

The Savings and Investment Union has had a bad start – we need an ‘emergency brake’

Karel Lannoo

Making citizens invest in Europe’s capital markets is core to the [Savings and Investment Union](#) (SIU). However, EU-wide rules agreed in the ‘trilogue’ between the European Parliament (EP) and the Council on 18 December do not make the EU’s offer to the retail investor more attractive. Inducements or conflicts of interest in investment products are formally allowed in the draft text, subject to certain conditions. Moreover, the compromise is an example of complexity, going against the objective of simplification adopted in ECOFIN a few days before.

The lengthy discussions on the [Retail Investment Strategy](#) (RIS), which aim to further harmonise rules for product manufacturers and distributors, have led to disappointing outcomes. The initial proposal already left much to be desired, as the Commission didn’t forbid inducements, but rather limited them to execution-only or non-advised sales and suggested applying a ‘best interest’ test. The proposal changes different rules – like an ‘omnibus’ – starting with the Markets in Financial Instruments Directive (MiFID II) and the Insurance Distribution Directive (IDD).

The trilogue outcome, which still needs to be passed during the EP plenary, further waters down the initial proposal. The core issue is inducements, which have moved up in priority, whereas other parts were moved down, including the best interest, suitability and appropriateness tests – except for the value-for-money (VfM) measurement.



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The big change is that inducements or kickbacks for distributors/advisors will be permitted, which marks a watershed moment. So far, under the Investment Services Directive (ISD) and MiFID, inducements were seen as the exception – i.e. to be avoided. Providers had to avoid conflicts of interest and act in the best interests of the client. This *fiduciary duty* is a foundational legal principle that underpins a lot of financial regulation.

The text now allows inducements under the following conditions:

- the inducement is based on a clear, comprehensible and transparent calculation method;
- the inducement provides a clear benefit to the client;
- the level of inducements paid or accepted and retained is proportionate to the service provided to the relevant client;
- the inducement doesn't contain any form of variable or contingent threshold or any other kind of value accelerator. However, this concerns a specific product or category of products or total sales. Under this criterion, sales targets within a remuneration system that adequately take into account qualitative and quantitative factors are permitted.

Additionally, the inducements rules have moved to level 1, with the Commission empowered to adopt delegated acts to further specify compliance criteria, and to amend the rules only after a review in five years-time. As for the IDD, elements which would have allowed the inducement to be reclaimed have been watered down with additional provisions. But the text still allows Member States to ban inducements.

Inducements will thus formally be permitted if they pass these tests. But the 'burden of proof' on whether investors get value for money becomes a sweetener for providers to continue business as usual. These requirements are a nightmare to both apply and control for financial supervisors – let alone consumers. A textbook example of how simplification is disregarded when vested interests are at stake, or how complexity becomes the best avenue of capture.

The other elements of the Commission proposal have moved down the priority list. The best interest test was removed and replaced by general provisions, again providing more leeway for providers. The suitability test was also softened, replaced by a 'suitability light' provision for certain product categories. Here as well, the level 2 empowerments for the content and format of warnings, as well as appropriateness and suitability tests and reports, have been removed.

The only step forward for the RIS is the value-for-money concept. EU supervisory benchmarks developed by EIOPA will apply for products under the IDD. It was clarified that VfM peer grouping would also be implemented for UCITS and AIFMD. This should allow a comparable performance matrix for investment products.

This compromise raises a broader question of international consistency. Other jurisdictions, such as the UK and the Netherlands, have already banned inducements in most retail investment contexts, recognising their incompatibility with a fiduciary-focused framework. Australia did the same following the findings of its [Royal Commission](#). The EU's permissive

approach, even with safeguards, now puts it out of step with jurisdictions that have moved towards prioritising consumer trust and further reducing conflicts of interest.

Trust is the missing ingredient. Retail participation in capital markets depends on confidence that the system is fair, transparent and acting in the investor's interests. By enshrining complexity and allowing kickbacks, the RIS risks reinforcing the perception that the investment product ecosystem serves intermediaries more than it serves clients. This isn't how the EU will close the gap with the US in terms of market depth or investor participation.

Overall, the draft text's complexity won't be a step forward in making the EU's investment product markets more attractive – one of the SIU's crucial elements. Today, EU fund markets remain fragmented and costly compared to the other side of the Atlantic. The trilogue text doesn't change this, on the contrary, the draft will make offering investment products across borders even more difficult because of the level of detail required. Fragmentation will persist and the cost of investment products won't decline, as the latest [ESMA data](#) demonstrated again.

That's why – even now – the proposal should be sent back to the drawing board, or an 'emergency brake' or additional impact assessment should be applied, as proposed in a recent [paper](#) by Germany and Italy for the February European Council. If the EU is serious about turning savers into investors, it needs to restore consistency with its long-standing narrative on retail investor participation.

This means prioritising simplification, banning conflicted remuneration and reinforcing the legal duties owed to investors. Anything less will continue to fall short of a true SIU.