DDV
Deutscher Derivate Verband

Comments

DDV response to the ESMA Call for evidence on the EC mandate on certain aspects relating to retail investor protection

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Deutscher Derivate Verband (DDV), the German Derivatives Association, is the industry representative body for the leading issuers of structured securities in Germany. Members are BNP Paribas, Citigroup, DekaBank, Deutsche Bank, DZ BANK, Goldman Sachs, Helaba, HSBC Trinkaus, HypoVereinsbank, J.P. Morgan, LBBW, Morgan Stanley, Société Générale, UBS and Vontobel. Furthermore, the Association's work is supported by more than 20 sponsoring members, which include the stock exchanges in Stuttgart, Frankfurt, and gettex, which belongs to the Bavarian Stock Exchange in Munich, Baader Bank, and the direct banks comdirect bank, Consorsbank, DKB, flatexDEGIRO, ING-DiBa, maxblue, S Broker, Trade Republic, as well as the finance portals finanzen.net, onvista and wallstreet:online, and other service providers. Based in Berlin, Frankfurt and Brussels, the DDV has the mandate to elaborate self-regulatory standards such as the Fairness Code which is observed by the issuers with respect to the structuring, issuing, marketing and trading of structured securities. Transparency and education of retail investors is at the heart of its mission. For more information, please consult www.derivateverband.de.

Q1: Please insert here any general observations or comments that you would like to make on this call for evidence, including any relevant information on you/your organisation and why the topics covered by this call for evidence are relevant for you/your organisation.

As an organisation that represents structured securities issuers and online brokers who primarily target retail investors in Germany with their activities, the DDV aims to promote more vibrant participation of retail investors in capital markets.

This objective, set as one of the highest priorities in the new Capital Markets Union (CMU) Action Plan, implies an environment that retail investors can decipher with more ease and trust. It would be utopic to set as a target a zero-risk objective and unwise to adopt an overly paternalistic view, which would go against the willingness to "empower" retail investors. In both advised and non-advised business, investors' maturity should be valued by aiming for the provision of high quality information, so as to enable investors to make informed decisions. The comprehensibility of the information lays the groundwork for, but does not replace its comprehensiveness by the investor.

With this in mind, we believe in the progressive development of a profound and lively securities culture to empower retail investors. The quality of disclosure (and even more its perception by retail investors) as well as the digital channels and tools at investors' disposal play a great role in this context. As active players who are embracing the new technologies for reaching out and interacting with investors[1], DDV members are particularly sensitive to their risks and opportunities. Many other aspects matter, as raised in the EC consultation on the Retail Investment Strategy, which contribute to making the EU capital markets attractive to retail investors. In our opinion, one aspect is of particular importance, namely the freedom and the richness to select between different financial products. Well exerted under the appropriate supervision and enforcement, the diversity of financial instruments at the disposal of investors should be seen as an opportunity and a sign of maturity of capital markets for retail investors.

Following up on its response to the EC consultation on the Retail Investment Strategy, the DDV would like to thank ESMA for the opportunity to provide feedback and illustrations stemming from market practice.

Q2: Are there any specific aspects of the existing MiFID II disclosure requirements which might confuse or hamper clients' decision-making or comparability between products? Are there also aspects of the MiFID II requirements that could be amended to facilitate comparability across firms and products while being drafted in a technology neutral way? Please provide details.

[1] Digital prevails increasingly upon paper, as indicated by the issuers in a recent DDV survey "Emittenten-Umfrage", 2021-2022, with several positive effects e.g., acceleration of the processes, increase of the efficiency, and improvement of the services.

Since 2018, the EU framework for the protection of retail investors has improved, including through increased disclosure requirements. This can be illustrated by the very low number of complaints of retail clients. The latter is acknowledged as a meaningful indicator, in particular according to the IOSCO Retail Market Conduct Task Force´s recent work, which showcases the compatibility of clients´ expectations and the investments they are offered.

This being said, the objective of transparency was not fully reached to the extent that the information provided does not fulfil the expectations of retail investors; however, market participants have learnt how to live with it together with investors. Further changes should be justified, particularly in times of recovery, where efforts are currently being allocated to the production/implementation of sustainable products and investments. Transparency for retail investors should go hand in hand with a level playing field amongst different product types in order to foster sound competition with a rich offer of multiple products.

From a practical perspective, the amount and occasional irrelevance of the disclosure and documentation provided are still some of the most common feedback received by the financial advisors who are the clients´ main contact point. On this basis, it is legitimate to aim for optimal documentation in order to make it more user-friendly and more in line with investors´ aspirations. However, if we follow the logic of empowerment, investors should be able to determine to which extent and what kind of information they would actually need to receive in order to improve the efficiency and the comfort of their experience.

Investors should indeed arrive at correct decisions and, as importantly, these decisions should be made possible in a reasonable timeframe with no confusion and a pragmatic approach to comparability. With regards to the latter, “strong comparability” within a product category, and “reasonable comparability” accompanied with a level playing field between product categories may be an appropriate way forward, as mentioned in the recent ESAs’ call for evidence on PRIIPs Regulation under the term “taxonomy” (i.e., to which differentiated rules apply).

Following these considerations, the requirements that should be improved and harmonised include: i) disclosure product costs according to MiFID and PRIIPs should be harmonised; ii) electronic provision of information through the MiFID Quick Fix and paper-based provision according to the PRIIPs Regulation should be facilitated; and iii) the different definitions of sustainability according to MiFID, the Sustainable Finance Disclosure Regulation (SFDR) and the Taxonomy Regulation should be harmonised. Details will follow in the respective questions.

Q3: Are there specific aspects of existing MiFID II disclosure requirements that may cause information overload for clients or the provision of overly complex information? Please provide details.

Practical experience shows that many investors complain about the high level of bureaucracy in the securities business. In particular, the amount of information requirements, some of which applied automatically due to automated processes, lead to customers feeling inconvenienced by too much information and reacting dismissively even to meaningful and appropriate information. They also criticise that the execution of transactions takes considerably longer under MiFID II compared to the time prior to the implementation of the MiFID II obligations. Investors would like to see orders executed more quickly, which may be facilitated by the removal of the obligation to provide ex-ante cost information for sell orders. According to a DDV survey, more than a quarter of clients feel that an investment in securities is so tedious and the flood of information so annoying that they will be less likely to be active in capital markets in the future. The exit of investors from capital markets is deeply worrying and represents the exact opposite of what the Retail Investment Strategy has set as its goal.

