

**MEMO# 32319**

March 26, 2020

# European Commission Tender for a Study on Disclosure, Inducement and Suitability Rules for EU Retail Investors

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March 26, 2020 TO: Global Advocacy Coordination Advisory Committee

Global Operations Advisory Committee

ICI Global EU Capital Markets Union Task Force

ICI Global Regulated Funds Committee RE: European Commission Tender for a Study on Disclosure, Inducement and Suitability Rules for EU Retail Investors

On 5 March 2020, the European Commission (“the Commission”) published a tender[\[1\]](#) (“the Tender”) for a study on disclosure, inducements and suitability rules for retail investors in the EU.[\[2\]](#) The study is part of a broader programme of work at EU level to enhance retail investor participation in EU capital markets, including through improvements to investment choice and capital market access. The results of the study, alongside input from other workstreams, will inform the Commission’s future policy work, including potential revisions to the MiFID II/R framework[\[3\]](#) and PRIIPs KID.[\[4\]](#)

## Background

A core objective of the Commission’s Capital Markets Union (CMU) initiative is to foster retail investment in EU capital markets.[\[5\]](#) Over the last few years, the Commission has taken various actions to support this including the development of a Pan-European Personal Pension product (PEPP)[\[6\]](#) and new Directive[\[7\]](#) and Regulation[\[8\]](#) to reduce barriers to the cross-border distribution of investment funds. The Commission and the European Securities and Markets Authority (ESMA) have also examined various aspects of the retail investment market in the EU, including:

- investment product distribution;[\[9\]](#)
- consolidation of mandatory investor disclosures;[\[10\]](#)
- the use of online tools and services to support retail investors;[\[11\]](#) and
- the cost and past performance of investment products,[\[12\]](#) including the publication of reports on fund fees[\[13\]](#) and performance,[\[14\]](#) and on the net performance of active and passive equity UCITS.[\[15\]](#)

Furthermore, as part of the review of the MiFID II/R framework, ESMA is examining the impact of inducements and costs and charges disclosure requirements[\[16\]](#) and the Commission is examining the effectiveness of the MiFID disclosure and inducement rules

requirements and the use of technology to support retail investors<sup>[17]</sup> as part of the Commission's digital finance strategy.<sup>[18]</sup>

The Tender, alongside work undertaken by the Commission and ESMA, will inform the next phase of policy work, including revisions to the MIFID II/R framework and amendments to the PRIIPs KID, which is also subject to review.<sup>[19]</sup>

## **Tender Specification**

The technical specifications of the Tender set out the background, aims, objectives and scope of the study and the requirements for producing the final report, as outlined below.

### **Background to the study**

The Commission's notes the following points by way of background to the study:

- Higher investment by consumers in financial markets could provide them with clear benefits (e.g. preparedness for retirement), while at the same time helping to mobilise new funding sources for Europe's firms;
- Promoting increased retail investor participation through improved investment choice and access to capital markets is a key objective of the CMU;
- At a time of population ageing and low interest rates, it is important to regularly evaluate the functioning and dynamics of the market for retail financial services to ensure that it provides tangible benefits to EU citizens;
- The current level of participation by retail investors in financial markets in the EU remains low by international standards;
- The right framework must be in place to empower consumers to participate in the market and take informed investment decisions, while providing adequate retail financial consumer protection to create a trustful investment climate;
- Disclosed investment information, and in some cases the advice received during the investment decision-making process, are important influencers of the final investment choice and should be high quality (i.e. understandable and meaningful) and help investors to compare investment products and make sound investment decisions;
- Investment advice should be guided by the objectives of investors.

The Commission briefly describes current EU rules concerning retail investment products, noting that as a result of the product-specific approach that has been adopted some elements in the existing disclosure and incentive-based measures might be inconsistent, redundant, overlapping or have gaps. As a result, the unintended consequences could reduce the transparency and accessibility of financial products and harm retail investors.

### **General and specific objectives of the study**

The Commission's aim for the study is to assess whether current retail investor protection rules in EU legislation, in particular the disclosure, inducements and suitability rules, are working as intended and how they affect the decision-making of retail investors. The study will also focus on the interplay between relevant legal frameworks and in doing so contribute to the review of the PRIIPs framework. The Commission is seeking for the study to provide conclusions on the fitness of existing rules relating to disclosure, suitability assessments and inducements across retail investment products. The study should examine whether such rules are effective, relevant, efficient and coherent and whether they have EU added value. In particular, the study should draw conclusions on possible shortcomings (if any) in the retail investment distribution, suitability assessment, and

disclosure process, and demonstrate how they affect retail investment decisions.

