

EBA REPORT ON COST AND PAST PERFORMANCE OF STRUCTURED DEPOSITS

EBA

EUROPEAN
BANKING
AUTHORITY

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Executive summary

As part of the implementation of the Capital Markets Union Action Plan, on 17 October 2017, the European Commission sent a formal request to the three European Supervisory Authorities to issue, by the end of 2018, the first one of what are envisaged to be recurrent reports on the cost and past performance of the main categories of retail investment, insurance and pension products. Products covered by the request of the European Commission are packaged retail and insurance-based investment products and personal pension products. In respect of the former, structured deposits is the only product category that falls under the EBA's consumer protection remit and for which the EBA is therefore providing the requested response via this report

The request provides that the reports should be based on data and information originating from disclosures and reporting that are already required by Union or national law. In addition, the request indicates that the first iteration should serve also as a basis for the further development of the reporting, and should therefore include a description of data gaps and other difficulties faced during the development of the report, including any potential recommendations for the consecutive reporting cycles.

To reply to the request, the EBA conducted an extensive analysis of the market for structured deposits, which is reproduced in this report. This included a mapping of the specific regulatory requirements on pre-contractual and/or reporting applicable to structured deposits at European and national level, and the identification of available sources of the data that would be required to fulfil the EC request.

The EBA's analysis concluded that it would be challenging to respond in a comprehensive manner with the information obtained from the current requirements, including from national competent authorities, and that comprehensive data cannot be procured from private data providers either. In view of the small size of the market for structured deposits that is estimated by national competent authorities, and that appears to be confirmed by the additional steps taken by the EBA summarised in this report, any additional efforts to collect data by an ad hoc data collection to all 6000 credit institutions in the EU, would be disproportionate at this stage.

Going forward, when replying to any future request of the European Commission for the EBA to issue reports on cost and past performance of structured deposits, the EBA may take specific initiatives to obtain more accurate and standardized data on market volumes and, in so doing, enhance the reliability and overall quality of its response. Such initiatives could include a survey (via national competent authorities) to collect data on sales and outstanding volumes from a sample of credit institutions within each jurisdiction, and an EBA assessment of further measures to improve data access.

In view of the improved understanding of the market size, and taking into account the eased access to market data in the coming years because of, for example, the wider use of the PRIIPs Key

Information Document, the EBA will reassess whether, taking into account the principle of proportionality, the size of the market justifies the effort that would be required to fulfil the request in a comprehensive manner.

Nonetheless, given the small market size currently estimated by national competent authorities currently, a comprehensive response may not be warranted unless there is a significant change in the market for structured deposits, for example, as a result of changes to the interest rate environment. The EBA would be able to identify such a change in the course of its market monitoring mandate under MiFIR.

The EBA recommends that the European Commission take this observation into account when assessing the most suitable timing for a second iteration of this report.

Background

1. As part of the implementation of the Capital Markets Union Action Plan, on 17 October 2017, the European Commission (EC) sent a formal request to the three European Supervisory Authorities (ESAs) to issue, by the end of 2018, the first one of what are envisaged to be recurrent reports on the cost and past performance of the main categories of retail investment, insurance and pension products (hereafter 'the EC request').
2. Products covered by the EC request are packaged retail and insurance-based investment products (PRIIPs) and personal pension products. In respect of the former, structured deposits (SDs) is the only product category that falls under the EBA's consumer protection remit and for which the EBA is therefore providing the requested response via this report.
3. According to the EC request, the report should be based on data and information originating from disclosures and reporting already required by Union or national law. In view of this, as a first step, the EC request asked the ESAs to map existing requirements under Union or national law for pre-contractual disclosures and reporting to investors with the aim of better understanding the relevant information that is being published by manufacturers and distributors of the categories of the products in scope. The mapping conducted by the EBA between December 2017 and February 2018 reviews the specific regulatory requirements on pre-contractual and/or reporting EU requirements in relation to SDs in EU and national law.
4. As a second step, the EC request asked the ESAs to develop a methodology for the first iteration of their respective reports, based on which the ESAs would subsequently collect and process the data, and finally, issue the first iteration of the reports on costs and performance of the categories of products in scope. According to the EC request, the first iteration should serve also as a basis for the further development of the reporting, and should therefore include a description of data gaps and other difficulties faced during the development of the reports, including any potential recommendations for the consecutive reporting cycles.
5. In order to reply to the EC request, the EBA conducted an extensive analysis of the market for SDs, which is presented in this report. To start with, the report describes the typical features of SDs (chapter one). Then, the report summarises the results of the legal mapping (chapter two), the details of which are also reproduced in the Annex. The third chapter of the report analyses the various sources as potentially containing data on the market for SDs that could help the EBA to prepare the reports requested, including the national authorities responsible for supervising credit institutions under the Capital Requirements Directive¹ (National Competent Authorities, NCAs), and alternative data sources that the EBA identified.
6. In the absence of regulatory reporting data on SDs covering all 28 EU Member States, either on the market for SDs in general or cost and performance data in particular, chapter four

¹ Directive 2013/36/EU

presents alternative measures the EBA has taken in an effort to establish at least the minimum of the market size across the EU. Finally, the last chapter of the report, concludes by presenting the measures the EBA will put in place, when replying to any future EC request for the EBA to issue reports on cost and past performance of SDs, in order to improve the availability of data and, in so doing, improve the quality of the EBA response to the EC.

1. Definition and typical features of Structured Deposits

Definition

7. SDs are legally defined in Article 4 (43) of MiFID II², according to which a SD is a “deposit as defined in point (3) of Article 2(1) of Directive 2014/49/EU of the European Parliament and of the Council³, which is fully repayable at maturity on terms under which interest or a premium will be paid or is at risk, according to a formula involving factors such as:
 - (a) an index or combination of indices, excluding variable rate deposits whose return is directly linked to an interest rate index such as EURIBOR or LIBOR;
 - (b) a financial instrument or combination of financial instruments;
 - (c) a commodity or combination of commodities or other physical or non-physical non-fungible assets;
 - (d) a foreign exchange rate or combination of foreign exchange rates.”
8. In addition, akin to other deposits, the amount invested in SDs benefits from the protection of the national transposition of the European Deposit Guarantee Scheme Directive (2014/49/EU), which guarantees that deposits up to €100,000, or the equivalent amount in national currency, will always be repaid even if the credit institution holding them fails. Consumers buying SDs therefore qualify as ‘depositors’, however MiFID II, and for consistency reasons therefore this report, too, refers to them as ‘investors’.