Furthermore, studies such as “MiFID II/MiFIR/PRIIPs Regulation Impact Study: Effectiveness and Efficiency of New Regulations in the Context of Investor and Consumer Protection – A qualitative/empirical analysis”, conducted by Professor Stephan Paul from Bochum University in February 2019, show that, due to the amount of the aggregate pre-contractual information provided to retail investors, there is a risk that investors are not able to absorb all the necessary information due to information overload. This can lead to suboptimal investment decisions.

Q4: On the topic of disclosures, are there material differences, inconsistencies or overlaps between MIFID II and other consumer protection legislation that are detrimental to investors? Please provide details.

As mentioned in the DDV response to the EC consultation on the Retail Investment Strategy, the main inconsistencies between MiFID II and other consumer protection legislation that we can observe exist in relation to cost disclosure requirements under MiFID II and the PRIIPs Regulation. Furthermore, the Prospectus Regulation also requires cost disclosure in prospectus summaries (either the costs according to the PRIIPs Regulation or according to MiFID II must be disclosed, but it appears that in most cases the MiFID II approach is taken). These discrepancies trigger negative comments and reactions from investors, and lead to difficult discussions and confusion for investors, which, in some cases, may discourage investments.

In more detail, the inconsistencies between MiFID II and PRIIPs regarding the calculation methods of costs and the cost components to be disclosed hinder the comprehensibility of the cost disclosure information provided to the client. Synchronisation of the MiFID II disclosure requirements (entry costs – upfront, ongoing costs – running fees per annum, and exit costs) with the requirements of the PRIIPs Regulation (reduction in yield, i.e., the impact of raw costs on annualised return) would be desirable in connection with the harmonisation of the calculation methods. Since the reporting of costs under MiFID II is more comprehensive and includes not only the costs

of the financial instrument but also the costs of the service, the MiFID II cost information should form the basis for an alignment. It should also be evaluated whether the MiFID cost information should be the only cost disclosure provided to clients in order to avoid potentially contradictory information and the unnecessary duplication of information. This would eliminate the current legal uncertainties, improve comprehensibility, and increase cross-product comparability for investors. Although we are aware that political considerations may not plead in favour of this evolution, we hope that an objective assessment of the matter will convince the regulator of the merits of this proposal.

From a more holistic perspective, the general approach for product-related information should be that it is as clear and easy to understand for clients/investors as possible, so that clients/investors can easily find the relevant information. To the extent possible, there should also be consistent language and a consistent publication regime, typically on the website for each product. Should a proposal to regroup product-related information on a more general level prevail, the focus should be on the highest degree of understandability for clients/investors, whilst avoiding parallel information provided in different formats. Where information is partially provided through more than one channel (for example, cost information as aforementioned), only the most far-reaching and appropriate information regime should prevail (in this example, the MiFID regime).

Q5: What do you consider to be the vital information that a retail investor should receive before buying a financial instrument? Please provide details.

The determination of the vital information varies depending on the point in time, the investor's education, and their knowledge and experience.

Regarding the first aspect, the information expected by the investor prior to an investment is not necessarily the same as the information claimed to be expected in the case losses occur. As a concrete illustration, a CEO of a major firm in Germany claimed not being knowledgeable after his investments did not reach the expected return. On the two other aspects, the more educated and wealthier customers do not accept being flooded with information (which certainly ties in with behavioural economics, as mentioned in the next question).

The difficult positioning of the distributor/financial advisor (and indirectly of the issuer) between the reality of the practical experience of investing and the legal requirements should be acknowledged. It will always be challenging to take the average fairness/education/wealth of investors as the benchmark for adequate information. Although a rule-based approach is likely to reduce transaction costs on the side of financial institutions, it may not serve the information needs of individual investors as well as a principle-based approach.

Coming back to the information that is deemed vital, we believe that the most crucial elements are risk indicators and performance scenarios (in particular forward-looking

for structured products). This information is, for instance, prominently presented on the internet platforms of the German financial institutions represented by the DDV.

A specific note should be made here regarding the vital information that should be reflected in theory in the PRIIPs KID. In practice, it appears that the information comprised in the PRIIPs KID does not fulfil the expectations of investors, as illustrated by a recent DDV survey that revealed that only 15.3 percent of investors use the PRIIPs KID as a basis for their investment decision. This lack of value is particularly true in the case of investment advice where, although the KID is provided as mandatory information, firms in Germany rely on other documents in order to provide the investor with the relevant information. This ties in with the history of the product information in Germany, where a template was developed at the initiative of the German Ministry of Consumer Protection in 2009 that has become a benchmark in terms of the understandability and comprehensiveness of information provided to retail investors. This product information sheet, known as the *Produktinformationsblatt* (mandatory for non-PRIIPs products) remains a reference as it presents the main opportunities, risks, costs and basic information of a financial product in a clear and transparent manner.

However these considerations about the vital information for investors should not be understood as a plea for a full reshuffle. The latter would not make sense at this point in time as firms and investors have adapted to the situation. However, necessary fixes in the context of the PRIIPs RTS implementation would bring added value at this stage for structured securities as mentioned in our contact with the relevant decision makers.

Q6: Which are the practical lessons emerged from behavioural finance that should be taken into account by the Commission and/or ESMA when designing regulatory requirements on disclosures? Please provide details and practical examples.

We have learnt from behavioural finance that it is debatable that the traditional approach to investor protection (which is underpinned in general legal regulations of financial markets and assumes that investors act rationally) is still adequate (Ben-Shahar and Schneider 2010, p. 48).

However, behavioural economics is still lacking the normative side of the coin because it focuses on empirical testing of behavioural assumptions in a determined environment, which explains that these findings cannot be easily generalised. This is the reason why it is challenging to transform the practical lessons from behavioural finance into norms.

This being said, it can be observed in practice that investors using the information derived from the current requirements on disclosures do not always avoid behaviours such as herding (as recently exacerbated by social media), endowment effects, and procrastination (which leads investors to stick to their current strategies and behaviour and to be unwilling to change), and overconfidence. These flawed decision patterns

should not be exploited and, on the contrary, the best conditions in terms of times, amount and understandability should be offered to the investor.

Although behavioural finance gives hints about how traditional assumptions may evolve, a step-by-step approach would be recommendable. This should build in particular on existing practices that have proven their merits, such as the appropriateness tests that are thoroughly practiced in Germany. Furthermore it is of utmost importance that this evolution goes hand in hand with financial education/literacy initiatives as presented below.

