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

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Executive Summary

This study analyses the impact of MiFID II/MiFIR and of the PRIIPs Regulation in terms of welfare economics, in the context of investor and consumer protection. Based on a nationwide sample of 153 banks and 2,852 customers, we analysed the quality of the new regulations. A qualitative/empirical research approach was employed, based on a questionnaire. Our analysis focused on the relationship between costs and benefits – and hence, on the question whether the (cost) burdens arising from the new regulations are offset by (increased) benefits to a sufficient extent. In summary, this is not always the case: high direct and indirect costs are matched by benefits which are at best doubtful – even tending towards negative. Customers are largely dissatisfied with the new rules, given the increasing amount of time required to implement them. On average, the more extensive information now available has not led to more informed decisions. Instead, it has created information overload, together with uncertainty. The higher degree of standardisation has not mitigated this problem – instead, in most cases it brings about further disadvantages due to less flexibility and customisation. Faced with more complex processes and information overload, customers ultimately rely on their advisor to an ever-increasing extent; they would like to do without any extra information. That said, some elements (such as reports on client financial instruments and depreciation reports) were rated positively. In their entirety, however, any potential value ascribed to the new regulations tends to be rather questionable, being contrary to consumer interests overall. Ultimately, the new regulations threaten to actually drive customers away from the capital markets, thus running counter to the objectives of capital markets union.

Authors and acknowledgements

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Contents

1. Introduction ........................................................................................................................................ 2
2. Methodological approach and characteristics of the sample ............................................................. 4
3. Costs and further burdens for clients and banks ................................................................................ 6
   3.1 Implementation ............................................................................................................................ 7
   3.2 Ongoing compliance .................................................................................................................... 8
4. Benefits and non-benefits ................................................................................................................ 13
   4.1 Benefits and non-benefits of more information material being provided in the context of
       information processing .............................................................................................................. 14
   4.2 Benefits and non-benefits of advisors acting as a navigator through information material ..... 16
   4.3 (Non-)benefits of individual (informational) elements .............................................................. 17
5. Conclusion: key findings ................................................................................................................. 25

Literature .............................................................................................................................................. 26

Appendix A: Institution data ................................................................................................................ 28
Appendix B: Client data ....................................................................................................................... 28
1. Introduction

Absurd yield forecasts\(^1\), a dramatic decline in the volume of corporate bonds traded by retail investors\(^2\), and mandatory recording of advisory services over the telephone – public criticism of the most recently introduced amendments to securities law is growing. Investors increasingly feel patronised. In order to strengthen capital markets in the aftermath of the financial crisis, in July 2014 the European Commission initiated the revised Markets in Financial Instruments Directive ("MiFID II"), the accompanying Markets in Financial Instruments Regulation ("MiFIR") as well as the Regulation on Key Information Documents for Packaged Retail and Insurance-based Investment Products ("PRIIPs Regulation"), all of which were finally implemented in January 2018.

The overarching goals of these new regulations – which need to be seen in the context of capital markets union – are to enhance market efficiency and to expand and diversify sources of financing.\(^3\) The focus is on six secondary objectives: (i) to enhance investor protection; (ii) to increase transparency on financial and securities markets; (iii) to boost competition in trading and clearing of financial instruments; (iv) to ensure that trading takes place on regulated platforms; (v) to introduce rules and regulations for algorithmic and high-frequency trading; and (vi) to resolve issues related to commodity trading.

Given the massive criticism voiced by investors and consumer watchdogs in the media, the question arises to what extent the new regulations may in fact contradict the interests of these stakeholders – in which case they might compromise the very objectives of MiFID II, MiFIR, and the PRIIPs Regulation. After all, the purpose of the intended strengthening of investor and consumer protection is to bolster investor confidence, thus increasing the volume of capital, as provided for by the overarching goals. Yet, if the specific design of the new regulations ultimately leads investors to withdraw from the capital markets, with potential new investors shying away from the hurdles to be overcome before engaging in securities business, this would fundamentally challenge these regulations. However, so far there has been a lack of impact studies regarding this issue.

\(^1\) By way of example, Börsen-Zeitung (Witkowski 2018) reported about an open-end participation certificate on Bitcoin (issued by Vontobel) which would provide a yield of 254,268.1% in a positive scenario – over a holding period of five years. Forecasts of this kind can also be found in KID ‘downside’ scenarios.
\(^2\) The decline in corporate bond trading activity by retail investors has been quantified at 20%-25% (cf. Schrader 2018; Heitker 2018).
\(^3\) Cf. Schumacher/Paul (2017) for a comprehensive overview of the various objectives of capital markets union.
As far as we are aware, research to date has been limited to merely two more comprehensive analyses—one of which was produced by the regulators themselves.\(^4\) Not only does this mean that potentially questionable aspects might not be addressed with sufficient clarity—it should also be noted that the analysis pre-dates the regulations' coming into force, and thus tends to be a forecast (rather than a reflection). Finally, the study focuses primarily on frictions in market allocation mechanisms, whereas the impact upon investors and consumers is given lower priority. In addition, a survey-based study prepared by consultancy firm PPI (2018) addressed the challenges that the new regulations have presented to banks, with a particular focus on the implementation process, key cost drivers, and the need for strategic adjustments. However, given an underlying sample of only 50 participating institutions, the results are only representative to a limited extent. In the absence of clients' perspective, no statements concerning the quality of the new regulations can be derived. After all, burdens placed upon banks may be justified in terms of welfare economics in the interests of protecting investors and consumers, provided that such burdens are compensated by (client) benefits of sufficient scope.

In the overall picture, there is considerable room for improvement. In order to be able to assess the extent to which criticism voiced by consumer watchdogs on the one hand—and by parts of the banking industry on the other hand—is in fact justified, costs and benefits of regulation need to be weighed against one another. Against the background of investor and consumer protection, the objective of this findings report is to subject the new regulations to a comprehensive impact analysis rooted in regulation theory. The focus is on specific consequences for the two key parties affected: clients and 'their' banks. This impact study is built upon a qualitative/empirical research approach using a questionnaire, based on a nationwide sample of 2,852 (non-institutional) clients and 153 credit institutions. Even assuming that the new regulations are suitable for contributing to their stated objectives (meaning that they are effective), the question is to what extent increased (opportunity) costs primarily incurred by institutions are in fact compensated by increased benefits enjoyed by those who are 'vulnerable'. However, there are significant methodological issues concerning the differentiation and quantification of costs—and especially of benefits\(^5\); as a result, the necessary comparisons are inevitably subject to imprecision. Only if client benefits were found to be completely non-existent (or at least highly questionable) could a valid statement be published to the effect that new regulations are inefficient (irrespective of the specific cost amounts involved), and hence require amendment.

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This findings report is structured as follows: chapter 2 outlines the research approach and the sample, whilst chapter 3 addresses the cost dimension. The primary focus in this context is on the burdens placed primarily upon institutions as a consequence of new regulations, whereby a differentiation is made between implementation burdens (which tend to be rather short-term in nature) and the long-term burdens of ongoing compliance. Chapter 4 mirrors this analysis by looking at benefits. Given that the primary purpose of regulation targeting investor and consumer protection is to benefit clients, the subsequent analysis focuses on the (non-)benefits of such regulation. In view of the growing amount of information, the analysis first looks at how clients process and use information, and considers the importance of standardisation of information. The analysis then looks at the role of advisors providing support in the decision-making process. Against this background, individual sources of information and process elements are reviewed concerning their associated benefits or disruptive effects. The report concludes with a summary of seven key findings (chapter 5).

