

# Retail investor protection rules

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The Committee on Economic and Monetary Affairs adopted the report by Stéphanie YON-COURTIN (Renew, FR) on the 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.

The committee responsible recommended that the European Parliament's position adopted at first reading under the ordinary legislative procedure should amend the proposal as follows:

## *Better frame the current advice environment*

Members underlined the need to introduce rules that better frame the current advice environment by ensuring that financial intermediaries provide **more transparent, understandable and tailored advice** to clients and consumers. This should ensure that clients and consumers are being offered products suitable to their needs and that they better understand the advice they receive.

## *Best interest of customers*

Member States should require that, when providing investment services or, where appropriate, ancillary services to consumers, an insurance undertaking or an insurance intermediary acts **honestly, fairly and professionally** in accordance with the best interests of its consumers.

Financial advisors should base their advice on an appropriate range of financial products suited to the client's or customer's needs. The range of financial products offered should take into account the business model of the firm and the investment objectives of the client or customer. The best interest of clients and customers is broader than costs. Therefore, financial advisors should, after having identified instruments **suited to their clients' or customers' needs**, recommend the most efficient product among products offering similar features to their clients and customers, taking into consideration its performance, level of risk, qualitative elements, costs and charges reported.

If advisors choose to recommend an equivalent product with higher costs to the client or customer, they should provide an objective justification for such recommendation and keep the record of that justification. Financial advisors **should not place the interest of their firm ahead of the interest of their clients and customers**. In the case of insurance-based investment products, advisors should also ensure that the insurance cover included in the product is consistent with the client's or customer's insurance demands and needs. In case that none of the products is in the best interest of the client or customer, financial advisors should refrain from giving advice or making a recommendation.

## *Assessment of the effectiveness of measures*

The new rules strengthen the existing requirements on disclosure of inducements 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.

In order to assess the effectiveness of these measures, **five years** after the adoption of the regulatory technical standards and after having consulted the European Securities and Markets Authority ('ESMA') and European Insurance and Occupational Pensions Authority ('EIOPA'), the Commission should prepare a report assessing strengthened product governance requirements, the potential conflict of interests

associated with inducements, the evolution of costs, the overall level of retail investment in capital markets, consumer protection, the relevance of distribution rules and the implementation of financial literacy measures. If the Commission's assessment does not show that the new provisions have led to positive change for consumers, the Commission may propose amendments to this Directive, if necessary.

In addition, the Commission should be mandated to prepare a report five years after the entry into force of this Directive, after consulting ESMA and national competent authorities, to assess whether providers of financial and non-financial market data should be included in the scope of this Directive.

### *Common European benchmarks*

Both ESMA and EIOPA should, after consulting the national competent authorities and on the basis of industry testing, develop common European benchmarks for products manufactured and distributed in more than one Member State. The benchmarks should be used solely by national competent authorities as a **supervisory tool** to perform the assessment of the qualitative and quantitative features of the products and to identify potential outliers on the market. As a supervisory tool, those benchmarks should not be disclosed publicly and should take into account the qualitative and quantitative features of financial instruments and insurance-based investment products.

If the product deviates from a relevant benchmark, national competent authorities should have the power to take the necessary corrective actions, including requiring the firm to provide a justification for such deviation, requiring the firm to correct its approach to comply with the product governance requirements and, as a last resort measure, requiring that the product be removed from the market, if necessary.

### *Finfluencers*

Members introduced the term 'finfluencer' which means a natural or legal person carrying out a commercial influence activity by mobilising their popularity to communicate to the public, by electronic means and for any sort of remuneration, content aimed at promoting, directly or indirectly, financial products or contracts.

Investment firms, insurance undertakings and insurance intermediaries which make use of finfluencers to carry out their marketing communication should establish a **written agreement** with the finfluencers laying out the content of their contractual relationship, namely the scope and nature of the activities carried out. They should also provide the competent authority upon request with the identity and contact details of the finfluencers whose services they rely on, and should regularly operate controls over the activities carried out by the finfluencers to ensure the finfluencers' compliance with this Directive.

### *Financial culture*

Trust in Union financial markets is intrinsically linked to the level of participation in those markets by retail clients. Education and knowledge are tools to empower each citizen to make informed investment decisions. However, the level of financial literacy differs significantly across Member States. According to Members, the proposed Directive should lay the ground for increasing the level of financial education in each Member State. In view of the limited competences conferred upon the Union in that area, it is the responsibility of each Member State to ensure that proper adjustments are made, particularly in their education systems, to comply with this Directive.