A read through behavioural finance´s findings, combined with the observations from the practice, lead to the conclusion that the following outlines may serve as guidance for the adjustment of the regulatory framework (both its spirit and its letter):

- Investors are human, which means that their biased behaviours may be reflected in their investments: regulation should take into account this paradigm and should aim to improve the conditions of the investment environment instead of trying to correct behaviours;
- Most investors have neither much interest nor much time; some investors, however, may be more interested: for the first category the information should be restricted to what is core; the investors who belong to the second category should be identified and provided with the necessary education and more detailed information. In other words, two-layers of information (a one-pager, then more in-depth information) might be contemplated depending on whether the investors are interested or not;
- Investors do not like complexity although it is intrinsic to this world and may be necessary for achieving investors' objectives: complexity is sometimes needed to achieve a desirable goal, and it is not imperative to manage all details in order to get a satisfactory outcome (by analogy, just because a driver does not manage all the technicalities of a car does not mean that they cannot drive it to their best satisfaction);
- Investors may be overconfident: they should be made aware of the risks and should be ready to bear them; in order to increase awareness, striking illustrations of the negative impact of over confidence and/or of positive impact of advice provided may be given;
- Investors do not like divergent information as it causes confusion and fears: the information should be consistent (the differences of approaches between the sets of regulations should not affect investors);
- Investors cannot remember the full set of information linked to their investments: the information should be retrievable at any moment on a website at a convenient place (e.g., where the investor looks at their investment); and
- Investors are not always fair: they should be made aware that they cannot complain afterwards that they have not received the necessary information if it

was offered to them.

Beyond these considerations, the best solution that we see as potentially able to optimally increase the chances that investors adopt more rational behaviour is financial education. This is why the DDV invests so much in this respect with its members through a broad toolkit: product classification (a system of product classification for structured products on which DDV members agreed, setting a new market standard); checklists (developed in cooperation with the Deutsche Schutzvereinigung für Wertpapierbesitz), 18 questions and explanatory notes that investors can use to clarify the most important issues before purchasing a structured product; standardised terminology for the extensive range of investment and leverage products; and the *Kompass Strukturierte Produkte* guide, which presents an overview of the world of structured products. Investors also have credit ratings at their disposal to help them assess the creditworthiness of issuers. For more advanced investors, training has been set up on structured products with three consecutive levels, available online. Events are also organised, such as the German Derivatives Day (organised in Frankfurt every autumn, which presents an opportunity for issuers, politicians, and journalists from Germany and the rest of Europe to come together) and the DDV Business Journalism Award (held in Stuttgart every year, which recognises outstanding writing on structured products). The DDV has been working a lot on improving transparency. An example for this is its Fairness Code,[2] which ties the industry to standards above and beyond the regulatory framework. This code contains important rules in order to ensure trust between the issuers of structured products and retail investors, which all members of the DDV have committed to observe. More recently, with the development of a Sustainable Finance Code of Conduct,[3] the DDV has contributed to fostering sustainability literacy. It aims to fulfil the need of the structured securities industry in Germany for transparent, clear, and uniform standards, which are crucial for the comprehensibility and the comparability of sustainable investments from an investor perspective. The ultimate objective of these initiatives is to create the conditions of trust in order for investors to acquire the necessary knowledge that allows for rational investment decision-making.

Q7: Are there any challenges not adequately addressed by MIFID II on the topic of disclosures that impede clients from receiving adequate information on investment products and services before investing? Please provide details.

As previously mentioned, the benefits from the existing regulatory framework should be acknowledged and, in the case further changes are considered, the actual improvements for investors should be weighted against the burdens potentially incurred by the investment firms. In this respect we welcome the extensive study launched by the EC, based on consumer testing and mystery shopping, and we are looking forward

[2] https://www.derivateverband.de/ENG/Transparency/FairnessCode
[3]https://www.derivateverband.de/EN/MediaLibrary/Document/Code%20of%20Conduct/Final_DDV_ESG_Kodex_A4quer_ENG_AUSDRUCK.pdf

to confronting its outcome with the feedback received from investors.

Q8: In case of positive answer to one or more of the above questions, are there specific changes that should be made to the MiFID II disclosure rules to remedy the identified shortcomings? Please provide details.

Please refer to our response to Q4 in particular with regards to the cost disclosure information in relation to the PRIIPs Regulation.

Q9: On the topic of disclosures on sustainability risks and factors, do you see any critical issue emerging from the overlap of MiFID II with the Sustainable Finance Disclosure Regulation (SFDR) and other legislation covering ESG matters?

We indeed see critical issues with regards to the diverging scopes of the applicability of the SFDR and the Taxonomy Regulation on the one hand, and MiFID II and the PRIIPs Regulation on the other. This misalignment threatens to jeopardise the concept of a level playing field for the manufacturers of sustainable financial instruments.

Looking at the disclosure obligations as such, one could conclude that the obligations under the SFDR coexist with those under MiFID II and PRIIPs, and that there is no conflict in this respect. However, this would be too short-sighted. In fact, we are facing a regulatory patchwork: The term “financial product”, which determines the scope of application of the SFDR, is not congruent with the term “financial instrument” under MiFID II, which is decisive for the target market definition and the suitability test in investment advice and portfolio management. Moreover, some “financial products” qualify as a PRIIP, while some do not (e.g., individual portfolio management), and there are products that qualify as a PRIIP, but not as a “financial product” (e.g., structured investment products issued as bonds). The transparency requirements under the SFDR therefore apply only to a part of the MiFID II and PRIIP product universe. In particular, they are not applicable to bonds such as green bonds or Sustainable Structured Investment Products (SSIPs) issued as bonds. Both asset classes qualify as financial instruments under MiFID II and – the latter – also as PRIIPs, but not as financial products under the SFDR/Taxonomy Regulation.

Delegated Regulation (EU) 2021/1253 amending the MiFID II Delegated Regulation (EU) 2017/565 requires that financial advisers and individual portfolio managers explore the potential “sustainability preferences” of their clients before rendering investment advice or portfolio management, which leads to the following mismatch:

- On the one hand, the notion of “sustainability preferences” uses the nomenclature of the Taxonomy Regulation and the SFDR by making reference to “sustainable investments” (Article 2, point 7(a) and point 7(b) of Delegated

Regulation (EU) 2017/565) and "principle adverse impacts" (PAI) (Article 2, point 7(c) of Delegated Regulation (EU) 2017/565);

- On the other hand, the exploration of the client's "sustainability preferences" is not limited to financial products, but encompasses the whole range of financial instruments irrespective of their qualification as financial products under the SFDR/Taxonomy Regulation.

