

Reply filed by the European Structured Investment Products Association (EUSIPA) to the EU Commission's public consultation on the review of the MIFID 2 / MiFIR framework

(Consultation with deadline 18 May 2020)

Note that responses were given to specific questions only.

The individual response statements can be quoted under indication of the source document/link.

EUSIPA
<p>Question 1. To what extent are you satisfied with your overall experience with the implementation of the MiFID 2/MiFIR framework?</p> <p> <input type="checkbox"/> 1 – Very unsatisfied <input type="checkbox"/> 2 – Unsatisfied <input checked="" type="checkbox"/> 3 – Neutral <input type="checkbox"/> 4 – Satisfied <input type="checkbox"/> 5 – Very satisfied <input type="checkbox"/> Don't know / no opinion / not relevant </p>
<p>From the perspective of issuers of structured products in Europe, EUSIPA, which bundles their voice, wishes to point out that, on the whole, the MIFID implementation hit the target while not always in an ideal way. Shortcomings of varying extent remain in a number of areas.</p>

On the positive side, there are clearly regulatory elements which have proven their added value in terms of safeguarding a product distribution adequate, in particular, to the larger part of the retail investor population.

On the other hand though, the high regulatory density of the MIFID framework reinforced by numerous implementing acts and secondary legislation and rulemaking both on the European and national level, not only has pushed the implementation cost for financial institutions to a very high level. It has also increased the density and complexity of rules to be considered at the point-of-sale. This situation leads in practice, in the field of advised sales at least, often to an undue focus on standard retail products which is not necessarily in line with each individual customer's investment goals and risk/yield expectations. The sheer mass of information to be looked at and evaluated by the investor thus makes well-informed investment decisions actually harder.

A further specific challenge of the MIFID framework, linked to its scope and regulatory density, stems from its overlap or correlation with other EU rulesets that apply to the same business areas but which follow diverging legal or technical concepts. (An example is the diverging cost disclosure regime under PRIIPs and MIFID).

These inadequacies further aggravate the uncertainty at the point-of-sale when dealing, for example, with different asset classes. They also obstruct the understanding of financial products by retail investors and contribute to the information overload.

Partially as a result of above situation MIFID unfortunately has so far not achieved to establish a true level-playing field for retail financial products in the EU. The time-wise inconsistent implementation of MIFID rules within single EU markets/jurisdictions has played a significant (negative) role in this context.

It should be well noted in this context that the industry made a substantial contribution to the successful roll-out of MIFID2 by way of standardising the communication between manufacturer and distributor on crucial regulatory elements, such as the target market criteria, through the set-up and work of FinDatEx, a cross-asset multi-national and open platform (www.findatex.eu).

Taking things into a wider perspective though, the sheer amount of complex European and national rules regulating the distribution of financial products in the EU in practice often seem to counter the ambition of the EU Commission and member states to bringing a broader range of EU retail investors closer to the Union's capital markets. Furthermore, the lack of stability of the MiFID 2 regime did not play in favour of the EU markets from a competition perspective towards the non-EU countries.

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

	1 Disagree	2 Rather not agree	3 Neutral	4 Rather agree	5 Fully agree	NA
The EU intervention has been successful in achieving or progressing towards its MiFID 2 /MiFIR objectives (fair, transparent, efficient and integrated markets).			X			
The MiFID 2/MiFIR costs and benefits are balanced (in particular regarding the regulatory burden).		X				
The different components of			X			

the framework operate well together to achieve the MiFID 2/MiFIR objectives							
The MiFID 2/MiFIR objectives correspond with the needs and problems in EU financial markets.			X				
The MiFID 2/MiFIR has provided EU added value.			X				

Question 3. Do you see impediments to the effective implementation of MiFID 2/MiFIR arising from national legislation or existing market practices?

☐ 1 – Not at all
☐ 2 – Not really
☐ 3 – Neutral
☒ 4 – Partially
☐ 5 – Totally
☐ Don't know / no opinion / not relevant

EUSIPA has noted with great concern the tendency of various national regulators to establish or maintain specific national distribution regimes in retail markets somewhat disregarding the political ambition behind MIFID and other EU rulesets to create an EU-wide level-playing field for retail

investors.

