**Milan, 28 August 2023**

**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 (*Retail Investment Strategy – "RIS")***

**Preamble:**

In answering the call for the submission of comments and observations on the Proposal for the RIS Directive, AIPB would firstly like to thank the Commission for this opportunity and wishes to express its general appreciation of the Commission's efforts to increase the participation of retail investors in the financial markets.

Nevertheless, we would like to bring forward in this memo several observations on the measures that are believed to be the most critical and that have the greatest impact on the Italian financial industry.

In this regard, it is paramount to firstly point out that the inevitable increase in costs due to the need of complying with an increasingly pervasive framework and new rules of conduct for the protection of retail investors shall inevitably lead to an increase in the costs of the provision of services. It is also clear that the revenues for the intermediaries can be obtained either directly through the charge of fees and commissions or indirectly through inducements.

Once the possibility of a total ban on inducements has been avoided, the following circumstances seem clear:

- inducements should not have a negative connotation as they represent a legitimate revenue system for intermediaries;
- imposing more and more stringent requirements for the collection of inducements could irretrievably reduce revenues;
- it might make the provision of some services through inducement schemes unsustainable, in particular distribution and investment advice;
- the absence of sustainability could make it impossible to face new costs and investments needed to create rules of conduct that would protect to retail investors.

Secondly, it is important to point out that the centricity of the cost factor that is present throughout the Proposal for the Directive threatens to outweigh a factor of equal importance for the attainment of the clients' best interest, *i.e.* the level of service provided according to the clients' characteristics.

In order to avoid a normative loop, it is essential to recognize the necessity for a balanced level of service, to guarantee and reinforce transparency towards the clients so that they have full awareness that inducements represent a cost to be borne for the service received and a legitimate revenue system for intermediaries.

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**1) INDUCEMENTS**

The introduction of the principle under which the provision of service itself justifies and legitimizes the payment of inducements is admirable since no intermediary may provide investment services free of charge. It is therefore made clear that the provision of investment services to the client, should it not be covered wholly or partly by a direct fee, justifies the payment made to the intermediary in the form of inducements.

However, in the wording of its final proposal, the Commission puts forward a solution that is considered potentially too drastic and disruptive, albeit carrying a forward-thinking approach.

The new proposal focuses on the cost-performance ratio based on the assumption that the products are too expensive and that it is therefore in the interest of the client that costs and charges should ultimately be reduced. Such an approach does not seem to be satisfactory, given that it does not sufficiently take into account or give the appropriate weight to the level and quality of the service received by the client. The challenge should consist in making the value of the service come to light while safeguarding what is important to the client and what contributes to consolidating the client's confidence in financial markets, investments, and professional advice. The management of the cost of the product and service constitutes a relevant element, but it most certainly does not constitute the only factor to be considered in formulating an investment proposal. The clients expect that professional advice is the result of evaluations arising from the analyses of different factors, *e.g.* the role of a single product in their overall portfolio and the market context, the minimum holding period, the level of risk, the policy area concerned, the selected strategy, past performances, earning prospects, ESG profile, and others.

In particular, the Proposal for Directive on the one side maintains the existing bans on inducements as regards advice and portfolio management, on the other side it introduces a ban on the payment/receipt of inducements in relation to the reception and transmission of orders and execution of orders on behalf of clients. Similarly, with regard to the Insurance Distribution Directive, a ban on inducements paid from manufacturers to distributors in relation to non-advised sales of IBIPs is introduced (see Article 1, par. 12 and 13 of the Proposal for Directive amending Article 24 and introducing a new Article 24a of the MiFID II and Art. 2 par. 20 and 21 amending Article 29 and introducing Article 29a of the IDD). The aim of these amendments is to eliminate potential conflicts of interest between distributors and retail investors when no advice is provided.



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In reality, the review of the inducements framework as presented appears equally disruptive and difficult to implement by market operators, manufacturers and distributors alike.

The new proposal focuses on the cost-performance ratio based on the assumption that the products are too expensive and that it is therefore in the interest of the client that costs and charges should ultimately be reduced. Such approach does not seem to be satisfactory, given that it does not sufficiently take into account or give the appropriate weight to the level of service received by the client. It is, therefore, clear that the product cost cannot be considered as a whole, given that one part of it consists indeed of inducements, which represent the cost of the service.

This statement is even more relevant in the private banking sector where, due to the specific target market (high-net worth individuals), the average portfolio size, the particular demands and needs of this category of clients and the level of service in terms of investment advice to the final client is crucial as to correctly evaluate the costs of every single product.