As a consequence, financial advisers or individual portfolio managers can recommend to a client with a sustainability preference a financial instrument (such as an SSIP) – although it is not a "financial product" – as long as the product has at least one of the SFDR/Taxonomy Regulation-related sustainability characteristics set out Article 2, point 7 of Delegated Regulation (EU) 2017/565. To be able to do so, financial advisers or portfolio managers have to rely on the information provided to them by product manufacturers, which gives them assurance that the product actually complies with at least one of the features in Article 2, point 7 of Delegated Regulation (EU) 2017/565. To this end, issuers of non-SFDR products (being nevertheless financial instruments) will have de facto to comply with the disclosure obligations under the SFDR if they want their product to be eligible for the ESG suitability test under MiFID II.

Regrettably, the SFDR (at Level 1 as well as at Level 2 as drafted in the ESA´s Final Reports) does not sufficiently reflect the typical features of financial instruments that do not qualify as financial products. Instead, it is very much aligned to UCITS, AIFs, and insurance products – with SSIPs, green bonds, and other non-SFDR products being sidelined. Only a comprehensive and well-balanced set of sustainability disclosures encompassing the full range of financial instruments as defined in MiFID II, while taking into account its respective specificities, will serve both investors' needs and the overarching goal of reorienting private capital flows towards a more sustainable economy. The SFDR with its limitation to "financial products" instead of "financial instruments" does not meet this objective. This deficiency should be addressed with high priority in a forthcoming revision of the SFDR.

Q10: Are there any other aspects of the MiFID II disclosure requirements and their interactions with other investor protection legislations that you think could be improved or where any specific action from the Commission and/or ESMA is needed?

Although not necessarily directly linked with the MiFID II disclosure requirements, an important aspect that could be improved in our opinion is gold plating. Gold plating makes the provision of cross-border investment services and the cross-border offering of financial products much more difficult.

The pre-authorisation regime for marketing material as implemented by some national competent authorities (NCAs) for instance can be seen as an obstacle due to the

restrictions that it imposes on prospectuses.

Other observations have been made that may restrict at the end of the chain the offer from issuers to retail investors, such as the notification of the ISIN in case of public and non-public offers in Austria to the "OeKB calendar" (https://www.oekb.at/en/capital-market-services/our-range-of-data-knowledge-creates-an-advantage/new-issue-calendar.html), as well as a stricter understanding of the "door-to-door selling" regulation in Italy which affects the distribution of financial products outside the office of an issuer (which is particularly an obstacle for foreign issuers).

In all of these cases, ESMA and the EU legislator should insist on a more consistent application of EU provisions in order to ensure that the investor protection framework is consistently applied across the EU and that no undue obstacles make cross-border offerings more difficult and prevent investors from investment opportunities.

Q11: Do you have any empirical data or insights based on actual consumers usage and engagement with existing MiFID II disclosure that you would like to share? This can be based on e.g., consumer research, randomized controlled trials and/or website analytics.

DDV members´ insights with existing MiFID II disclosure are primarily based on the feedback received by distributors/financial advisors when it comes to advised business. As far as non-advised business is concerned, regular surveys (e.g., DDV Emittentenumfrage) are performed.

In addition, issuers are very attentive to the feedback provided by distributors in connection with the product governance process. This is particularly relevant in the case products are sold outside the target market.

All of this has contributed to the observations and statements made in this response.

Q12: Do you observe a particular group or groups of consumers to be more willing and able to access financial products and services through digital means, and are therefore disproportionately likely to rely on digital disclosures? Please share any evidence that you may have, also in form of data.

Although younger investors may be more at ease in accessing financial services through digital means, the digital means are conceived in a way that facilitates their use by all kinds of investors, as illustrated by the large spectrum of investors who are the customers of DDV members.

As digital disclosures are as valid as paper-based information, the overreliance on this type of disclosure does not seem to be the right angle of approach.

Q14: Would it be useful to integrate any of the approaches set out in paragraph 27 above in the MIFID II framework? If so, please explain which ones and why.

The overarching principle should be that digital information should not be different from paper-based information. DDV members (in both advised and non-advised business) display the legally required information in a comprehensive manner on their websites.

With regards to the principles laid down in paragraph 27 of the consultation, they look reasonable and are complied with by DDV members. The “versioning” may pose questions though, as the display of many versions may lead to confusion for investors. We are doubtful that the benefit for investors justifies the cost imposed on the firm. Furthermore the “use of different means” would be better grounded if it were adapted to the type of services (advised business vs. non-advised business in execution only) instead of taking the complexity of services as the delineation for the use of such communication means.

Q15: Should the relevant MIFID II requirements on information to clients be adapted in light of the increased use of digital disclosures? If so, please explain how and why.

As mentioned in our previous response, what matters most is that the substance of the information, as required by the MiFID II framework, does not vary in terms of substance between paper-based information and digital channels. Other aspects may be different for digital disclosures, in particular, the format due to the technological and readability constraints, and the frequency, which may be less of an issue due to facilitation brought by the digital communication.

The aspect where the increased use of digital disclosures would deserve adaptation is the obligation to provide the information in paper upon the investors´ request, which derives from the provision on digital communication introduced in the recent MiFID II Quick Fix. Although much welcome, this evolution has led to the unintended effect for online brokers to be obliged to offer this possibility, which was not foreseen until now due to the nature of the business. In order to avoid translating this positive move into a step backwards for non-advised business, the MiFID provisions should be adapted.

In addition, as far as the access to information is concerned, it is of the utmost importance that there is an alignment between different sets of legislation regarding digital disclosure in the way pre-contractual disclosure documents are put at the disposal of investors. Whilst, through the MiFID II Quick Fix, the provision of information (e.g., suitability report and ex-ante cost information) via electronic means has become the option by default, it is not the case for the PRIIPs KID, where the default option is still paper-based information (except if requested differently by the investor). This poses difficulties in practice, particularly as it has to be proved in case of “non face-to-face contact” that the choice for receiving the PRIIPs KID (between paper-based and digital)

is given to the investor. Therefore, the PRIIPs Regulation should be aligned with MiFID II in this respect.

Q16: Do you see the general need for additional tools for regulators in order to supervise digital disclosures and advertising behind 'pay-walls', semi-closed forums, social media groups, information provided by third parties (i.e., FINfluencers), etc? Please explain and outline the adaptions that you would propose.

Efforts should turn to market participants such as Amazon or Google, as it may not be in the interest of investors that they are providing investment advice without being subject to the investor protection requirements similar to those faced by financial market participants.