The introduction of such specific national provisions hampering the availability or at least the time-wise access of capital markets products to retail investors, however often is arranged through non-MIFID legislation such as the EU PRIIPs Regulation (for example by applying a KID advance approval resulting often in substantial delays in the availability of products to retail markets) and, in single cases, national adaptations the EU Prospectus Regime (used, for example, to modify internationally standardised unfair terms rules for issuances to a specific local market). Inconsistencies between EU markets are further rooted in specific national marketing rules on distributing financial products to retail clients which are applied independently of MIFID.

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

1 – Not at all

☐ 2 – Not really

☐ 3 – Neutral

☐ 4 – Partially (X)

☐ 5 – Totally

☐ Don't know / no opinion / not relevant

II.- Investor Protection

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

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

The investor protection rules in MiFID 2/MiFIR have provided EU added value				X		
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Question 32. Which MiFID 2 / MiFIR requirements should be amended in order to ensure that simple investment products are more easily accessible to retail clients?

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

1. EUSIPA takes the view that generally – with the only exception of the products mentioned below – the MiFID2 product governance rules should apply to all financial instruments covered by the MiFID regime the same way. There are no convincing arguments for exempting certain products, or tightening the requirements, based on a product’s alleged “simplicity” or “complexity”.
2. In EUSIPAs view, a distinction between complex and non-complex products – however defined – is not the right starting point for a potential

disapplication of MiFID investor protection rules for certain products. We agree with the argument that only shares and plain vanilla bonds should not be subject to product governance and cost disclosure rules, given that they are “produced” for the purpose of raising capital (and are accordingly not “packaged” in the sense of the PRIIPs Regulation) and do not comprise “production” fees in the same way as “packaged” products. Even for these products, other rules, such as conduct related requirements, should continue to apply, as the mentioned differences in their “production” status are not relevant for their respective investor protection objectives.

3. Accordingly, we neither see a basis for dis-applying or lowering other investor protection standards under MiFID for products regarded as “simple”. It should be kept in mind that regulatory requirements introduced by MiFID 2 such as those relating to product governance and cost disclosure have been justified exactly with regard to “packaged” products. Introducing a distinction based on a notion of “simplicity” of products would run contrary to the underlying legislative objectives. Also, a lot of the relevant investor protection requirements, including again product governance and the conduct-related rules, already take account of differences between individual products in terms of riskiness, degree of structuring and transparency (understandability), through their “built-in” proportionality, which requires different kinds of safeguards or restrictions vis-à-vis target clients depending on the categorisation of products according to the mentioned criteria.
4. In any case, the question whether products classify as “complex” or “non-complex” under article 25 section 4 MiFID 2 and for which ESMA provided further explanatory guidance, does not provide an appropriate basis for deciding about potential additional requirements for a subset of products. The mentioned classification has only been introduced to decide about the possibility to distribute products execution-only, and does not justify a general distinction in the product governance–related regulatory approach regarding investment products. In relation to a specific product, the level of investor protection required can only be determined cumulatively as a function of different factors. Among others, those factors would include their relative degree of riskiness (including liquidity), degree of structuring and transparency (understandability). In EUSIPA’s view, this assessment is confirmed by several academic studies which, in recent years, tried to capture crucial aspects of complexity. The approach taken by MiFID 2 is – from an investor's perspective – not suited to adequately classify investment products as “complex” and “non-complex”.
Furthermore, EU financial regulation does not provide a clear definition of “complex” or “non-complex” products which brings about a fragmented supervisory practice in different countries and, in this respect, even the application of rules predating MiFID 2 by some NCAs.

Question 33. Do you agree that the MiFID 2 / MiFIR requirements provide adequate protection for retail investors regarding complex products?

- ☐ 1 – Disagree
☐ 2 – Rather not agree
☐ 3 – Neutral
☐ 4 – Rather agree
☒ 5 – Fully agree
☐ Don't know / no opinion / not relevant

As set out in the answer to Question 32, EUSIPA takes the view that the MiFID 2 requirements generally provide adequate protection for investors regarding all types of products.

