

A retail investment strategy for Europe: Commission consultation response

On 3 August, ICMA filed its response to the European Commission [consultation](#) on a retail investment strategy for Europe. As the response used the required but restrictive multiple choice response form, the content of ICMA's response has been extracted into a shorter and more reader-friendly format that has been [published](#) on the ICMA website.

ICMA's response effectively reiterated prior ICMA positions in the international bond context, which were cross-referenced throughout.

The response generally noted EU regulation has been one incentive behind the reduced availability of international bonds to direct retail investor participation (initially with the introduction of the prospectus regime and then the convoluted retail summary requirements introduced in its 2010 review, and notably recently with the PRIIPs and MiFID II product governance regimes). But as many corporate borrowers have now got used to seeking funding away from EEA retail investors, regulatory alleviations may not necessarily drive a significant resurgence of European retail bond markets. The EU's substantive retail policy focus seems anyway to be more on shares, funds/UCITS and structured products.

The response addressed several specific areas:

- (a) *Machine readability*: Any regulation should be flexible in terms of technical formats and not indirectly force standardisation or simplistic (and potentially misleading) labelling.
- (b) *Advertising*: MiFID product governance rules do not regulate marketing communications (as suggested by a question on stricter rule enforcement), with advertisements however covered by the Prospectus Regulation.
- (c) *Sufficiency of existing disclosure*: Bond offers are already subject to a requirement for a prospectus (including a summary) with the necessary information material to an investment decision.
- (d) *Comparability*: Comparison of different products is only meaningful to the extent products have comparable features (and may otherwise be misleading).
- (e) *Disclosure language*: Any local language translations should be the responsibility of any entity selling/distributing a product within a particular EEA Member State rather than the product "manufacturer" (bearing in mind bonds trade independently of their issuer, manufacturer responsibility for translation seems more likely to incentivise fragmentation of product availability within Europe).
- (f) *Short-form disclosure / PRIIPs KID: concept, length and cost*: A short document like the PRIIPs KID seems highly unlikely (whatever length cap is imposed) to be able to disclose the necessary information material to an investment decision (which was suggested in an ESMA speech) and so risks being intrinsically misleading (KIDs were initially designed for the UCITS fund context, where such disclosure arguably relates more to an investment mandate than to specific investment exposures as for bonds). The purpose of short-form disclosure should rather be (like the prospectus summary) as an initial reference ahead of further consideration, either directly or with an advisor (bearing in mind most retail investors do not read long-form disclosure or misunderstand short-form disclosure), in which case length cap similar to what is currently required under PRIIPs might well be workable (though any specific number of words would still likely be relatively arbitrary). Simplifying the KID by limiting it to purely factual information would also reduce the risk of it being misleading. From a vanilla bond issuer perspective, the challenge is not so much the logistical cost of producing a KID but rather the risk of it being misleading.
- (g) *PRIIPs product scope*: Despite ESMA's helpful step in the right direction to reassure the markets that vanilla bonds are indeed out of scope, differing views as to what may be interpreted as "packaged" have continued (and so uncertainty on PRIIPs product scope), with significant ongoing reluctance to make vanilla bonds directly available to EEA retail investors.
- (h) *KID availability*: It may be prudent to await the outcome of the EU's PRIIPs review before including PRIIPs information within the European single access point (ESAP).
- (i) *Improvement of target market determination (MiFID product governance)*: The issue is rather that MiFID product governance should not apply to commoditised funding products such as Eurobonds, which are not "designed" as a "service" for investor "clients" (being rather a decades-old "product" for corporate and other borrowers to seek market financing).
- (j) *Investor categorisation*: If seeking to increase direct market access for retail investors that have some distinct knowledge and means, then it may be simpler (to avoid a significant and potentially disincentivising repapering consequence that might accompany the creation of an entirely new category) to adjust (subject to appropriate grandfathering) the existing threshold tests for professional status on request (including by way of recognised third party certification).
- (k) *Inducements*: If an inducement ban prohibited issuers of bonds from retaining underwriting banks from marketing their bonds even where no investor advisory service is being provided, that could have a materially adverse impact on the availability of bonds to European investors (and on the ability of real economy borrowers to fund themselves). Where no advisory or portfolio management services are being provided, characterising underwriter remuneration as banned inducements would also be unnecessary from an investor protection perspective.

The response concluded that, whilst such a consultation that seeks stakeholder views on the *status quo* can be helpful, many stakeholders may rather have stronger views on future changes – with consultation on the Commission's actual policy proposals best serving the aim of involving stakeholders in the EU decision-making process. (And consulting on legislative drafting intended to give effect to ultimate policy conclusions could also be technically very valuable.)

 **Contact: Ruari Ewing**
ruari.ewing@icmagroup.org