The Commission has set out the following specific objectives for the study:

- Identify potential redundancies, inconsistencies, overlaps and gaps in the regulatory disclosure, suitability assessment and inducements-related rules in scope, using a mapping of the relevant rules as a basis;
- Provide empirical evidence on the practical implementation of all the rules in scope, especially with regard to the availability, clarity, comparability, level/degree of digitalisation and understandability of information provided to retail investors in relation to the different categories of products described (see section 2.2) during their investment decision-making process, as well as their effect on consumer choices;
- Assess the effect of existing inducement-related rules (including under MiFID II and IDD), such as their impact on the provision of investment advice and the functioning of the internal market on cross-border investment advice (e.g. with respect to the provision of advice);
- Assess the effect that existing rules in scope, their implementation, and prevailing market practices have on the ability of retail investors to understand risks, costs, and potential returns, and to compare and choose among the available products those that are suitable for them, based on scientifically rigorous consumer testing, and including by examining the interplay between information disclosed, information collected from the investor (e.g. suitability assessment) , and any advice provided;
- Provide evidence in support of the legal review obligations specified in Article 33 of the PRIIPs Regulation, such as on the practical application of the Regulation, a possible extension of its scope, the treatment of certain pension products, and the operation of the so-called comprehension alert. This should be done by gathering (or copying) output that is relevant to the PRIIPs review.

### **Scope of work and tasks to be carried out**

The Commission intends for the scope of the work to include the array of retail investment products, including UCITS and AIF, and to consider the various EU legislative acts, national rules and other relevant guidance, recommendations and statements from EU and Member State supervisors that are applicable.

The Commission has outlined the following tasks related to product, disclosure and inducement and suitability rules.

Mapping of the supply and distribution of products in scope, including:

- For each Member State, identifying the types of products most commonly made available to retail investors, broken down according to product groups, sub-groups, and further down if applicable;
- Detailing how the supply of retail investment products in scope through various distribution channels has evolved after entry into application of the rules on disclosures (namely PRIIPs, MiFID II, IDD);
- Providing data on the penetration of complex and non-complex products, as defined in IDD and MiFID II, based on the inclusion of the comprehension alert in the PRIIPs KIDs.

Analysing existing disclosure rules, including:

- Reviewing existing disclosure rules and analysing potential redundancies, inconsistencies, overlaps and gaps;

- Analysing the quality of information documents and their impact on consumers' comprehension of the information during the investment decision making process;
- Collecting a representative sample of pre-contractual information documents for retail investment products;
- Analysing the quality of information documents;
- Analysing the provision of information during the retail investment decision-making process;
- Analysing the impact of information documents on retail investors' level of comprehension and choice of products;

Analysing existing inducements rules, particularly conflicting incentives that inducements may cause, including:

- Assessing the quality and access to independent and non-independent advice;
- Analysing the effect of prevailing market practices and inducement-related rules on retail investment decision-making;

Analysing existing suitability assessment rules, including:

- Assessing the rules for the demands and needs test and the suitability assessment for retail investors;
- Analysing the information provided through the demands and needs test or the suitability assessment from a client perspective.

## **Next Steps**

The Commission has set out a timeline for the production of a draft and final reports from the study. The Commission does not confirm whether the study will be published but indicates that the final study is due to it under the Tender within 16 months of the start date of the contract.