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

	Yes	No	N.A.
Professional clients and ECPs should be exempted without specific conditions	X		
Only ECPs should be able to opt-out unilaterally		X	
Professional clients and ECPs should be able to opt-out if specific conditions are met.		X*	

All client categories should be able to opt out if specific conditions are met.			X**
Other			X

*as we are against "specific conditions"

** we like to differentiate between ECPs and retail

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

To a large extent, the same considerations apply for professional investors. In order to provide for a proportionate regime, they should be not in scope of the disclosure requirements, at least for any information going beyond ex-ante disclosure on service costs through fee grids that would be specific to each asset class, and ex-post information for clients who have been in an "ongoing relationship" with the investment firm over the past year.

Regarding retail clients, please see the answer to Question 42.

Any opt-out possibility for certain kinds of investors should be made subject to practicable and easy-to-handle requirements, otherwise there will be a high probability that only a small number of investors will ultimately benefit from the new regime.

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

☐ 1 – Do not support

- ☐ 2 – Rather not support
☐ 3 – Neutral
☐ 4 – Rather support
☒ 5 – Fully support
☐ Don't know / no opinion / not relevant

EUSIPA fully supports the endeavour to phase out paper-based information as step to further strengthening the digital economy while supporting environmental goals.

In order to manage the transition in a market-friendly way, in particular retail customers should still be allowed to request paper-based information. This approach would be in line with the current business practice regarding the provision of other legally required information, such as account or security deposit statements.

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

	Yes	No	N.A.
General phase-out within the next 5 years		X*	
General phase-out within the next 10 years	X		

For retail clients, an explicit opt-out of the client shall be required		X	
For retail clients, a general phase out shall apply only if the retail client did not expressively require paper-based information	X		
Other			X

Question 36.1 Please explain your answer to question 36 and indicate the timing for such phase-out, the cost savings potentially generated within your firm and whether operational conditions should be attached to it: (5 000 characters maximum)

Reference is made to our above statement and choice indication.

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

☒ 1 – Do not support
☐ 2 – Rather not support
☐ 3 – Neutral
☐ 4 – Rather support
☐ 5 – Fully support
☐ Don't know / no opinion / not relevant

Question 37.1 – Please explain your answer to question 37 (5 000 characters maximum)

EUSIPA does **not** support the establishment of a new database in the described sense.

While EUSIPA fundamentally support investor protection also by means of transparent data, we think that for various reasons the establishment of such database would not serve this purpose well.

In our eyes, the provision of product-related data on a comparative basis falls outside the remit of a regulatory/supervisory mandate as there is no reason discernible which justifies taking this activity out of the hands of private sector operators who, in order to differentiate each other on a competitive, free-market economy basis towards their customer base, are ideally placed to handle the relevant updating routines and local market adaptations, when making such product data available to existing and prospective retail clients.

Creating a authority-run database next to those of private sector operators neither is a useful approach as the centralisation of private-market product data under the auspices of a public entity raises not only fundamental aspects of EU competition and data protection law, once these data are made public again. It would also bring huge administrative costs to the data delivering entities and create a potential additional source for misinformation, in particular if product-specific information updates important for an investment decision are not in line with data/information provided through other, already highly regulated and market-established information channels used today by the financial market participants, including retail customers. (Such would be, for example information provided through public trading venues as MTFs and stock exchanges but also data contained in automatically updated and delivered PRIIPs-KIDs).

While the ambition of spreading financial product information across borders seems at first glance a reasonable one, the motivation overshoots in our eyes real-life experience. Customers in a free-market economy as the EU operate in a dynamic but also specific demand-driven national and cross-border environment that should not be made more complex by adding data from markets or product segments which, for a variety of reasons (which often include taxation issues), did so far not play any role for them.

The competition between several commercial offers should lead to better quality in terms of information and updated content.

For above reasons, EUSIPA clearly is against the creation of a new retail product-related database.

Question 38. In your view, which products should be prioritised to be included in an EU-wide database?

	1 (irrelevant)	2 (rather not relevant)	3 (neutral)	4 (rather relevant)	5 (fully relevant)	N.A.
All transferable securities						X
All products that a PRIIPs KID / UCITS KIID						X
Only PRIIPs						X
Other						X

Not relevant (see answer to question 37).