Typical features

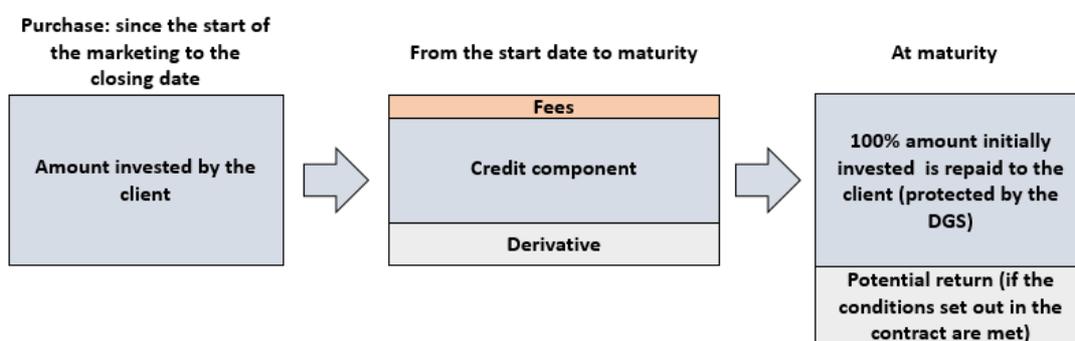
9. SDs are a subset of the wider product category of ‘structured products’. Structured products can be defined as a type of fixed-term investment whose return is linked to the performance of some defined indices or reference assets named underlyings. There are a number of forms that structured products can take (these forms are called wrappers), such as securities and deposits. The focus of the EBA work is on deposit-based structured products, i.e. SDs.
10. SDs, as well as structured products more generally, tend to have the following characteristics:
 - i. Fees: some portion of the investment accrue directly to the credit institution as fee revenue.

² [Directive 2014/65/EU](#)

³ European Deposit Guarantee Scheme Directive.

- ii. **Credit component:** the majority of the investment is made available to the credit institution, which is then generally free to use that money for any investment purpose it sees fit. In this respect, a SD is therefore no different from a bond⁴.
- iii. **Derivative:** the credit institution spends some portion of the amount received from the investor in a derivative or combination of derivatives (depending on the complexity of the structure) to replicate the conditions offered to the investors. The derivative ensures that the credit institution will be able to pay to the investor the return agreed if the conditions set out in the contract are met.

Figure 1. Life cycle of a SD from inception to maturity.



⁴ A bond is a fixed income investment in which an investor loans money to an entity which borrows the funds for a defined period of time at a variable or fixed interest rate.

2. Mapping of disclosure and reporting requirements for SDs

11. According to the EC request, the reporting should be based on data and information originating from disclosures and reporting already required by Union law (e.g. MiFID II/MiFIR⁵, PRIIPs Regulation⁶) or national legislations. To this end, it requires the three ESAs, firstly, to map existing requirements under Union or national law for pre-contractual disclosures and reporting to investors with the aim of better understanding the relevant information that is being published by manufacturers and distributors of the categories of the products in scope, for the purpose of this report, SDs. The legal mapping conducted by the EBA reviews the specific regulatory requirements on pre-contractual and/or reporting requirements in relation to SDs at national and EU level. As to the latter, the mapping reviews MiFID II and the PRIIPs Regulation requirements that started to apply in January 2018.
12. Before the adoption of MiFIR, MiFID II and the PRIIPs Regulation, SDs were not specifically regulated at the Union level. These three new pieces of EU law introduce substantial changes applicable to SDs, including conduct of business requirements for entities that design and sell SDs, and market monitoring mandates and intervention powers for the EBA and NCAs.
13. Between December 2017 and February 2018, the EBA conducted the legal mapping. The following paragraphs present a summary of the conclusions of the mapping which is reproduced in the Annex.

EU requirements

14. The PRIIPs Regulation will increase the level of transparency of SDs, through the publication of the key information document (KID), which provides information on product characteristics, including the total cost and expected performance of all PRIIPs. However:
 - i. the PRIIPs KID does not contain information on past performance;
 - ii. the PRIIPs KID is only required for the subset of SDs marketed to clients from 1 January 2018, given that SDs marketed before that date cannot be transmitted to other investors and, as indicated in the EC communication, where a PRIIP is no longer made available to other retail investors as of 1 January 2018, a KID is not required⁷; and

⁵ Regulation (EU) No 600/2014 on markets in financial instruments and amending Regulation (EU) No 648/2012.

⁶ PRIIPs Regulation (EU) No 1286/2014 on key information documents for packaged retail and insurance-based investment products.

⁷ [Communication from the Commission, guidelines on the application of Regulation \(EU\) No 1286/2014](#), paragraph 12

- iii. the PRIIPs Regulation does not introduce reporting requirements on PRIIPs to NCAs neither before the sale of the PRIIP nor afterwards.
15. MiFID II introduces information to clients' requirements on SDs, notably on information on cost and charges; however, MiFID II does not introduce any reporting requirements from credit entities to NCAs on SDs (e.g. volumes, costs, performance).
16. At EU level reporting requirements on the volume of deposits exist under the Capital Requirements Regulation (CRR), however, these requirements do not require to submit data that is broken down specifically to SDs⁸. Finally, the Directive on Deposit Guarantee Schemes provides that the EBA shall collect information on the level of deposits that are protected by a DGS in each Member State (the level of "covered deposits"), however, the data collected is aggregate and is also not broken down to the level of SDs⁹.

National measures

17. The legal mapping of national measures was based on input gathered by the EBA from NCAs in December 2017. According to the mapping, 16 out of the 23 NCAs that submitted input reported that in their jurisdictions, there are no national rules on cost and performance disclosure and reporting on SDs beyond those that EU regulation introduced in January 2018.
18. As to those that reported national measures, these consisted of pre-contractual and reporting requirements to clients on SDs. Measures differed across jurisdictions, and, more importantly, only three NCAs seemed to have set up a formal process through which they collect information on volumes and costs and/or past performance of SDs from credit institutions.

⁸ See art.420 of the Regulation 575/2013 (CRR).

⁹ See art.10.10 of the Directive 2014/49/EU.

3. Data sources

19. The availability of data on SDs from all 28 EU markets is difficult to obtain, which is a reflection of the specific characteristics of SDs. As opposed to most financial instruments¹⁰, which, once issued, continue to be available to investors (e.g., open-ended funds, securities traded on secondary markets), SDs are contracts between two parties (credit institution and investor) and are non-transferable. As a result, SDs are, in general, not only less liquid, but also less transparent than financial instruments, e.g. there is no public information, on the price of SDs at a given moment as there is for financial instruments traded on secondary markets.
20. This chapter analyses the various sources as potentially containing data on the market for SDs that could help the EBA to prepare the reports requested. The sources are of different kinds and include NCAs, and alternative data sources, which are public and private databases, and credit institutions.

National Competent Authorities

21. As has become apparent throughout the EBA work carried out since 2015 to fulfil its market monitoring and market intervention mandates under MiFIR¹¹, NCAs generally do not seem to have quantitative information on the size of the market for SDs, much less on cost and past performance. NCAs attributed this to the low level of importance of this market within their jurisdictions.
22. The last EBA attempt to collect data on SDs took place in the context of the EBA work to fulfil its Market Monitoring and Intervention Powers under MiFIR. In 2018, EBA requested input from NCAs on qualitative and, on a voluntary basis, quantitative data of the market for SDs.
23. The quantity and quality of the quantitative data provided by the 23 NCAs that provided input to the EBA was, in general, very limited, most likely, because of the fact that, in most cases, there were no compulsory reporting requirements. Only three NCAs (ES, HU and PT) seemed to have accurate data of the market size. These three NCAs have put in place reporting requirements, with different levels of detail, to collect data on the market for SDs. In this regard, the EBA observed that PT has the most comprehensive data collection framework based on which issues an annual report with an analysis of the market for SDs, followed by HU, that collects data on outstanding amounts and interest rates, and ES, which only collects outstanding amounts.
24. The type and detail of data reported was very heterogeneous, with some NCAs reporting data sales for 2017, others report outstanding volumes and/or number of products sold, and/or number of firms involved.

