Public consultation on the review of the MiFID II/MiFIR regulatory framework

DDV Response dated 18 May 2020

The document is based on the template provided by the European Commission. The DDV responds only to selected questions which are marked in grey in the following.

SECTION 1. GENERAL QUESTIONS ON THE OVERALL FUNCTIONING OF THE REGULATORY FRAMEWORK

The EU established a comprehensive set of rules on investment services and activities with the aim of promoting financial markets that are fair, transparent, efficient and integrated. The first comprehensive set of rules adopted by the EU (MiFID I - Directive 2004/39/EC.) helped to increase the competitiveness of financial markets by creating a single market for investment services and activities. In the wake of the financial crisis, shortcomings were exposed. MiFID II and MiFIR, in application since 3 January 2018, reinforce the rules applicable to securities markets to increase transparency and foster competition. They also strengthen the protection of investors by introducing requirements on the organisation and conduct of actors in these markets.

After two years, the main goal of a MiFID II/MiFIR targeted review is to increase the transparency of European public markets and, linked thereto, their attractiveness for investors. The Commission aims to ensure that European Union's share and bond markets work for the people and businesses alike. All companies, both small and large, need access to the capital markets. The regulatory regime for financial markets and financial services needs to be fit for the new digital era and financial markets need to work to the benefit of everyone, especially retail clients.

Question 1. To what extent are you satisfied with your overall experience with the implementation of the MiFID II/MiFIR framework?

☐ **1 - VERY UNSATISFIED**
☒ **2 - UNSATISFIED**
☐ **3 - NEUTRAL**
☐ **4 - SATISFIED**
☐ **5 - VERY SATISFIED**
☐ **DON'T KNOW / NO OPINION / NOT RELEVANT**

General Disclaimer DDV: Although the box ticked is "Unsatisfied", it does not necessarily mean that further legislative action is recommended. Our intention is to draw the attention to practical difficulties investment firms are facing when implementing the rules. Those difficulties arise especially in light of the density and the level of detail of the regulation, including regulation on Level 2 and Level 3. The implementation of MiFID II resulted in

substantial one-off implementation costs and is still binding resources among others due to ongoing changes of Level 3 provisions. While, we agree that MiFID II was an important step in the development of an integrated market for EU financial services, we nevertheless recommend to carefully consider any further changes. Those changes should be limited to targeted improvements, in particular in cases in which current provisions have detrimental effects for investors. The Commission should take this into account when reading the following comments.

Question 1.1 Please explain your answer to question 1 and specify in which areas would you consider the opportunity (or need) for improvements:

MIFID II / MiFIR, the associated Level 2 and Level 3 regulations and the related regulations such as the PRIIPs Regulation have resulted in an immense increase in the density of regulation. This has not only resulted in substantial one-off implementation costs. The ongoing organisational burden in the course of day-to-day business has also increased considerably, making it more difficult for investors to access the capital market, especially retail investors.

MiFID II / MiFIR have significantly increased the number of rules relevant to investment services and their scope. The regulatory approach composed of several institutional levels (known as the Lamfalussy architecture) explains, at least to a large extent, this situation. In addition to 39 implementing regulations and delegated regulations at Level 2, ESMA publishes guidelines and Q&As updated on an ongoing basis. At the national level, implementing rules and orders as well as a large number of supervisory publications have to be taken into account. Against this background, it is already a challenge to follow current developments, not to mention their implementation.

The high level of regulation is not only a problem for the supervised institutions. It is also clear from the feedback from clients that the new requirements are often perceived as too prescriptive. On the whole, they fail to achieve the goal of enabling the client to make independent decisions and also lead to an "information overload" of clients.

It is to be noted also that due to divergence of the implementation and application of MiFID II in individual EU Member States, the goal of creating a level playing field through uniform regulation has not been achieved. This is not only relevant with respect to the contents, but also the timing of the transposition into national laws. It has to be stressed that MiFID II was transposed in Germany – and in other Member States – in time at immense expense but this was not the case throughout the whole EU. European regulation must therefore be designed from the outset in such a way that it can be implemented on time in all countries at reasonable cost.

Question 2. Please specify to what extent you agree with the statements below regarding the overall experience with the implementation of the MiFID II /MiFIR framework?

	1 (disagree)	**2** (rather not agree)	**3** (neutral)	**4** (rather agree)	**5** (fully agree)	**N.A.**
The EU intervention has been successful in achieving or progressing towards its MiFID II/MiFIR objectives (fair, transparent, efficient and integrated markets).	☐	☐	☒	☐	☐	☐
The MiFID II/MiFIR costs and benefits are balanaced (in particular regarding the regulatory burden).	☒	☐	☐	☐	☐	☐
The different components of the framework operate well together to achieve the MiFID II/MiFIR objectives.	☐	☐	☒	☐	☐	☐
The MiFID II/MiFIR objectives correspond with the needs and problems in EU financial markets.	☐	☐	☒	☐	☐	☐
The MiFID II/MiFIR has provided EU added value.	☐	☐	☒	☐	☐	☐

Question 2.1 Please provide qualitative elements to explain your answers to question 2:

We make reference to our responses to Questions 1.1, 9, 31.1 and 32.1 which set out further explanations to our comments in relation to the statements above.

Further, we want to make reference to two recent studies which have identified areas of improvement in the MiFID II / MiFIR framework or analyse certain aspects of the current framework:

- Paul, Stephan, Prof. Dr.: MiFID/MiFIR/PRIIPs Regulatory Impact Study: Effectiveness and Efficiency of new Regulation in the Context of Investor and Consumer Protection, Ruhr University Bochum, February 2019; and

- Koziol, Christian; Roßmann, Philipp; Weitz, Sebastian: Complexity of Financial Products, University of Tübingen, October 2018.

Question 3. Do you see impediments to the effective implementation of MiFID II/MiFIR arising from national legislation or existing market practices?

☐ **1 - NOT AT ALL**
☐ **2 - NOT REALLY**
☐ **3 - NEUTRAL**
☒ **4 – PARTIALLY**
☐ **5 - TOTALLY**
☐ **DON'T KNOW / NO OPINION / NOT RELEVANT**

Question 3.1 Please explain your answer to question 3:

As pointed out in our response to Question 1.1 above there is some degree of divergence of national legislation transposing MiFID II in the laws of Member States. DDV members have also noted that the application of certain provisions varies across Member States. This particularly applies to the product governance regime and inducements provisions.