Question 40. Do you consider that MiFID 2/MiFIR can be overly protective for retail clients who have sufficient experience with financial markets

and who could find themselves constrained by existing client classification rules?

- ☐ 1 – Disagree
- ☐ 2 – Rather not agree
- ☐ 3 – Neutral
- ☒ 4 – Rather agree
- ☐ 5 – Fully agree
- ☐ Don't know / no opinion / not relevant

Generally, EUSIPA is of the opinion that the density and complexity of MiFID investor protection rules to be complied with at the point of sale and across a broad range of retail investors with varying financial literacy levels inevitably also has potentially detrimental effects.

As for customers with a high level of product/ market knowledge often combined with extensive trading activity, it cannot be overlooked that the concerned investors often simply renounce on using the extensive product information made available to them.

To correlate this behavioural pattern as observed in real life with a legally more certain status for the concerned individual, it may be worth reviewing the current application of the opt-up regime, by which a retail investor can decide, upon the fulfilment of predefined requirements, to be treated as professional under MIFID rules (see our answer to question 42 in point 1).

In addition EUSIPA would suggest looking into the introduction of a new opt-out regime by which retail investors can, at least in certain cases, renounce on the provision of information.

(Please also see in this context also our detailed answer on Q42.)

Question 41. With regards to professional clients on request, should the threshold for the client's instrument portfolio of EUR 500 000 (See Annex II of MiFID 2) be lowered?

- ☐ 1 – Disagree
- ☐ 2 – Rather not agree
- ☐ 3 – Neutral
- ☐ 4 – Rather agree
- ☐ 5 – Fully agree
- ☒ Don't know / no opinion / not relevant

Rather than focussing on (modifying) specific criteria EUSIPA would suggest to more fundamentally evaluating the options for dealing with customers that show features of professional investors but are not classified as such. Reference is made in that sense to EUSIPA's answer on question 42 below where different approaches are discussed.

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

- ☐ 1 – Disagree
- ☐ 2 – Rather not agree
- ☐ 3 – Neutral
- ☐ 4 – Rather agree
- ☐ 5 – Fully agree

X Don't know / no opinion / not relevant

EUSIPA well understands the ambition to better deal with sophisticated clients currently falling into the retail customer category, while having knowledge and experience substantially exceeding that of the average retail customer.

By way of illustration, some qualified investors such as institutional investors operating in the format of non-profit or non-commercial legal entities (e.g. foundations, associations) as well as a number of very active retail investors do not meet the current high requirements for achieving the status of a professional investor, but in many cases provide for the experience, expertise and knowledge of a professional investor.

There are many options to deal with this situation all of which should be carefully scrutinised before being put forward as legislative change proposal. The following variations present itself from EUSIPA's perspective:

1. It might be worth testing whether the conditions for "**opting-up**" (from retail to professional) are to be changed. This may include lowering wealth thresholds or redefining the threshold calculation base by taking more assets into consideration and modifying criteria related to the investment/trading activity of an individual. Finally it needs to be looked at whether the criteria are to be met each or whether a combination of a few (as in today's practice) is sufficient.
2. Independent of (read: in addition to) the "opt-up" approach, retail clients could be given the choice to **opt-out**, by means of an explicit (and revocable) declaration, from being provided with specific information. (The "opt-out" may relate to the ex-ante cost disclosure or more generally to ex-ante and ex-post product information and should have as requirements, if anything, only knowledge and/or experience-linked criteria.)
3. Insofar as the access to products meant to be distributed to professional customers only is concerned, it could be considered, in addition to above two options, to **use the target market provisions, as is possible under current legislation already**, in order to make these products

(also) accessible to a very limited group of qualified retail investors.

4. As for the introduction of a **new investor category**, it cannot be ignored that such option would imply adapting retail business-linked IT systems and point of sale processes (on customer verification and documentation) under quite some resources. In case such category is being introduced, its application should not be made mandatory but lie strictly within the sole discretion of the distributor, whose decision should specifically be based on the experience and knowledge of the client (as is the case also for option 2 “opt-out” above).