As mentioned above, the first change, as regards Italy, concerns the introduction of a ban on inducements applied to non-advised sales. In particular, the Proposal for Directive introduces, within the scope of MiFID II, a partial ban on inducements for mere execution services such as non-advised execution and reception and transmission of orders and, under IDD, "non-recommended sales".

In this regard, it is to be noted that the ban, in its current wording, would only seem to allow transactions that are the result of a specific advise by the intermediaries and not also those carried out by clients on, albeit within the scope of an on-going advice relationship concerning the entirety of the client's portfolio.

The second novelty consists in extending the ban on inducements to the provision of portfolio management services. In particular, the wording of MiFID II has been amended in the way that the intermediaries in charge of "management activities" not only are forbidden from receiving inducements, but they cannot even pay them to third parties. It is considered that such change could have negative repercussions on the service scheme that is often being provided in Italy, as it would seem to prevent managers from returning the inducements to the clients, as well as paying inducements to distributors for the marketing of portfolio management service provided within the scope of investment advice.

Another news regards the introduction of an important exemption to the ban on receiving inducements when providing execution services outside the scope of investment advice. This is the case when execution services are aimed at carrying out placement activities vis-à-vis an issuer so as not to compromise the issuers' ability to collect savings and thus to finance themselves through placing financial instruments.
In this regard, it is firstly noted that this particular case allows the issuers to receive inducements, albeit without any indication of the rules governing this possibility.



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Conversely, the exemption cannot apply and the ban resurfaces in the event that the subject of the execution services vis-à-vis the retail client, along with the provision of placement service vis-à-vis the issuer, are PRIPs, *i.e*. "Packaged Retail Investment Products", as set out in Art. 4, par. 1, of Reg. 1286/2014 and subsequent amendments. The following is noted in this respect.
Although the logic of such limitation is to ensure that the exemption applies only in relation to financial instruments deemed essential to the ability of issuers to raise funds, it appears inconsistent with the domestic funding model mostly centred on the issuing/placement of bonds, more specifically not only "plain vanilla" or fixed-rate bonds, which are certainly excluded from the definition of PRIPs, but also structured products (*i.e*. bonds with cap/floor options) and derivative financial instruments such as certificates that are, on the other hand, included in the aforementioned definition. To this end, it is also important to point out that such discrepancy is certainly worsened due to the absence of an official list of instruments qualifying as PRIPs under Reg. PRIIPs (as is known, the qualification of certain financial instruments, such as, for instance, bonds with "redemptions at make-whole" clauses is yet to be issued), and therefore by the existence of different qualification possibilities given to certain products by different manufacturers.

As regards the "review clause" three years after the entry into force of the proposed amendments, and thus the possibility of a total ban on the receipt of inducements, the following is noted. AIPB believes that a general ban on inducements would bring more harm than hypothetical good. The fairness of the inducements is ensured by strong transparency requirements and the need to justify any type of inducement received or paid by an intermediary. These requirements allow inducements to be a useful instrument through which intermediaries can provide investment advice without direct costs to be borne by the clients. Thanks to the regulation on inducements currently in force, all clients are granted access to high value-added investment advice. Conversely, a general EU-wide full ban on receiving inducements would mean significant cost increase for investors, thus discouraging them from receiving investment advice and, consequently, leading them to use basic services that entail increased risks, as demonstrated already in the United Kingdom and the Netherlands, and further confirmed by the FCA in its Evaluation of the impact of the Retail Distribution Review, 10 years after the entry into force of the ban on inducements, which has fundamentally highlighted the following findings:

- advice gap (only 17% of all clients had received a “regulated financial advice”;
- many investors are not able or willing to pay for an advice fee
- many investors are “over-confident” and do not find advice useful
- investment gap: many investors hold their money in cash in their bank accounts (about 55% with at least 75% in cash) rather than investing it, leading them to sub-optimal financial decisions
- the total cost of service is approximately 1.9% (which is actually equivalent to the cost of the products in the “commission-based” model”

Moreover, we do not consider fair that the introduction of a total inducement ban is subordinate to the spread of independent advice, whose development processes are not



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necessarily linked to the regulation of inducements and whose development as a fee-only model of service must remain a free choice between the financial intermediaries and the clients and, as provided for in MiFID II, as well as a complimentary or alternative model of service to the commission-based, independent model, thus avoiding personal favours or exclusive preferences. Finally, a three-year review period is not deemed consistent with the costs of implementing the new regulation to be borne by the intermediaries.

