



Association des Banques et Banquiers, Luxembourg  
The Luxembourg Bankers' Association  
Luxemburger Bankenvereinigung

**MIDI de l'ALJB – 24.04.2024**

**“Where do we currently stand on the European  
Retail Investment Strategy ?”**

**Retail Investment Strategy Package**



**01**

# **Retail Investment Package proposal: overview**

# RIS- What does it say?

On 24 May 2023, the EU Commission published the final version of their proposal.

<https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52023PC0279>

## Objectives:

- **Increase** retail investor' participation in capital markets
- **Improve** investment outcomes for retail investors
- **Strengthen** retail investors' protection



## One omnibus directive amending several texts:

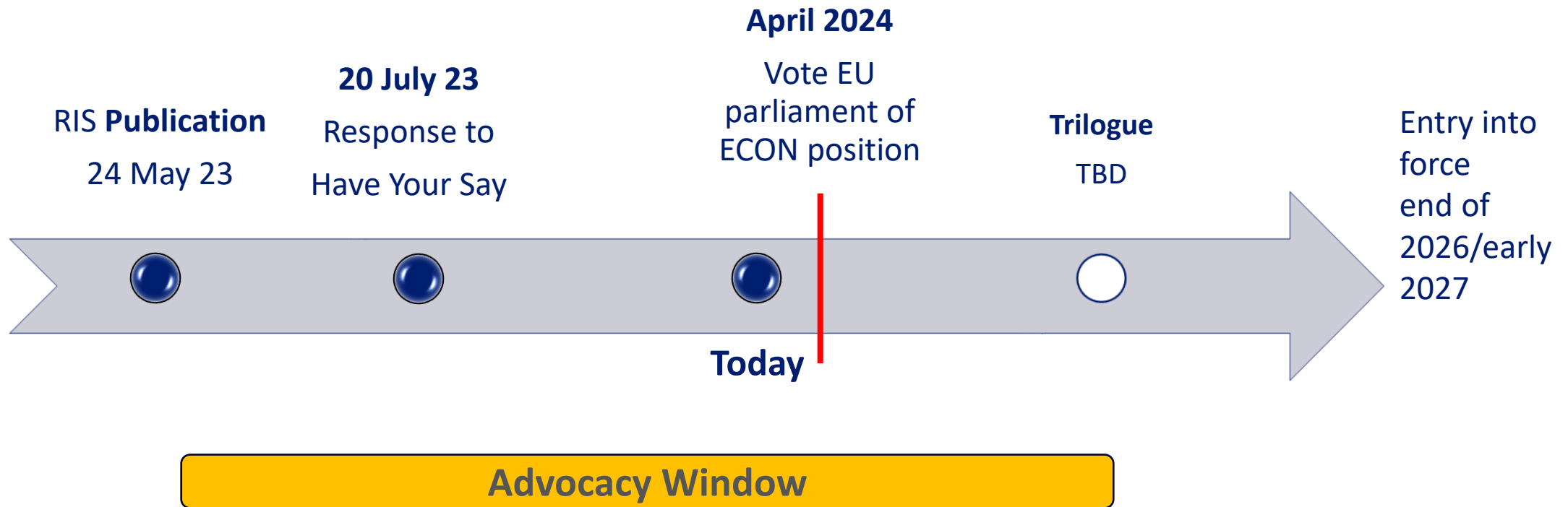
- MIFID II
- Insurance Distribution Directive (IDD)
- Solvency II
- UCITS & AIFMD Directives



## Far-reaching proposal entailing:

- Increased **complexity** and **regulatory burden**
- **Regulatory intervention** in products' pricing
- Enhanced **supervision** and **standardisation**

# Timeline



# Advocacy actions – RIS/RIP

## ➤ Completed Steps



- The ABBL has responded to the [Have-Your-Say Consultation](#) expired on August 28<sup>th</sup>, 2023.
- Contribution to the EBF position on **MiFID** and **PRIPs** changes.



- ABBL position paper outlines detailed **considerations** on **negative impacts** to retail clients, investment firms and financial eco-system as a whole
- Paper **circulated** to EBF, Ministry of Finance, EU Stakeholders (EC, EP, PermReps) and uploaded on ABBL website.
- The ABBL has proposed amendments via the Ministry of Finance for the ECON hearings
- ECON position adopted on the March 20<sup>th</sup>, 2024.

