THE AGREEMENT OF THE COUNCIL OF THE EUROPEAN UNION ON THE STRENGTHENING OF THE RULES ON THE PROTECTION OF RETAIL INVESTORS: THE "*RETAIL INVESTMENT PACKAGE*"

On 12 June 2024, the Council of the European Union reached an important agreement on strengthening the rules on the protection of retail investors[1] (hereinafter the "**Retail Investment Package**")[2].

The Retail Investment Package includes two legislative proposals:

- A proposal for an *omnibus* directive to amend the so-called directives MIFiD, IDD, Solvency II, UCITS and AIFMD;
- A proposed regulation to amend the so-called PRIIPs (Packaged Retail and Insurance-based Investment Products) Regulation.

The Retail Investment Package marks a decisive step towards greater protection for retail investors seeking to invest in the European Union's capital markets. With it, the European legislator intends to strengthen investor confidence in the EU's financial markets, protecting investments through the introduction of stricter rules.

The provisions of the Retail Investment Package are intended to provide this category of investors with clearer, more comparable and transparent information on financial products. Furthermore, the rules on financial advice will be consolidated, to ensure recommendations that are consistent with the needs and risk profile of investors, regardless of the investment product or the marketing and distribution channel used. All this by channelling private finance into European businesses, including small and medium-sized enterprises (SMEs).

In the end, the agreement introduces measures to reduce costs and fees for retail investors, promote more competitive and transparent market practices and ensure protection from unfair market practices, including through enhanced sanctions for breaches and enhanced oversight of financial markets.

With this agreement, the Council is ready to start negotiations with the European Parliament on the final form to be given to the legislation.

(1) Retail investors are defined as those who do not qualify as professional clients. See Article 4(1)(11) of MiFID https://eur-lex.europa.eu/legal-content/IT/TXT/PDF/?uri=CELEX:02014L0065-20240328
(2) See https://www.consilium.europa.eu/en/press/press-releases/2024/06/12/retail-investment-package-council-agrees-on-its-position/

1. Main proposed changes

1.1 Inducements

The Council of the EU proposed to lift the prohibition on "Inducements" received for performance-only sales, i.e. where no advice is provided to the investor. At the same time, in order to consolidate the prevention of potential conflicts of interest, the Council of the EU strengthened the guarantees relating to inducements, providing:

(i) an inducement test, to be applied in cases where there is no prohibition of incentives;
(ii) a new uniform test specifying the duty of advisers to act in the best interests of the client;
(iii) greater transparency and disclosure about what payments are considered as inducements, their costs and their impact on investment returns.

The Council has also introduced "Overarching Principles" to be respected when paying or receiving inducements. These, however, are not included in the test referred to in point (i), but undertakings should comply with these principles at all times and be able to demonstrate this before the national competent authorities. According to the Overarching Principles, incentives **should not**:

- encourage companies to recommend certain products over others;
- be disproportionate to the value offered;
- be treated unfairly if they are paid or accepted by persons belonging to the same group.

The incentive rules will be reviewed by the Council five years after their entry into force.

1.2 Cost-benefit ratio and peer group system

The Council introduced the new concept of "Cost-benefit ratio", aimed at ensuring that financial products are offered to retail clients only if the costs and charges associated with them are justified and proportionate in view of their performance, characteristics, objectives and strategy.

In addition, it has been envisaged that European supervisory authorities such as ESMA and EIOPA will have to develop Union benchmarks that are not mandatory and integrated into products, but are developed as a supervisory tool, suitable for identifying investment products that do not offer a cost-benefit ratio.

Since these benchmarks, used as a supervisory tool, would not be directly binding on distributors of financial products, the Council intended to strengthen their product distribution processes with a peer group system.

Distributors will have to compare their products with similar products in the European Union, based on databases maintained by ESMA and EIOPA, to determine whether they offer convenient cost-benefit products. The peer group system makes it possible to guarantee the retail investor that the financial products offered to him are competitive and advantageous, improving the transparency and efficiency of the financial market.

In addition to the above, the Council provided for the possibility for distributors to be able to choose whether to compare their products with the peer group system or, alternatively, with the relevant Union benchmark used for supervisory purposes.

Finally, Member States whose national competent authorities have developed national benchmarks for the identification of outliers before 1 July 2024 will be allowed to continue to use those benchmarks but only in relation to insurance-based investment products.

The cost-benefit framework will be reviewed by the Council seven years after its entry into force.

2. Conclusions

The strengthening of the Retail Investment Package marks a key step forward for the European financial market, as part of the 2020 Action Plan and the 2021 Capital Markets Union package[3] aimed at improving consumer confidence in financial markets, helping to create a more transparent, fair and competitive environment for retail investors.

However, the agreement reached by the Council of the European Union is only the beginning of an implementation process that will involve not only the European Parliament but also national financial supervisory authorities, which will have a crucial role in the application and monitoring of the new provisions.

(3) See https://www.consilium.europa.eu/it/policies/what-the-eu-is-doing-to-deepen-its-capital-markets/#:~:text=L'unione%20dei%20mercati%20dei%20capitali%20%C3%A8%20l'initiative%20dell,di%20cittadini%2C%20imprese%20e%20investitori.

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