**2) BEST INTEREST TEST**

Articles 1, par. 12 and 2, par. 21 and 22 of the Proposal for Directive introduce respectively a new paragraph 1a to Article 24 of MiFID II and a new Article 29b of IDD. The new articles envisage regulatory changes, both in MiFID II and IDD, in case financial advice is provided. MiFID's "quality enhancement" and IDD's "no detriment" tests have turned into a "best interest test" based on three parameters.

The amendments to the two directives and their critical aspects are analyzed below.

**<u>Par. 1a of Article 24 MIFID II</u>**

Letter a) of Article 24(1a) MiFID II provides that advice shall be based on an "appropriate range" of financial instruments. In this regard, it is noted that this requirement is more burdensome than the one provided for in Article 24(7) on the provision of investment advice on an independent basis in which, under letter a), reference is made to a "sufficient range" of financial instruments available on the market.

The adjective "appropriate" appears troublesome for the sake of interpretation and application. In any case, it should be taken into consideration that the subsequent paragraph 4(ii) of the same Article 24, in setting out disclosure requirements when providing investment advice, provides that the client must be informed on "whether the advice is based on a broad or on a more restricted analysis of different types of financial instruments and, in particular, whether the range is limited to financial instruments issued or provided by entities having close links with the investment firm or any other legal or economic relationships, such as contractual relationships, so close as to pose a risk of impairing the independent basis of the advice provided".
It seems that the wording of the new MiFID II admits that the intermediary could provide investment advice on a limited range of financial instruments, issued or provided by entities having closed links with the very same intermediary such as, by way of example, contractual relationships or if they belong to the same corporate group. It is paramount to receive confirmation on the matter, also considering that it is in line with the recommendations in the "Questions and Answers on the Retail Investment Package", but only limited to trading through tied agents, thus not including the limitations of the Q&A wording.

Letter b) provides that "the most cost-efficient financial instruments among financial instruments identified as suitable to the client pursuant to Article 25(2) and offering similar features" must be recommended.



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Once again, the requirement needed in order to carry out the "best interest" test appears to be too burdensome and focused exclusively on cost as a decisive factor when choosing the products. Such an approach would, therefore, lead to an unequal comparison between products that have significantly different cost structures (first and foremost, the presence or absence of distribution costs included in the total cost of the product in a commission-based model) precisely due to the different distribution and advisory strategies for which the products themselves were created (*e.g*. ETFs listed on the exchange that do not envisage distribution costs because they are primarily intended for a purely executive distribution strategy, in contrast to UCITS which are not listed on the exchange and that envisage, instead, a model of distribution and advice provided by financial intermediaries).

Moreover, this requirement is not envisaged either for the provision of investment advice on an independent basis, which should have higher standards than advice on a non-independent basis when inducements are received. Moreover, the concept of "similar features" is not clear. It should also be brought into focus that similar products with different distribution strategies cannot be compared with one other (a crucial issue already reported with reference to the logic of benchmark creation and the Value for money assessment).
It is also fundamental that the notion of “similar features” be clarified, so as to give value to the risk/performance profile of the products and, consequently, the classes and types of assets related thereto.
Letter c) provides that "among the range of financial instruments identified as suitable to the client pursuant to Article 25(2), 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" must be recommended. In this regard, we believe it is important to point out that the purpose of the suitability assessment is in itself to identify the most suitable product(s) to the needs and characteristics of the client. From this perspective, to recommend a product without additional features together with a product deemed suitable seems contradictory.

**Article 29b IDD**

Letter a) provides that recommendations must be made on the basis of an "appropriate range" of insurance-based investment products and, where applicable, on underlying assets. In this regard, it is noted that this requirement is more burdensome than the one provided for in paragraph 5b, letter a) of the same Article 29b as regards the provision of investment advice on an independent basis where, under letter a), reference is made to a "sufficiently large number" of insurance products available on the market that are sufficiently diversified.
The adjective "appropriate" appears troublesome for the sake of interpretation and application. In any case, the exact proposal that should be considered as regards disclosure requirements when providing investment advice specifies as follows: "whether the advice is based on a broad or on a more restricted analysis of different types of insurance investment products and, where applicable, underlying investment assets, and in particular, whether or not the range is limited to products and assets manufactured or provided by entities having close links with the insurance intermediary



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or insurance undertaking or any other legal or economic relationships, such as contractual relationships, so close as to pose a risk of impairing the independent basis of the advice provided".