Q17: To financial firms: Do you observe increased interest from retail investors to receive investment advice through semi-automated means, e.g., robo-advice? If yes, what automated advice tools are most popular? Please share any available statistics, data, or other evidence on the size of the market for automated advice.

Whilst robo-advisers may offer advantages for retail investors, in particular lower fees, accessible investment thresholds, and, in principle, often impartial advice, robo-advisers may, in our view, also present risks to investors resulting from, for example, simplistic and non-dynamic algorithms that may not create efficient investment portfolios or result in erroneous recommendations/trading instructions. In particular, the quality of the investment services received by investors from robo-advisers depends on the kind and quality of data entered by the investor into the system.
Investors need to be aware of how the provided data could influence the results of the robo-adviser where incomplete or inaccurate information may even result in erroneous recommendations/trading instructions. In contrast to traditional investment services provided by traditional financial institutions, investors relying on robo-advisers often cannot assess why a specific financial product is recommended to them and, for instance, fail to understand that even automated investment advice may be influenced by the preferences of the provider of the robo-adviser.

As far as structured securities are concerned, we have not observed an increased appetite for the use of automated advice tools due to the tailor-made expectations of investors. Some attempts were made though by issuers, but they did not prove successful due to the limitations explained in the response to the next question.

Interesting practices can be observed, for instance, amongst the online brokers who are members of the DDV, where the automated journey can take two paths: the investor can opt either for fully automated recourse to robo-advice or for being accompanied by a (human) financial adviser who acts as a coach in order to lead the investor through

advice benefiting from automated assistance. The combination of the automated and the human advice is definitely an avenue to explore, at least regarding the financial instruments for which it is appropriate.

From a more general perspective, in the long run, a combination of robo-advisers and human financial advisors seems to indeed be the most effective approach, as they are complementary and should not exclude each other.

Q18: Do you consider there are barriers preventing firms from offering/developing automated financial advice tools in the securities sectors? If so, which barriers?

The limitation we see in the automated tools are their intrinsic constraints. Robo-advisers may not be appropriate for every kind of product and situation. For instance, they have an inherent limitation with regards to structured securities due to the fact that they assume the linearity of products. More specifically, the Marcowitz approach used for portfolio management (or related approaches) can only handle linear products, which is not the case for structured securities.

Therefore, while tools of portfolio management are deemed useful for these products, robo-advisers shall always be regarded as a possible but not a mandatory complement to human advice.

Q22: Do you consider that the existing MiFID regulatory framework continues to be appropriate with regard to robo-advisers or do you believe that changes should be added to the framework? If so, please explain which ones and why.

The MiFID regulatory requirements are still appropriate and should not be lowered in order to foster the use of these tools. This would certainly not be to the advantage of investors and would endanger the progress made so far in terms of financial advice. Robo-advisers (i.e., online platforms providing automated investment advice, and in many cases also portfolio management) are in principle (and depending on how a particular platform is structured and on what contractual arrangements are agreed with the users) subject to the same rules as traditional "human" advice – both in terms of required authorisation as well as of investor protection rules under the MiFID II and IDD frameworks.

In its administrative practice, BaFin in fact takes the view that robo-advisers conduct the same business as traditional financial institutions, thereby creating the same risks for (retail) investors, and therefore should comply with the same regulatory framework as traditional financial institutions. In a nutshell – "same business, same risk, same rules".

Q23: Do you think that any changes should be made to MiFID II (e.g., suitability or appropriateness requirements) to adequately protect inexperienced investors accessing financial markets through execution only and brokerage services via online platforms? If so, please explain which ones and why.

Investors who recourse to non-advised services of investment firms have a specific desire to invest based on their own decision-making processes. However, they are not fully left on their own, as they benefit from the appropriateness mechanism, which is meant as a further level of protection that prevents investors from buying products whose risks are not fully understood. For these reasons, in Germany, almost all banks pursue an appropriateness test for all products (i.e., for both products deemed complex and products deemed non-complex). This is not perceived as an obstacle and ensures a certain level of investor protection, as is self-evident with regards to, for instance, a penny stock or a high-yield bond, which can bear huge risks and which certainly should not be bought easily by every investor. The appropriateness test is an important safety net to ensure investors are made aware of product features, including risk levels.

We are taking advantage of this question to reiterate that the conceptual difference between appropriateness and suitability is not indicative of a protection deficit in the appropriateness concept. Rather, the design of the appropriateness assessment and its consequences in the MiFID II regulations reflect the needs of the client groups that typically use investment services that do not require advice. These are self-directed investors who make a conscious decision not to seek out the support of third parties, whether in the form of investment advice or asset management, but rather make their own investment decisions. This group of investors, whose guiding principle is “informed investment decisions”, needs and wants investor protection through proper, correct, and comprehensible information. It is proper that MiFID II also obliges investment firms to check the appropriateness of the transactions in question against the benchmark of informed investment decisions, and to clearly warn non-advised clients about inappropriate transactions. This additional protective mechanism does nothing other for non-advised services than concretise the general obligation of investment firms to act in the client’s best interest; the concept of the statutory regulation does not include any further protective mechanisms. In particular, the concept of the appropriateness assessment also respects the freedom of the non-advised client to disregard warnings on an informed basis, and to decide to carry out potentially inappropriate transactions.

For these reasons, the suitability assessment requirements are not one to one transferable to non-advised services. The latter are tailored to the needs and preferences of investors who act on their own initiative and make their own investment decisions (“self-directed investors”). This will hopefully be taken into account by the ESMA Guidelines on certain aspects of the MiFID II appropriateness and execution-only requirements.

The design of the appropriateness requirements should always be weighed against the capacity to access the products for clients who prefer non-advised services. In other

words, the right balance should be kept between a high level of investor protection and the availability of products for clients who buy on their own initiative.

Q24: Do you observe business models at online brokers which pose an inherent conflict of interest with retail investors (e.g., do online brokers make profits from the losses of their clients)? If so, please elaborate.

Mainly, the business model of online brokers is based on fees and commissions. It is not linked to the loss or gain of the financial product investors have invested in via the broker.

Further, the online brokers´ business models are subject to strict requirements to which they abide under the supervision of BaFin in Germany. Inducements, for instance, are carefully scrutinised, including through regular external audits that assess in particular the criteria of quality enhancement.

It may happen that there are online brokers who operate under less strict requirements, but these are located outside the EU or in some jurisdictions where the enforcement is less stringent (e.g., in Malta).

Q25: Some online brokers offer a wide and, at times, highly complex range of products. Do you consider that these online brokers offer these products in the best interest of clients? Please elaborate and please share data if possible.