Question 43. What investor protection rules should be mitigated or adjusted for semi-professionals clients?

	1 (irrelevant)	2 (rather not relevant)	3 (neutral)	4 (rather relevant)	5 (fully relevant)	N.A.
Suitability or appropriateness test						X
Information provided on costs and charges						X
Product governance						X
Other						X

Question 44. How would your answer to question 43 change your current operations, both in terms of time and resources allocated to the distribution process?

EUSIPA makes reference to its answer on question 42, point 4. The mentioned impacts on the operational side would very likely make substantial allocations of IT and human resources for the introduction of a new investor category necessary.

Question 45. What should be the applicable criteria to classify a client as a semi-professional client?

	1 (irrelevant)	2 (rather not relevant)	3 (neutral)	4 (rather relevant)	5 (fully relevant)	N.A.
Semi-professional clients should possess a minimum investable portfolio of a certain amount (please specify and justify below).						X
Semi-professional clients should be identified by a stricter financial knowledge test.						X

Semi-professional clients should have experience working in the financial sector or in fields that involve financial expertise.						X	
Semi-professional clients should be subject to a one-off in-depth suitability test that would not need to be repeated at the time of the investment.						X	
Other							

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

☐ 1 – Disagree

☐ 2 – Rather not agree

X 3 – Neutral

☐ 4 – Rather agree

☐ 5 – Fully agree

☐ Don't know / no opinion / not relevant

EUSIPA would not support the view that MIFID2 product governance rules inadequately limit the availability of products to retail investors.

However, EUSIPA would like to point out again that the density and complexity of distribution rules often lead in practice at the point of sale to a focus on assumed "simple" or standardised products, which does not necessarily tie in with the risk/yield expectations of individual customers.

Furthermore, EUSIPA again makes recourse to its aforementioned observation that in some markets rules from outside the MIFID2 regime, for example the pre-notification optionality under the PRIIPs Regulation and modifications to the EU Prospectus Regime (see above example under answer 3), in addition to specific national provisions on "financial product marketing", heavily impact timeliness of access to a product, or are even prevent the product availability as such, despite MIFID suitability and appropriateness criteria being formally met.

Question 47. Should the product governance rules under MiFID 2/ MiFIR be simplified?

	Yes	No	N.A.
It should only apply to products to which retail clients can have access (i.e. not for non-equities securities that are only eligible for qualified investors or that have a minimum denomination of EUR 100.000).		X	
It should apply only to complex products.		X	
Other changes should be envisaged – please specify below.	X		

Simplification means that MiFID 2/MiFIR product governance rules should be extended to other products.		X	
Overall the measures are appropriately calibrated, the main problems lie in the actual implementation.	X		
The regime is adequately calibrated and overall, correctly applied.	X		

Fundamentally, EUSIPA is of the opinion that the existing MIFID2 product governance rules provide, by way of their balanced and reasonable application, for adequate room to prevent for mis-selling in retail markets.

As for necessary calibrations and adjustments we take resource to our made statements on before questions. In particular EUSIPA would urge again to harmonize the existing legal rule-works which apply at the point of sale, foremost in terms of eradicating contradictions or diverging legal terms and technical methodologies.

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

☐ Yes
☒ Yes, but in that case the firm should provide a written explanation that the client was duly informed but wished to acquire the product nevertheless.
☐ No
☐ Don't know / no opinion / not relevant

Based on the different approaches where a number of practical complications have been observed, EUSIPA would plead for leaving it to the discretion of issuer/distributor whether to indicate a negative target market.

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

- ☐ 1 – Disagree
- ☐ 2 – Rather not agree
- ☐ 3 – Neutral
- ☐ 4 – Rather agree
- ☒ 5 – Fully agree
- ☐ Don't know / no opinion / not relevant

EUSIPA does not support changing the current MIFID rules for inducements.

EUSIPA would like to underline that the individual EU member state's financial markets are highly heterogenic structure-wise. The current MIFID rules ensure that investment firms are not exposed to undue conflicts of interests when servicing their respective clients. The current system strikes, in our eyes, the appropriate balance between the crucial client protection needs and the corresponding need to fund quality enhancing services. Above assessment we see somewhat by the absence of any valuable objective information evidencing that the current set up would in any form harm the investor interests.