## ➤ Next Steps



- **Plenary vote** of the EU Parliament (ECON position) scheduled for [Tuesday 23rd of April 2024](#)
- **Outstanding:**
  - Position of the European Council to be established
  - Trilogue between Council, Parliament and Commission to take place with adoption of the final text
  - Publication on the Official Journal (OJ)

# 02

## RIS proposal: amendments to MIFID

# Client categorisation: easing the conditions to become a professional client

## Client categorisation

Value for Money

Inducements

Best interest test

Suitability &  
Appropriateness

Marketing  
communication &  
practices

### ➤ Amendments to criteria to opt-up: § 5 of Annex II, section II.1

- **Portfolio's size reduced to EUR 250 000** on average during the last 3 years
- **Client's experience** in the financial field: **new alternative criterion** "or undertaken capital market activities requiring to buy and sell financial instruments and/or to manage a portfolio of financial instruments"
- **New criterion added:** client's recognized education or training

### ➤ New criteria added for legal entities

- **Quantitative:** meeting **at least 2 of the 3 criteria** on Balance sheet (> EUR 10 million), net turnover (> EUR 20 million) and own funds (> EUR 1 million)
- **Qualitative** criteria for the entity's legal representative or investment manager

# ABBL proposition on Client categorisation

We see allowing more clients to become professional clients as a way for experienced investors to access products that suit their experience and preferences. While this may not be relevant for regular retail investors, this would enable these experienced clients to channel investments and savings to capital markets, thus achieving the **objective of the Capital Markets Union (the CMU)**.

## #1 Trading frequency

- ❖ ABBL suggests using the following wording which states "the client has made significant transactions on the relevant market about 10 times a year on average over the last 3 years."

This approach ensures fair treatment for all instruments and avoids penalizing trading in less liquid assets.

## #2 Legal entities

- ❖ We are **not supportive** of the proposed new condition for testing the understanding of transactions by the legal representative or the person responsible.
- ❖ We are suggesting a modification of this requirement for assessing comprehension of transactions by the legal representative or the individual overseeing investments by the corporate purpose of the legal entity, "The corporate purpose of the legal entity: the date of constitution of the legal entity is above 1 year and the corporate purpose in the articles of incorporation includes the activity of "buying, holding and selling financial instruments."



# Value for Money (VfM)

Client categorisation

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- **VfM provisions set out in new article 16-a: Product governance requirements**
- **VfM provisions applicable to both manufacturers and distributors**
- **Scope: PRIIPs financial instruments**
- **Objectives:**
  - Having in place a clear pricing process
  - Clear identification and quantification of all costs & charges
  - Assessing if they are justified and proportionate
- **Process**
  - **Manufacturers** make the information available to distributors
  - **Distributors:** quantify costs of distribution + other costs not considered by the manufacturer

# Value for Money (VfM)

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## ➤ **Benchmarking requirements**

- Assessing the costs & performance of PRIIPs products **against benchmarks** to be developed by ESMA
- Where a product **deviates** from its benchmark:
  - It **shall not be** approved by the manufacturer nor distributed, **or**
  - It **shall be** approved and distributed **if** the investment firm performs **additional testing and further assessments**
- All assessments to be **documented** and provided to the Competent Authority, **if requested**: art 16-a(7)
- **Benchmarks** to be elaborated by the **EU COM** (delegated acts) and **ESMA** (RTS)

# Value for Money (VfM)

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## ➤ Reporting to NCAs for transmission to ESMA

- **Manufacturers:** details on costs & charges, performance, risk and third-party payments
- **Distributors:** costs of distribution, including costs related to advice and third-party payments

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- **Ban on inducements in the context of execution only and RTO on behalf of retail clients**
- **Exemptions to the ban**
  - When providing non-independent advice and execution/RTO transactions are covered by the advice
  - Fees related to underwriting and placement services provided to an issuer when the investment firm also provides execution/RTO to the retail client
  - Minor non-monetary benefits < EUR 100, if disclosed to the client
- **Review clause**
  - Timeline: 3 years after the transposition of the Directive
  - Assessing the effects of inducements on retail clients
  - Potentially, proposing a full ban on inducements

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## ➤ Disclosure of inducements

- Part of the **overall disclosure** on costs/charges of **art. 24b(1)**
- Disclosure in good time and **prior to** the provision of investment services/ancillary services. **If not feasible**, the calculation method must be clearly disclosed in an understandable manner for an average retail client
- Inducements detailed **separately**, with their **purpose** and **cumulated impact** on the net return
- **Standardized** disclosure, to be elaborated by ESMA RTS: format and standard terminology