Online brokers do not necessarily offer the most highly complex range of products. For instance, they may offer leverage products without offering CFDs. The online brokers who also offer more sophisticated products do it as part of their offer of the full range of financial instruments. Their approach is indeed to provide investors with the greatest diversity in terms of choice of financial instruments. The most complex products are meant for investors who have extensive knowledge. The marketing of these products is not prominent (e.g., on brokers' websites), due to their specific target market.

Although not necessarily easy to plead for in a jurisdiction that is very protective of investors, we believe in the ability of investors to make decisions on their own as long as this is on an informed basis. More and more investors are "self-directed" investors, who have a specific investment purpose and are willing to accept a certain risk-reward profile. They should be provided with the respective information, but the choice of products should not be restricted. It should also be noted that investors who have appetite for the highest risks do not invest in the EU area due to the stringent regulatory framework and are served by brokers outside the EU.

On a side note about the supposed complexity of products, the definition of complexity in MiFID can be easily challenged as, for instance, UCITS funds are deemed non-

complex (although they use ABS structure, complex bonds, and complex derivatives that completely change the strategy of the fund) whereas reverse convertibles (which have transparent credit ratings and are based on plain vanilla products) are deemed complex. There is no real and reliable measure of complexity to date.

Q26: One of the elements that increased the impact on retail investors in the GameStop case was the widespread use of margin trading. Do you consider that the current regular framework sufficiently protects retail investors against the risks of margin trading, especially the ones that cannot bear the risks? Please elaborate.

Recent experiences (in particular, GameStop) have triggered reflection on the role that should be played (or not) by online brokers in such contexts. They have shed light on the difficulty for online brokers in particular of positioning themselves in such situations. Indeed, some brokers were criticised for their decisions regarding the offering of these products (warning or suspension of trades) or placing a limit regarding the volume of the orders. The nature of this business renders any intervention from the broker delicate, having in mind that the investors can make losses but also gains in such a context. In addition, being more interventionist would pose the question of the proper timing of the intervention.

Thus, it is unclear if a clearly defined process would help deal with these situations in an orderly and consistent manner. These situations are indeed rare (compared to the number of trades) and it would be difficult to use these cases as a blueprint. However, these phenomenon should be observed carefully in the future in order to assess if regulatory action and/or supervisory practice should develop accordingly. The GameStop scenario was a non-functioning market where brokers were unable to provide sufficient liquidity and hedge their positions. These extraordinary situations should not lead to an interventional approach in all circumstances. It may rather require some emergency mechanics in order to deal with a non-functioning market.

More precisely with respect to the use of margin trading (which is a mechanism that exists in particular for CFDs), this may not be the core of the issue. It may be that, from a more global perspective, the solution lies more in the quality of the onboarding of investors in order to ensure that investors´ knowledge is adequately assessed before giving them access to products of that kind.

Q27: Online brokers, as well as other online investment services, are thinking of new innovative ways to interact and engage with retail investors. For instance, with “social trading” or concepts that contain elements of execution only, advice, and individual portfolio management. Do you consider the current regulatory framework (and the types of investment services) to be sufficient for current and future innovative concepts? Please elaborate.

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Online brokers, as well as investment firms that provide online investment services, are indeed exploring ways of interacting with investors by means of a more “social touch”, for instance, through the provision of guidance/inspiration by using examples of what other investors are interested in. It is seen more as a sharing of experiences, without any prominent adviser who might show the way.

These innovative ways of engaging with investors are well captured by the existing regulatory framework. What matters most is harmonised enforcement, with the capacity to react swiftly and consistently in different jurisdictions if laws are breached. The other crucial element that guarantees investor protection is the application of the principle “same business, same rules”, which should ensure that market participants (including online investment platforms) that interact directly or indirectly with retail investors do not escape from the protective regulatory framework. Investor protection rules apply to fintechs and other new market participants. A level playing field is needed, irrespective of the offering of financial products or the distribution channel (i.e., in-person investment advice, online advice, or execution only).
In particular, if third-party providers such as comparison websites encourage clients to purchase certain products, consideration should be given to subjecting these providers (at least partially) to the requirements for investment services companies. It would be conceivable, for example, to apply the general requirements for information duties according to Article 24(3) of MiFID II, so that investors also receive honest, clear, and non-misleading information from third-party providers.

Q28: Are you familiar with the practices of payment for order flow (PFOF)? If yes, please share any information that you consider might be of relevance in the context of this call for evidence.

The use of payment for order flow (PFOF), where a broker (investment firm) directs the orders of its clients to a single execution venue (i.e., a trading venue as defined in Article 4(1), point (24) of MiFID II) for execution against remuneration, appears to be increasingly popular as a business model, in particular in the context of newly established online brokers (known as “neo brokers”). Being compensated by such execution venues, neo brokers are able to offer their services with low – or even no – direct fees to their clients. In this respect, it is also interesting to note as a first indication that a recent publication made by “*Finanztest*”[4] states that they did not find out evidence of greater spreads. This may need further investigation.

While, on one hand, this practice seems to contribute to a very significant increase in clients investing in financial instruments and thus fosters – the highly desirable – investor participation in capital markets, on the other hand, it may raise concerns in terms of potential conflicts of interest due to payment of inducements and fulfilment of

[4] https://www.test.de/Smartphone-Broker-im-Test-5468655-0/ (9 November 2021)

the obligations surrounding best execution of client orders (i.e., an obligation to execute orders on terms that are most favourable to the client).

Where the business model of neo brokers is based on payments received from cooperating trading venues, it should be kept in mind that the use of inducements (i.e., fees, commissions, and monetary or non-monetary benefits) in general is already very restricted, i.e., any payment must be designed to enhance the quality of the relevant service to the client and must not impair compliance with the investment firm's duty to act honestly, fairly, and professionally in accordance with the best interest of its clients. According to ESMA, the quality enhancement provided should go beyond aspects of the firm's organisation or services that are legally required or that can be considered as essential for its functioning. Any payments must also be clearly disclosed – transparency is a crucial aspect for the investor.

Like any other investment firm, neo brokers also have the duty to apply the principal of best execution. It must be ensured that there are no incentives to route client orders to the highest bidder rather than to the execution venue offering the best prices and fastest execution. If a broker cooperates, for instance, with several trading venues and gives its clients the choice between these several trading venues, the broker must present the trading venues to its clients in a manner that is not influenced by inducements paid by any of these trading venues. Pre-determination of a particular trading venue might go against best execution principles. As outlined by ESMA in its "Questions and Answers On MiFID II and MiFIR investor protection and intermediaries topics", MiFID II does not prohibit firms from selecting only one execution venue to execute client orders in a given class of financial instruments, provided that they are able to demonstrate that this choice enables them to consistently get the best results for their clients. However, from an investor perspective, it may make a difference if only one or several executions venues are offered. In addition, the brokers are in competition with each other and are dependent on satisfied customers. If a customer is dissatisfied with his order execution, he is free to change providers at any time. Even today, many (self-directed) investors have accounts with various online brokers.