2. Methodological approach and characteristics of the sample

This findings report is based on a qualitative/empirical research approach, using questionnaires addressed to clients and institutions. These questionnaires were developed through an iterative approach, in the course of several expert workshops, to ensure that all relevant aspects were covered. Besides members of banks' management boards, the specialist departments of banking associations and experts of individual banks, sales staff and client advisors were involved in this exercise. Therefore, the finalised questionnaires were not only comprehensive but also practicable, especially concerning the clients to be surveyed. A final test run with end-clients was carried out prior to dispatch.

Questionnaires addressed to institutions and clients shared a similar structure, and were made available on paper or in electronic format, depending on participants' preference. Following questions targeting material characteristics of clients or institutions, questions predominantly used unipolar Likert scales: this was designed particularly to minimise the effort required from clients to complete the questionnaire and thus to raise the response ratio. Options to express statements, or to answer questions, included "agree", "somewhat agree", "somewhat disagree" and "disagree". In order to assess the statistical distribution of these results, which are based on an ordinal scale, they were assigned a numerical value of between zero ("agree") and 3 ("disagree"). The results of the respective Likert scale were then supplemented by the mean value ($\mu$; determined using a code) and the standard deviation ($\sigma$). Moreover, the appendix provides detailed analyses of the key characteristics surveyed.
All member banks of the German Banking Industry Committee and their clients were then surveyed regarding the new regulations pertaining to securities law between August and October 2018. Banks were contacted via their respective associations, whilst clients were contacted via the respective institutions, which were asked to select a random sample of clients evenly distributed amongst all relevant client groups. In addition, clients were supposed to complete the questionnaire alone, and preferably at home. Of the 1,604 institutions across all groups of institutions (as at July 2018), a total of 153 completed the questionnaire, representing a return ratio of approximately 9.5%. Table 1 below outlines the sample of institutions, differentiated by size and type. Given that the exact level of total assets was not surveyed (for confidentiality reasons), it is impossible to make any statement as to whether the data is representative for any specific institution size.

<table>
<thead>
<tr>
<th>Institutions</th>
<th>Private Banks</th>
<th>Public Banks</th>
<th>Cooperative Banks</th>
<th>Sum</th>
<th>Total assets in %</th>
</tr>
</thead>
<tbody>
<tr>
<td>Total assets &lt; 1,000 Mio €</td>
<td>5</td>
<td>7</td>
<td>14</td>
<td>26</td>
<td>17,0%</td>
</tr>
<tr>
<td>Total assets 1,000 - 2,000 Mio €</td>
<td>1</td>
<td>20</td>
<td>17</td>
<td>38</td>
<td>24,8%</td>
</tr>
<tr>
<td>Total assets 2,000 - 4,000 Mio €</td>
<td>4</td>
<td>28</td>
<td>10</td>
<td>42</td>
<td>27,5%</td>
</tr>
<tr>
<td>Total assets 4,000 - 8,000 Mio €</td>
<td>2</td>
<td>23</td>
<td>4</td>
<td>29</td>
<td>19,0%</td>
</tr>
<tr>
<td>Total assets 8,000 - 16,000 Mio €</td>
<td>0</td>
<td>4</td>
<td>1</td>
<td>5</td>
<td>3,3%</td>
</tr>
<tr>
<td>Total assets 16,000 - 30,000 Mio €</td>
<td>2</td>
<td>2</td>
<td>0</td>
<td>4</td>
<td>2,6%</td>
</tr>
<tr>
<td>Total assets &gt; 30,000 Mio €</td>
<td>6</td>
<td>2</td>
<td>0</td>
<td>8</td>
<td>5,2%</td>
</tr>
<tr>
<td>Total assets</td>
<td>21</td>
<td>86</td>
<td>46</td>
<td>153</td>
<td></td>
</tr>
</tbody>
</table>

Table 1: Participation ratios of institutions, broken down by affiliation to the pillars of the German banking system and by total assets

A total of 2,852 clients completed the questionnaire. Given that the survey was carried out in a fully anonymous manner, no statement can be made concerning client-specific participation ratios. Table 2 below shows a breakdown of client participation by client segment and type of institution.

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6 The German Banking Industry Committee (GBIC) is a body representing almost all German banks. Its members are the National Association of German Cooperative Banks (Bundesverband der Deutschen Volksbanken und Raiffeisenbanken – "BVR"), the Association of German Banks (Bundesverband deutscher Banken – "BdB"), the Association of German Public Banks (Bundesverband Öffentlicher Banken Deutschlands – "VÖB"), the German Savings Banks Association (Deutscher Sparkassen- und Giroverband – "DSGV") and the Association of German Pfandbrief Banks (Verband deutscher Pfandbriefbanken – "vdp").

Table 2: Participation ratios, broken down by client segment and pillar of the German banking system

<table>
<thead>
<tr>
<th></th>
<th>Private Banks</th>
<th>Public Banks</th>
<th>Cooperative Banks</th>
<th>Sum</th>
<th>Clients in %</th>
</tr>
</thead>
<tbody>
<tr>
<td>Retail Clients</td>
<td>81</td>
<td>1.066</td>
<td>345</td>
<td>1.492</td>
<td>52.3%</td>
</tr>
<tr>
<td>Private Banking Clients</td>
<td>202</td>
<td>562</td>
<td>291</td>
<td>1.055</td>
<td>37.0%</td>
</tr>
<tr>
<td>Corporate Clients</td>
<td>52</td>
<td>173</td>
<td>80</td>
<td>305</td>
<td>10.7%</td>
</tr>
<tr>
<td>Sum</td>
<td>335</td>
<td>1.801</td>
<td>716</td>
<td>2.852</td>
<td></td>
</tr>
<tr>
<td><strong>Pillars in %</strong></td>
<td><strong>11.8%</strong></td>
<td><strong>63.2%</strong></td>
<td><strong>25.1%</strong></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

The representativeness of the client sample is restricted: even though we have no precise reference data on client segmentation, the share of high net worth private banking clients – relative to all bank clients in Germany – is likely to be clearly below the 37% represented here. Given the further analysis, this distortion is unproblematic, however, since all statements were validated based on corresponding sub-samples. In line with the segment-specific distortion, the majority of clients who responded are older than 50; 8.3% are between 18 and 30 years old, 24.7% between 31 and 50, 30.7% between 51 and 64, and 36.1% 65 years or over. Furthermore, the client sample not only comprises a significant range of securities portfolio sizes, but also – and especially – a wide range of trading frequencies: the full range of trading types, from 'securities sceptics' right up to day traders (cf. table 3). In terms of their primary advisory channel, 51% of clients predominantly use personal advice in branches, 33% use both branch-based advice and advisory services over the telephone, and 14% exclusively use advice via the telephone. Innovative concepts such as advisory services via video chat are only used in isolated cases.