¹⁰ Financial instruments are defined in Annex I, section C of MiFID II (2014/65/EU).

¹¹ See Article 39(2) and Article 41(1) of MiFIR.

25. The results of the input request confirmed the general absence of quantitative data, which the broad majority of respondents explained by referring to the low level of importance of the market. In any case, quantitative data reported was consistent with the estimated low level of activity reported by respondents.
26. However, two NCAs (LU and PT) were in a position to provide data to the EBA, even though only for a small subset of SDs that matured between 1 January 2015 and 31 December 2017. This data is reproduced in table 1 below, and illustrates the type of data that the EBA would need to obtain, for all SDs sold and/or matured across all 28 EU Member States, in order to be able to produce the reports requested by the EC.

Table 1

NCA	Term (1)	Maturity	Underlying (2)	Past performance (3)	Cost
LU	1 month	20/04/2015	FX rate	3.50%	0.00%
LU	3 months	09/06/2017	FX rate	1.42%	0.00%
PT	3	26/08/2016	Interest rate indices	1.87%	n/a
PT	3	02/06/2017	Interest rate indices	1.80%	n/a
PT	1	24/09/2015	Shares	0.25%	n/a
PT	1	17/10/2016	Shares	0.15%	n/a
PT	1.5	27/11/2015	Shares	0.49%	n/a
PT	1.5	20/03/2017	Shares	0.23%	n/a
PT	1.5	21/04/2017	Shares	0.00%	n/a
PT	3	24/09/2015	Shares	2.23%	n/a
PT	3	04/02/2016	Shares	0.78%	n/a

- (1) In years, unless otherwise specified.
- (2) Indices of reference assets to whom the performance of the SD is linked, these can include:
- Shares (including baskets of shares and indexes)
 - Fixed rate assets (including baskets of bonds and indexes)
 - Foreign exchange rate or combination of foreign exchange rates
 - Commodities (including baskets of commodities and indexes)
 - Interest rate indexes (please note that deposits are excluded if the return is directly linked to an interest rate index such as EURIBOR or LIBOR).
 - Others.
- (3) Average annual rate of return. This figure shall be calculated considering net performance as numerator and the initial investment amount or the price paid as denominator. The return should be calculated net of all applicable costs.

27. It should be noted that, since 2013, the Banco de Portugal publishes every quarter on its bank customer website data on performance for SDs matured within that quarter, however, PT does not collect information on costs¹².

Public databases

28. No public database collects information on market volumes of the market for SDs, let alone on cost and past performance. The ECB provides statistical information in the Euro area on the volume of deposits held by households and corporates. The ECB data provides detailed

¹² <https://clientebancario.bportugal.pt/en/consulta-de-remuneracao-de-indexados-e-duais>

information by the agreed maturity of the deposit. However, the ECB data aggregates all types of deposits and is not broken down to the level of SDs.

Private databases

29. As with public databases, the EBA did not identify any private data provider that collects information on cost and past performance of SDs. The EBA contacted three data providers. The first data provider, which covers the market for structured products in Austria, Belgium, France, Germany, Italy, Sweden, Belgium, UK, Switzerland and The Netherlands, indicated that they do not hold data on this product given that in the geographic areas that they cover they do not see SDs being used at all.
30. The second data provider indicated that they do not have the information and that the only way they see to collect the data is to approach the industry for that specific purpose. The EBA would expect such a process to be burdensome and expensive for the EBA to pay.
31. Finally, the third data provider collects information on SDs directly from credit entities, either through their network of contacts, from providers' websites, or, if need be, through mystery shopping. This data provider indicated that, in contrast with information of structured securities traded on exchanges that is uploaded electronically, SDs information is added to the database manually, which, as they indicated is reflective of the nature of the product. This data provider acknowledged that there are some EU countries in which it does not collect information, because markets for SDs in these countries are judged by it to be, as yet, of insufficient scale to justify the research effort. Since there was no other database public or private with comprehensive data on SDs, it was not possible to verify exactly their market coverage.
32. The database of this third data provider presented the list of SDs in each market and detailed information for each product. However, the database did not present all the information contained in the PRIIPs KID, in particular, the database did not provide information on costs, and information on past performance was only available in a small subset of SDs.

Credit institutions

33. Credit institutions are the primary source of information. The EBA can survey EU credit institutions and request them to provide the information the EBA needs to fulfil its duties under MiFIR, and to issue the reports requested by the EC. However, such an exercise might not be proportionate and would be a resource intensive task, taking into account that:
 - i. As of February 2018, 6,241 credit institutions were authorized in the EU¹³;
 - ii. It would be difficult to ensure homogeneity in the information collected given that:

¹³ https://www.ecb.europa.eu/stats/ecb_statistics/escb/html/table.en.html?id=JDF_MFI_MFI_LIST_NEA

- there are no common requirements at EU level on the calculation on past performance; and
- standardized information on cost is only available for the subset of SDs marketed from 2018.

4. EBA measures to try to establish the market size

34. As described in chapter 3 on data sources, in terms of market size, with very few exceptions, NCAs have not been able to provide exact quantitative data on the size of the market for SDs. The EBA did not identify other sources with accurate and comprehensive quantitative data of this market, although, as described in chapter 3, qualitative input gathered by the EBA from NCAs and data providers suggests that the market for SDs is relatively small.
35. In view of the lack of further quantitative evidence, the EBA deemed it necessary to take other measures to try to establish the market size. Owing to the difficulties in accessing quantitative data, the EBA took the following steps:
- Review of NCAs' assessment of the relevance of structured deposits within their jurisdictions.
 - Review of analysis of the market for SDs commissioned by DG Internal Market and Services in 2010¹⁴.
 - Analysis of the potential evolution of the market for SDs in view of changes in funding costs.
 - Analysis of the evolution of products with similar profile., i.e. capital protected structured securities.
 - Desk based research into promotional activities of credit institutions.

Review of NCAs' assessment of the relevance of structured deposits within their jurisdictions

36. In 2018, the EBA requested input from NCAs regarding the relevance of the market for SDs within their jurisdictions and its recent evolution. The 23 NCAs authorities that provided input to the EBA indicated that the level of importance in their respective jurisdiction was low. To support this conclusion, 17 of the 23 NCAs indicated that they had collected market data. However, the level of detail provided in relation to the process with which the NCAs had collected the data varied widely. While several NCAs used data from a variety of sources (e.g. surveys to credit institutions or market associations, website review), only five NCAs (BE, ES, HU, HR and PT) based their estimate on data gathered in response to reporting requirements for firms on SD data, which is the source of data that would be most reliable to establish market size.