[…]

Question 5.1 Please explain your answer to question 5:

Question 6. Have you identified barriers that would prevent investors from accessing the widest possible range of financial instruments meeting their investment needs?

☐ **1 - NOT AT ALL**
☐ **2 - NOT REALLY**
☐ **3 - NEUTRAL**
☒ **4 – PARTIALLY**
☐ **5 - TOTALLY**
☐ **DON'T KNOW / NO OPINION / NOT RELEVANT**

Question 6.1 If you have identified such barriers, please explain what they would be:

An important feature of the German market in particular in the structured products space is the so called "open architecture", i.e. investors have access to broad range of products across different product manufacturers.

However, the access of investors to products may be limited in case over prescriptive regulation make automation of processes more difficult: In order to comply with certain requirements and continue to offer a broad range of products automation for example of the target market process and the PRIIPs products is a necessary element. Part of this is exchange of information between the product manufacturer and the distributor. The compliance with regulatory requirements can only be ensured if respective IT interfaces are in place. Irrespective of whether those IT interfaces are provided by third party providers or between individual market participants, any additional levels of complexity created by new regulation make an open architecture and access of investors to products more difficult.

Question 6.2 Please explain your answer to question 6:

Please see our response to Question 6.1.

SECTION 2. SPECIFIC QUESTIONS ON THE EXISTING REGULATORY FRAMEWORK

PART ONE: PRIORITY AREAS FOR REVIEW

[…]

1.2. AVAILABILITY AND PRICE OF MARKET DATA

In its report submitted on 5 December 2019 to the Commission, ESMA considers that so far MiFID II/MiFIR has not delivered on its objective to reduce the price of market data and the Reasonable Commercial Basis ('RCB') provisions have not delivered on their objectives to enable users to understand market data policies and how the price for market data is set.

ESMA recommends, in addition to working on supervisory guidance on how the RCB requirements should be complied with, a number of targeted changes to either the Level 1 or Level 2 texts to strengthen the overall concept that market data should be charged based on the costs of producing and disseminating the information:

- add a mandate to the Level 1 text empowering ESMA to develop Level 2 measures specifying the content, format and terminology of the RCB information; and
- move the provision to provide market data on the basis of costs (Article 85 of CDR 2017/565 and Article 7 of CDR 2017/567) to the Level 1 text;
- add a requirement in the Level 1 text for trading venues, APAs, SIs and CTPs to share information on the actual costs of producing and disseminating market data as well as on the margins with CAs and ESMA together with an empowerment to develop Level 2 measures specifying the frequency, content and format of such information;
- delete Article 86 (2) of CDR 2017/565 and Article 8 (2) of CDR 2017/567 allowing trading venues, APAs, CTPs and SIs to charge for market data proportionate to the value the data represents to users.

Question 9. Do you agree with the above targeted amendments recommended by ESMA to address market data concerns?

We would like to provide a general comment in this regard. In general, we fully support ESMAs approach to assess whether the MiFID II/MiFIR provisions in the area of market data aiming at improving the quality and availability of market data and reducing costs for market participants when purchasing data have achieved their goals.

There has been a very controversial discussion for many years on the cost of market data in the EU. From our perspective, market data fees have continued to increase after the MiFID II / MiFIR regime has been implemented in the EU even though one of its primary intentions was to avoid an exploitation of the dependence of demand-side companies on the services of stock exchanges as suppliers and to bring market data prices "down to a reasonable level" (see ESMA Consultation Paper, MiFID II/MiFIR review report on the development in prices for pre- and post-trade data and on the consolidated tape for equity instruments, ESMA70-156-1065, 12 July 2019, p 10).

So far, we do not notice a significant disciplinary effect of the regulation on the price for market data and for index data which should also be encompassed by the term market data. Therefore, we generally support any effective measures which are able to effectively address these concerns.

[…]

II. INVESTOR PROTECTION[1]

Investor protection rules should strike the right balance between boosting participation in capital markets and ensuring that the interests of investors are safeguarded at all times during the investment process. Maintaining a high level of transparency is one important element to enhance the trust of investors into the financial market.

In December 2019, the invited Council conclusions on the Deepening of the Capital Markets Union the Commission to consider introducing new categories of clients and optimising requirements for simple financial instruments where this is proportionate and justified, as well as ensuring that the information available to investors is not excessive or overlapping in quantity and content.

Based on, but not limited to, the review requirements laid down in Article 90 of MiFID II, this consultation therefore aims at getting a more precise picture of the challenges that different categories of investors are confronted with when purchasing financial instruments in the EU, in order to evaluate where adjustments would be needed.

Question 31. Please specify to what extent you agree with the statements below regarding the experience with the implementation of the investor protection rules?

	1 (disagree)	**2** (rather not agree)	**3** (neutral)	**4** (rather agree)	**5** (fully agree)	**N.A.**
The EU intervention has been successful in achieving or progressing towards more investor protection.	☐	☐	☐	☒	☐	☐
The MiFID II/MiFIR costs and benefits are balanced (in particular regarding the regulatory burden).	☒	☐	☐	☐	☐	☐
The different components of the framework operate well together to achieve more investor protection.	☐	☐	☒	☐	☐	☐
More investor protection corresponds with the needs and problems in EU financial markets.	☒	☐	☐	☐	☐	☐
The investor protection rules in MiFID II/MiFIR have provided EU added value.	☐	☐	☐	☒	☐	☐

[1] The review clause in Article 90 paragraph (1)(h) of MiFID II is covered by this section.

Question 31.1 Please provide both quantitative and qualitative elements to explain your answer and provide to the extent possible an estimation of the benefits and costs. Where possible, please provide figures broken down by categories such as IT, organisational arrangements, HR etc.

Quantitative elements for question 31.1:

Qualitative elements for question 31.1:

We make reference to the RUB study mentioned in our response to Question 1.1. The study has identified a number of deficits in the current investor protection framework. We want to emphasize that this is in accordance with the experiences DDV members have made. Broken down in the categories requested the impact can be described as follows:

- IT: Build up of IT systems, both software and hardware, is a major cost driver for DDV members without increasing investor protection in all cases.

- Organisational arrangements/HR: Constant monitoring and requests by supervisory authorities increase complexity of processes and the need of resources required. Also training of staff is a cost driver.

1. Easier access to simple and transparent products

The CMU is striving to improve the funding of the EU economy and to foster retail investments into capital markets. The Commission is therefore trying to improve the direct access to simple investment products (e.g. certain plain-vanilla bonds, index ETFs and UCITS funds). On the other hand, adequate protection has to be provided to retail investors as regards all products, but in particular complex products.

