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COMMISSION STAFF WORKING DOCUMENT
EXECUTIVE SUMMARY OF THE IMPACT ASSESSMENT REPORT

Accompanying the document

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 2016/97 as regards the Union retail investor protection rules

and

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

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A core aim of the Capital Markets Union (CMU) is to ensure that consumers can fully benefit from the investment opportunities offered by capital markets. For them to be able to do so, they must be supported by a regulatory framework that adequately protects them in the single market and enables them to take investment decisions in line with their needs and objectives. While retail participation in capital markets varies widely across Member States, reflecting different historical, and socio-economic conditions, retail investors should be able to achieve better investment outcomes than is currently the case.

In line with the Commission's stated objective of 'an economy that works for people', and as announced in both the September 2020 CMU action plan (action 8) and the 2023 work programme, the Commission is now putting forward a strategy for retail investments in the EU. The strategy aims to ensure that retail investors can take full advantage of EU capital markets and that rules are consistent across legal instruments.

The legislative framework governing retail investor protection is largely set out at EU level. The current approach is intended to ensure that regulatory requirements fit the specific needs of the relevant sector (for example, investment management or insurance). However, despite the existence of an extensive set of rules, some problems remain: retail investors have difficulties in accessing relevant, comparable and easily understandable investment product information; they may be inappropriately influenced by marketing; there are shortcomings in the way products are manufactured and distributed, linked to the payment of inducements; and products do not always offer Value for Money to the retail investor.

In some parts of the frameworks relevant to retail investments, diverging rules cause distortions in the internal market, by creating an un-level playing field for investment services, inefficiencies, and different levels of consumer protection across sectors and Member States. To address these problems, further efforts are required at EU level to modernise and update the framework and establish coherent and consistent regulatory requirements across the EU.

Four problem drivers are identified and addressed as part of this impact assessment: 1) the information provided to investors is not always useful or relevant for their decision-making process; 2) retail investors tend to be influenced by over-appealing digital marketing and misleading marketing practices; 3) some retail investment products incorporate unjustifiably high costs and/or do not offer good value to retail investors, and 4) conflicts of interest caused by the payment of inducements negatively affect the net return on investment products and the quality of the investment advice.

This impact assessment focuses on identifying and addressing specific failures at key stages of the retail distribution and investment process. It looks at issues that prevent retail clients from making the best use of investment product information (in relation to the Regulation on packaged retail and insurance-based investment products (PRIIPs), the Markets in Financial Instruments Directive (MiFID) and the Insurance Distribution Directive (IDD)). It also addresses the rules governing conflicts of interest, arising from inducements, at the 'point of sale' and at the production stage of investment products and services (in both MiFID and IDD), and it looks into product oversight and governance rules (for both distributors, hence in MiFID and IDD, and for product manufacturers, namely in the Directive on undertakings for collective investment in transferable securities (UCITS), MiFID and IDD) to ensure that retail clients obtain good value from their investment (that is, 'Value for Money').

This impact assessment concludes that there is a need to act at EU level. Member States have only limited possibilities of addressing the identified problems via changes at national level, mainly because the financial legislation applying to the retail value chain (from product manufacturing to final sale and post-investment) is already regulated at EU level. The proposed solutions set out below take the form of regulatory amendments to EU legislation. They are expected to improve retail investors' investment outcomes, by improving the value of the investment services and products provided to them, ensuring that these better fit their needs and investment objectives, and by addressing conflicts of interest in the supply chain. The resulting strengthened investor protection framework should help improve access to capital markets for retail clients, increase their trust in capital markets and support the development of EU capital markets in general.

Possible solutions

For each of the three principal areas – 1) disclosure and marketing communications, 2) inducements and 3) Value for Money, the impact assessment sets out two alternative or, in the case of disclosures, complementary policy options (dubbed respectively 'options 2 and 3'). Each option is assessed against the baseline scenario, taking account of the available empirical evidence and stakeholders' views. The evidence base includes input received from stakeholders (including through consultations, dedicated workshops and bilateral meetings), technical advice from the Joint Committee of the European Supervisory Authorities, the European Securities and Markets Authority and the European Insurance and Occupational Pensions Authority, as well as a commissioned study on disclosure, inducements, and suitability rules for retail investors, and research papers.