It could mean that the wording of the new amendments to IDD would deem acceptable that an intermediary provides advice with a range of products limited to insurance investment products issued or made available by entities having close links with the very same intermediary, such as, for example, contractual relationships, or if they belong to the same corporate group.

Moreover, it is not clear if the "appropriate range" is referred only to underlying investment options, which in our opinion would be acceptable, or to IBIPs as well. Should that be the case, we would not share this view, given that it would entail practical difficulties in having a broad range of IBIPs.

Letter b) provides that the recommendation made must be related to the product with the most cost-efficient insurance investment products and, where applicable, underlying investment assets among insurance-based investment products identified as suitable to the customer pursuant to Article 30(1) and offering similar features.

Once again, the requirement needed in order to carry out the "best interest" test appears to be too burdensome. In this case too, said requirement is not envisaged for the provision of investment advice on an independent basis, which should have higher standards than advice on a non-independent basis where inducements are received.

Letter c) provides that "among the range of insurance-based investment products identified as suitable to the customer pursuant to Article 30(1), one or several insurance-based investment products and, where applicable, underlying investiment asset, a product or products without additional features that are not necessary to the achievement of the customer's objectives and that give rise to extra costs" must be recommended. In this case as well the considerations made in relation to Art. 24a MiFID II apply.

Regarding the amendments described above, it should be noted that, in its current wording, the Proposal for Directive seems to suggest, as regards both MiFID II and IDD, that the intermediary must provide two recommendations: one regarding the financial instrument that is actually recommended, albeit chosen among the most cost-efficient ones, and another regarding a "simple product", leaving the final choice to the client. This process does not seem suitable for the client's best interest, who needs to receive an investment advice service with a precise investment strategy. Should the proposal become definitive, the client would have at their choosing two alternative and uneven options (the cheaper instrument and the simpler instrument).

The consequence of such mechanism would in fact mean redirecting investment advice towards certain products (notably, the cheaper ones) and it would carry the risk of invalidating the role, professionalism and discretion of the advisor. Moreover, it would result in giving priority to the cheaper product rather than to others that could potentially offer greater value to the clients. Such a result would be in conflict with the client's best interest. Indeed, cost is not the only relevant factor when selecting the most suitable product for the client; other factors such as risk, complexity, performance, market, manufacturers and sustainability factors, all determine the characteristics of the product and their conformity with those of the client.



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For this reason, focusing advice on costs, and thus on the least expensive product, risks not only misrepresenting the service offered by the advisor, but also offering a too simplistic and counterproductive approach towards the clients.
This is all the more true in the private banking sector which manages portfolios of considerable sizes and sophisticated investment needs that can often be met with complex financial instruments instead of "plain vanilla" options.

Under IDD, the best interest test - based on three parameters which fully correspond to those provided in MiFID II - seems even more burdensome. Indeed, it is noted that the rules according to which advice on suitable insurance products must be made not only by recommending the least expensive product from the range of suitable financial products, but also on the simplest one, *i.e*. a product without additional features which are not necessary for the achievement of the client's investment objectives and that give rise to additional costs, already criticized in the proposal to amend MiFID II, does not seem to be applicable when policy distribution is concerned, in which the concept of "simplicity" does not seem applicable to IBIPs, which are multivalent products with two components: an insurance-based one and a financial one.

As regards this final issue, we find it important in general to stress out that the proposal seems to be based on the assumption that "additional features" are in fact considered mere "extra costs". Conversely, the sophisticated elements that the client needs and that are in their primary best interest can be found in financial instruments, insurance products, as well as in the advisory service provided. It is obvious that they represent costs, albeit not *extra costs*, but rather charges that are perfectly compatible with the features of the product and the service rendered, which has, *inter alia*, already been acknowledged as suitable to client's characteristics, as set out in the MiFID/IDD questionnaire.

It should also be noted that the inclusion of product cost evaluation in the provision of investment advice has already been implemented by intermediaries after the entry into force of MiFID II as part of the obligation to adopt procedures that would be suitable to compare equivalent products that may match the customer's profile while taking into account their cost and complexity.
This additional process, which requires the intermediary to make a further selection of the least expensive and simplest product among those already deemed "suitable" for the client, does not appear consistent with the objective of achieving the client's best interest.

**3) BENCHMARK**

The Proposal for Directive consolidates product governance rules and regulates pricing policy processes so as to limit the offer of products that bear poor or no "Value for money" for retail investors (see Article 1, par. 9 of the Proposal for Directive introducing a new Article 16a MiFID II and Article 2, par. 16 amending Article 25 IDD.