¹⁴ Study on the Costs and Benefits of Potential Changes to Distribution Rules for Insurance Investment Products and other Non-MIFID Packaged Retail Investment Products. Europe Economics Chancery House, 2010.

37. In addition, four NCAs (IE, LT, LV and UK) based their respective conclusions in respect of the small size on the impact on the market for SDs as a result of enforcement or supervisory actions they had taken or legislative changes. Three other NCAs (FR, NL and SE), indicated that they had reached this conclusion through market research/analysis or supervisory work. Table 2 summarises the arguments provided by NCAs as described above.

Table 2

NCAs	NCAs' arguments to support the reported estimated small market size and the low relevance of SDs
AT	Data collected through a review of credit institutions websites.
BE	Data collected on a regular basis from credit institutions who voluntarily signed the Moratorium ¹⁵ .
BG	Data collected from credit institutions (no specific information about how data is collected).
CY	Data collected from credit institutions through a survey.
CZ	Data collected from credit institutions (no specific information about how data is collected).
DE	Data collected from a sample of banking associations.
DK	No response received.
EE	Data collected from credit institutions through a survey.
EL	No response received.
ES	Data collected from credit institutions through binding reporting requirements (outstanding volume).
FR	Market analysis carried out by the NCA.
FI	Data collected from credit institutions (credit institutions are required to inform the NCA in case they market SDs).
HR	Data collected from credit institutions on a regular basis.
HU	Data collected from credit institutions through binding reporting requirements (outstanding amounts and interest rates).
IE	Data collected from MIFID institutions on a regular basis and supervisory work.
IT	Data collected through a survey of a sample of, and review of the websites of most significant credit institutions.
LT	Data collected from credit institutions (no specific information provided about how data is collected).
LU	Data collected from survey on a sample of credit institutions.
LV	Stop in the sale of SDs owing to enforcement action and legislative changes.
MT	No response received.
NL	Supervisory work.
PL	No response received.
PT	Data collected from credit institutions through binding reporting requirements (e.g. number of deposits and outstanding volume, number and type of clients, gross annual nominal rate of return of matured deposits).
RO	No response received.
SE	Market analysis carried out by the NCA.
SI	Data collected from credit institutions through a survey. Data collected through a review of credit institutions websites.
SK	Data collected from credit institutions (no information about how data is collected).
UK	Decrease in the sale of SDs, probably, as a result of NCAs action in 2016. Data collected through a survey on a sample of banking associations.

38. In addition to the above, one NCA (PT), reported comprehensive information on market trends since 2010, which is the year in which it started to collect detailed data on the market for SDs. PT, stood out compared to all other NCAs in terms of data available and related work on the market for SDs. PT collects and checks regularly data from the industry on SDs and reports, in

¹⁵ <https://www.fsma.be/en/structured-products-moratorium>

its annual Retail Banking Markets Monitoring Report, both quantitative information on SDs reported by credit institutions and qualitative information collected from the pre-contractual documents provided by credit institutions¹⁶.

Review of analysis of the market for SDs commissioned by the EU Commission in 2010

39. In 2010, Europe Economics Chancery House published a report commissioned by the EU Commission to investigate the costs and benefits to industry of potential changes to the distribution rules for insurance investment products and other non-MIFID packaged retail investment products such as SDs (2010 report)¹⁷.
40. The 2010 report refers to deposit-based retail structured products and defines them as products that offer a combination of a term deposit with a return linked to the performance of some defined index or financial asset. This definition seems to be consistent with the legal definition of SDs under MiFIR and also with the scope of the EC request.
41. The 2010 report provided an overview of the market for SDs in the period 2004-2008, drawn from Arete Consulting's dataset. As indicated in the 2010 report, Arete collected the information through "extensive contact" with market participants. As explained in the 2010 report, which predates the definition of SDs set out in MiFIR by eight years, structured products can take different forms, such as funds, notes, bonds, certificates or deposits. According to the report, SDs hold a small share of the market for structured products.
42. The 2010 report stated that, at the end of 2008 the total outstanding amount invested in structured products (all types of legal forms, e.g. securities, deposits) across the EU was €678 billion, with total sales for 2008 reaching €179 billion. Of this, SDs accounted for approximately 12% (€22 billion) of total sales of structured products in 2008, and under 8% (€54 billion) in the outstanding amount invested at the end of this same year.
43. Arete only provided information for 13 EU countries, since, as stated in the 2010 report, Arete judged the SDs market in the remaining countries to be of insufficient scale to justify the research effort. In relation to these 13 countries, the report showed that the importance of SDs varies widely across Member States.

Analysis of the potential evolution of the market for SDs in view of changes in funding costs

44. Credit institutions use SDs as a source of funding (like other deposits) and, to a lesser extent, a source of revenue through fees and commissions charged to investors. Therefore, the

¹⁶ https://www.bportugal.pt/sites/default/files/anexos/pdf-boletim/relatorio_de_acompanhamento_dos_mercados_bancarios_de_retailho_2017.pdf;
<https://www.bportugal.pt/en/publications/banco-de-portugal/2017/392>

¹⁷ http://ec.europa.eu/finance/consultations/2010/prips/docs/costs_benefits_study_en.pdf

funding cost of SDs compared to the cost of alternative sources is a key variable in the evolution of the market for SDs. If SDs are expensive compared to alternative sources, credit institutions, other things being equal, will refrain from issuing them.

45. The cost of funding of SDs is the price of the derivative bought by the credit institution, which replicate the conditions offered to investors to ensure that the credit institution will be able to pay to the investor the return agreed if the conditions set out in the contract are met. The higher the potential return offered, the more expensive the derivative is.
46. If the cost of alternative sources of funding is high, the amount that the credit institution will be willing to spend in the derivative will be equally high, and in turn it will be able to offer a more attractive payoff profile to the investor. Conversely, if the cost of funding of the credit institution is low, it will not be willing to spend much money in the derivative and the conditions offered to the investor will be less attractive.
47. The financial crisis led to a significant increase in funding cost of credit institutions, however, monetary policy, regulatory and supervisory actions taken in Europe to address the crisis, resulted in an overall reduction of interest rates and credit institutions funding cost across the EU¹⁸ which is expected to have had a negative impact on the issuance of SDs.
48. It should be noted that the general reduction of funding cost does not have the same effects across countries and/or credit institutions. As a result, certain countries/credit institutions that bear higher funding costs, may have still found attractive the use of SDs as a source of funding, and in fact, may have increased the sale of SDs over the last years. In addition, other drivers of the supply and demand of SDs, such as increasing consumer demand in search for yield or consumer preferences at national level, may have also pushed the sale of SDs. This has indeed been the case for PT, the only member state whose NCA seemed to have collected regularly comprehensive information of the evolution of the market for SDs over the last years. In PT, the market of SDs followed an upward trend from 2011 to 2015, which reversed in 2016¹⁹. However, in view of the information provided by the rest of the NCAs and additional EBA measures to try to establish the market size presented in this chapter, the upward trend observed in PT from 2011 to 2015 does not appear to be the main trend across the EU.
49. Finally, it should be taken into consideration that future market conditions in general, and the evolution of funding costs in particular, cannot be predicted. Market conditions may change and become more or less favourable for the issuance of SDs.