Table 3: Client participation ratios, broken down by securities portfolio size and trading frequency

<table>
<thead>
<tr>
<th>Clients</th>
<th>Almost never (&lt;1 time)</th>
<th>1-6 times</th>
<th>7-12 times</th>
<th>13-48 times</th>
<th>&gt;48 times</th>
<th>No input</th>
<th>Sum</th>
<th>Total deposits in %</th>
</tr>
</thead>
<tbody>
<tr>
<td>&lt; 10.000 €</td>
<td>63</td>
<td>165</td>
<td>22</td>
<td>6</td>
<td>2</td>
<td>2</td>
<td>260</td>
<td>9.1%</td>
</tr>
<tr>
<td>10.000-50.000 €</td>
<td>43</td>
<td>360</td>
<td>75</td>
<td>29</td>
<td>8</td>
<td>5</td>
<td>520</td>
<td>18.2%</td>
</tr>
<tr>
<td>50.000-100.000 €</td>
<td>6</td>
<td>282</td>
<td>91</td>
<td>31</td>
<td>6</td>
<td>6</td>
<td>425</td>
<td>14.9%</td>
</tr>
<tr>
<td>100.000-500.000 €</td>
<td>14</td>
<td>464</td>
<td>232</td>
<td>161</td>
<td>39</td>
<td>9</td>
<td>919</td>
<td>32.2%</td>
</tr>
<tr>
<td>500.000-1.000.000 €</td>
<td>4</td>
<td>105</td>
<td>105</td>
<td>107</td>
<td>29</td>
<td>1</td>
<td>351</td>
<td>12.3%</td>
</tr>
<tr>
<td>&gt;1.000.000 €</td>
<td>1</td>
<td>56</td>
<td>86</td>
<td>128</td>
<td>76</td>
<td>4</td>
<td>351</td>
<td>12.3%</td>
</tr>
<tr>
<td>No input</td>
<td>2</td>
<td>13</td>
<td>4</td>
<td>4</td>
<td>0</td>
<td>3</td>
<td>26</td>
<td>0.9%</td>
</tr>
<tr>
<td><strong>Sum</strong></td>
<td><strong>133</strong></td>
<td><strong>1.445</strong></td>
<td><strong>615</strong></td>
<td><strong>466</strong></td>
<td><strong>160</strong></td>
<td><strong>33</strong></td>
<td><strong>2.852</strong></td>
<td></td>
</tr>
<tr>
<td><strong>Trading frequency in %</strong></td>
<td><strong>4.7%</strong></td>
<td><strong>50.7%</strong></td>
<td><strong>21.6%</strong></td>
<td><strong>16.3%</strong></td>
<td><strong>5.6%</strong></td>
<td><strong>1.2%</strong></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

3. Costs and further burdens for clients and banks

The new provisions go hand in hand with costs and other burdens. Whilst it is mainly the banks which have to shoulder the costs, further burdens impact banks and clients alike. A clear distinction is often
impossible – for example, burdens borne by banks regularly lead to changes in sales policy – which then often also impact the clients. However, due to a lack of appropriate data, quantifying client-related burdens on a monetary level is difficult; hence, statements made only show a tendency regarding benefit and non-benefit. The following analysis thus primarily focuses on banks.

Since the beginning of 2018, complaints about declining revenue from securities business have become increasingly frequent. Conversely, the discontent about constantly rising expenses is growing; margin erosions would be the result. In order to examine whether the new provisions truly have such drastic effects, banks were initially questioned about their expenses and earnings development in securities business. Compared to the previous year (H1 2017), the earnings contribution of revenue has decreased by 1.5%. However, clearly identifying whether and, if so, to what extent this is due solely to the new provisions is impossible.

3.1 Implementation

The burdens within the scope of implementation largely depend on the point in time as well as on the manner in which banks have taken up the new provisions, or are still in the process of doing so. The range is substantial: 28.8% of banks started preparations back in 2015; 43.8%, however, only began in 2017. In addition, every second bank states that it was not fully compliant at the beginning of January 2018, when the provisions entered into force. The banks concerned justify this particularly by pointing to the late final details received concerning the provisions, and – on a subordinated level – with difficulties in adapting their technical infrastructure. The bulk of implementation costs, however, have likely been incurred in the meantime, since our data was collected significantly after the provisions had entered into force.

Direct implementation costs average EUR 3.7 million per bank. However, they vary greatly depending on the bank’s size; thus, this value carries little significance when it is considered in isolation. Particularly small banks with total assets of less than EUR 1 billion quantify implementation costs at merely EUR 218,000, whereas medium-sized banks - with total assets of between EUR 4 billion and EUR 8 billion - invested an average of EUR 911,000. The largest banks (total assets >EUR 30 billion) quantify implementation costs at an average of EUR 35.6 million.

According to the banks, main cost drivers are particularly (1) familiarisation with the regulatory provisions, (2) staff training, and (3) the acquisition of new (and the expansion of existing) IT systems and hardware. The prioritisation of these drivers once again varies with the size of the bank. The small
to medium-sized banks that make up the lion’s share of the sample have comparatively limited capacities; hence, these banks focus on human resource-intensive familiarisation with regulatory provisions and staff training. For larger banks, on the other hand, the IT infrastructure is highly important - and often even stated to be the main cost driver.8

As regards the indirect implementation costs, every second bank mentions that other urgent projects, such as adjustments made necessary by digitalisation, are being delayed due to the high implementation efforts required. A further 30% mention that while the additional burden does not cause delays, it nevertheless is noticeable. At least 9% of banks emphasise the high degree of coordination required with their associations, since legislation was unclear (for a long time).

Whilst most implementation burdens occur only once, delays to strategically important projects, for example, may also have long-term negative implications and are thus especially grave.

3.2 Ongoing compliance

Burdens incurred in the wake of ongoing compliance are also long-term in nature, and thus particularly relevant from a strategic point of view. They can, in turn, be split into direct and indirect burdens.

Direct burdens

On a higher level, banks figure additional annual direct costs to average EUR 508,000. On the back of the very heterogeneous sample, differentiating according to bank size makes sense here, too. Small banks with total assets of less than EUR 1 billion indicate ongoing compliance costs of approximately EUR 44,000 per annum, whereas the costs for medium-sized banks with total assets of between EUR 4 billion and EUR 8 billion average EUR 182,000. Particularly large banks (total assets >EUR 30 billion) indicate costs averaging EUR 4.247 million. Running costs thus increase significantly with the size of the bank.

These costs are mainly incurred as a result of (1) information requirements, (2) qualification requirements, and (3) monitoring requirements. Information requirements particularly include the new mandatory documents, e.g. KID and ex-ante cost disclosures, which have to be provided to clients. Qualification requirements focus on necessary continuous staff training, and monitoring requirements comprise target market assessments, for example.

8 In this context, however, it must be noted that associations regularly describe IT adjustments as being conducted via central data centres and service providers. An indirect cost burden that many primary banks experience as a result – for example by fees being incurred at a later stage – thus may distort this ranking.
These requirements go hand in hand with a significant degree of extra work – regarding direct interactions between banks and clients, as well as apart from this (e.g. in the back office). Banks therefore state that the extra time required due to ongoing compliance has increased in all client segments. Direct interactions between banks and clients now take 22.8% longer in the retail segment and 21.9% longer in the corporate client segment. In private banking, the average interaction is even higher – 27.8% longer. This bank-related time burden is also reflected in clients’ feeling of benefitting or not benefitting.\(^9\) Outside the scope of direct interactions between banks and clients, the additional burden is less pronounced, at 16.7-19.4%.

**Indirect burdens**

The additional time-related burden is also reflected in the banks’ allocation of human resources. Legal, Compliance and (Product) Governance departments have shown the strongest increase in required additional human resources (16% on average). Customer Service and Advice, as well as Sales, require approximately 12.7% more personnel. The additional burden within banking management in the broader sense (risk management, reporting, internal audit, etc.) amounts to 9.8%, and is thus in third place. The additional burden in other departments such as IT, Human Resources and the Management Board is just under 5%.