Question 32. Which MiFID II/MiFIR requirements should be amended in order to ensure that simple investment products are more easily accessible to retail clients?

	Yes	No	N.A.
Product and governance requirements	☐	☒	☐
Costs and charges requirements	☐	☒	☐
Conduct requirements	☐	☒	☐
Other	☐	☐	☒

Question 32.1 Please explain your answer to question 32:

Reduction of MiFID II/MiFIR requirements only for non-PRIIPs products, level playing field among packaged products

In our view – if anything - only for non-PRIIPs products certain MiFID II/MiFIR requirements should be reduced. However, this is not due to their simplicity but rather because these financial instruments are primarily issued in order to raise capital and they are not produced in order to serve additional (retail) investors' needs and objectives or responding to particular risk profiles such as packaged products – including UCITS funds and index ETFs which are specifically mentioned in the Commission's consultation document (see Commission Consultation

Document, explanation preceding Question 32). There is no reason to lower standards for packaged products, including UCITS funds, index ETFs and structured products. It is important to ensure a level playing field among different packaged products.

Distinction between products should be based on the investor's ability to assess the balance between risk and rewards expectations

In our view, a distinction between "complex" and "non-complex" products – however defined – is not the right starting point for a potential loosening of MiFID investor protection rules for certain products. This is due to several considerations.

First, the classification of "complex" versus "non-complex" has only been introduced to decide about the possibility to distribute products execution-only. Thus, it is not a suitable criterion for a general distinction in the regulatory approach between different investment products.

Second, we have serious doubts whether the approach taken by MiFID II is – from an investor's perspective – sufficiently clear and simple to adequately classify investment products as "complex" and "non-complex":

In recent years several academic studies tried to capture crucial aspects of complexity. Each of these studies account for different combinations and weighting of factors (such as simplicity of the payoff formula, the underlying, the risk profile, liquidity, cost and fee structures). Some of these factors would apply to different asset classes independent from its "wrapper", however familiar the latter might be. Thus, we are of the view that in relation to a specific product the level of investor protection required can only be determined cumulatively as a function of different factors. Among others, those factors would include their relative degree of riskiness (including liquidity), degree of structuring and transparency (understandability).

This view is supported by a study presented by Koziol, Roßmann and Weitz (Complexity of Financial Products, Tübingen 2018). They developed an economic approach for determining the complexity of financial instruments based on the notion of complexity from an investor's perspective along with a method aligned with that notion. On the basis of the so-called "value-surprise" – the difference of an investor's estimation of the value of a financial product and its true value – they make estimates using capital market data in order to ultimately translate those value surprises into a consistent complexity scores. Thereby, the authors try to refrain from subjective weightings of individual product characteristics. They find that the MiFID II classification is not at all consistent with the study's results. According to the study, a classic discount certificate ("complex" according to MiFID II rules) would be less complex than an equity fund and much less complex than a life insurance policy (MiFID II: both considered to be "non-complex"). The least complex product is considered to be a 2-year German government bond (MiFID II: "non-complex"), a 10-year German government bond, however, would be more complex (MiFID II: "non-complex") than a DAX future (MiFID: "complex"). A non-traded corporate bond is considered to be one of the most complex products (MiFID: "non-complex").

Therefore, we strongly encourage the Commission or any other regulator to carefully assess the full level of complexity prior to taking any actions which may lead to adverse results from an investor's perspective. For this purpose, a useful approach might be to put the investor at the center of the analysis and to focus on his/her understanding of the risks and performance offered by the products. The comprehensiveness of the investment should not be decisive but rather the ability of the investor to assess the balance between risk and rewards expectations. It could even be argued that the complexity of the financial mechanisms and components contribute in many cases to strengthen investors´ protection. Again, for the time being, at the most only non-packed products (plain vanilla bonds and shares) should be subject to certain flexibility.

Question 33. Do you agree that the MiFID II/MiFIR requirements provide adequate protection for retail investors regarding complex products?

☐ **1 - DISAGREE**
☐ **2 - RATHER NOT AGREE**
☐ **3 - NEUTRAL**
☐ **4 – RATHER AGREE**
☒ **5 - FULLY AGREE**
☐ **DON'T KNOW / NO OPINION / NOT RELEVANT**

Question 33.1 If your answer to question 33 is on the negative side, please indicate in the text box which amendments you would like to see introduced to ensure that retail investors receive adequate protection when purchasing products considered as complex under MiFID II/MiFIR:

Question 33.1 Please explain your answer to question 33:

We are of the view, that MiFID II/MiFIR requirements provide adequate protection of investors for all types of products. It should also be taken into account that regulatory requirements introduced by MiFID II such as those relating to product governance and cost disclosure have been justified exactly with regard to "packaged" products.

2. RELEVANCE AND ACCESSIBILITY OF ADEQUATE INFORMATION

Information should be short, simple, comparable, and thereby easy to understand for investors. One challenge that has been raised with the Commission are the diverging requirements on the information documents across sectors.

One aspect is the usefulness of information documents received by professional clients and eligible counterparties ('ECPs') before making a transaction ('ex-ante cost disclosure'). Currently, the ex-ante cost information on execution services apply to retail, professional and eligible clients alike. With regard to wholesale transactions a wide range of stakeholders consider certain information requirements a mere administrative burden as they claim to be aware of the current market and pricing conditions.

Question 34. Should all clients, namely retail, professional clients per se and on request and ECPs be allowed to opt-out unilaterally from ex-ante cost information obligations, and if so, under which conditions?

	Yes	No	N.A.
Professional clients and ECPs should be exempted without specific conditions.	☒	☐	☐
Only ECPs should be able to opt-out unilaterally.	☐	☒	☐
Professional clients and ECPs should be able to opt-out if specific conditions are met.	☐	☒	☐
All client categories should be able to opt-out if specific conditions are met.	☐	☒	☐
Other	☐	☐	☒

Please specify what is your other view on whether all clients, namely retail, professional clients per se and on request and ECPs should be allowed to opt-out unilaterally from ex-ante cost information obligations?

Practical experience shows that many clients, including and in particular retail clients, show no interest in information on costs within the meaning of Art. 50(1) subpar. 2 and 3 Delegated Regulation (EU) 2017/565. On the contrary the information overload may be detrimental to the feeling of having access to the relevant information.