In order to comply with the requirement under Article 24(1) of MiFID II to act in the best interests of its clients, firms will need to regularly assess the market landscape to determine whether or not there are alternative venues that they could use. It is indeed of utmost importance that the best execution venue is chosen in the interest of the clients.

Following the decision from the European Commission to insert a provision which consists of a ban of PFOF in the MiFIR review before the outcome of this call for evidence, further analysis would be needed on i) the use of third party payments by the broker; ii) the execution quality and the transparency to the clients of the broker; iii) and the impact on liquidity. Once done, these technical findings should be weighted against the increase of the engagement of retail investors in capital markets, the latter being one of the most prominent objectives of the CMU, which should not be hampered by

higher trading commissions.

Q34: Online brokers seem to increasingly use gamification techniques when interacting with clients. This phenomenon creates both risks and potential benefits for clients. Have you observed good or bad practices with regards to the use of gamification? Please explain for which of those a change in the regulatory framework can be necessary. Do you think that the Commission and/or ESMA should take any specific action to address this phenomenon?

The innovative techniques that aim to favour the informed engagement of investors in capital markets may deserve a better name than "gamification techniques". Actually, although efforts are being made to make these techniques more investor friendly, they are inspired by the intention to increase the knowledge and the comfort of investors in their choices. For instance, virtual approaches are used as simulated experiences of trades. Watchlists are also provided to observe some stocks and the way they are evolving. These techniques are seen as part of the education provided to investors in a way that improves their investment experience. All of these initiatives performed by DDV members are subject to a protective regulatory framework that ensures the respectability of the approach.

Q35: The increased digitalisation of investment services, also brings the possibility to provide investment services across other Member States with little extra effort. This is evidenced by the rapid expansion of online brokers across Europe. Do you observe issues connected to this increased cross-border provision of services? Please elaborate.

The increased cross-border provision of services has made the diversity of rules even more apparent, or at least their application by the supervisors in some Member States regarding marketing and advertising of investment products. This can result in different levels of information being provided and different standards being applied to disclosures, in particular digital, which could negatively impact retail clients.

These rules would benefit from more harmonised supervisory practices, as this would contribute to the readability of the offers to retail investors. In particular, a regular review of the implementation of individual requirements by the NCAs would be desirable, also from a level playing field perspective.

Such harmonisation should be principle-based in order to leave enough room for innovation in this area as well. What matters is vigilant oversight, accompanied by the exchange of information amongst EU supervisors as soon as mis-selling practices are detected.

Q36: Do you observe an increasing reliance of retail clients on information shared on social media (including any information shared by influencers) to base their investment decisions? Please explain and, if possible, provide details and examples. Do those improve or hamper the decision-making process for clients?

Social media platforms are already a prominent reality in retail investment and their influence on the decision-making process of retail investors cannot be neglected, as illustrated in a recent DDV survey[5] where more than half of the German issuers have indicated that they observe a link between social media and the increase of retail trading. In order to have a clearer picture of what is happening in practice, it is important to identify the different forms under which these platforms operate.

The following distinct configurations may be set up: i) social platforms where an investor signs in while trading via a broker; ii) social platforms owned by brokers in order to use them as channels to deliver content on products; iii) social trading platforms that also offer the possibility of trading, for example, CFDs. In the first two categories, the trades are subject to the relevant regulation due to the legal nature of the broker while the situation is less clear for the third category. Indeed, it is of utmost important that the platforms performing the trades (via apps for instance) should also abide by the rules in order to prevent further incidents from happening.

Although following this phenomenon closely, it is difficult for investment firms to carry out analysis on the basis of customer data due to the strictness of privacy law in Germany. Based on the overall observations and feelings gathered, it appears that intervention of social media has clearly triggered an increase of trade and also of questions (some online brokers offering weekly responses to questions on YouTube) from retail investors, as strongly illustrated in the GameStop case. However it is difficult to say if the intervention of social media is the main reason that motivated this "rush", or if it only contributed to it.

Further to following this phenomenon with attention, online brokers can also play an active role in channelling this new trend. Indeed, they know their customers well (e.g., they keep in touch via Q&A sessions with investors) and they may usefully counterbalance the influence of social media information, or at least give a direction to it that allows investors to make more informed decisions.

Q37: What are, in your opinion, the risks and benefits connected to the use of social media as part of the investment process and are there specific changes that should be introduced in the regulatory framework to address this new trend?

It should be acknowledged that the use of social media opens up a lot of opportunities, in particular as it enables a broad range of individuals to be reached who would not

[5] DDV Emittenten-Umfrage 2021-2022, question 10.

have engaged in markets otherwise.

In order to contribute to increasing the positive externalities of social media platforms, we believe that the diversity of these platforms is key. In addition, it would be healthier if the focus of social media was the discussion amongst retail investors, and if the content was not driven by a specific hidden agenda. In the social media platforms where the online brokers intervene, the discussion is meant to be between retail investors and, if the broker sometimes delivers content, it is only in order to respond to questions that are linked to the services provided.

In a nutshell, as illustrated by the GameStop case, observation and oversight should be exercised without stopping this innovative method of incentivising individuals to become retail investors. Frictions in the market caused by herding should be tackled, as they may reflect artificial pricing and misguide the market. Regulators may need to adapt MAR to include these scenarios in the future. In other words, the provisions foreseen by MiFID II and MAR should fully apply to any distribution of financial products/advice, irrespective of the platform and channel used. And, very importantly, the same rules should apply if social media platforms are used as a channel or if social media platforms themselves disseminate such relevant information.

As far as the market participants are concerned, they are already engaging in fostering the ways by which the education/awareness of investors (through forums, Q&As, infographics, etc.) is reinforced in order to counterbalance the influence of social media. A better educated investor will be less prone to follow a movement that will be detrimental in the end, and will be more able to select the proper information for their decision-making process.

Q38: Are you aware of the practices by which investment firms outsource marketing campaigns to online platform providers/agencies that execute social media marketing for them, and do you know how the quality of such campaign is being safeguarded?