¹⁸ Credit institutions interest rates on deposits, EU28 <https://sdw.ecb.europa.eu/browse.do?node=9691394>
Analysis of funding cost in the Euro area: https://www.ecb.europa.eu/pub/pdf/other/eb201601_article01.en.pdf

¹⁹ https://www.bportugal.pt/sites/default/files/anexos/pdf-boletim/relatorio_de_acompanhamento_dos_mercados_bancarios_de_retalho_2016.pdf page 49 and following

Analysis of the evolution of products with similar profile: Capital protected structured securities

50. SDs are equivalent to structured products that use a so-called security wrapper that guarantees at maturity the amount initially invested, these are referred to as capital protected structured securities (CPSS), which are a specific category of structured securities that, akin to SDs, aim at returning the original investment at maturity, whatever the performance of the underlying. The only difference between both products lies in the level of the extra guarantee provided by SDs through the deposit guarantee scheme, which is usually considered as one of the implicit costs in SDs, on top of other embedded costs associated with structured products.
51. In view of the similarity between both product types, an additional approach to establishing the size and evolution of the market for SDs was therefore for the EBA to study the evolution of CPSS, for which quantitative data was found to be more readily available.
52. As shown by ESMA in its Report on Trends and Vulnerabilities published in January 2018 (ESMA TRV²⁰) “in 2017, volumes outstanding (of structured securities) stood at around EUR 500bn, down from almost EUR 800bn in 2012”, and “in the six years to 2017, the share (in volume sold) of 100% capital protected products”, i.e. CPSS, “declined (by 36 percentage points) whereas that of capital-at-risk products increased (by the same amount)”, which, as shown in the ESMA TRV, resulted in a significant decrease in the volume of CPSS sold. In relation to this trend, ESMA, indicates that “this trend is likely to be at least partly attributable to the low interest rate environment and the consequent search for yield by investors”.²¹
53. Even though the evolution of CPSS may have been affected by other factors that do not affect SDs or that may affect SDs differently, the downward trend of capital protected structured securities gives an indication of the potential reduction in the sale of SDs.

Desk based research into promotional activities of credit institutions

54. The EBA reviewed the websites of a sample of credit institutions, and checked whether there were indications of sales activities of SDs. The sample consisted of the 29 most significant institutions in the Eurozone²² according to the list of supervised entities²³ published by the ECB (cut-off date January 2018)²³.
55. The review showed that none of the credit institutions within the sample promoted on their websites specific issuances of SDs, while just three out of the 29 credit institutions promoted

²⁰https://www.esma.europa.eu/sites/default/files/library/esma50-165-538_report_on_trends_risks_and_vulnerabilities_no.1_2018.pdf

²¹ ESMA TRV no.2 2018, page 56, figure V.5.

²² [The criteria for determining whether credits institutions are considered significant are set out in the Single Supervisory Mechanism \(SSM\) Regulation and the SSM Framework Regulation](#)

²³ https://www.bankingsupervision.europa.eu/ecb/pub/pdf/ssm.list_of_supervised_entities_201802.en.pdf

SDs, but as a general category of products available, and advised clients to request additional information either online or by approaching a branch.

56. It should be noted, however, that the review of these 29 credit institutions had some significant limitations:
- The institutions selected were holding companies under which there can be various brands. The EBA just focused on the website of the main brand that provided retail-banking services in the country where the holding company was based. This was a significant limitation, given that there may be a large number of credit institutions under the holding company.
 - The sample consisted of credit institutions within the Eurozone.
 - The desk-based research was focused on the 29 biggest credit institutions, with size of an institution not necessarily being a reliable proxy for the propensity of that institution to issue SDs. In other words, the extent to which the sample was representative of the SD market is unknown; if the review had also covered small credit institutions, the results may have been different.
 - The number of SDs being promoted can vary from one day to another and the information was collected at a single point in time. If the information had been conducted over a certain period of time, the results may have been different.
57. To complement the sample and address the Eurozone limitation above, the EBA gathered input, via the relevant CA, from a trade association in an additional non-Eurozone country (the UK) on the number of SDs being offered by a sample of 16 credit institutions of which eleven were large and mid-tier retail credit institutions and five large and small private credit institutions. According to the information provided, the 16 institutions had 138 of past SDs outstanding and yet to mature but were closed to new business and were not offering any SDs at that point in time.

5. Planned EBA improvements to future reports

58. In the absence of a comprehensive and consistent data collection approach used by the 28 NCAs, the only means through which the EBA can obtain the data required to respond to the Commission's request is for the EBA to approach all potential issuers of structured deposits, i.e. all 6,000 credit institutions in the EU. However, in view of the small market size estimated by NCAs, and reiterated by the additional steps taken by the EBA as presented in Chapter 4, the resultant effort required by NCAs and the 6,000 credit institutions would appear to be disproportionate.
59. Going forward, the EBA will therefore aim at improving its understanding of the market for SDs by obtaining more accurate data on market size without accessing all 6,000 credit institutions. Taking into account improvements in data availability as a result of the new regulatory requirements under the PRIIPS Regulation, when replying to any future EC request for the EBA to issue reports on cost and past performance of SDs, the EBA will take the following two-steps:
- *Improvements in the EBA understanding of the market size:* The EBA will collect data on sales and outstanding volumes from a small and as representative as possible sample of credit institutions across the EU. The EBA will also assess additional measures to improve its data on market size, including the possibility, and pros and cons of embedding the collection of data volumes for SDs in the existing EU reporting requirements.
 - *Reassessment of the EBA ability to fulfil the EC request in a comprehensive manner.* In view of the improved understanding of the market size as a result of measures described above, and taking into account eased access to market data because of the wider application of the PRIIPs KID, the EBA will reassess whether, taking into account the principle of proportionality, the size of the market justifies the effort that would be required to issue the EC reports. If the conclusion reached is that it is justified for the EBA to produce the reports, the EBA will discuss and agree on how to proceed to produce them. Otherwise, the EBA will continue monitoring the market for SDs in fulfilment of its MiFIR duties, and be ready to take further steps if required in view of the conclusions of its market monitoring work.
60. Given the small market size estimated by NCAs as of now, a significant number of them do not see merit in taking further steps unless there is a significant change in the market for structured deposits, which may come about as a result of changes to the interest rate environment and which the EBA would be able to identify in the course of its market monitoring mandate under MiFIR. The EBA recommends the European Commission take this observation into account when assessing the most suitable timing for a request for a second iteration of this report.