DDV therefore advocates facilitations for retail clients. It should also be possible for retail clients to opt out of ex-ante cost disclosure by means of an explicit declaration. MiFID II already provides the possibility for experienced retail clients to be treated as professional clients and waive some of their protection, upon request and if they fulfill the conditions of Section II of Annex II of MiFID II. Consequently and in conjunction with the information overload described above, retail clients in general should be able to opt-out of ex-ante and ex-post information (see also ESMA Technical Advice to the Commission on the impact of inducements and costs and charges disclosure requirements under MiFID II, ESMA35-43-2126, 31 March 2020, p 30; subsequently referred to as “ESMA Technical Advice”). Adequate investor protection can be ensured by making such an agreement revocable. If further requirements would be necessary to grant opt-out rights, (i.e. if the explicit declaration would not be sufficient), only the knowledge and/or experience criteria should be relevant. See also our answer to question 42.

Further, in respect of retail clients investment firms should be allowed to provide ex-ante cost information after the provision of the investment service, at least in case of distance communication.

As regards professional clients and eligible counterparties we are of the view that it should be the rule that ex-ante and ex-post cost disclosure is only provided if this is requested by those clients. Professional clients and eligible counterparties have sufficient knowledge and understanding of the products which allow them to make their own assessment of products. It should be left to their discretion to ask for further information. This is in accordance with the ESMA recommendation in the ESMA Technical Advice (p. 29).

Question 34.1 Please explain your answer to question 34 and in particular the conditions that should apply:

Please see the response to Question 34 above.

Another aspect is the need of paper-based information. This relates also to the Commission's Green Deal, the Sustainable Finance Agenda and the consideration that more and more people use online tools to access financial markets. Currently, MiFID II/MiFIR requires all information to be provided in a "durable medium", which includes electronic formats (e.g. e-mail) but also paper-based information.

Question 35. Would you generally support a phase-out of paper based information?

☐ **1 - DO NOT SUPPORT**
☐ **2 - RATHER NOT SUPPORT**
☐ **3 – NEUTRAL**
☐ **4 – RATHER SUPPORT**
☒ **5 - SUPPORT COMPLETELY**
☐ **DON'T KNOW / NO OPINION / NOT RELEVANT**

Question 35.1 Please explain your answer to question 35:

We support a phase-out of paper based information. MiFID has a preference for information to be provided on paper rather than electronically (via pdf or an internet link). The latter is only allowed if further conditions are met. With regard to the ongoing digitalization the preference for paper based information is antiquated. Furthermore, providing information on paper consumes lots of resources (energy, paper) and therefore runs counter the ambitious targets of the EU with regard to sustainability. As a consequence, paper based information should be the exemption only if the client requests for this. We would be happy to provide clients the option to have paper based information.

Question 36. How could a phase-out of paper-based information be implemented?

	Yes	No	N.A.
General phase-out within the next 5 years	☒	☐	☐
General phase-out within the next 10 years	☐	☐	☐
For retail clients, an explicit opt-out of the client shall be required.	☐	☐	☐
For retails clients, a general phase-out shall apply only if the retail client did not expressively require paper-based information	☐	☐	☐
Other	☐	☐	☐

[…]

Question 37. Would you support the development of an EU-wide database (e. g. administered by ESMA) allowing for the comparison between different types of investment products accessible across the EU?

☒ **1 - DO NOT SUPPORT**
☐ **2 - RATHER NOT SUPPORT**
☐ **3 – NEUTRAL**
☐ **4 – RATHER SUPPORT**
☐ **5 - SUPPORT COMPLETELY**
☐ **DON'T KNOW / NO OPINION / NOT RELEVANT**

Question 37.1 Please explain your answer to question 37:

Rather than establishing new databases with potentially additional requirements for investment firms, existing databases and communications tools should be established and used. Several reasons explain our reluctance in this respect. First and foremost, we believe that there are databases and tools in the market that allow comparison between products. By using those tools it will be ensured that the actual needs of investors are met and that the tools will continue to be developed pursuant to those needs. Second, we expect that ultimately market driven solutions can be provided at lower costs and at the time required whereas any reporting tools operated by public authorities tend to increase complexity without necessarily creating the added value expected. There are a number of examples for this, such as the EMIR Trade Repositories in accordance with Art. 2(2) Regulation (EU) 648/2012.

[…]

Question 39. Do you agree that ESMA would be well placed to develop such a tool?

☒ **1 - DISAGREE**
☐ **2 - RATHER NOT AGREE**
☐ **3 - NEUTRAL**
☐ **4 – RATHER AGREE**
☐ **5 - FULLY AGREE**
☐ **DON'T KNOW / NO OPINION / NOT RELEVANT**

Question 39.1 Please explain your answer to question 39:

3. CLIENT PROFILING AND CLASSIFICATION

MiFID II/MiFIR currently differentiates between retail clients, professional clients and eligible counterparties. In line with the procedure and conditions laid down in the Annex of MiFID II, retail clients can already "opt-up" to be treated as professional clients. Some stakeholders indicated that the creation of an additional client category ('semi-professional investors') might be necessary in order to encourage the participations of wealthy or knowledgeable investors in the capital market. In addition, other concepts related to this classification of investors can be found in the draft Crowdfunding Regulation which further developed the concept of sophisticated investors[2].The CMU-Next group suggested a new category of experienced High Net Worth ("HNW") investors with tailor made investor protection rules[3].

[2] According to the draft of the Crowdfunding Regulation (to be finalised in technical trilogues) a sophisticated investor has either personal gross income of at least EUR 60 000 per fiscal year or a financial instrument portfolio, defined as including cash deposits and financial assets, that exceeds EUR 100 000.

[3] According to the CMU-NEXT group "HNW investors" could be defined as those that have sufficient experience and financial means to understand the risk attached to a more proportionate investor protection regime.

[…]

Question 42. Would you see benefits in the creation of a new category of semi-professionals clients that would be subject to lighter rules?

☐ **1 - DISAGREE**
☐ **2 - RATHER NOT AGREE**
☒ **3 - NEUTRAL**
☐ **4 – RATHER AGREE**
☐ **5 - FULLY AGREE**
☐ **DON'T KNOW / NO OPINION / NOT RELEVANT**

Question 42.1 Please explain your answer to question 42:

We welcome the intention of the European Commission to facilitate the access to capital markets including for retail investors. The experience showed that for certain retail investors some flexibility especially regarding information obligations could be beneficial. For instance, some qualified investors (e.g. foundations or other associations) that do not meet the high requirements for achieving the status of a per se professional client, but possess the experience, expertise and knowledge of a professional investor and hence, are less worthy of protection, are nevertheless qualified as retail investor. In such a case the qualification is not appropriate. However, we want to emphasize that only knowledge and/or experience should be regarded as relevant when deciding if a client is "qualified" enough to be exempted from certain investor protection requirements. This also applies in the case of the introduction of a new client category.