# Best Interest Test for investment advice to retail clients

Client categorisation

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- **Obligation to act in the client's best interest when providing investment advice to retail clients: new art. 24.1a**
  - Advice based on an **appropriate range** of financial instruments
  - Recommending the most **cost-efficient** product among those identified as suitable (as per art. 25a(2))
  - Recommending **at least one product** without additional features (e.g., capital guarantee, structured product) to offer the retail client a **potential cheaper alternative**
  
- **The best interest test replaces the current requirement that inducements must enhance the quality of service to the client**

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## ➤ **Article 25.1**

The S & A assessment of the relevant financial instrument/investment service to a client **or potential client** must be made **in good time before** the provision of investment advice, portfolio management or execution/RTO

## ➤ **Reporting to clients**

- Purpose of the S & A assessment explained to the client/potential client
- **Standardized warning** if incomplete, inaccurate or absent information provided by the client
- **Standardized report** on the information collected for the S & A assessment upon request of the retail client
- **ESMA RTS** to determine the content and format of warnings and of reports to the client

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➤ **Investment advice or portfolio management: suitability assessment, art. 25.2**

- Knowledge & Experience,
- Financial situation, **including the composition of any existing portfolio**
- Ability to bear **full or partial** losses,
- Investment needs and objectives (**including sustainability preferences**)
- Risk tolerance, including **need for portfolio diversification**

**Independent advice: exemption** from assessing K&E and portfolio composition, if advice limited to well-diversified, non-complex and cost-efficient products



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➤ **Other investment services: appropriateness test, art.25.3**

- Knowledge & Experience of the product or service
- Ability to bear losses, **for retail clients (new)**
- Risk tolerance, **for retail clients (new)**
- In case of **negative** appropriateness assessment:
  - **Standardized warning** provided to the client, to be recorded
  - Transaction possible at the client's explicit request
- **ESMA RTS** to determine the content and the format of the warnings

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## ➤ Exemptions to the appropriateness test, art.25.4

- Execution / RTO for Non-complex products
- Mandatory **standardized** warning to the client or potential client informing on the absence of appropriateness test
- **ESMA RTS** to determine the content and format of the **mandatory warning**

Classification of clients

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**Marketing communication  
& practices**

- **New definition of marketing communication and practices: art. 4.1**
- **Policy defined, approved and overseen by the management body: art. 9.3(d)**
- **Organizational and administrative arrangements: art. 16.3a**
- **New obligations for investment firms related to marketing communications & practices: art. 24c**
  - Fair, clear, not misleading, balanced in presenting benefits and risks
  - **Division of responsibilities** between manufacturers and distributors
  - **Record keeping** of all marketing communications for 5 years (7 years requested by NCAs)
  - **NCAs empowered** to act in case of non-compliance

# ABBL position in a nutshell (MiFID)

1

## Partial ban on inducements:



- Disproportionate, unjustified (no impact on conflict of interest)
- Will impact product diversity, financial innovation, competition and smaller firms
- Complex and costly to implement
- Couples with review clause (3 yrs): equals a full ban

ABBL rejects any form of ban

2

## Investment Advice:



- New principle of “best interest of the client”:
- Disregards quality of advice and products (E.g., ESG) by focusing on cheaper products
- Punishes advice with a portfolio approach and Portfolio management.
- “Light” Suitability regime for indi. advice only limits business and creates competition issues

ABBL in favor for a return to “quality enhancement” rules and removal or extension of “light” suitability regime

3

## Value for Money:



EU-wide benchmarks approach:

- Represents a regulatory intervention in product pricing – will create a price cap effect.
- “one-size-fits-all” approach disregards differences in market structure
- Massive implementation uncertainty. Severe reliance on L2.
- Cost-centric approach: disregards quality.

ABBL rejects price regulation at EU level

4

## Suitability / Appropriateness:



- Suitability's portfolio composition data requirement presents technical, privacy, and competition challenges.
- New info in Appropriateness blurs lines between assessments

ABBL rejects these changes and will present technical amendments

5

The **timeline** for the implementation is **unfeasible**. The **heavy reliance on L2** is worrying.



ABBL calls for more clarity, extended implementation deadline and removal (or extension) of the review clause on inducements

6

## Opt-up to professional client review (to be enhanced)



ABBL is proposing amendments to improve the current text where it lacks clarity

- “Digital-by-default” communication with clients. 
- Promotion of financial literacy;
- Efforts to simplify disclosures
- Cross-border disclosures (to be clarified)

**THANK YOU FOR YOUR INTEREST.**

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ABBL