With regard to PRIIPs and IBIPs, the pricing process is strengthened with the envisaged requirement that manufacturers/insurance undertakings and distributors respectively



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do not approve products that deviate from the relevant benchmark published by ESMA/EIOPA that is generated and integrated with data on costs provided by manufacturers, insurance undertakings and distributors, unless they are able to establish that the costs and charges are nevertheless justified and proportionate (see Articles 1, par. 9 and 2, par. 19 of the Proposal for Directive introducing Article 16a, par. 1 MiFID II and amending Article 25, par. 1 IDD).

The European legislators find that the introduction of benchmarks, as a tool of comparison, should make the pricing process at both manufacturing (by creating a "manufacturer benchmarks") and distribution levels ("distributor benchmarks") more objective. Indeed, a deviation from the relevant benchmark should introduce the presumption that costs and charges are too high, unless it can be demonstrated otherwise.

The comparison with the benchmark should be undertaken during the pricing process and on the basis of the relevant available benchmark. Should the benchmark that would be considered relevant for the product not be available, it does not relieve the manufacturer or distributor of the obligation to demonstrate that costs and charges are justified and proportionate.

A thorough analysis of the Commission's proposal on the introduction of a benchmark assessing if Value for Money is indeed offered, *i.e.*, if the costs and performance of a financial instrument qualifying as a PRIIP or an insurance-based investment product are in balance, shows that it substantially modifies not only the rules of conduct of manufacturers and distributors, but also, generally speaking, market rules which are based on the one hand on transparency, and the other on freedom of competition and economic freedom.

A very invasive supervisory instrument is intended to be activated through the benchmark mechanism. On this point, it should be noted that this choice is unprecedented in the EU and in other legal systems. Benchmarking raises significant concerns also from a systemic perspective. It appears to be the result of a dirigiste approach aimed at imposing reference standards of a coercive nature that would diminish freedom of competition and competitiveness, albeit without ensuring the full achievement of an elevated quality standard of financial products, insurance products, and levels of service provided to the clients.

In fact, according to the provisions of the Proposal for Directive, a choice that deviates from the relevant benchmark shall only be made if thoroughly justified. Any deviation from the relevant benchmark shall be considered as a presumption that costs and charges are too high and that Value for Money is not delivered.

On the other hand, it is noted that, with regard to the costs inherent to ascertaining "manufacturer benchmarks" and "distributor benchmarks" respectfully, none of the cases gave appropriate relevance to the level of service provided to the client.
In other words, the reference benchmarks tend to concentrate product evaluations plainly and exclusively based on the cost of products and services in a sterile manner



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without considering other factors such as the level and quality of the service provided and/or the distributive strategy adopted which are able, on the one hand to meet additional needs of the clients, and the other hand, to justify the costs that raise the benchmark and that are, by definition, included in the total cost of the products in the commission-based model.

Also under the scope of IDD, which provides for all obligations to be covered by insurance undertakings, it is not entirely clear if and how relevance is given to the distribution strategy. If it is indeed true that insurance undertakings are usually in full control of the costs charged to the client, including distribution costs, when dealing with insurance-based investment products, and that distributors, as part of their pricing process, must only verify if there are costs at a distribution level that manufacturers have not taken into consideration as part of their pricing process (and must inform the company if such event has occurred), it is not entirely clear in what way relevance is given to the distribution strategy in the pricing process of the insurance undertaking.
This is clearly reflected in Article 16a(4), letter b) MiFID II and Article 25(5), letter c) IDD providing only for a proportionality assessment with reference to the target market's needs and objectives.

Such a system might privilege less expensive products, albeit without guaranteeing the best results for the client.

It is, in fact, clear that the assessment of distribution costs, including inducements, should be made based on the type of service provided for the activities of placement and advice provided to investors. A correct cost assessment comprehensive of inducements, which are by now considered included in the service cost, should be carried out also considering the production costs of the service itself, which, of course, vary depending on the quality and sophistication level of the activities carried out vis-à-vis the client, understood as effective target market, as to meet the client's demands and needs.

This observation seems even more fitting when referring to the world of private banking. Private banking clients, due to the average size of their portfolios and the specific investment advice they require for considerable and diversified assets, should be classified as an autonomous target market. In any case, the level of service provided in private banking is on average high, and it can only be sustained with high production costs, which in the commission-based model are covered by the distribution costs included in the total cost of the product, that would indemnify, precisely through the inducements mechanism, all professional figures and technical instruments involved in order to ensure specific qualitative standards.