In any case, we want to highlight that it is of utmost importance that with respect to the assessment whether a client possesses the necessary qualifications investment firms can reliy on the information provided by the client as stipulated in Art. 55 para 3 DR 2017/565 and the not further manual reviews are necessary. This principle is of particular importance in highly automated environments with little personal contact with end clients (e.g. in case of online brokerage) In addition, further easing of obligations for services towards professional clients should be considered (see also our answer to question 34).

[…]

4. PRODUCT OVERSIGHT, GOVERNANCE AND INDUCEMENTS

The product oversight and governance requirements shall ensure that products are manufactured and distributed to meet the clients' needs. Before any product is sold, the target market for that product needs to be identified. Product manufacturers and distributors should thus be well aware of all product features and the clients for which they are suited. To do so, distributors should use the information obtained from manufacturers as well as the information which they have on their own clients to identify the actual (positive and negative) target market and their distribution strategy.
There is a debate around the efficiency of these requirements. Some stakeholders criticise that the necessary information was not available for all products (e.g. funds). Others even argue that this approach adds little benefit to the suitability assessment undertaken at individual level. Similar doubts are mentioned with regards to the review of the target market, in particular for products that don't change their payment profile. Concerns are raised that the current application of the product governance rules might result in a further reduction of the products offered.

Question 46. Do you consider that the product governance requirements prevent retail clients from accessing products that would in principle be appropriate or suitable for them?

☐ **1 - DISAGREE**
☐ **2 - RATHER NOT AGREE**
☒ **3 - NEUTRAL**
☐ **4 – RATHER AGREE**
☐ **5 - FULLY AGREE**
☐ **DON'T KNOW / NO OPINION / NOT RELEVANT**

Question 46.1 Please explain your answer to question 46:

The current product governance requirements effectively prevent retail clients from accessing financial products that are appropriate for them. Examples of such products include equity instruments and corporate bonds.

We therefore advise for the adoption of less restrictive rules for equity instruments and corporate bonds in order to reasonably facilitate retail investors' access to such products.

Question 47. Should the product governance rules under MiFID II/MiFIR be simplified?

	Yes	No	N.A.
It should only apply to products to which retail clients can have access (i.e. not for non-equities securities that are only eligible for qualified investors or that have a minimum denomination of EUR 100.000).	☐	☒	☐
It should apply only to complex products.	☐	☒	☐
Other changes should be envisaged – please specify below.	☒	☐	☐
Simplification means that MiFID II/MiFIR product governance rules should be extended to other products.	☐	☐	☒
Overall the measures are appropriately calibrated, the main problems lie in the actual implementation.	☐	☒	☐
The regime is adequately calibrated and overall, correctly applied.	☐	☒	☐

Question 47.1 Please explain your answer to question 47:

The product governance requirements are an effective tool to prevent misselling of products. As explained above, we suggest to restrict the product governance regime to PRIIPs products, i.e. only shares and plain vanilla bonds should be exempted. In addition, a number of further changes to the product governance regime should be made:

Negative target market does not provide any added value

Please see our answer to question 48 below.

Distributors should be allowed to use the target market defined by the product manufacturer and the process for the non-advisory business should be simplified

While Art. 16 (3) subpar. 3 and 4 MiFID II only requires product manufacturers to define a target market and Art. 24 (2) subpar. 2 MiFID II refers to the "market segment" defined in Art. 16 (3) and (4) MiFID II with a reference to the "market segment" defined in Art. 16(3) MiFID II, with its reference to the target market defined in accordance with Art. 16(3) MiFID II, does not provide any indication of the need for independent target market definition by distributors, Art. 10 Delegated Directive (EU) 2017/593 of the Commission stipulates the requirement for independent target market definition by the investment firm distributing the financial instrument.

The target market definition by the distributor must be based on the actual target market, i.e. the target group to which the product is to be offered as part of its service, and is thus intended to specify the general target market definition by the product manufacturer, which is based on theoretical knowledge and experience with comparable products without specific knowledge of the individual client (see MaComp BT 5.3.3 and ESMA35-43-620 DE, no. 34 et seq. for the requirement of specific target market determination). This obligation is intended to exist independently of a target market definition by the product manufacturer. Such a far-reaching obligation of the distributors is neither prescribed by the Level 1 measures nor justified by investor protection aspects. The target group to which the product is to be offered is already taken into account when the product manufacturer defines the target market.

We therefore propose deleting the general obligation for distributors to define a target market in any case where a manufacturer's target market exists or in the case of simple financial instruments that are not also subject to PRIIPs Regulation (such as shares or bonds) and where the product governance requirements should generally apply to only a limited extent. Constellations in which a concept target market does not exist because the concept is not subject to MiFID II could be excluded. The needs, characteristics and objectives of the type(s) of client must also be determined as part of the procedure for defining the target market (Art. 24 (1) MiFID II, Art. 9 (9) Delegated Directive (EU) 2017/593). At the level of Level 1 and 2 rules, the interaction of the identification and assessment of the target market with the type of investment service is not taken into account. Accordingly, implementation at national level also failed to materialise.

ESMA, on the other hand, differentiates in terms of the requirements for the level of detail of the target market identification and assessment according to the type of service provided: If only execution services are provided together with an appropriateness test, the assessment of the actual target market is limited to the target market categories "client category" and "knowledge and experience". We support this, as in non-advisory business only limited information is usually available. We propose that for the non-advisory business, facilitations in the target market comparison by the sales company are already laid down in the Level 1 and Level 2 regulations and that, after prior one-time approval by the client, a target market review can be completely omitted in all variants of the non-advisory business.

Practical design of the feedback regime

The provisions of Art. 16 (3) MiFID II and Art. 9 and 10 Delegated Directive (EU) 2017/593 provide for a regular review of the products both by the manufacturer and by the distributors, in order to evaluate the assessment of the consonance between needs, characteristics and objectives with the identified target market and on the other hand to assess the ongoing appropriateness of the sales strategy. To support the reviews of the manufacturers, distributors have the duty to provide manufacturers with information on sales and, where available, all other relevant results of their own regular review.

