



## Current Investors Issues at the European Level

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Since the 2008 financial crisis, the European Authorities have embarked into a vast revamping of EU wide financial regulations. While some new European regulations and directives are already enacted (Reform of European financial supervision, Alternative Investment Fund Management), most are still being finalized at the European Commission's, at the Parliament's or at the Council's levels.

Most of these ambitious financial reforms will impact directly or indirectly all European private investors.

This paper focusses on the most sensitive EU legislative projects for private investors.

### Current EU policies (2011-2012) and investors' protection

(A detailed Table of the European Commission's projects pipeline on financial issues is attached)

- 2011: a **new European Financial Supervision**: one Board (Systemic Risk) and three Authorities (Securities Markets, Banks, Insurance & Pensions)
- **MiFID 2 proposal** (20/10/2011 - capital market structures and distribution of securities and funds)
- **Corporate governance and shareholder engagement** July 2011 EC consultation
- **Takeover bids** Directive (2004) assessment
- **Market Abuse** Directive (2003) proposal (20/10/2011)
- The "**PRIPs**" (Packaged Retail Investment Products) regulatory project
- **UCITS IV Directive** implementation (investment funds information)
- **ADR (Alternative Dispute Resolution)** and **Collective Redress** EC consultations
- **Withholding taxes on investment income in the EU** (EC consultation)
- **IMD Review** (life insurance contracts and insurance-regulated long term and pension investment products)
- **CRD IV and Solvency II**: capital ratio requirements for banks and insurers

## **The new European Financial Supervision**

- The conflict of financial supervision objectives: solvency vs. Customer protection
  - No “Twin Peaks” for the European Union
- Customer Protection : Number 6/6 Objective of the new Financial Supervisors: last but not least ?
- The power to warn against / to ban specific products ?
- The “Stakeholder Groups”:
  - No balanced representation of users vs. industry
  - Can they work ?

## **MiFID 2**

### **Capital markets fragmentation**

- Order (“pre trade”) and trade (“post trade”) data transparency has deteriorated for small equity investors; usually they do not get the data from the new market venues, i.e. they now probably miss about 50% or more of the data.
- The average size of disclosed trades has collapsed, but not the orders’ size from the end investors; studies on the impact of the markets fragmentation on liquidity are contradictory at best.
- The “best execution” of the retail orders (best price) is simply not there for small investors
- The cost of shares’ trading for small investors (transaction and information costs) has not decreased.
- Overall, MiFID has contributed to further marginalize individual investors, despite the fundamental economic purpose of the capital markets (as opposed to intermediated finance) which is to connect directly end investors and issuers of the capital

## **MiFID 2**

### **Investor protection**

- Insufficient enforcement of the clear, fair and not misleading information rules
- Widespread and misleading use of the “advice” and “advisors” labels
- Necessity for unbiased, competent and knowledgeable advice and in the interest of the client
- Insufficient enforcement of the justification and of the disclosure of “inducements

- Necessity for MiFID investor protection provisions to cover all retail financial investment products offered to EU citizens, and not only – as it is currently the case – about only one fifth of them (securities and funds).

## Corporate governance and shareholder engagement

- The weaknesses of corporate governance of financial issuers did contribute to the financial and economic crisis.
- When it comes to the deficiencies of shareholders engagement, one must distinguish between:
  - ❑ Shareholders who really “own” the shares not only legally but also economically, and bear the risks and rewards of ownership (individual investors in particular);
  - ❑ And “agency” shareholders who are the legal owners but not the economic ones (a part of the “institutional” investors).
- The role and influence of individual shareholders have been shrinking over time, due to the “reintermediation” of capital markets to the benefit of financial institutions and to the detriment of “end” investors and non financial issuers.
- It is difficult and sometimes costly to cast votes in Europe
- Euroshareholders is taking action:
- Euroshareholders general voting guidelines
- Euroshareholders’ EuroVote project to facilitate cross-border proxy voting

## The IMD Review and the “PRIIPs” Project

- We support the **“horizontal” approach** taken by the European Commission: the right way to harmonize the selling practices of the retail investment products
- We also support the proposals aimed at using the UCITS KIID as much as possible as a benchmark for harmonizing the pre-contractual information for the other retail investment products.
- The current **definition and scope of PRIIPs** is much **too narrow** as many retail investment products are excluded or undecided: bank saving accounts, traditional life insurance contracts, equities, bonds and all long term savings and pension products that can be subscribed on a voluntary basis
- All substitute retail investment products at the point of sale must be included. Otherwise, regulatory arbitrage would likely be very widespread and the retail market playing field very uneven

- **Proposed PRIIPs definition:** all retail investment products subject to fluctuations in investment values; such fluctuations coming from capital and from income values and from both nominal and real (inflation-adjusted) fluctuations.

## **The UCITS IV Directive implementation**

### **(Investment funds)**

- The “KIID” (Key Investor Information Document): a real and important improvement for product information
- Examples of key improvements:
  - ☐ More comparable and easier to read
  - ☐ Standardized risk information
  - ☐ Consolidated charges borne by the investor
- Still some issues:
  - ☐ Structured Funds
  - ☐ Past performance indicators of reference

## **Investors’ dispute resolutions**

- No restoring of investors confidence without effective redress
- Alternative dispute resolution schemes (like mediation) will work better if there is a deterrent not to try it
- European Investors need collective redress schemes because of complexity and cost
- Investors never wanted and never asked for a “US Style” collective action system: A “Dutch style” more appropriate
- Such collective schemes should work cross-border
- European consultation in April 2011

## **Tax on Cross border Investment Income**

### ***EC Consultation:***

### ***“Taxation problems that arise when dividends are distributed across borders to portfolio and individual investors and possible solutions”***

- Despite EU Treaties and bilateral tax treaties : still widespread double taxation of dividends and tax discrimination based on the national domicile of the investment product
- Withholding tax recovery when allowed still often very difficult and costly.