As a result of these additional burdens, banks may generally (i) hire new employees, (ii) allocate existing employees differently and/or (iii) restrict other activities, which in turn results in opportunity costs. In the last three – and less affected – departments mentioned, such offsetting measures are carried out only to a limited extent. In Customer Service and Advice, or in Sales, 42.5% of banks state that they have reallocated existing employees; 51.6% even reduce other activities in order to offset the additional burdens. The same applies to Legal, Compliance and (Product) Governance, in which 39.9% of banks reallocate their employees: a high number (60.1%) restrict other activities. In the area of banking management in the broader sense, employees are being reallocated (47.1%) and other activities reduced (51.6%). The majority of new employees required – recruiting which would lead to direct costs – have not yet been taken on. Accordingly, the burden on personnel resources is reflected mainly in the form of opportunity costs.

Against this backdrop, outsourcing resource-binding activities is becoming increasingly important. As such, approximately 50% of banks have mentioned that they increasingly outsource activities as a
result of the new provisions. This applies particularly to MiFIR reporting\(^\text{10}\) and other IT matters such as voice recording (29% each), as well as to the preparation of ex-ante cost disclosures (21%).

In addition to these operating burdens, the new provisions also have a significant impact on the strategy and thus also on the long-term orientation of banks. A change in prioritisation regarding sources of income and target clients, as well as changes to the range of products/services and sales policies, are particularly relevant, given that such adjustments not only affect banks themselves, but also impact clients and their feeling of benefitting or not benefitting to a large extent.

In view of the material increase in effort and expense regarding customer service and sales, banks could now start giving preference to alternative sources of income. In fact, 73.9% ($\mu=2.1; \sigma=1.01$) state that advisory business is actually not becoming less important as a source of income. However, this is particularly driven by the large number of small and medium-sized banks. For 50% ($\mu=1.1; \sigma=1.11$) of all large banks (total assets $>$EUR 30 billion) and 76.2% ($\mu=0.8; \sigma=1.09$) of private commercial banks, advisory business is losing relevance.\(^\text{11}\) These banks tend to have a broader range of sources of income at their disposal, whereas savings banks and cooperative banks, which are smaller on average, are (historically) more dependent on advisory business.

Due to lower expenses, non-advised business is gaining in importance for 53.6% ($\mu=1.4; \sigma=0.94$) of banks. Whilst earnings are also lower here, margins are now more attractive (in relative terms) than those achieved in advisory business – due to the lower cost burden. The increasing cost pressure in advisory business ultimately leads to a change in prioritisation of target clients: the private banking (77.1%; $\mu=0.7; \sigma=0.92$) and corporate clients segments (65.3%; $\mu=1.0; \sigma=0.99$) are becoming more attractive compared to the more granular retail segment. Costs per order tend to be constant, whilst capital expenditure is higher; hence, margins are higher than in retail business.

On the back of lower margins, more and more banks are limiting their range of products and services – especially in the retail segment.\(^\text{12}\) These reductions relate to shares (58.8%, $\mu=1.3; \sigma=1.08$), bonds (63.4%, $\mu=1.2; \sigma=0.96$), certificates (54.2%; $\mu=1.4; \sigma=0.99$), currency management (54.5%; $\mu=1.1; \sigma=1.08$) and other derivatives (62.7%; $\mu=1.0; \sigma=1.1$). In contrast to the (intuitive) theory that reducing the range of products on offer should primarily affect products which are more complex and thus

\(^{10}\) In accordance with MiFIR Art. 26, investment firms which execute transactions in financial instruments must report these transactions to the competent authorities as early as possible, and no later than the close of the following working day.

\(^{11}\) Regarding potential parallel influences, business model adjustments as a result of digitalisation of banks must be considered.

\(^{12}\) Cf. Lange/Paul (2017); Schumacher/Lange/Paul (2019).
require more explanation – and not shares or bonds\textsuperscript{13} – our results show that such a connection does not exist: bonds are the most-affected product. The degree to which banks reduce their offerings correlates with the size of the bank. Thus, on average smaller banks downsize their offerings to a stronger extent than their larger counterparts. The fact that larger banks benefit from economies of scale and greater (financial) resources offers an explanation for this development, since these institutions are thus able to reduce their costs more strongly than smaller banks by means of automation techniques.

The restrictions driven by the new provisions also have a direct impact on clients’ use of securities products and thus run counter to the targets set by capital markets union – whose key elements are, however, MiFID II and MiFIR: after all, strengthening the provision of capital in the single market is a cornerstone of capital markets union. Meanwhile, 26.5\% (µ=2.0; σ=0.93) of clients state their intention of wanting to focus less on capital markets and more on less complicated asset classes, such as overnight or term deposits, as a result of the new provisions. Bonds (34.3\%; µ=1.8; σ=0.99) and derivatives (45.8\%; µ=1.4; σ=1.17) are particularly affected by this partial withdrawal. Finally, every eighth client (12.5\%; µ=2.4; σ=0.79) even says that they will completely withdraw from the capital markets due to an increasing level of discontent. Regarding capital markets union, but also regarding the relevance of capital market products within the scope of private provision for retirement, such a development is disastrous.

On a higher level, 85.6\% (µ=0.5; σ=0.82) of banks state that they aim to gear their range of products and services increasingly to specific client segments. It is in this context that extensive standardisation of services, which ultimately also aims to reduce the amount of advisory work required, has taken place. In line with the decreasing importance of retail clients as a source of income, the retail segment shows the strongest standardisation trends (94.7\%, µ=0.3; σ=0.55). However, the more lucrative private banking and corporate clients segments are also becoming increasingly standardised (65.3\%; µ=1.1; σ=0.84 and 61.4\%; µ=1.1; σ=0.83).

It goes without saying that product and performance policy adjustments – even when taking the implications for capital markets union out of the equation – strongly impact clients: advisory services become less individual, and the range of products is reduced. Whether and to what extent this influences any perceived benefit for clients will be discussed in chapter 4. After all, a smaller product range – especially in advisory business – may also have a positive effect, to the extent that product baskets which are better tailored to clients’ needs could prevent clients from feeling overwhelmed, thus making

\textsuperscript{13} PPI (2018).
the decision-making process easier. In addition, numerous banks already state today that the constantly increasing investor and consumer protection requirements under securities law are putting pressure on margins so significantly that doing business with less affluent retail clients is no longer worthwhile. Some banks are therefore attempting to divert these clients towards other less cost-intensive business. Depending on how much protection requirements are further tightened, however, the question arises as to when banks will begin to completely cut off entire customer groups from investment advice. Nonetheless, $64.5\% (\mu=1.8; \sigma=0.94)$ of banks still state that regulatory costs actually do not inhibit (or tend not to inhibit) their growth strategies in the area of securities investments. However, no differentia-tion by client groups is made here.

Finally, in view of increasing overall expenses, the question arises as to whether these expenses are reflected not only in the previously mentioned changes but also in higher prices for clients. Despite it being initially irrelevant (in the context of welfare economic-based cost-benefit analyses) who bears the costs – since the approach focuses solely on cumulated macro-economic figures – ceteris paribus, more expensive terms would in fact reduce the clients’ benefit and thus worsen the situation of the proclaimed beneficiaries of the new provisions. Yet, this is only the case for one third of banks. The bulk ($66.7\%; \mu=1.9; \sigma=0.9$) of the costs caused by the new provisions are not passed on to clients – at least not at present. Going forward, however, many banks will not be able to avoid this.