With regard to the concrete form of the cooperation between the manufacturer and the distributor, the associations of the German Banking Industry together with the Federal Association of Investment and Asset Management (BVI) under the leadership of DDV, a common standard for the feedback regime was developed. Hereby the participants choose a risk-based and practice-oriented approach, which allows the focus on provision for relevant distributors for which a so-called "rule check" is performed. The data collected is limited to any significant distribution outside the target market. A further notification of the distributors to the manufacturer should move away from a continuous transmission to be limited exclusively to feedback related to the event, for

example, if market conditions change in such a way that the product is no longer compatible with the currently defined target market.

Further, even though ESMA clarified in its guidelines that the sale of products outside the actual target market is possible in so far as this can "be justified by the individual facts of the case", distributors seem reluctant to do so even if the client insists. This consultation is therefore assessing if and how the product governance regime could be improved.

Question 48. In your view, should an investment firm continue to be allowed to sell a product to a negative target market if the client insists?

☒ **YES**
☐ **YES, BUT IN THAT CASE THE FIRM SHOULD PROVIDE A WRITTEN EXPLANATION THAT THE CLIENT WAS DULY INFORMED BUT WISHED TO ACQUIRE THE PRODUCT NEVERTHELESS.**
☐ **NO**
☐ **DON'T KNOW / NO OPINION / NOT RELEVANT**

Question 48.1 Please explain your answer to question 48:

The differentiation between a market lying outside the positive target market and the negative target market encounters difficulties in the practical implementation. Although some target market characteristics that serve to define the negative target market can be derived as a counter conclusion to positive target market criteria, this does not apply to all target market criteria. Furthermore, it is possible - if justified in individual cases - that a sales company distributes a financial instrument within the scope of the negative target market. The product manufacturer must be informed of this. The definition of a negative target market increases the complexity and expense for market participants without ensuring a higher level of investor protection. DDV therefore proposes that the requirement to define a negative target market should be completely deleted.

Question 49. Do you believe that the current rules on inducements are adequately calibrated to ensure that investment firms act in the best interest of their clients?

☐ **1 - DISAGREE**
☐ **2 - RATHER NOT AGREE**
☐ **3 - NEUTRAL**
☒ **4 – RATHER AGREE**
☐ **5 - FULLY AGREE**
☐ **DON'T KNOW / NO OPINION / NOT RELEVANT**

Question 49.1 Please explain your answer to question 49:

There should be a level playing field between different investment products. While Art. 24(9) MiFID generally prohibits inducements provided or received by investment firms except for strict conditions, similar provisions do not apply to insurance products. The same applies to building society products. This unjustified unequal treatment of financial instruments in the scope of MiFID compared with other comparable investment products

leads to a distortion of competition and should be eliminated by harmonising the requirements for comparable products.

Further, the DDV is of the view that the current regime is working well in so far as there is an adequate balance between the financing needs of investment firms on the one hand and the protection of investors on the other hand. DDV especially regards transparency on inducement as very important and agrees with ESMA that the use of costs and charges disclosure is an effective means in order to comply with their inducement disclosure obligations in accordance to Art. 11 (5) para. 2 Delegated Directive (EU) 2017/593 (see ESMA Technical Advice, p. 16). Inducements are disclosed to clients by pre- and post-trade cost transparency, different clarifications (e.g. conflict of interest information) and the strict use of inducements for enhancing the quality of the relevant service. Hence, clients are fully informed about inducements and the inducements are used in best interest of clients. The lack of client complaints clearly demonstrates that the current regime works well and obviously other topics are more important from an investor protection perspective.

Some consumer associations have stated that inducement rules inducements under MiFID II/MiFIR are not sufficiently dissuasive to prevent conflicts of interest in the distribution process. They consider that financial advisers are incentivised to sell products for which they receive commissions instead of recommending the most suitable products for their clients. Therefore, some are calling for a ban on inducements.

Question 50. Would you see merits in establishing an outright ban on inducements to improve access to independent investment advice?

☒ **1 - DISAGREE**
☐ **2 - RATHER NOT AGREE**
☐ **3 - NEUTRAL**
☐ **4 – RATHER AGREE**
☐ **5 - FULLY AGREE**
☐ **DON'T KNOW / NO OPINION / NOT RELEVANT**

Question 50.1 Please explain your answer to question 50:

DDV strongly advises against the introduction of an outright ban of inducements. This is due to several considerations. First, protection of interest of investors is best ensured by a maximum of transparency on inducements. Second, certain services could not be offered by investment firms if they cannot rely on inducements by the product manufacturer. Third, a ban of inducement would question the level playing field between different investment products even more (see Question 49.1). DDV therefore welcome´s ESMA view expressed in the Technical Advice which expresses similar concerns as regards a ban of inducements (see ESMA Technical Advice, p. 12 et seq).

As regards the criteria for the assessment of knowledge and competence required under Article 25 (1) of MiFID II, ESMA's guidelines established minimum standards promoting greater convergence in the knowledge and competence's guidelines of staff providing investment advice or information about financial instruments and services. Nonetheless, due to the diversified national educational and professional systems, there are still various options on how to test the relevant knowledge and competences across Member States.

[…]

5. DISTANCE COMMUNICATION

Provision of investment services via telephone requires ex-ante information on costs and charges (please consider also ESMA's guidance on this matter). When a client wants to place an order on the phone, the service provider is obliged to send the cost details before the transaction is executed, a requirement which may delay

the immediate execution of the order. Further, MiFID II/MiFIR requires all telephone communications between the investment firm and its clients that may result in transactions to be recorded. Due to this requirement, several banks argue to have ceased to provide telephone banking services altogether.

Question 53. To reduce execution delays, should it be stipulated that in case of distant communication (phone in particular) the cost information can also be provided after the transaction is executed?

☐ **1 - DISAGREE**
☐ **2 - RATHER NOT AGREE**
☐ **3 - NEUTRAL**
☐ **4 – RATHER AGREE**
☒ **5 - FULLY AGREE**
☐ **DON'T KNOW / NO OPINION / NOT RELEVANT**

Question 53.1 Please explain your answer to question 53:

Simplifications as regards ex-ante cost disclosure: orders by telephone /distance communication

In case orders are placed by phone, the requirements as regards cost transparency under Art. 24(4) MiFID II and Art. 50 Delegated Regulation (EU) 2017/565 should be aligned with the respective requirements under the PRIIPs Regulation. Art. 13(3) PRIIPs Regulation provides for the possibility of forwarding the key information document without delay, whereas a similar provision for ex-ante cost disclosure is not included in MiFID II.