- Much too narrow scope of consultation: other cross-border investment income issues: interest, life insurance income, etc.

## About European Private investors organizations:

### 1. Euroshareholders

- Euroshareholders is the Federation of European shareholders associations.
- It was **founded in 1992** with its **General Secretariat in Brussels**.
- At present Euroshareholders gathers **32 shareholders associations all over Europe** (including **ADICAE** and **AEMEC** in Spain), and represents about 2,5 million individual shareholders.

The organisation's overall task is to **represent the interests of individual shareholders in the European Union**.

- President: **Jella Benner-Heinacher** (DSW)
- Vice Presidents:
  - **Jan Maarten Slagter** (VEB- The Netherlands)
  - **Günther Mårder** (Aktiespararna – Sweden)
- General Secretary: **Guillaume Prache**
- **AEMEC** Managing Director **Henning Wegener** is a board member

### 2. EuroInvestors

- **EuroInvestors (The European federation of Investors - EFI)** was founded in **2009** by several founder organizations: **Euroshareholders**, **FAIDER** (France), and other financial services users' organizations
- **EFI has a broader scope than ESH** –all private investors: private shareholders plus bond holders, fund investors, life insurance policy holders, bank savers, pension fund participants, etc.
- Today represents **50 national associations** and about **4 million European citizens**
- **Main objective:** to restore financial services consumers' confidence
- President: **Jella Benner-Heinacher** (DSW)
- Vice President : **Jean Berthon** (FAIDER – France)
- Managing director: **Guillaume Prache**
- **Jofre Farres** (**ADICAE**, Spain) is a board member

### 3. EuroInvestors Key priorities 2011

- A better governance of financial supervision
- Better transparency, liquidity, integrity, and efficiency of capital markets
- A better protection of financial services users
- More responsible and more competitive lending

#### ANNEX

#### FORWARD LOOKING EUROPEAN COMMISSION AGENDA Q4 2011

<u>Proposal</u>	<u>Type</u>	<u>Initiative</u>	<u>Theme</u>
<b>ONGOING</b>			
	Leg	Prospectus Directive	
	Leg	Responsible Lending & Borrowing	
15/09/2010	Leg	Market Infrastructure Regulation (EMIR)	Infrastructure
15/09/2010	Leg	Short Selling Regulation (SSR)	Speculation
20/07/2011	Leg	Capital Requirements (CRD IV)	Capital rules
28/09/2011	Leg	Financial Transaction Tax (FTT)	Speculation
<b>Q4 2011</b>			
19/10/2011	Leg	Review of 4th/7th Company Law Dir (Accounting)	Incentives
20/10/2011	Leg	<b>MiFID/MiFIR</b>	Infrastructure
20/10/2011	Leg	Market Abuse Directive Review (MAD)	Speculation
25/10/2011	Leg	Transparency Obligations Directive Review (TOD)	Consumer
25/10/2011	Leg	Credit Rating Agencies 3	Capital rules
Nov 2011	Leg	Eurozone (fiscal) surveillance Regulation	
Nov 2011	Non-Leg	External representation eurozone Communication	
Nov 2011	Leg	Euro stability bonds Green Paper	
15/11/2011	Non-Leg	<i>Action plan for SME access to capital markets</i>	Role of Finance in society
15/11/2011	Leg	Crisis Management/Bank Recovery & Resolution	Role of Finance in society
23/11/2011	Leg	Auditing Directive Review	Incentives
30/11/2011	Leg	Central Securities Depositories (CSD)	Infrastructure
30/11/2011	Leg	<i>Venture Capital initiative</i>	Role of Finance in society
7/12/2011	Leg	Social investment funds	Role of Finance in society

Feb 2012	Leg	<b>Insurance Mediation Directive Review (IMD)</b>	Consumer
Dec/Q1	Leg	Insurance Guarantee Schemes (IGS)	Consumer
Q4/Q1	Leg	Sanctions (omnibus)	Incentives

## 2012

Feb 2012	Leg	<b>UCITS V (depositories + remuneration)</b>	Infrastructure
Feb 2012	Leg	<b>Packaged Retail Investment Products (PRIIPs)</b>	Consumer Infrastructure
Q1 2012	Leg	Close-out netting	e
Feb 2012	Leg	<b>Corp Gov in FS (COM statement in Dec 2011)</b>	Incentives Infrastructure
H1 2012	Leg	Securities Law Directive (SLD)	e
Q3 2012	Leg	<b>IORP Review (Pensions)</b>	Consumer
H2 2012	Impl	CRD IV Level 2 (EBA + Commission work)	Capital rules
H2 2012	Impl	<b>Solvency II Level 2 (EIOPA + Commission work)</b>	Capital rules
H2 2012	Leg	Financial Conglomerates Directive 2 (FICOD)	Capital rules
2012	?	Initiative "targeting investment funds"	?
2012	?	Initiatives "in the insurance sector"	Capital rules

## BEFORE END OF COMMISSION MANDATE

2012-2014	Non-Leg	<b>Broad review of financial supervision system</b>	Supervision
2012-2014	Non-Leg	Broad review of regulatory reform in Fin Services	Role of Finance in society