Finally, it is important to point out that the creation of sufficiently detailed benchmarks that would be suitable to identify also qualitative characteristics of the many financial instruments present on the market and that would also be applicable to insurance undertakings, manufacturers and distributors, is actually very difficult to achieve and it carries the risk of an incorrect and/or misleading comparison. We are referring, in particular, to financial instruments with innovative characteristics, for which products



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with equivalent features are not yet available on the market, and to IBIPs which are characterized by even narrower margins of comparability. It is finally noted that such complexity carries objective difficulties in maintaining and updating such benchmarks in line with the process of financial innovation.

**4) SUITABILITY AND APPROPRIATENESS**

With reference to these subject matters, the main proposals for amendments concern first and foremost the suitability assessment (see Article 1, par. 14 and Article 2, par. 22 of the Proposal for Directive amending Article 25 MiFID II and Article 30 IDD). This assessment was integrated with the need to evaluate, when obtaining necessary information regarding the client's financial situation, also the composition of any existing portfolios. This was added to the elements that intermediaries must obtain in order to perform the suitability assessment of a product or service. Such assessment shall, therefore, concern not only risk tolerance and the ability to bear losses, but also the need for portfolio diversification.
In particular, among the information that shall be obtained from the client as regards their financial situation, a new information is introduced on "the composition of any existing portfolios".
The use of the plural "portfolios" and the adjective "any" implies that the information must concern not only the composition of portfolios held with the intermediary that performs the suitability assessment but also those held with third-party intermediaries.
In this regard, the information concerning portfolios held with third-party intermediaries, albeit useful from a general point of view, entails the following:

- it may be very difficult to obtain;
- it may not be accurate;
- it is problematic in terms of mandatory data update;
- it may not be efficient considering the possible discrepancies with: (i) client profiling performed by other intermediaries; (ii) investment objectives set out by the client with different intermediaries.

For these reasons, we believe that the Proposal for Directive should be amended to make this requirement optional and discretionary; conversely, the data that must be obtained should only concern the portfolio held with the intermediary and not those with third-party intermediaries.

The client's ability to bear full or partial losses and their risk tolerance is added to the knowledge and experience assessment when conducting the appropriateness assessment test when services other than investment advice and portfolio management are provided to retail clients.

We do not agree with the extension of the filters and scope of the assessment. Even considering the exemptions that are distinctive trait of appropriateness under which the retail client, once they receive a warning from the intermediary, can still request - under his own responsibility - to proceed with the execution of the order, it is considered that this would place too many filters on execution services which, given that they are



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provided separately from investment advice, are characterised by their celerity and swiftness.

The Proposal in question would make appropriateness resemble suitability, the intermediaries' workload in terms of client profiling would grow, substantial investments would be required to perform such a comprehensive assessment and the responsibility of the intermediary would significantly increase. All this would be found in the context of business operations where intermediaries merely execute orders coming exclusively from the will of the clients and are not the result of recommendations from the intermediary.
Moreover, in this manner, the client's ability to bear loss and their risk tolerance would be assessed in a less efficient way than on a single financial instrument and not considering the client's portfolio in its entirety.

**5) INDEPENDENT ADVICE**

With reference to independent advice, the Proposal introduces both in MiFID II and IDD (see Articles 25 MiFID II and 30 IDD) the possibility of providing advice limited to a sufficient range of well-diversified, non-complex and cost-efficient financial instruments, and, in such case, intermediaries may perform a suitability assessment based on more limited information about the client. An assessment of the knowledge and experience of clients, together with their portfolio diversification, will not be required.
In other words, the Proposal provides an important exception for the suitability assessment when providing independent advice: to allow the provision of recommendations without taking into account the knowledge and experience of the clients and of their portfolio diversification, provided that it is made only for well-diversified, non-complex and cost-efficient products.
The reason for this provision is the reduction of filters in case the universe of recommended investments is particularly eligible (well-diversified, non-complex, and cost-efficient).
We believe that such proposal introduces unequal treatment between investment advice (independent and non-independent), individual portfolio management and independent advice on well-diversified, non-complex, and cost-efficient products, which does not seem justifiable.

Simplifying the assessment of the client's knowledge and experience on non-complex, well-diversified, and cost-efficient products is proposed only in relation to independent advice, thus favouring it and creating "disequilibrium" in respect of non-independent advice (providing the same types of products) and portfolio management.
It is therefore suggested to extend the content of the rule, and therefore the exception, to any kind of advice and not only to the independent one.