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## **endnotes**

[1] <https://etendering.ted.europa.eu/cft/cft-documents.html?cftId=5959>

[2] <https://etendering.ted.europa.eu/cft/cft-document.html?docId=67355>

[3] Directive 2014/65/EU and Regulation (EU) No 600/2014 on markets in financial instruments <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32014L0065> and <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32014R0600>

[4] Packaged Retail and Insurance-based Investment Products (PRIIPs) Key Information Document (KID)

[5] [https://ec.europa.eu/info/business-economy-euro/growth-and-investment/capital-market-s-union/capital-markets-union-action-plan/fostering-retail-investment\\_en](https://ec.europa.eu/info/business-economy-euro/growth-and-investment/capital-market-s-union/capital-markets-union-action-plan/fostering-retail-investment_en)

[6] [https://ec.europa.eu/info/law/pan-european-personal-pension-product-pepp-regulation-2019-1238\\_en](https://ec.europa.eu/info/law/pan-european-personal-pension-product-pepp-regulation-2019-1238_en)

[7] Directive (EU) 2019/1160 with regard to cross-border distribution of collective investment undertakings, available from <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32019L1160>

[8] Regulation (EU) 2019/1156 on facilitating cross-border distribution of collective investment undertakings, available from <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32019R1156>

[9] For instance, in 2018 the Commission published a study that was undertaken for it by Deloitte Luxembourg on the distribution systems of retail investment products, available from [https://ec.europa.eu/info/publications/180425-retail-investment-products-distribution-systems\\_en](https://ec.europa.eu/info/publications/180425-retail-investment-products-distribution-systems_en)

[10] For instance, in 2017 the Commission issued a tender for a study on options for consolidation of mandatory disclosure requirements of retail investment products and related services, available from <https://etendering.ted.europa.eu/cft/cft-display.html?cftId=2835>

[11] For instance in 2017, the Commission issued a tender for a study on options for development of online tools and services supporting retail investors in investment decisions, available from <https://etendering.ted.europa.eu/cft/cft-display.html?cftId=3823>

[12] For instance in 2017, the Commission issued a request to the European Supervisory Authorities to report on the cost and past performance of investment products, available from [https://ec.europa.eu/info/sites/info/files/171013-request-to-esas-to-report\\_en.pdf](https://ec.europa.eu/info/sites/info/files/171013-request-to-esas-to-report_en.pdf)

[13] The impact of charges on mutual fund returns, ESMA Report on Trends, Risk and Vulnerabilities, No. 2, 2017, available from [https://www.esma.europa.eu/sites/default/files/library/esma50-165-422\\_trv\\_-\\_vulnerabilities\\_-\\_investor\\_protection\\_corrected.pdf](https://www.esma.europa.eu/sites/default/files/library/esma50-165-422_trv_-_vulnerabilities_-_investor_protection_corrected.pdf)

[14] ESMA Annual Statistical Report, Performance and Costs of Retail Investment Products in the EU 2019, available from [https://www.esma.europa.eu/sites/default/files/library/esma50-165-731-asr-performance\\_and\\_costs\\_of\\_retail\\_investments\\_products\\_in\\_the\\_eu.pdf](https://www.esma.europa.eu/sites/default/files/library/esma50-165-731-asr-performance_and_costs_of_retail_investments_products_in_the_eu.pdf)

[15] Net Performance of active and passive equity UCITS, ESMA Report on Trends, Risk and Vulnerabilities, No. 2, 2019, available from [https://www.esma.europa.eu/sites/default/files/library/esma\\_50-165-883\\_report\\_on\\_trends\\_risks\\_and\\_vulnerabilities\\_no.2\\_2019.pdf#page=59](https://www.esma.europa.eu/sites/default/files/library/esma_50-165-883_report_on_trends_risks_and_vulnerabilities_no.2_2019.pdf#page=59)

[16] Call for evidence on the impact of the inducements and costs and charges disclosure requirements under MiFID II, available from <https://www.esma.europa.eu/press-news/consultations/call-evidence-impact-inducements-and-costs-and-charges-disclosure>

[17] European Commission Public Consultation on the review of the MIFID II/R regulatory framework, available from [https://ec.europa.eu/info/sites/info/files/business\\_economy\\_euro/banking\\_and\\_finance/docu](https://ec.europa.eu/info/sites/info/files/business_economy_euro/banking_and_finance/docu)

[ments/2020-mifid-2-mifir-review-consultation-document\\_en.pdf](#)

[18] [https://ec.europa.eu/info/business-economy-euro/banking-and-finance/digital-finance\\_en](https://ec.europa.eu/info/business-economy-euro/banking-and-finance/digital-finance_en)

[19] Joint Committee consultation concerning amendments to the PRIIPs KID, available from <https://www.esma.europa.eu/press-news/consultations/joint-consultation-concerning-amendments-priips-kid>

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