not	Migration of some asset holdings into inducement-free share classes	none	None	none

8 For PRIIPs KIDs, the scope of supervision does not change significantly (very limited number of datapoints would be added, which are disclosed on websites and other documents under existing legislative frameworks). Similarly, for the annual statement on costs and performance, there is already supervision in place and the number of datapoints will only increase moderately. Where more work would result, this would likely be tackled through slight reprioritisation rather than budget increase.

9 e.g. more roboadvice solutions, chatbox functions or application of other digital distribution and marketing tools.

10 Only sanctions in case of non-compliance to ensure the ban is adequately enforced.

			expected to lead to a cost increase for retail investors compared to the baseline (see indirect benefits).				
Value for money	Direct adjustment costs	none	none	Adaptation of existing internal processes and IT systems to assess VfM of investment products against bench-marks	Loss of business from products that do not offer retail investors good value for money and possible pressure on margins (both for product manufacturers and distributors): potentially sizeable, but not possible to estimate. In the long run, may be mitigated (partially or fully) by growth in the retail investment market [11].	None	none
	Direct administrative costs	none	none	Supervisory reporting costs estimated to amount to between €12-€30 million	Ongoing supervisory reporting costs estimated to be €2.3-5.4 million annually across the EU These costs would be further assessed and refined by the ESAs when preparing their technical advice on the more detailed rules to be adopted by the Commission at L2.	None	none

[11] Making costs more effective may attract more investors to capital market increasing the scale of retail participation, thus also profits for financial intermediaries.

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					Additional costs for VfM at distribution level could not be reliably estimated.		
	Direct regulatory fees and charges	none	none	none	Fees to cover the cost of supervision may increase, depending on national systems	None	none
	Direct enforcement costs	none	none	none	none	Adjustment of super-vision by the NCAs, including possible changes to IT systems or reporting channels.	Enforcement of value for money rules[12] (NCAs and ESAs) and development of VfM benchmarks (ESMA, EIOPA). Final effect not clear as there would be savings on enforcement of product rules that could offset this increase in costs[13].
	Indirect costs	none	Depending on the size of costs to the industry, there may be a cost pass-through to clients.	none	none	None	none
Costs related to the 'one in, one out' approach							
Total	Direct adjustment costs	None	None	Disclosures and marketing communicat-ions: adaptation for annual statement in approximate range of EUR €19 – 67.5 million, some cost impact of adaptation to EU template on cost disclosures: cost to be assessed at L2. Inducements: large market adjustment impact; could not be quantified	Disclosur es: providing annual statement to new clients: EUR 5 per client/per year (total could not be quantified). Value for money: loss of revenues for products that do not offer good		

[12] Additional costs for NCAs to receive the relevant information from product manufacturers and pass it on to the ESAs are expected to be limited.

[13] Under the current framework, despite efforts by the ESAs to coordinate, some NCAs have expressed concerns that the rules are difficult to enforce.

				Value for Money: adaptation to revised product governance rules and use of bench-marks; not possible to quantify	VfM, but could not be reliably quantified.[14]		
	Indirect adjustment costs	None	Inducements: direct payment for financial advice and services or alternative ways to obtain information All measures: possible pass through of costs to clients (likely limited by the low expected size of some impacts on the industry)	Inducements: enhancing digital and other alternative distribution models (not possible to quantify; large offsetting factors expected[15]); migration of some asset holdings. Disclosures: voluntary costs for application of digital features	None		
	Administrative costs (for offsetting)	None	None	Supervisory reporting costs estimated to amount to between (approximate) EU total €12-€30 million (costs to be further assessed at L2 by the ESAs)	Value for Money: supervisory reporting EU total of €2.3-5.4 million per annum (costs to be further assessed at L2 by the ESAs)[16]		

(1) Estimates (gross values) to be provided with respect to the baseline; (2) costs are provided for each identifiable action/obligation of the preferred option otherwise for all retained options when no preferred option is specified; (3) If relevant and available, please present information on costs according to the standard typology of costs (adjustment costs, administrative costs, regulatory charges, enforcement costs, indirect costs;). (4) Administrative costs for offsetting as explained in Tool #58 and #59 of the 'better regulation' toolbox. The total adjustment costs should equal the sum of the adjustment costs presented in the upper part of the table (whenever they are quantifiable and/or can be monetised). Measures taken with a view to compensate adjustment costs to the greatest extent possible are presented in the section of the impact assessment report presenting the preferred option.

[14] Over time, this is expected to be (partially) mitigated by growing retail investment participation and greater use of payment-based financial advice and alternative distribution models such as roboadvice.

[15] Notably the ongoing savings from not having to pay inducements to financial advisors.

[16] Additional costs for VfM at distribution level could not be reliably estimated.