Moreover, if one takes into account the legislator's intention to enable investors to make an investment decision on an informed basis, it becomes clear that the provisions on information requirements in general and cost information in particular are aimed at acquisition transactions. The investor only makes an investment decision in the acquisition process. This understanding is also suggested by the provisions in Art. 50(10) sentence 1 and sentence 2 lit. b Delegated Regulation (EU) 2017/565, which, by virtue of their content, can only play a role in the decision-making process in the context of an acquisition transaction. As a rule, the client's interest in prompt execution will outweigh his or her interest in information, particularly in the case of sales transactions. DDV therefore suggests that the ex ante cost provisions should only apply to buy transactions.

Simplifications as regards ex-ante cost disclosure: harmonization of calculation methods

DDV considers the harmonisation of calculation methods and the disclosure of costs to be a high priority. Since cost reporting under MiFID II is more comprehensive and includes not only the costs of the financial instrument but also the costs of the service, the alignment should be based on MiFID II cost reporting.

Pursuant to Art. 24(4) MiFID II and Art. 50 Delegated Regulation (EU) 2017/565, clients and potential clients must be provided with appropriate information in good time about all costs and associated fees incurred in connection with the investment service. For packaged investment products for retail investors and insurance investment products, Art. 8(3) (f) PRIIIPs Regulation provides for the client to be informed of the costs associated with an investment in the PRIIP by means of a heading in the key information document. With regard to the methodology for calculation, Art. 5 in conjunction with Annex VI Delegated Regulation (EU) 2017/653 (PRIIPs-RTS) provides further specifications.

With regard to the methods of calculation of the costs or cost components to be reported, there are differences between the two sets of rules which prevent the information in the cost report from being comprehensible to the client. ESMA is also striving to bring the MiFID II requirements into line with the requirements of the PRIIPs Regulation.[4] In connection with the harmonisation of calculation methods, a uniform model for the presentation of costs would also be helpful. This would eliminate the current legal uncertainties and increase comprehensibility and cross-product comparability for investors. DDV support this initiative.

[4] Cf. ESMA 2014/1569, p. 115, para. 14 and most recently ESA, Final Report following joint consultation paper concerning amendments to the PRIIPs KID of 9 February 2019, JC 2019 6.2. (under "5. Intended Next Steps").

Question 54. Are taping and record-keeping requirements necessary tools to reduce the risk of products mis-selling over the phone?

☐ **1 - DISAGREE**
☒ **2 - RATHER NOT AGREE**
☐ **3 - NEUTRAL**
☐ **4 – RATHER AGREE**
☐ **5 - FULLY AGREE**
☐ **DON'T KNOW / NO OPINION / NOT RELEVANT**

Question 54.1 Please explain your answer to question 54:

The introduction of the recording obligation has led to a considerable reduction in the number of orders placed by telephone. In addition, there have been numerous client complaints. Against this background, a complete abolition of the taping and record-keeping requirements should be considered. In any case, however, clients should be able to waive these requirements.

With regard to the scope of the recording there is a tension with data protection obligations. It is the responsibility to of the investment firm to solve the conflict, for example by using start and stop functions. In practice, the ambiguities lead to legal risks for the investment firm and extensive documentation. DDV therefore advocates a restriction of the recording obligations in line with data protection requirements if the Commission should decide not to entirely abolish the recording obligation as suggested initially.

[…]

IV. COMMODITY MARKETS

Question 69. Please specify to what extent you agree with the statements below regarding the experience with the implementation of the position limit framework and pre-trade transparency?

Question 69.1 Please provide both quantitative and qualitative elements to explain your answer and provide to the extent possible an estimation of the benefits and costs. Where possible, please provide figures broken down by categories such as IT, organisational arrangements, HR etc.

Qualitative elements for question 69.1:

We would like to provide a few general comments in relation to the position limit and reporting regime with respect to securitised commodity derivatives. Since the introduction of the respective MiFID II / MiFIR rules the DDV continuously promoted an exclusion of securities derivatives from the position limit and reporting regime as – as ESMA also points out (see ESMA Consultation Paper, MiFID II review report on position limits and position management, Draft Technical Advice on weekly position reports, ESMA-70-156–1484, 5 November 2019, pp. 24 et seq.; ESMA MiFID II Review report on position limits and position management, ESMA-70-156-2311, 1 April 2020, pp. 24, 25, subsequently "ESMA review report on position limits") – the respective framework fails to recognise the unique characteristics of securitised derivatives as transferable securities compared to other commodity derivatives. Against this background, we fully support ESMA's view to exclude securitised derivatives from the scope of position limits in Art. 57 MiFID II and thus already on Level 1. The entire issuance, distribution and marketing process in relation to securitised commodity derivatives is regulated and the products are listed on regulated markets or MTFs. In cases, where securitised derivatives are traded OTC, this usually takes place within the systems of systematic internalisers. Therefore, we fully share ESMA's view that the MiFID II position

limit regime for commodity derivatives is not the appropriate tool for preventing market abuse and ensuring orderly pricing and settlement conditions in securitised derivatives. In addition, particularly in comparison to ETCs, an exclusion of securitised derivatives from the scope of Art. 57 MiFID II would lead to a more consistent approach of MiFID II Level 1 provisions regarding instruments sharing similar characteristics.

[…]

SECTION 3. ADDITIONAL COMMENTS

You are kindly invited to make additional comments on this consultation if you consider that some areas have not been covered above.

Please, where possible, include examples and evidence.

Question 94. Have you detected any issues beyond those raised in previous sections that would merit further consideration in the context of the review of MiFID II/MiFIR framework, in particular as regards to the objective of investor protection, financial stability and market integrity?

ESMA`s temporary product intervention measures

In the recent past, temporary product intervention measures by ESMA have been repeatedly renewed on the basis of Art. 40 MiFIR.[5] There is currently no restriction on the number of renewals of the temporary measures, so that legal uncertainty exists at regular intervals as to whether the prohibition or restriction will be renewed. Thus, a limitation on the maximum number of renewals of a temporary prohibition or Restriction by ESMA should be introduced at Level 1. We also disagree with ESMA`s view that the impact and effect of temporary measures should be extended (See ESMA, Final Report, ESMA's Technical Advice to the Commission on the effects of product intervention measures, ESMA35-43-2134, 3 February 2020, p. 21, subsequently referred to as "ESMA Technical Advice on product intervention measures").

Further, the legal uncertainty caused by the limited predictability of the product intervention measures should be addressed by consulting market participants prior to imposing a prohibition or restriction. Such consultations should be mandatory with a deadline of at least 3 weeks before the entry into force of the product intervention measure. An explicit provision to this effect should be included in Art. 40(1) MiFIR.