For disclosures, policy option 2 involves targeted changes to disclosure rules aimed at improving their relevance for retail investors. Policy option 3 complements it by proposing targeted changes to address informational deficiencies relating to marketing communications. For inducements, policy option 2 proposes to maintain the current system which allows the payment of inducements, while improving and harmonising sector-specific disclosures relating to such inducements. Policy option 3 contains a ban on all forms of inducements (as well as a partial ban for execution-only services as a variant). For Value for Money, policy option 2 seeks to strengthen manufacturers' product governance rules, requiring them to assess their products against relevant 'manufacturer benchmarks', and to explain any departures from the benchmarks, in order to ensure stronger focus on cost-efficiency and performance. Policy option 3, in addition to applying rules to manufacturers (as in option 2), also imposes Value for Money obligations on distributors, requiring them to assess certain products against relevant 'distributor benchmarks' and to explain any departures from the benchmarks, with a view to limiting distribution fees.

Comparison of options and impacts of preferred options

The impact assessment analyses the options in relation to three specific objectives, that is whether they: (i) improve the information provided to investors and help them take well-informed investment decisions, (ii) lead to a better alignment of intermediaries' and investors' interests and (iii) ensure that retail investors are offered cost-effective and better performing products.

For disclosures and marketing communications, options 2 and 3 are complementary and both present an improvement compared to the baseline at a reasonable cost. Hence, they are, together, the preferred option. For inducements, an EU-wide full ban as put forward in option 3 is judged the most effective way of removing or significantly reducing conflicts of interest across the EU. Option 2 (enhanced transparency) would address a part of the problem but would be less effective than the full ban, if implemented as a standalone measure. Finally, for Value for Money, option 3 requires both manufacturers and distributors to assess costs and performance of their products against a benchmark as part of their product governance duties; this is considered an effective and comprehensive way to ensure that investors are offered cost-effective products.

With the combination of the preferred options, retail investors would benefit from improved disclosures, in the form of more user-friendly information responding to changing consumer needs (with respect to digitalisation and sustainability) and better information after a financial product has been purchased. They would also be better protected against increasing exposure to misleading marketing. At the same time, they should have access to products which offer better Value for Money and be able to invest (through advised and non-advised distribution services) in ways that help them achieve better investment outcomes thanks to stronger rules on conflicts of interest in the distribution process. A full ban on inducements would be a highly effective way to address conflict of interest, but would also have a major impact on existing distribution systems. The variant of a partial ban on inducements for execution-only services would be less impactful on existing distribution systems, while still delivering benefits for retail investors (although it would not tackle the consumer detriment observed in advised services). A partial ban could pave the way to a further expansion towards a full ban, as it could be a means to ensure a smooth and gradual transition into such a new system. This would avoid shocks on the industry deriving from sudden (and major) structural changes and adjustment costs. The flanking measures, outlined in the annexes, will complete and further complement the effects of the partial ban by ensuring improved supervisory enforcement, better qualified advisors, a more efficient investor screening process, improved financial literacy levels and more flexibility for knowledgeable investors to access a wider set of products and services without the unnecessary red tape.

The assessment confirms that the measures identified under the preferred options would eliminate the distortions identified in the internal market and ultimately benefit retail investors by enabling them to take informed investment decisions and reach better investment outcomes. Taken together, these measures would increase retail investor protection and lead to cheaper and better-quality investment products for retail clients. This would both benefit existing investors and encourage more citizens to invest.

The reforms envisaged in the preferred options would inevitably lead to some costs for the financial industry (notably related to the change of distribution systems and supervisory reporting). These should be assessed against the societal benefits of addressing the significant misalignment of interests present in today's market, and against the prospect of better quality, better-value products for retail investors. These benefits are expected to far outweigh the costs. Furthermore, some cost savings could be expected from the simplification of existing requirements on inducements and from changes to investor categorisation requirements.