Furthermore, sales policy adjustments could also have negative implications for clients. For example, if banks increasingly withdrew from business due to the new regulations, or if they limited their investment advice to only a few, selected branches, these cost-saving measures would entail significant non-benefits for clients. Whilst such actions are currently irrelevant for two thirds of banks, as many as $30.7\% (\mu=2.0; \sigma=0.91)$ state that they are increasingly withdrawing from business as a result of regulatory provisions; $25.5\% (\mu=2.0; \sigma=0.96)$ now concentrate their investment advice on selected branches only. Going forward, this development could threaten to cut off especially elderly and less mobile clients from securities business.

Against this background, the new provisions have negative implications for those clients who are currently mainly using or have mainly used the telephone distribution channel: immobile, non-net savvy customers can either no longer conduct securities transactions at all, or only with difficulty. After all, prior to order placement, essential information documents need to be provided; this cannot be done via

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14 Cf. studies on the cumulative (future) impact of regulation on the business models of cooperative banks and savings banks by Lange/Paul (2018) and Schumacher/Lange/Paul (2019).
15 Cf. Schumacher/Lange/Paul (2019).
the telephone. In addition, general legal concerns exist regarding mandatory voice recording, which affects all clients alike. Due to the greater time and administrative burden telephone orders entail, they are now also becoming less attractive for banks. Thus, overall 75.8% (µ=0.9; σ=1.01) of banks now indicate that the importance of business conducted by telephone as a distribution channel is diminishing. This statement is also reflected on a quantitative level: the number of telephone orders is decreasing. Their share in the total number of orders with investment advice declined by 9.9 percentage points due to the new provisions, the equivalent of a relative drop of approximately 50% (H1 2017 vs H1 2018). The share of orders placed in branches increased accordingly.

Finally, the new provisions also influence the competitive situation in the banking sector: whilst around 50% of institutions have not noticed any changes (“the rules apply to everyone”), 38% feel their competitive position has weakened, and 10% feel it has grown stronger. Especially smaller and medium-sized banks feel their position has weakened. Reasons for this development are, for example, difficulties regarding the automation of resource-binding activities and other administrative requirements, as well as (in some cases) even the “regulation-driven” abandonment of telephone advice. Institutions also feel that the increasing level of standardisation is threatening the character of a principal banking relationship. Conversely, especially large banks (which are more capable of handling the new requirements) feel their competitive position has improved compared to their smaller bank counterparts. As such, maintaining telephone-based advice can hold a real competitive advantage. Irrespective of size, online banks are strengthened, and fintechs are becoming ever-stronger competitors.

While distorting effects on competition have been rather minor so far, banks are generally impacted by significant further burdens. In addition to the costs affecting mainly the banks themselves, adjustments carried out as a result of the new regulations can also strongly (negatively) impact the benefits clients experience.

4. Benefits and non-benefits

Rising dissatisfaction among clients, as reported in the media, is also confirmed by the data collected: banks have recorded a strong increase in expressions of discontent or complaints. During the reference period (H1 2018), general complaints were up by 6.4% on H1 2017 and by 15.6% on H2 2017. Whilst complaints that required reporting to BaFin\(^{16}\) rose by a mere 5.6% on H1 2017, they increased by

\(^{16}\) In general, all complaints relating to a specific advisory situation must be reported. As such, the cases that will be recorded are those within the direct sphere of influence of the investment advisor. Cf. section 87 WpHG.
19.1% on H2 2017. As the only far-reaching changes in legislation during this time were MiFID II/MiFIR and the PRIIPs Regulation, this jump is likely to be caused by their coming into effect. However, other reasons cannot be ruled out. Our data does not show whether the increase was due to one-off effects – such as witnessed in early January, when for a brief period many securities transactions could not be conducted due to changeovers taking place at institutions – or whether the complaints were spread out evenly across H1 2018 as a whole. Qualitative data suggests the latter: 92.1% of institutions (μ=0.6; σ=0.64) said that client discontent had increased following the new legislation. This is also reflected on the client side, where 38.4% (μ=1.7; σ=1.08) stated that they had increased their search for alternatives to traditional bank advice.  

Even though this reorientation of clients implies that they are, overall, dissatisfied with the new legislation – i.e. they may feel that the non-benefits outweigh any benefits – the question remains as to where this dissatisfaction stems from. A more differentiated analysis of the client perspective is therefore required. Since comprehensive information, provided in a more harmonised manner, was intended to increase client protection, it is this information that is the starting point for any further investigation. The key question is whether clients now indeed feel better informed and better protected, because only if the answer is 'yes' may the significant burden placed upon institutions be justified.

4.1 Benefits and non-benefits of more information material being provided in the context of information processing

With transaction and opportunity costs for clients in mind, clients were asked about the effort required to conduct securities transactions. The rationale behind this was: even if clients were to feel better protected and better informed, this does not mean that they see the price that needs to be paid for this – i.e. a rising expenditure of time – as justified, and that they are willing to pay it. 83.6% of clients (μ=0.6; σ=0.87) said that discussions with their advisor now took (significantly) more time. At the same time, 69.1% (μ=1.9; σ=1.01) feel that the effort required to place an order is (rather) inappropriate. The relationship between benefit and non-benefit therefore seems questionable.

To reduce the effort, clients could try to trade less – or bundle their transactions to a greater degree than before. However, such a development has so far not been evident in banks' order books: the number of orders (excluding savings plans) actually rose by around 23% between H1 2017 and H1 2018. At the same time, volumes decreased by around 20%. If clients were indeed bundling their transactions, a trend to the contrary would have to be expected. These developments hold true both for orders

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17 The results for the institutions confirm this trend.
that require prior securities investment advice and for non-advised orders, precluding any substitution effect. Clients could still avoid the increased burden by choosing to bundle their transactions to a greater degree going forward: after all, 46.7% of clients (µ=1.5; σ=1.04) said that they plan to bundle more. As the survey was conducted during H1 2018, this intention may not have been clear from the start, but may have manifested itself over time. Whilst no concrete evidence of avoidance tactics has become apparent so far, the intention of numerous clients to react in the future implies a rising dissatisfaction with the effort required to conduct securities transactions.

However, the increased effort – i.e. expenditure of time – could at least partially be justified if clients did feel better informed and better protected as a result. However, this is not the case for the majority: 77.3% of clients (µ=2.1; σ=0.88) said that more comprehensive information did not help them better understand the contents discussed. Even worse, 62.3% (µ=1.2; σ=1.06) said that they felt overwhelmed by the sheer quantity of information presented to them – a fact that implies grave faults in information processing. Against this background, almost all banks are confronted with a greater need to explain the new processes and materials to clients (98.7%; µ=0.3; σ=0.51). At the same time, 64.6% of clients (µ=1.1; σ=1.03) said they 'got lost quicker' in the flood of information and had to ask their advisor questions more often.

If the quantity of legally required information causes two out of three clients to get 'lost', then this is alarming indeed. After all, the objective of the new legislation was to make costs and risks transparent, not to deluge clients with a flood of information. Almost all banks (91.5%; µ=0.6; σ=0.68), however, said that important information got lost in the sheer glut of material. At the same time, the definition of what constitutes important information seems to vary from institution to institution, with one in two banks (49.7%; µ=1.5; σ=0.9) stating that costs and risks were now communicated much more clearly than before. Yet not all clients agree with that: a mere 33.7% (µ=1.8; σ=0.94) said that they now felt much better informed about the costs and risks involved in their investment decisions. In other words, most clients do not see a benefit.