Geographical scope of product intervention measures by national competent authorities

Art. 42 (1) MiFIR provides in its wording that a competent authority may impose prohibitions or restrictions within the meaning of the standard "in or from that Member State". Accordingly, the marketing, distribution or sale of certain financial instruments (see Art. 42 (1) (a) MIFIR) outside the respective Member State is also covered. This may result in a competent authority regulating the marketing, distribution or sale on markets outside its Member State without the product being offered on its own market.[6]

Such far-reaching competence of a competent authority is problematic if it interferes with the competence of other competent authorities, in particular if the proposed product intervention goes beyond the temporary product intervention measures of product intervention taken by ESMA.[7] The task of national authorities is to protect investors in the respective national markets. Where financial instruments are only offered outside the respective Member State and certain distribution activities, in particular where they are carried out by supervised

[5] See e. g. Decision (EU) 2019/155 of 23 January 2019 on the extension of the temporary restrictions on marketing, distribution and sales of contracts for difference (CFD) for retail investors; Resolution (EU) 2018/2064 of 14 December 2018 on the extension of the temporary ban on marketing, distribution and sale of binary options to retail investors.

[6] See e. g. DDV's statement of 7 February 2019 on the FCA Consultation Paper - restricting contract for difference products sold to retail clients and a discussion of other retail derivative products as of December 2018 (FCA Consultation Paper CP18/38).

[7] In the case of CFDs, see most recently ESMA Decision (EU) 2019/155 of 23 January 2019 on the prolongation of the temporary restriction on marketing, the Distribution and sale of contracts for difference (CFDs) to retail investors, OJ L 27, 31.1.2019, p. 36.

distributors, fall within the scope of supervision of another competent authority, there is no justification for product intervention by the home Member State competent authority. Moreover, in the case of national transactions with cross-border effects, there is a risk that the competence of ESMA and EBA to coordinate product intervention measures under Art. 43 MiFIR may be undermined. We therefore propose that the words "or from" in Art. 42 (1) MiFIR be deleted.

Definition of the term "securitised derivatives" at Level 1

The application of the provisions of MiFID II to securitized derivatives repeatedly causes difficulties. This is also due to the fact that the term “securitized derivatives” is not defined at Level 1 (See ESMA, Questions and Answers on MiFID II and MiFIR commodity derivatives topics, ESMA70-872942901-36, 27 March 2019, p. 17; subsequently referred to as “ESMA Questions and Answers on commodity derivatives”).

As ESMA acknowledges, with respect to exchange traded commodities (ETCs) that the distinction from securitized derivatives is “neither clear nor uniform” (ESMA Questions and Answers on commodity derivatives, p. 17). A revision of MiFID II / MiFIR is the time to think about a definition of securitised derivatives at Level 1 and subsequent differentiated regulations. At the moment such a definition is only included on Level 2. If the definition is introduced at Level 1 misunderstandings can be avoided (such as in connection with commodity derivatives, see our response to Question 69.1)

Clarification of the applicability of Art. 15 Delegated Regulation (EU) 2017/565 to securitized derivatives

Insofar as an investment firm has reached or exceeded the respective thresholds for frequent trading or for trading in a significant volume, Art. 15 Delegated Regulation (EU) 2017/565 stipulates that the investment firm shall become a systematic internaliser in respect of "all derivatives" belonging to a category of derivatives. Securitized derivatives fall under the generic term of derivatives according to Art. 2 (1) No. 29 MiFIR and are therefore covered by Art. 15 Delegated Regulation (EU) 2017/565. Since Art. 15 Delegated Regulation (EU) 2017/565 - unlike Art. 13 Delegated Regulation (EU) 2017/565 for bonds - does not restrict the definition to the group of companies, there are uncertainties in interpretation. Thus, the characteristics of systematic internaliser could extend to securitized derivatives issued by other issuers. Even if, in particular, the history of the origin of the provision and a comparison with the corresponding provision for equity instruments suggests that the characteristic of a systematic internaliser should always be limited to the respective ISIN in the case of securitized derivatives, this should also be clarified by a corresponding correction of Art. 15 Delegated Regulation (EU) 2017/565.

The MiFID II Review should be an opportunity to consider the application of Art. 23 (3) Prospectus Regulation

The current wording of Art. 23 (3) Prospectus Regulation causes extreme challenges to financial markets participants and supervisory authorities alike. The wording in its current version is very broad and seems to go beyond the initially intended meaning. We understand that the ratio behind Art. 23 (3) Prospectus Regulation is that a financial intermediary can be expected to maintain close contact with investors during the crucial period between subscription and delivery of the securities. He should therefore be able to provide information on supplements at the time of the purchase/subscription of the securities. We fully agree that the corresponding right of withdrawal is essential for the investor protection purposes and do not intend to undermine it in any way.

Article 23 (3) Prospectus Regulation assumes a close relationship between an issuer and the financial intermediary on the one hand as well as the financial intermediary and investors on the other hand. Such close relationships, however, only exists for issues on the primary market during the subscription period where the financial intermediary is in close contact with the investors. This close relationship between a financial intermediary and investors ends after the subscription period elapses (i.e. after the subscription of the securities and their delivery, as a corollary to Art. 23 (3) Prospectus Regulation).

Moreover, the financial intermediary only has limited possibilities to obtain information on the issue of supplements from the issuer during the entire term of a security (beyond the general availability of a supplement on the website of the issuer or the other means through which the supplement is made available). Only in cases where the intermediary and the issuer closely cooperate, information about a new supplement will be actively communicated by the issuer to the financial intermediary. In our view, this is a further argument for the limitation

of Art. 23 (3) Prospectus Regulation to public offerings with limited subscription periods (subscription business). DDV is therefore of the view that Art. 23 (3) should be amended to reflect such interpretation and the wording should more clearly reflect the ratio stated above.

Furthermore, Art. 23 (3), subparagraph 2 Prospectus Regulation assumes that the financial intermediary is informed of the publication of a new supplement on the day of its publication. To ensure such timely transmission of information, a central source of information would be needed. At the moment, no centralised or even decentralised source exists allowing for same day information transfer. Ideally, a uniform EU-wide solution should be established. Mere national solutions could present the risk of differing supervisory practices which could distort competition. This would undermine the Prospectus Regulation's objective of harmonisation as well as one of the major aims of the CMU, which is to facilitate cross-border offerings.