Annex: Mapping of disclosure and reporting requirements for structured deposits

EU legislation

61. According to article 4(3) of MiFID II, *'structured deposit' means a deposit as defined in point (3) of Article 2(1) of Directive 2014/49/EU of the European Parliament and of the Council (1), which is fully repayable at maturity on terms under which interest or a premium will be paid or is at risk, according to a formula involving factors such as:*
- *an index or combination of indices, excluding variable rate deposits whose return is directly linked to an interest rate index such as EURIBOR or LIBOR;*
 - *a financial instrument or combination of financial instruments;*
 - *a commodity or combination of commodities or other physical or non-physical non-fungible assets; or*
 - *a foreign exchange rate or combination of foreign exchange rates;*
62. Before the adoption of MiFID II, MiFIR and the PRIIPs regulation, SDs were not specifically regulated at the Union level. Both MiFID II and the PRIIPs regulation contain pre-contractual and/or reporting to investors requirements that apply to investment firms and to credit institutions when selling or advising clients in relation to SDs. Against this background, the EBA carried out the mapping of the MiFID II and the PRIIPs regulation as envisaged in the EC request. The mapping is presented in table below.
63. The mapping provides a summary of the relevant articles identified by the EBA within these legislative acts. The description of the articles referred to in the mapping tables should not be relied on as an exhaustive description of the provisions of the legislative acts to where they belong. Applicable law should be consulted. The mapping builds on the analysis of the applicable legislation presented in annex four of the EBA Internal Report on market monitoring and product intervention powers on structured deposits under Article 39 and Articles 41 to 43 of MiFIR adopted by the EBA BoS in September 2016.

MiFID II Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments		
MiFID II provisions to ensure investor protection, and more specifically on information and reporting to clients, apply to investment firms and to credit institutions authorised when selling or advising clients in relation to SDs. These requirements have been further developed in level 2 measures, see Commission Delegated Regulation 2017/565 ²⁴ .		
Article	Description	Comments
General principles and information to clients Article 24 MiFID II	<p>This article requires investment firms and credit institutions (hereafter, 'entities') to provide appropriate information to clients in good time to clients or potential clients with regard to the investment firm and its services, the financial instruments and proposed investment strategies, execution venues and all costs and related charges.</p> <p>In addition, where applicable, such information shall be provided to the client on a regular basis, at least annually, during the life of the investment.</p>	<p>Entities have to provide information on costs and related charges to clients or potential clients. This information may be used for the purposes of the EBA report on costs of Structured Deposits. The requirement covers both the provision of the information ex-ante (in good time before the investment) and ex-post (on a regular basis at least annually).</p> <p>The details of the content and format of information to clients in relation to, among other things, costs and charges are developed in the Commission Delegated Regulation 2017/565.</p>
Assessment of suitability and appropriateness and reporting to clients Article 25 MiFID II	<p>Entities are required to provide the client with adequate reports on the service provided in a durable medium. Those reports shall include periodic communications to clients, and shall include, where applicable, the costs associated with the transactions and services undertaken on behalf of the client.</p>	<p>These periodic reports are referred to the service through which the SDs is marketed or sold, and not to the SD itself, however, these reports may provide information on the cost and performance of the SD. The content of the reports is further developed in the Commission Delegated Regulation 2017/565 (see below).</p>
Information on costs and associated charges Article 50 Commission Delegated	<p>This article provides the details of the information to clients on costs and charges that entities are required to provide to clients according to Article 24(4) of Directive 2014/65/EU. The information should be provided both ex-ante (in good time) and ex-post (annually).</p>	<p>This obligation explicitly applies where the investment firm (or credit institution) providing any investment services is required to provide clients with a UCITS KIID or PRIIPs KID in relation to the relevant financial instruments. This will be the case for SDs.</p> <p>The requirements on the detailed content of the information on cost and charges to be provided to investors are the same ex-ante and ex-post. Ex-post information should be provided at least annually.</p> <p>Information on costs should include all cost and associated charges. This requirement is in line with the principle contained in the EC request which requires the reporting on costs (and past performance) to</p>

²⁴ Commission Delegated Regulation 2017/565 supplementing Directive 2014/65/EU of the European Parliament and of the Council as regards organisational requirements and operating conditions for investment firms and defined terms for the purposes of that Directive.

<p>Regulation 2017/565 (regulatory technical standards)</p>	<p>The obligation to provide in good time a full ex-ante disclosure of information about the aggregated costs and charges related to the financial instrument and to the investment or ancillary service provided apply (a) where the investment firm recommends or markets financial instruments to clients; or (b) where the investment firm providing any investment services is required to provide clients with a UCITS KIID or PRIIPs KID in relation to the relevant financial instruments, in accordance with relevant Union legislation.</p> <p>In addition, entities are required to provide their clients with an illustration showing the cumulative effect of costs on return when providing investment services.</p>	<p>include all fees impacting the net performance of retail investment products (notably the investment costs [asset management fees, custodian fees] and possibly transaction costs, the performance fees, the administration costs, the fees and commissions charged by financial intermediaries, the initial charges (subscription fees) and exit charges (redemption fees)).</p> <p>Ex-ante and ex-post information should also show the effect of the overall costs and charges on the return of the investment.</p> <p>Regarding ex-ante disclosure of costs, it could be assumed that entities will comply with the requirements of this article (in relation to product costs) by providing investors with the PRIIPs KID, however this is not stated in article 50. Interestingly, article 50 indicates that there can be costs and charges that are not included in the <u>UCITS KIID</u> which entities are required to calculate and disclose, however, there is no similar reference to PRIIPs KID.</p>
<p>Reporting obligations in respect of portfolio management (Article 25(6) of Directive 2014/65/EU)</p> <p>Article 60</p> <p>Commission Delegated Regulation 2017/565 (regulatory technical standards)</p>	<p>Entities which provide the service of portfolio management to clients shall provide each such client with a periodic statement in a durable medium of the portfolio management activities carried out on behalf of that client unless such a statement is provided by another person.</p> <p>With certain exceptions, the periodic statement shall be provided once every three months.</p>	<p>The periodic statements to be provided to investors under article 60 are referred to portfolio management activities. However, this statements include specific information on the products within the portfolio. If the SD is marketed through portfolio management these statements will include information on the SDs. This information may be useful for the purposes of the reports requested by the EC.</p>

<p>Statements of client financial instruments or client funds</p> <p>Article 63</p> <p>Commission Delegated Regulation 2017/565 (regulatory technical standards)</p>	<p>Investment firms that hold client financial instruments or client funds shall send at least on a quarterly basis, to each client for whom they hold financial instruments or funds, a statement in a durable medium of those financial instruments or funds unless such a statement has been provided in any other periodic statement.</p>	<p>According to the second subparagraph of this article, this provision does not apply to SD:</p> <p><i>The first subparagraph shall not apply to a credit institution authorised under Directive 2000/12/EC of the European Parliament and of the Council (1) in respect of deposits within the meaning of that Directive held by that institution.</i></p>
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PRIIPs Regulation. Regulation (EU) No 1286/2014 of the European Parliament and of the Council of 26 November 2014 on key information documents for packaged retail and insurance-based investment products

The Packaged Retail Investment and Insurance Products (PRIIPs) regulation, requires PRIIP manufacturers to draw up the Key Information Document (KID) and providers (persons advising on or selling) of investment products to provide the KID to beginning in 2018. These requirements have been further developed in level 2 measures, see Commission Delegated Regulation (EU) 2017/653²⁵.