**6) DISCLOSURE AND TRANSPARENCY**

**Transparency concerning particularly risky products:**
The main novelty of the Proposal for Directive is the introduction of the concept of "particularly risky products", in relation to which financial and insurance intermediaries



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must alert the client *ex ante* in a standardized manner about specific risks. ESMA and EIOPA were given the mandate to define the concept of "particularly risky products" and the warning format on such risks (see Article 1, par. 12 and Article 2 par. 20 of the Proposal for Directive introducing respectively a new paragraph 5c in Article 24 MiFID II and a new paragraph 5 in Article 29 IDD).
In this regard, we deem that the definition of a detailed and objective scope of the products defined as "risky" will be remarkably important, especially because of the considerable and burdensome requirements that the intermediaries must fulfill to comply with these disclosure requirements. Moreover, a close link to the PRIIP framework is relevant for the sake of consistency with definitions and to ensure that the relevant information is included in the KID. Concerning this, a thorough analysis should be carried out on whether such information is, in fact, the very same that the client has already received upon delivery of the KID. Indeed, we hope that in the case of products that fall under the definition of PRIIPs, the intermediary's disclosure requirements can be deemed fulfilled once the client has received the KID. The proposal of the new PRIIPs Regulation contained in the RIS should, therefore, be amended so that it does not include any reference to this.

**Transparency on costs and inducements:**
Information on costs was subject to amendments mainly in relation to the representation of the sums paid or received by the intermediary as inducements: the overall impact of these sums on the return of the investment must be indicated and a detailed and standardised explanation of their purpose must be given (see Article 1, par. 13 of the Proposal for Directive introducing a new Article 24b MiFID II).

In this regard, we generally appreciate the part of the Proposal leading towards the standardisation of disclosure designs and their content. This is, in fact, deemed essential to have a clear definition of the reporting obligations and especially to ensure that it is evenly and uniformly applied in all Member states and their national regimes, hoping that it would resolve the regulatory discrepancies that are still in force.

With reference to the disclosure of inducements, the following should be pointed out. Recital 7 of the Proposal for Directive provides that the "existing requirements on disclosure of inducements should be further strengthened to ensure that retail investors understand the general concept of inducements, the potential for conflict of interest, as well as the impact of inducements on the overall costs and expected returns." Simultaneously, the Proposal of the new Article 24b MiFID II introduced by Article 1, par. 12 of the Proposal for Directive requests, with regard to third-party payments, that clients be given "explanations related to those costs and their impact on the expected returns".
In this regard, we would like to point out that clients could find the disclosure on the impact of inducements on expected returns (included in the information on costs) contradictory and misleading, given that the distributors use the inducements paid by clients to provide them with a range of high value-added services (including investment advice) thus acting in their best interest. In this respect, it is not deemed fair, not even from a financial viewpoint, to carry out such a calculation and provide the client with



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such a disclosure report, considering that the relevant sum is compensated by additional high value-added services of corresponding value provided to the client.

The *ex post* disclosure in the form of an annual statement reaffirms a differentiated regime based on whether the intermediary provides or not a service of safekeeping and administration of financial instruments on behalf of the client. This entails evident duplications with respect to the reporting that the intermediary already provides to the client on an annual basis, precisely with reference to the service of safekeeping and administration of assets, and is binding with respect to the operational choices that intermediaries are now able to make so as to comply with the two disclosure requirements (cost and custody reporting).

Finally, it should be pointed out that the proposals for amending the rules on costs, charges, and inducements that do not differentiate the types of clients risk thwarting the progress made by Directive 2021/338 (the so-called "Quick Fix Directive"), which instead provides for professional clients to be exempt from *ex ante* and periodic disclosure requirements.

With particular reference to IDD, the proposal introduces a standardised insurance product information document for life insurance products other than IBIPs based on the insurance product information document for non-life insurance products already provided in IDD. In this regard too, we welcome the standardisation of disclosure, also in line with what IVASS has already done at the domestic level.

With reference to *ex post* disclosure requirements of insurance undertakings by means of an annual statement, we believe it to be quite burdensome and difficult to implement. In particular, we refer to the requirements set out in Article 29, par. 3, letter f) IDD of providing "adjusted individual projections of the expected outcome at the end of the contractual or recommended holding period" that must be based on the current value of the investment and its performances up until that moment and linked, in any case, to the performance scenarios already stated in the KID. Given that insurance undertakings are already required to draw up an annual review of the KID, such anadditional requirement - that must be done, moreover, on an individual level for every single contract - seems excessive and does not seem to bring effective added value to the client.