Overall, the benefit of more comprehensive information is questionable: the fact is that only a minority of clients do not feel overwhelmed and benefit from more transparency. For the majority, overwhelmed by the information flood, it is the non-benefits that dominate. Which of these effects prevails in sum, however, depends on the amount of benefit and non-benefit and cannot be answered due to a lack of quantifiability.
Even though the quantity of information provided has risen, a sensible and comparable structure or presentation should make it easier to intuitively understand the material, improving information processing. The higher degree of harmonisation that comes with the new legislation could improve comprehensibility. However, it turns out that in practice such a positive effect has not materialised in the majority of cases.

70.7% of clients ($\mu=1.9; \sigma=0.86$) said that a greater degree of harmonisation did not help them to filter relevant information faster. On the contrary, it is negative aspects that dominate: 83.7% of banks ($\mu=0.8; \sigma=0.85$) said that harmonisation of processes made advice less individual, and 60.1% ($\mu=1.3; \sigma=0.82$) saw that advisory services had become more interchangeable. Clients feel similar, with 57.8% ($\mu=1.3; \sigma=1.1$) stating that their advisor used to be more flexible and used to appreciate their needs more individually. In the end, harmonisation has not had the positive effect it was intended to have, and the aspects of non-benefits seem to predominate.

Yet harmonisation could bring benefits for institutions. As processes are harmonised, automation increases as well. If the advisory processes become less error-prone, thanks to process steps being automated, this might reduce error costs (e.g. for lawsuits due to non-compliance with information or disclosure requirements). Against this background, the error ratio in the advisory process would be expected to have fallen. This is confirmed, however, only by 41.9% of institutions ($\mu=1.7; \sigma=0.91$).

The high level of detail provided for in MiFID II/MiFIR is another potential source of benefit for banks, as precise requirements can help mitigate legal and interpretative uncertainties, which pose a major challenge for many institutions.18 However, only 30.7% of banks ($\mu=1.8; \sigma=0.8$) confirm that legal certainty in the advisory process was on the rise. On the contrary, it is negative effects that dominate: 84.3% of institutions ($\mu=0.7; \sigma=0.71$) said that the new legislation had resulted in growing uncertainty among advisors. This is also reflected negatively in the quality of the advisory services provided, with another 84.3% of institutions ($\mu=0.6; \sigma=0.75$) stating that their advisors were now more worried about making formal mistakes than about providing bad advice. It remains to be seen whether such a development is for the benefit of clients, as advisors continue to play an important role for them.

4.2 Benefits and non-benefits of advisors acting as a navigator through information material

As to the importance of advisors, two positions are conceivable based on the results so far. First, the importance of advisors could decline due to a stronger harmonisation and automation of processes,

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18 cf. Schumacher/Lange/Paul (2019).
less individuality and flexibility, and advisory services become more interchangeable. Second, the importance of advisors could rise given that clients feel overwhelmed by the complexity and flood of information. In this scenario, advisors play a more important role as they help navigate the information jungle.

On an intuitive level, both scenarios seem equally plausible. The clearness of our results therefore comes as a surprise. The vast majority of clients (82.9%; \(\mu=2.4; \sigma=1.01\)) do not agree with the proposition 'It does not matter to me who advises me'. Insofar, the institution's assessment of advisory services becoming increasingly interchangeable does not match the clients' perception. Also, the decrease in flexibility and individuality that clients perceive appears to have only a minor influence on advisory services. Almost two thirds of clients (66.6%; \(\mu=1.9; \sigma=1.04\)) do not feel that the trust-based personal relationship built up with their advisor over the years had suffered from the new legislation. Banks share this view, with 64.1% (\(\mu=1.8; \sigma=0.83\)) stating that the trusting relationship between client and advisor was not threatened.

Whether in spite of or due to the new legislation, clients continue to place great trust in their advisor. 72.6% of clients (\(\mu=1.1; \sigma=0.92\)) said they rely completely on their advisor when making an investment decision, and that they did not need further material. Against this background, 71.1% (\(\mu=0.9; \sigma=1.04\)) of clients would like to waive all explanatory information ('opt out'), or at least have the option to do so.

These results clearly point to clients being overwhelmed by too much information. With almost three quarters of all clients relying on their advisor alone anyway and not needing or wanting any additional information, this shows that the new legislation is a misconstruction. It does not result in the majority of clients being better enabled to make their own decisions or critically evaluate recommendations made by their advisor. While there is no doubt that a trusting relationship can be of benefit to the client, a creeping loss of autonomy cannot be in the interests of either regulators or clients. This problem is further aggravated by the fact that advisors today worry more about making formal mistakes than about giving bad advice.

4.3 (Non-)benefits of individual (informational) elements

Seen in the context of results presented thus far, the new regulations appear to be highly questionable overall. High costs, plus further burdens upon institutions, combined with benefits which are at best unclear – if not negative – when seen together, give rise to considerable doubt regarding efficiency. And MiFID II/MiFIR even appear to be non-effective, at least in parts – e.g. when considering the
information overflow. Even though this calls for criticism of the new regulations as a whole, specific individual provisions may nonetheless be sensible.

We therefore examine below whether – and to what extent – at least individual elements generate benefits (in the sense of the stated objectives). Such elements include mandatory documents such as the suitability report, ex-ante cost information, product information sheets\(^\text{19}\), reports on client financial instruments and depreciation reports, as well as documentation requirements such as the recording of advisory discussions conducted over the phone, and documentation of orders\(^\text{20}\). Clients were asked to assess these elements concerning (i) their benefits, (ii) their nuisance level; and (iii) whether they might prefer to waive the respective element. (i) "Benefits" in this context means benefits perceived by clients in terms of information received or as a trust-building measure. (ii) "Nuisance" means that clients feel bothered or annoyed by the respective element. (iii) A "waiver" means that clients would prefer not to receive the respective element, or to have the option of not receiving it (opt-out). Figure 1 below provides an overview and a first indication of clients' perception of the individual elements.

Figure 1: (Non-)benefits of individual elements from a client's perspective

\(^{19}\) Key information document, product information sheet or key investor information.

\(^{20}\) The documentation of an order is also referred to as the record or minutes of the conversation or note on the order.
The suitability report provides a written record of the product's suitability for the client concerned. It is designed to provide a comprehensive overview of the content of (and the reasons for) the recommendation, with the objective of contributing to an informed decision. Together with the target market assessment, this has created a dual safety mechanism designed to prevent recommendations of unsuitable products. At the heart of this concept is a reconciliation of client characteristics and product features: the idea is to create transparency for the client as to what extent a (product) recommendation is consistent with their preferences, knowledge and experience, as well as risk tolerance and capacity for loss. As a matter of principle, the suitability report has to be provided to the investor prior to their entering into a contract.21

Looking at client (dis-)benefits, the suitability report is characterised by a balance between a potential feeling of being patronised on the one hand, and the potential protection on the other. Regulations should generally be structured so as to provide the full range of products to experienced 'stock market players', whilst preventing 'newcomers' from selling options for speculative purposes, for example. Whether – and to what extent – clients now take more informed decisions remains questionable, however, given the information overload and the high importance of the advisor.