Article	Description	Comments
<p>Form and content of the Key Information Document</p> <p>Article 6, 7 and 8</p>	<p>The KID shall constitute pre-contractual information and should be provided in good time before retail investors are bound by any contract or offer relating to the PRIIP.</p> <p>These articles define the form and content of the KID. The content of the KID include information on costs and the expected performance of the product.</p> <p><i>Performance</i> The KID shall contain under a section titled ‘What are the risks and what could I get in return?’ a brief</p>	<p>Performance scenarios in the KID are expected returns, however the EC letter request the ESAs to issue reports on past performance. As a result it seems that KID information on performance may not be appropriate for the purposes of the EC request.</p> <p>Similarly, information on costs presented in the KID are also costs envisaged in the product as opposed to costs effectively charged. Even though there can be differences depending on various factors (e.g., early disbursement), the EC request does not specifically request information cost effectively charged but on costs by products. In addition, cost effectively charged could be estimated consequence, KID information on costs seems to fit into the reports.</p>

²⁵ Commission Delegated Regulation of 8 March 2017 supplementing Regulation (EU) No 1286/2014 of the European Parliament and of the Council on key information documents for packaged retail and insurance-based investment products (PRIIPs) by laying down regulatory technical standards with regard to the presentation, content, review and revision of key information documents and the conditions for fulfilling the requirement to provide such documents

	<p>description of the risk-reward profile including appropriate performance scenarios.</p> <p>Costs The KID shall contain under a section titled ‘What are the costs?’ the costs associated with an investment in the PRIIP, comprising both direct and indirect costs to be borne by the retail investor, including one-off and recurring costs, presented by means of summary indicators of these costs and, to ensure comparability, total aggregate costs expressed in monetary and percentage terms, to show the compound effects of the total costs on the investment.</p> <p>If there are other costs different from those specified above should be provided in detail by advisors, distributors or any other person advising on, or selling, the PRIIP.</p>	<p>It should also be noted, that if there are any additional cost apart from those described in the delegated regulation, advisors or distributors should be ready to provide the information, which means that the information could be retrieved from them.</p>
<p>Delegated regulation (EU) 2017/653 (based on the draft RTS submitted to EC by the three ESAs).</p> <p>Article 3 and 5</p>	<p>Article 3 and annexes IV and V specifies how performance scenarios should calculated and presented. Article 5 and Annex VI does the same in relation to costs.</p>	
<p>European Commission Communication</p> <p>Guidelines on the application of the PRIIPs Regulation (2017/C 218/02)</p>	<p>(12) Offers closed by 31 December 2017. Where a PRIIP is no longer made available to retail investors as of 1 January 2018 and changes to the existing commitments are only subject to the contractual terms and conditions agreed before that date, a KID is not required. Where those contractual terms and conditions allow exiting the PRIIP, but that PRIIP is no longer made available to other retail investors after 1 January 2018, a KID is not required.</p>	<p>The KID is only required for SDs marketed to clients and not for SDs already marketed and not available to consumers anymore. As opposed to financial instruments, which once issued continue to be available to investors (e.g., open-ended funds, securities traded on a secondary market), SDs are contracts among two parties (the credit institution and the consumer) that cannot be subsequently transmitted, and as a result are not available to other investors. In consequence, the PRIIPs KID will only be required to the subset of SDs that currently marketed in the EU, but not to outstanding products previously sold to investors.</p>

National legislation

64. The mapping of national legislation is based on a questionnaire submitted to NCAs members in December 2017. In the following, the annex firstly presents a summary of the key findings, and secondly a more detailed analysis of the responses submitted by NCAs.

Key findings

65. Before the adoption of MiFID II, MiFIR and the PRIIPs regulation, SDs were not specifically regulated at the Union level. Both MiFID II and the PRIIPs regulation have filled this gap by introducing pre-contractual and/or reporting EU requirements that apply to investment firms and to credit institutions when selling or advising clients in relation to SDs. However, it will take some time for the PRIIPs regulation to penetrate the market for SDs, since the KID is only required to the subset of SDs that currently marketed in the EU, but not to outstanding products previously sold to investors.
66. Regarding the mapping on national measures, the EBA received 23 responses to the questionnaire sent to NCAs in December.
67. 17 out of the 23 respondents reported that in their Member States (MS) there are no national requirements, beyond those that MiFID II and the PRIIPs Regulation have introduced in January 2018, on cost and performance disclosure and reporting.
68. Six respondents, however, reported specific national disclosure and reporting requirements applicable to SDs on cost and performance as follows:
- i. Disclosures costs reported by these respondents costs involve all types of costs charges to potential investors, however, these respondents do not precise the specific type of costs disclosed and/or calculation method.
 - ii. Disclosures on performance refer to expected performance, i.e. the performance agreed in the contract of the SD. Four respondents also refer to reporting requirements on the actual performance of the SD. In the same way as for costs, there is no information as to the calculation method of the performance.
 - iii. Some of the seven respondents report requirements that are also applicable to all types of deposits, while some others report requirements that specific to SDs.
 - iv. While some respondents indicate that these requirements will be replaced by MiFID II regime, some others indicate that it is still to be decided if both regimes will coexist.
69. In terms of data availability, three respondents reported that they collect data on volumes and/or cost and/or performance data on SDs systematically including:
- i. BE: Database on costs envisaged in the product.

- ii. PT: Credit entities are required to submit to the CA information of the performance of the SD at maturity. No information on costs is collected.
- iii. HU: Credit entities are required to send monthly the average agreed interest rates (new SDs sold and outstanding amounts), volumes (new SDs sold and outstanding amounts). The scope of the data collection does not include costs. In addition, in 2017 the CA a one-off data reporting on SDs, but the scope of the data collection and the subsequent analysis did not include costs.

70. Finally, five respondents conducted studies/analysis on SDs.

Information that supervised entities are required to submit to the NCAS on the information on cost and/or performance:

71. According to the responses submitted, only two jurisdictions have requirements that fall under this category, these are:
- i. Hungary: entities are required to submit to the Central Bank of Hungary on a monthly basis, the average interest rate and the volume (new and outstanding contracts) of SDs owned by households and non-financial corporations (cost are out of the scope of the data collection).
 - ii. Portugal: On a quarterly basis, credit entities are required to report to Banco de Portugal information about remunerations that paid to SDs clients (with a breakdown by deposit and client type) over that period. This return information is required both in nominal and percentage terms (gross annual nominal rate).

National studies, reports or quantitative databases on costs and/or performance.

72. 16 respondents indicated that they have neither conducted any study, nor do they maintain a quantitative database on the costs and/or performance of SDs.
73. Quantitative databases:
- i. BE reported that they have a database that contain information on costs envisaged in the SD.
 - ii. PT: on a quarterly basis, credit entities submit to Banco de Portugal information about remunerations paid to SDs clients (with a breakdown by deposit and client type) over that period. This return information is required both in nominal and percentage terms (gross annual nominal rate).
 - iii. HU: credit entities are required to send to monthly the average agreed interest rates (new SDs sold and outstanding amounts), volumes (new SDs sold and outstanding amounts). The scope of the data collection doesn't include costs.