Overall, EUSIPA would like to stress that from an investor perspective the transparency on paid or due inducements is the most important aspect.

Consequently EUSIPA suggests putting the regulatory focus strictly on ensuring the compliance of market participants with the existing inducement disclosure rules.

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

☒ 1 – Disagree

☐ 2 – Rather not agree

☐ 3 – Neutral

☐ 4 – Rather agree

☐ 5 – Fully agree

☐ Don't know / no opinion / not relevant

For the reasons outlined in our answer to question 49, EUSIPA would speak out strictly against an outright ban on inducements.

In addition, an outright ban on inducements would have undesirable effects: i) it would contribute to an “advice gap” or a “service gap” for an important share of the retail segment where firms rely on inducements to maintain services; ii) it would further weaken the relative weight of EU’s financial sector on the world stage, putting retail and private banking at a disadvantage against other large jurisdictions where no inducement ban exists; iii) finally, an outright inducement ban would question the level playing field between different investment products.

Question 51. Would you see merit in setting-up a certification requirement for staff providing investment advice and other relevant information?

- ☐ 1 – Disagree
- ☐ 2 – Rather not agree
- ☒ 3 – Neutral
- ☐ 4 – Rather agree
- ☐ 5 – Fully agree
- ☐ Don't know / no opinion / not relevant

While the motivation behind introducing an EU-wide certification requirement for investment advisers is laudable, EUSIPA would not support this approach at the moment.

The reason is that with any certification requirement very likely also EU-wide standards (for obtaining such certification) would be introduced, even if in framework format only (see next question). Any such standards however run the danger that without extensive advance analysis they do not adequately reflect the fragmentation of EU national markets in terms of different market/product structures, investor preferences and financial literacy levels. They could thus very easily be perceived as unsuited in the specific national market context.

Hence, without fundamentally opposing the idea of an EU certification requirement, EUSIPA would at the moment only plead for extensively screening the existing certifications and relevant requirements for financial industry professionals that exist in many national markets already. The aim should be to assess the comparability of technical expertise required under the various existing formats, before deciding whether a European certification project is worth pursuing.

Question 52. Would you see merit in setting out an EU-wide framework for such a certification based on an exam?

- ☐ 1 – Disagree

- ☐ 2 – Rather not agree
- ☒ 3 – Neutral
- ☐ 4 – Rather agree
- ☐ 5 – Fully agree
- ☐ Don't know / no opinion / not relevant

EUSIPA makes reference to our statements provided for in our answer to question 51.

Question 90. Do you believe that certain product governance and distribution provisions of the MiFID 2/MiFIR framework should be adapted to better suit digital and online offers of investment services and products?

- ☐ 1 – Disagree
- ☐ 2 – Rather not agree
- ☐ 3 – Neutral
- ☒ 4 – Rather agree
- ☐ 5 – Fully agree
- ☐ Don't know / no opinion / not relevant

Generally, EUSIPA wishes to underline its view that financial markets-related rules, such as MIFID, should be phrased in a way that they allow for a meaningful interpretation somewhat independent of the technological progress.

The before non-withstanding EUSIPA recognises of course, that within the process of digitalisation, occasionally unforeseen technical constellations may arise which call for clarifying their legal treatment.

At this point EUSIPA wishes to hint at one specific problem relating to the question of **differentiating between a customer-friendly on-line presentation of financial instruments and robotic (“robo”) investment services** on the other.

As for the background:

Customers expect investment firms nowadays to present their portfolio of services/financial instruments online.

Most market participants allow for generic filtering functions on their respective online sites so to enable clients or potential clients to obtain a better overview of the products/services that may be of potential interest to them. **It would thus be highly beneficial were there an EU-wide guidance or harmonization effort setting out under which conditions such filtering mechanisms or tools are considered to represent a personal recommendation by the respective investment firm and hence, constitute (“robo”) investment advice under the MiFID2 classification.**

The currently existing legal uncertainty hinders investment firms to present their products/services in a customer-friendly way and to use modern technological means customers expect while gathering information on potential investment opportunities.