On this matter, it should be pointed out that the new rules are very incisive, they require procedural integration and various interventions of organisational nature, they also establish greater responsibilities of the intermediaries and higher legal risk with respect to clients, in particular retail ones.

**7) CLIENT CATEGORISATION**

AIPB welcomes the content of the Proposal concerning the category of the professional client on request which simplifies the upgrading process.

The new rules aim to introduce conditions that could justify the retail clients' requests to be treated as professional ones. The envisaged amendments are relevant insofar as



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they provide the exemption from all the new conduct rules on the protection of the retail clients' interests which the proposal itself intends to introduce.

Under the scope of IDD, we welcome the fact that the Proposal, for the purpose of exemption from disclosure requirements, defines professional clients according to the provisions set out in MiFID II and, more specifically, in Annex II, which was amended by changing the categorisation conditions and facilitating the upgrading process for the category of professional client on request.
In this regard, we deem that the intervention should be more comprehensive and provide for all exemptions listed in the Proposal to amend MiFID II in both the section on policies and especially the one on IBIP distribution.
The reasons for this are twofold: firstly, to ensure the highest uniformity between the provisions of MiFID II and IDD, and, secondly, for the sake of coherence with respect to the fundamental purpose of the RIS, which is precisely the protection of the retail clients' interests, allowing instead extensive exemptions when the recipients of the services are professional clients.

On this matter, it is important to point out that AIPB has been suggesting for some time the creation of a new category of clients that would be added to the classification already provided for in MiFID II. This category would be represented by private banking clients that, due to their specific characteristics as further detailed hereafter, would differ considerably from that of the retail client and the professional client on request.

The creation of this new client category would be useful in many respects.
Firstly, the acknowledgment and definition of a specific positive target market representing a private banking client and their need for diversification and attainment of sophisticated investment objectives could grant them access to illiquid or complex products by virtue of the level of service received and the minimum portfolio size, which would filter out eligible clients and serve as a guarantee.
In particular, the client would be considered as a private banking client:

- by virtue of the quality of service received and not on the account of their knowledge and experience;
- in consideration of a minimum portfolio size of € 500,000 € and not in relation to the minimum investment in a single financial instrument;

Secondly, the creation and recognition of an autonomous target market would simplify the process of product manufacturing. It would likewise facilitate the distributors in allocating a suitable product in a positive target market.
The private banking client would differ greatly from the professional client on request given that:

- they do not dispose of professional elements, but instead they buy them from their service provider (manager/advisor)
- they do not become one after an upgrading process upon their own initiative (bottom up) but with a qualification process carried out upon the intermediary's initiative (top down)
- the non-application of the rules of conduct is not envisaged
- their profile favours the application of the rules of conduct: Product Oversight Governance, positive target market identification, suitability



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Moreover, this category would be encompassed in other regulatory frameworks on products (AIFMD, AIF, ELTIF):

- by creating a positive target market that would allow the underwriting of products that were up to that moment available only to professional clients (reserved funds)
- it allows not to alter the nature of the reserved products by preserving their characteristics and functions
- it expands the target audience and increases the number potential beneficiaries in terms of investable assets in those products
- it contributes to the transfer of resources to the real economy.

AIPB proposes to create the private banking client category, taking into account the following criteria:

1. a minimum total portfolio held with the intermediary or with third parties of € 500,000.00;
2. provision of portfolio management or investment advice services;
3. level of service as an enabling factor to have the opportunity to invest in financial products that are illiquid, complex, or having such structure to be able to satisfy the advanced needs of a private banking client;
4. paid investment advice (only fees or fees + inducements);
5. sophisticated investment objectives and the possibility of granting protection and generational handover of the client's personal, family, professional or corporate assets;
6. qualified assistance through the support of a private banker whose professionalism and competence are proportional and correlated to the level of service provided.

The level of service would be based on:

- the provision of investment advice or portfolio management services;
- accurate profiling of the client and the client's demands and needs with continuous updating;
- periodic and multivariate assessment of suitability and portfolio overview;
- under the suitability assessment, compensation of the client's poor knowledge and experience by the professional skills and expertise of the advisor or the portfolio manager.

Indeed, the only concession concerning the application of the rules of conduct would fall under the scope of the suitability assessment: the level of service provided to the client would give them the knowledge and experience needed to find suitable certain products that would otherwise be out of their reach, together with the minimum portfolio size that affects the financial assessment and the actual possibility of effectively diversifying investments.



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