Overall, less than half of clients see any benefit in the suitability report: 55.4% (µ=1.6; σ=0.88) stated that they find the report "pointless" or "rather pointless". This is mirrored by the response of 59.4% of clients (µ=1.2; σ=0.88) who considered the document a nuisance. Whilst benefits and nuisance effects are also correlated for the sub-samples (in that rising benefits are associated with lower nuisance levels), the sub-samples also show marked differences: corporate (68.2%; µ=1.8; σ=0.82) and private banking clients (63.4%; µ=1.8; σ=0.84) see particularly low benefits. In contrast, half of retail clients (49%; µ=1.4; σ=0.89) perceive the suitability report to be "rather sensible" or "very sensible". Given that retail clients tend to be less experienced, with a lower capacity for loss (due to lower asset levels), this result indicates that, in principle, regulators had the right idea with the report. This is supported by our results for clients with particularly large securities portfolios or frequent trading activity: benefits tend to fall (and nuisance levels rise) with increasing capacity for loss and experience. Specifically, 85.7% (µ=2.2; σ=0.74) of the most actively-trading clients stated that the suitability report was somewhat or completely pointless, whilst 84.4% (µ=0.6; σ=0.79) found it a (serious) nuisance.

Finally, most clients would like not to receive the suitability report, or to have a choice of waiving it. This wish is pronounced across all client groups (71.4%; µ=0.8; σ=0.96), albeit least so for retail clients.

21 Cf. section 64 (4) sentence 2 of the WpHG (as amended); BaFin (2018).
(64.9%; $\mu=1.0; \sigma=0.99$). Compared with the benefits and the nuisance factor (which is interpreted as a non-benefit), the wish to waive the report is clearly more pronounced – which may indicate a mismatch between benefits and non-benefits. After all, if benefits were low but nuisance levels even lower, there would be no (or very little) reason for the wish not to receive the suitability report.\textsuperscript{22}

The **ex-ante cost disclosure** is a mandatory document which informs clients about all (ancillary) costs associated with the securities transaction and the financial product concerned. This must be provided to the client, prior to their concluding a trade, in durable form (meaning in hardcopy or by e-mail, fax, in an electronic mailbox, or via a website). The objective is to increase transparency of the investment in terms of its cost structure, and to facilitate comparison, also with rival products or services.\textsuperscript{23}

Yet this objective – which is also built on the concept of informed decision-making, is largely not reflected in clients' perceptions: in fact, only 42.7% of clients ($\mu=1.6; \sigma=1.03$) assign benefits to ex-ante cost disclosure. This might be driven once again by information overload, as well as a wish to largely leave decisions to the advisor. 54.2% ($\mu=1.3; \sigma=1.03$) of clients even perceive this additional information as a (serious) nuisance. Like with the suitability report, retail clients (49.2%; $\mu=1.4; \sigma=1.01$) assign the strongest benefits to the ex-ante cost disclosure. Again, this is likely due mainly to their having less experience in securities transactions than corporate or private banking clients. The more experienced the client, the more they felt bothered or annoyed: the most active investors (>48 transactions per year) felt the most bothered (78.1%; $\mu=0.7; \sigma=0.84$). This corresponds to a very pronounced wish for a waiver, at 86.2% ($\mu=0.4; \sigma=0.76$), compared to 62.7% ($\mu=1.0; \sigma=1.1$) of all clients who would like to waive the ex-ante cost disclosure. A breakdown across individual client segments provides a result similar to that for the suitability report: on average, private banking and corporate clients consider the information to be less sensible, feel more bothered by it, and show a stronger wish for a waiver.

\textsuperscript{22} In the questionnaire, the "waiver" option is not limited to the wish not to receive the document, but also includes the wish of being able to waive it; the latter would, however, only provide another 'free' option to the client. Therefore, from the client's perspective, it would be logical to affirm the wish for a waiver, even though they had no fundamental intent to forego this information. Even though this makes it impossible to clearly detect a mismatch between benefits and non-benefits, the high score for an unconditional waiver ("yes"; 43.6%) compared to "rather yes" (27.8%) provides an indication in this direction.

\textsuperscript{23} Cf. section 63 (7) of the WpHG (as amended); BaFin (2018).
Leaving client perceptions aside, comparability of costs for products and services across institutions (as intended by regulators) is only achieved to a limited extent: even though a transparent cost disclosure is generally a sensible objective for clients, the presentation, structure and breakdown of cost information provided varies greatly across institutions or groups of institutions.

The key information document (KID)\(^{24}\) required pursuant to the PRIIPs Regulation is a further mandatory document. This standardised information sheet (which is restricted to a maximum of three A4-sized pages) informs clients about material product characteristics\(^{25}\) – in particular, inherent risks, return profiles and scenarios, as well as costs. Alongside the suitability report and the ex-ante cost disclosure, the KID is handed over to clients prior to their entering into the contract. Again, the primary objective is to enhance transparency and comparability; for this reason, contents, layout and structure are neutral and standardised. Moreover, in the interests of financial literacy, clients are expected to develop their own expectations regarding product information over the long term.

Strong criticism has been voiced with respect to the key information document in light of providing unrealistic information in some cases.\(^{26}\) For instance, where derivatives are purchased, the KID sometimes contains positive six-figure yield forecasts and 'absurd downside scenarios', while transaction costs that are shown as negative and consequently suggest a positive yield also give grounds for criticism.\(^{27}\) Such distorted calculations are primarily caused by legal requirements set out in the standardised EU calculation instructions. Such (justified) criticism is all the more regrettable since the key information document would indeed provide the opportunity of contributing to better-informed decisions, especially in view of the results ascertained thus far. A document with a simple structure that is identical across all providers and restricted to a maximum of three pages would indeed be suitable for preventing clients from being flooded with information. Yet if clients ultimately do not (or cannot) trust this document, a fundamentally sound approach is rendered meaningless.

This dichotomy is also reflected in the results: 69.0% of clients (\(\mu=1.9; \sigma=1.03\)) said that they do not read the document. Consequently, 72.5% (\(\mu=2.0; \sigma=0.88\)) do not see any trust-building effect. The statement: "The key information document/product information sheet and key investor information

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\(^{24}\) Must be handed over when selling derivatives, structured securities, fund-based or index-linked life assurance policies, as well as other insurance-based investment products.


provide a good basis for comparison in order to take better decisions" is rejected by 67.9% ($\mu=1.9$; $\sigma=0.88$) of clients. Overall, regulators' target would thus appear to have been missed.

At the same time, however, 62.7% ($\mu=1.2$; $\sigma=0.86$) consider the key information document to be sensible – only 8.8% consider it to be "completely pointless". The trust issue mentioned above may provide a possible explanation for these – at first glance – contradictory results. Faced with negative media coverage, clients do (not yet) trust the information provided, but see strong benefits in the future once the teething problems have been resolved. Only 35.9% ($\mu=1.6$; $\sigma=0.88$) of clients feel irritated, with 49.3% ($\mu=1.4$; $\sigma=1.05$) looking for a waiver. Compared to the other documents, which largely received negative assessments, the PRIIPs Regulation therefore appears to be seen in a positive light (going forward). Looking at a breakdown of sub-sample results by transaction frequency provides remarkable results, however: they also show declining benefits and increasing nuisance levels with rising trading activity. Given the regulatory purpose of facilitating comparisons 'at a glance', experienced traders in particular should value the high information density of the key information document. Instead, clients with little activity see the highest benefits and feel the least irritated.