The outsourcing of marketing campaigns to online platform providers/agencies is not the way currently favoured by DDV members. While the marketing format (of the website and flyers, for instance) may be outsourced, the content remains solely with the online broker. In other words, the online broker defines the frame of the content and its presentation is always presented beforehand to the broker for approval. In addition, marketing campaigns do not focus on single stocks and instead address subject areas at the industry level.

That said, it is likely that marketing will be pursued to a certain extent via social media (e.g., Twitter, Instagram, and Facebook) in the future. Furthermore, the use of chats, blogs, and other social forums is driving investment decisions as well as marketing communication. The current framework does not properly cater for these kinds of

channels. In other words, it should be ensured that all marketing channels are subject to the existing regulatory framework so as not to disadvantage existing channels. There should be a level playing field in the marketing of financial products. This does not mean stricter rules or stricter enforcement.

Q39: Have you observed different characteristics of retail clients, such as risk profiles or trading behaviour, depending on whether the respective client group bases their investment decision on information shared on social media versus a client group that does not base their investment decision on social media information? Please elaborate.

Such observation is difficult, as making up a risk profile, for instance, would imply having a large set of information at disposal, including data that is out of range for investment firms.

Q40: Do you have any evidence that the use of social media (including copy/mirror trading) has facilitated the spreading of misleading information about financial products and/or investment strategies? Please elaborate and share data if possible.

Misleading information whose spreading might have been facilitated by the use of social media is not monitored as such by DDV members. The supervisor may be in a good position to do so.

Q41: Have you observed increased retail trading of 'meme stocks', i.e. equities that experience spikes in mentions on social media? Please share any evidence of such trading and, if possible, statistics on outcomes for retail investors trading such instruments.

The situation that arose in the case of GameStop shares in January 2021 illustrates that extreme volatility does not necessarily discourage investors due to the potential high returns. By way of illustration, a small proportion of investors (1 percent) followed this movement amongst the clients of one of the online brokers who is part of the DDV's membership. Similar cases happened with Nokia and Blackberry shares for instance.

However, a direct correlation between these peaks and the mentions in social media (or on the websites of financial firms that sometimes rank, for instance, the top ten traded stocks) is difficult to establish with certainty.

Financial education of investors, as performed by DDV members using several

approaches (e.g., webinars), can also contribute to mitigating the appetite of retail investors for these “meme stocks” that do not result in positive outcomes for the market and the investors themselves in the end. However, there are two sides of the coin. On the one side, there are well known risks connected to the hype in connection with meme stocks, on the other side, there is the possibility of a high return of investment due to the higher volatility and rise of the stock price.

Q42: Do you consider that the current regulatory framework concerning warnings provides adequate protection for retail investors? If not, please explain and please describe which changes to the current regulatory framework you would deem necessary and why.

The current regulatory framework around warnings is protective of retail investors. It also has the merit of leaving leeway for financial firms to a certain extent. Certain firms have policies and procedures that would imply that a client may not be allowed to proceed with a transaction after having received a warning (although such restrictions do not follow from the rules in themselves). In addition, German firms often take this into account with non-advised services for higher-risk leveraged products by providing clients interested in such transactions with a separate risk explanation and warning before the clients conclude such transactions for the first time. In this regard, it might be advisable to refer to “leveraged financial instruments” pursuant to Article 62(2) of the MiFID II Delegated Regulation.

As far as the drafting of warnings is concerned, the current requirements are well adapted to the reality of hundreds of thousands of new and different individual products with their own ISIN, for which a granular analysis per product would be impossible in a fairly automated process.

Q43: Do you believe that consumers would benefit from the development of an ‘open finance’ approach similarly to what is happening for open banking and the provision of consumer credit, mortgages, etc? Please explain by providing concrete examples and outline especially what you believe are the benefits for retail investors.

It is acknowledged that open finance might bring advantages, such as:

- making the financial situation of customers transparent and allowing products to be shaped accordingly;
- tailoring financial products according to the data;
- building ecosystems that offer a broader range of products (financial and non-financial) than traditional banks; and
- establishing blockchains that will allow trustless (without

trustees/intermediaries) transactions by the use of smart contracts; the technology allows transactions without intermediaries.

Accordingly, the following potential benefits may be expected from an open finance approach: competitive pricing; cost reductions; comparability of products; standardisation of products; enhanced and targeted investment advice through the use of client data and algorithms; clients able to design their risk profile and manage their entire investments (securities, FX, funds, etc.); and greater liquidity through more customers entering the same market/interoperability of open finance.

Q44: What are, in your opinion, the main risks that might originate from the development of open finance? What do you see as the main risks for retail investors? Please explain and please describe how these risks could be mitigated as part of the development of an open finance framework.

The benefits mentioned in response to the previous question need to be balanced against the risks involved in open finance as a whole, namely: fast and easy investment decisions without considering the risks; long-term investments made quickly without the possibility of an easy get out; because of standardisation, the possibility of losing niche products and diversity of the market; frictions between platforms; data security; and bank compliance across all offerings and market participants.

In order to efficiently develop an open finance framework while mitigating the aforementioned risks, it would be of paramount importance to develop the related rules at the same time for the whole range of players.

Q46: What are the main barriers and operational challenges for the development of open finance (e.g., unwillingness of firms to share data for commercial reasons; legal barriers; technical/IT complexity; high costs for intermediaries; other)? Please explain.

Securities investments differ considerably from payment transactions. In contrast to securities investments, payment transactions usually involve the payment of a service for which the customer is generally indifferent as to how it is carried out. A payment service is also a single product compared to millions of securities. Furthermore, securities transactions involve investment decisions and the achievement of a return. Hence, the open payment approach cannot be compared with open finance as a whole (and securities investments in particular). It should be noted that, with securities transactions in particular, it is not as simple as creating an API and then third party service providers are able to offer suitable investment products. The distribution of securities requires knowledge of the investment profile and the risk appetite of investors as well as knowledge of the entire range of securities products. The range of products is broader than simply providing a payment service. Opening the API will not address

the complexity of securities, their investment, or distribution.

However, it should be noted that some online brokers within the DDV's membership have their own API that is open both to institutional partners and to retail clients (however, the decision of who uses the API lies with the broker). This allows them to program their online trading software there or to follow "guidance" from experts who use available information (in particular market data) and connect the investor´s account to their strategies.

Q47: Do you see the need to foster data portability and the development of a portable digital identity? Please outline the main elements that a digital identity framework should be focusing on.

The new digital ID framework proposed by the European Commission could indeed be a new tool brought to the financial services. It would provide a standard-based and interoperable identity solution that could be applied across different data controllers and sectors, both public and private.