2024-10-23

NSA's comments to Retail Investment Strategy – trilogue update

Article	PROPOSAL
Article 24a (2) MiFID II	**Inducements; ban for execution services**[1]
	The NSA supports deletion of COM's proposal for a new ban on inducements for execution services. Instead, we propose better calibrated disclosures to retail clients and measures to improve the existing quality enhancement test. As regards the new inducement test proposed by the Council, we consider that additional work needs to be done to limit the complexity and legal uncertainty as regards the meaning of each of the requirements. It is important to keep the "where applicable", as the current wording is not applicable for all types of financial instrument and investment services or ancillary services that may fall under the inducement rules. Furthermore, it is important not to consider the inducement rules in isolation but together with the best interest test, cf. below.
Article 24a (4) MiFID II	**Inducements, primary market transactions**
	A clarification is needed in MiFID II (e.g., in a recital) that payments or fees received from one client as remuneration for the provision of an investment service should not be considered as an inducement in relation

[1] The Norwegian Ministry of Finance is in a process evaluating a national ban on inducements. The Norwegian Securities Dealers Association (NSDA) has in the national consultation commented that Norway should not have rules deviating from those in the EU in regard of inducements. Thus, the NSDA has refrained from taking a stand on the NSA's comments on this point.

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	to another client, but instead a potential conflict of interest that should be disclosed accordingly under existing conflict of interest rules.
Article 24a (4) MiFID II	**Accept and retain**
	NSA supports amendments to COM's proposal so that the ban on inducement for independent advice and portfolio management is only applicable to "accept and retain".
	Best interest Test
	The NSA considers that the best interest test from an investor protection perspective is unnecessary considering that: (i) the best interest test was intended as a replacement for the quality enhancement test, which in the Council text is kept and further developed by the new inducement test (ii) there is already an overarching requirement for investment firms to act in their clients best interest as well as a requirement for suitability assessment (iii) the proposed VfM includes elements of acting in the clients best interest when manufacturing new products/selecting the product offering. In fact, we consider that the best interest test creates legal uncertainty i.e. as regards the relationship to other parts of the regime such as suitability and value for money regime. Based on the above, we consider that the test should be deleted. If the best interest test is kept, NSA considers that targeted amendments are needed to ensure that the test works from an operational perspective and that it is aligned with existing rules e.g. on suitability: (a) it should be possible to consider the firm's business model e.g. type of advisory service and product offering in the requirement to assess a range of financial instruments.

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	(b) we agree that also qualitative aspects need to be considered when determining if the firm has acted in the best interest of a client, not only costs. Having said that, the wording of this requirement ("most cost-efficient" or "most efficient") must be analyzed in relation to other requirements i.e. value for money and suitability. (c) we support the Parliaments proposal to delete "additional features". We note that in the Council's text, the requirement has been moved to the suitability regime which is unfortunate.
Article 16-a MiFID II	**Value for Money**
	The NSA is concerned with the risk for price regulation and strongly supports deletion of all requirements of EU or national benchmarks. Targeted amendments are needed in order to ensure that investment firms are allowed flexibility to define an appropriate vfm framework that works for all PRIIPs products (i.e. not only investment funds but also derivatives, structured products and bonds). In the vfm-assessment, firms should be able to consider both quantitative and qualitative values for their clients. There should also be a strong internal governance e.g. policy and procedures as well as senior management involvement. A distributor should be able to build its vfm-assessment on the vfm-assessment done by the manufacturer, where appropriate. Additional work needs to be done in trialogue in order to make the vfm-rules less complex and to clarify the relationship between the peer grouping and supervisory benchmarks as well as the legal consequences for deviating from the supervisory benchmarks and/or the peer group. It is also essential to carefully consider the consequences when determining how comprehensive and inclusive any potential supervisory benchmarks could be. It is important to avoid pushing details needed to understand the legal implications to level 2 or level 3.
Article 24b MiFID II	**Cost & Charges**
	The NSA considers that proposals on very detailed pre-contractual information as well as annual reports should be made more proportional, taking into consideration that retail clients are interested in total costs and not detailed itemized breakdowns over several different time periods and calculation methodologies. For example,

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	when providing an investment service which includes either a recommendation or combined transactions in financial instruments with different features, it is of great importance that only one or more fixed time periods for all the financial instruments are used when calculating and disclosing the costs and charges. Information overload must be avoided. We therefore support the proposals to delete disclosures regarding cumulative effects on return. It is also important to ensure alignment between MiFID II and PRIIPs.
Annex II section II.1 MiFID II	**Client categorization; opt-up**
	The NSA welcomes that both Parliament and Council have made amendments to the transactions criteria. The Councils proposal of 15 transactions per year during the past 3 years is in our view a very high threshold that will be difficult to comply with for less liquid instruments such as many corporate bonds. We therefore support that Esma is given a mandate to develop the thresholds on level 2 as this would allow different calibrations for different types of financial instruments. For the sake of clarity, we propose that it is explicitly stated in the mandate that Esma should consider the liquidity profile of different classes of instruments.
Article 25(1) and (3) MiFID II	**Suitability; portfolio diversification**
	The NSA supports the proposals by the Parliament and Council regarding information on external portfolios, i.e. that the requirement is limited to the information that is available to the firm or which the client agrees to provide to the firm. Also, there should be a proportionate approach for situations where e.g. a client asks for specific advice on how to invest a given amount of money that represents a relatively small part of their overall portfolio. The NSA strongly opposes the proposal by the Council that a financial instrument should not be considered as suitable if it has additional features which leads to extra costs. Not only will such a requirement be overly

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	complex from an operational perspective, but it would also limit client's choices. It should be recalled that "retail clients" is a large group of diverse types of clients which have different needs e.g. consumers, sophisticated investors and small companies.
Article 25(2), second subpara MiFID II	**Suitability regime; suitability light**
	The suitability light regime in article 25.2 second paragraph should be extended to all types of investment advice and not only independent advice.
Article 25(3) MiFID II	**Appropriateness: risk tolerance and ability to bear losses**
	The NSA opposes the proposal to add risk tolerance and ability to bear losses as part of the appropriateness assessment as this would blur the distinction between the appropriateness and suitability assessment.
Article 24(d) + Annex V	**Knowledge requirements for advisers**
	Amendments are needed to make proposal more proportional: (i) Distinction between professional and non-professional clients. To the extent an investment firm only give advice to professional clients, the existing knowledge and training requirements in MiFID II should be sufficient. (ii) Ensure that the 15 h training requirement also applies to a person who provides advise under both IDD and MiFID II, i.e., not 30 h in total. (iii) Ensure that the knowledge requirements in the annex is relevant to the investment services provided. (iv) More proportional requirements for employees which only provide information on products and services. i.e. no advice. (v) Support that certificate can be both internal and external.

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Articles 4 MiFID II	**Marketing communication**
	The NSA generally supports proposals to regulate agreements with finfluencers acting on their behalf. However, we are concerned that COM's definition of marketing communication is very wide. Considering that this definition is linked to many other requirements in MiFID II, it must be ensured that the requirements e.g. on record keeping and reporting linked to marketing communication is operationally workable. Also, there is a concern with the alignment between these rules and other EU-rules on marketing.
Articles 2 and 4 PRIIPs	**PRIIPs scope**
	PRIIPs should only apply to packaged investment products. Bonds issued by (non-financial) corporate issuers for financing purposes (regardless of feature, cf. ESA's guidance) and derivatives entered into for the purpose of hedging a commercial risk should not be classified as a PRIIPs.

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