In addition to mandatory documents which must be handed over prior to a transaction, clients receive ex-post reports: the report on client financial instruments and (if applicable) the depreciation report. Whilst the former provides details on portfolio holdings on a particular record date, with the objective of providing quarterly information on prevailing market value (where available), the latter constitutes an additional reporting requirement. Investment firms must value client portfolios on a daily basis, informing clients when a prescribed 10% loss threshold is exceeded.28

Clients gave a predominantly positive assessment of these reports. 62.7% ($\mu=0.9$; $\sigma=0.97$) consider the depreciation report to be sensible; only 27.7% ($\mu=1.6$; $\sigma=0.95$) find it annoying, and around half of clients (49.9%; $\mu=1.4$; $\sigma=1.09$) do not want to give it up. The report on client financial instruments in accordance with MiFID II is seen even more favourably: 71.9% ($\mu=1.0$; $\sigma=0.92$) of clients who are familiar with it find it useful.29 Only 20.3% ($\mu=2.0$; $\sigma=1.05$) of clients feel it is a nuisance, with a clear majority of 60.3% ($\mu=1.7$; $\sigma=1.22$) wishing to keep it.

Whilst providing additional information prior to a transaction thus harbours a significant threat of information overload, with the benefit/non-benefit ratio appearing questionable, providing information

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28 Cf. Article 62 of Delegated Regulation 2017/565/EU.
29 Due to the fact that many institutions had not yet implemented the report on client financial instruments at the time of the survey (according to the institutions concerned, due to unclear regulatory provisions), the relevant sample of only 335 clients (equivalent to 11.8% of the overall sample) is relatively small, with representativeness limited as a result.
ex-post appears to offer real added value. This may reflect the fact that – from the client's point of view – information provided subsequently does not delay the order execution process.

Finally, the new regulations also go hand in hand with new documentation requirements: besides the overarching objective of enhancing investor protection and market surveillance, these requirements are especially aimed at achieving higher legal certainty by securing evidence.

One new documentation feature is called 'taping': the mandatory recording of telephone conversations between banks and clients which (may) lead to transactions in financial instruments, as well as relevant internal communications within an institution.\(^\text{30}\)

Taping has attracted significant criticism: institutions criticise the enormous technical and administrative burden involved, plus the significant need for explanation to clients, who are in turn concerned about intrusions of privacy. 55% (\(\mu=1.2; \sigma=1.15\)) of clients perceive a threat to the confidentiality of their conversations, whereas only 26.1% (\(\mu=1.8; \sigma=0.89\)) see benefits. 64.5% (\(\mu=0.9; \sigma=0.96\)) find the practice of taping annoying, with the majority of these clients finding it "highly annoying". The rejection of voice recording is particularly evident among corporate and private banking clients. Only 22.3% (\(\mu=1.9; \sigma=0.82\)) of corporate clients recognise benefits; 72.5% (\(\mu=0.8; \sigma=0.93\)) see it as annoying. Amongst private banking clients, only 19.3% (\(\mu=2.1; \sigma=0.83\)) see any sense in taping; 72.8% (\(\mu=0.8; \sigma=0.92\)) feel bothered by it. Given this unfavourable ratio of benefits to non-benefits, 73.8% (\(\mu=0.6; \sigma=1.09\)) of all clients would like to get rid of taping altogether.

Overall, clients largely do not appear to associate any benefits with higher legal certainty: even if they found an intrusion of their privacy annoying, this is likely not reflected in lower benefit scores ("sensible" vs. "not sensible"), but only in terms of nuisance levels. Furthermore, 49.1% of clients (\(\mu=1.4; \sigma=1.16\)) indicated that they would (in future) refrain from conducting securities business by phone due to the new regulations.\(^\text{31}\) The regulatory target thus appears to have been missed.

Mirroring the taping of business conducted by phone, orders placed at a branch are documented by way of a written **record of the order**\(^\text{32}\). In the context of a face-to-face conversation, advisors have to

\(^{30}\) Cf. section 83 of the WpHG; Article 16 of Directive 2014/65/EU.

\(^{31}\) This corresponds with the massive collapse in orders placed by phone, as described in chapter 3.2 on page 13.

\(^{32}\) Alternatively, documentation of the order placed is also referred to as the record or minutes of the conversation or note on the order.
prepare detailed minutes that must be provided to the client upon request. There are no data protection concerns, and the record of an order has received only marginal media coverage.

Assuming that the record of an order is designed to increase legal certainty and does not threaten confidentiality, the benefits associated with it should be "high": after all, clients do not need to sign the record, nor do they have to otherwise take notice of (or even store) it. In fact, only 53.2% (µ=1.4; σ=0.93) consider the record to be sensible; 40% (µ=1.6; σ=0.93) find it annoying, and around half of clients (50.1%; µ=1.3; σ=1.07) would like to be able to get rid of it. The reasons for this unexpected result ultimately remain unclear.

There is significant variance in terms of benefits, nuisance levels, and the wish for a waiver across all (individual) elements. Whilst mandatory documentation to be handed over in advance is mainly seen in a negative light in terms of benefits vs. non-benefits, ex-post reports receive rather positive assessments. A split picture emerges in terms of documentation requirements: whilst results show a clear rejection of taping, no conclusion can be made regarding the written record of an order. However, clear trends have emerged concerning specific client groups and trading frequencies: (a) on average, retail clients perceive higher benefits, feel less bothered, and express a desire to opt out less frequently (compared to corporate and private banking clients); (b) benefits decline, nuisance levels increase, and the desire to opt out increases with a rising number of securities transactions.

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33 Cf. section 83 of the WpHG; Article 16 of Directive 2014/65/EU.
34 It is possible that clients take such little notice of the record of an order (and are even possibly unaware of it) that they are completely unappreciative of any higher legal certainty. But if this was the case, they should not see it as a nuisance.
35 Key information document/product information sheet are the exception: results are contradictory to some extent and hence ultimately unclear.
36 By definition, these depend upon securities portfolio size; results for corporate and private banking clients strongly correlate with the sub-samples of large portfolio size.
5. Conclusion: key findings

1. MiFID II/MiFIR and the PRIIPs Regulation have imposed significant direct and indirect costs as well as other burdens upon institutions. Any (additional) benefits which might justify the regulatory burdens are doubtful at best, and even tend to be negative.

2. Customers are largely dissatisfied with the new rules, given the increasing amount of time required to implement them. New regulations imposed upon telephone business are seen as being especially negative; the volume of orders placed by phone has fallen significantly.

3. On average, the more comprehensive information now provided does not lead to more informed decisions, but creates information overload and uncertainty.

4. A higher degree of standardisation does not resolve this problem, but leads mainly to further non-benefits in the form of less flexibility and less individual advice. It is especially the large group of less affluent retail clients (who thus need more protection) that is affected by the negative impact of the new regulations.

5. Faced with complex processes and information overload, clients tend to rely on their advisor to an even greater extent, and would like to do without any further documents and information. At the same time, the new regulations have also led to significant uncertainty amongst banks.

6. Even though some individual elements (such as reports on client financial instruments and depreciation reports) receive predominantly positive client feedback, MiFID II/MiFIR and the PRIIPs Regulation in their entirety are highly questionable. Ultimately, the new regulations, which were introduced with investor and consumer protection in mind, have turned out as primarily running counter to consumer interests.

7. Finally, an increasing number of clients are already withdrawing from the capital markets or intend to do so in the future. Even though MiFID II and MiFIR are key components of capital markets union, their impact contradicts a key capital markets union objective: strengthening the availability of capital in the single market. This is a fatal development, not least considering the importance of capital market products (such as shares and bonds) within the scope of private provision for retirement.
Literature

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Appendix A: Institution data

Appendix B: Client data