74. Studies and reports. Four respondents reported that their MS conducted studies related to SDs. These are:
- i. EE: Finantsinspektsioon published in 2015 on its website a short overview about performance of structured deposits.
 - ii. HU: In April 2017 the Central Bank of Hungary conducted an extraordinary data reporting on SDs, however, the scope of the data collection and the subsequent analysis did not include costs. Based on this data the Central Bank produced a report describing the dynamics of the value of SDs in credit institutions' balance sheets and explaining the risks of SDs to retail investors.
 - iii. IE: On September 2016, the Central Bank of Ireland issued its findings of its themed inspection on structured retail products. A Product Performance Comparison was carried out as part of this inspection, measuring the final returns of products that matured in 2014 and 2015.
 - iv. PT: based on the information collected from the industry (see above) Banco de Portugal issues a regular report which presents and analyses the market for SDs.
 - v. UK published two reports: the first one, that cover all types of structured products (including structured deposits), is a thematic review of product development and governance; the second one, which is specifically focused on SDs, investigates how well retail investors understand and value this product.

Pre-contractual disclosures and reporting on costs of structured deposits:

75. 16 respondents noted that their Member States (MS) have not established national requirements beyond EU requirements on cost disclosure, which, as stated, in the legal mapping of EU legislation did not exist before MiFID II and PRIIPs.
76. 7 respondents noted, instead, that their MS have established specific national requirements. These are:
- i. BE: Information requirements when selling structured deposits to retail customers. As regard disclosure on costs of structured deposits, the advertising materials must contain all costs and charges payable by the investors. It covers all direct and indirect costs payable by the investors including commissions and remunerations paid to intermediaries (inclusive of taxes). In addition, this authority indicated that in its jurisdiction there is a voluntary sales moratorium for particularly complex structured products (including structured deposits) according to which financial institutions have agreed not to distribute to individual investors structured products that are considered particularly complex. In any case, these requirements do not go beyond EU requirements.
 - ii. EE: for those deposits where there is investment risk, the credit institution is required to notify the client before the conclusion of the agreement, among other things, all the charges related to deposit, including the risk premiums and the methods for calculation thereof; the options of the early termination of the agreement, including the charges therefor. No major changes are expected as a result of the application of MiFID II requirements.

- iii. ES: credit institutions must provide their clients, free of charge, with all legally required pre-contractual information, in particular for deposits repayable at par, this information must include all applicable commissions, fees or charges together with an explanation on how these fees would be charged (periodicity, etc). Also, the firm must inform the client about the possibility to terminate early the deposit agreement and any related fees. In addition, in case of a hybrid or structured deposit, firms must also provide the information on the way in which any cancellation costs would be calculated, if any. Firms should submit a “standardised annual information sheet on fees and interests”, including information on any commission paid and cancellation fee. It is not clear whether this regime will coexist with MiFID II requirements.
 - iv. FR: refer to the same rules that apply to all deposits according to which credit institutions are required to inform their clients on the general and pricing conditions applicable to the operations related to the management of a deposit account. Credit institutions are also required to provide to clients each year in January, a document summarizing the total amounts they received in the preceding calendar year in respect of products or services distributed within the framework of the deposit account agreement.
 - v. EL: firms are required to inform clients, among other things, about any taxation on interest income, commissions and fees or handling charges. In addition, as regards “synthetic products” (the return on which is determined on the basis of data and indices), customer information shall include specific elements that would facilitate the comparability of such products with other products of a similar nature (either deposit- or investment-type). This information shall be submitted at regular intervals, at least every quarter, unless the account has remained inactive, in which case information shall be submitted biannually. It will be assessed if there are overlaps between this regime and the MiFID II regime.
 - vi. IE: There are no additional requirements to MiFID investment firms (including credit institutions) on disclosure for MiFID financial instruments and structured deposits. However, there are specific requirements for firms exempted from the MiFID regime. These requirements are set out in the Consumer Protection Code which requires these firms, prior to providing a product or service to a consumer to: a) provide the consumer, on paper or on another durable medium, with a breakdown of all charges, including third party charges, which will be passed on to the consumer; and b) where such charges cannot be ascertained in advance, notify the consumer that such charges will be levied as part of the transaction. Detailed reporting to clients on costs and charges and performance, is required to be sent to the consumer at least annually.
 - vii. PT: In Portugal, it is not a market practice for credit institutions selling SDs to directly charge costs on investors, such as entry or exit fees. However, if any fees or other expenses are levied, credit institutions are required to disclose them to investors, under the existing regulatory framework.
77. From these 7 that reported national measures, those that submitted additional information on the type of costs disclosed and reported to clients, generally refer to costs and charges payable by the investors.

Pre-contractual disclosures and reporting on performance

78. 17 respondents noted that their Member States (MS) have not established national requirements beyond EU requirements on past performance disclosure, which, as stated, in the legal mapping of EU legislation, did not exist before MiFID II and PRIIPs.
79. 6 respondents noted, instead, that their MS have established national requirements beyond EU requirements. These are:
- i. EE: for those deposits where there is investment risk, the credit institution is required to notify the client before the conclusion of the agreement, among other things, the interest rate paid and earnings gained on the amount of the deposit, including the methods of calculating the interest and the procedure of payment of interest. No major changes are expected as a result of the application of MiFID II requirements.
 - ii. ES: credit institutions must provide their clients, free of charge, with all legally required pre-contractual information, in particular for deposits repayable at par, this information must include information about the agreed return of the deposit. In addition, in case of a hybrid or structured deposit, firms must also provide the information on, for example, the circumstances under which the return is made conditional. Firms should submit a “standardised annual information sheet on fees and interests”, including information on the interest paid. It is not clear whether this regime will coexist with MiFID II requirements.
 - iii. FR: Prior to MiFID II, there were no specific national rules on disclosure regarding the performance of SDs, which were assimilated to banking deposits. According to general rules on disclosure on the performance of banking deposits, credit institutions are expected to inform the client, before the conclusion of the contract, on the characteristics of the interest rate applicable to the deposit, and in particular indicate the variability of the rate and the index or the reference rate that applies to it, as well as the means to acquaint with it. Regarding contractual information, it is recommended that credit institutions, in the case of variable rate contracts, periodically inform the investor on the updated status of its investment. The entry into application of MiFID II and its delegated regulation, which is directly applicable at the national level, led to the introduction of specific rules applying to SDs.
 - iv. EL: firms are required to inform clients, among other things, about interest rate levels or ranges offered, depending on the duration and the amount of the deposit. In addition, as regards “synthetic products” (the return on which is determined on the basis of data and indices), customer information shall include specific elements that would facilitate the comparability of such products with other products of a similar nature (either deposit- or investment-type). This information shall be submitted at regular intervals, at least every quarter, unless the account has remained inactive, in which case information shall be submitted biannually. It will be assessed if there are overlaps between this regime and the MiFID II regime.
 - v. IE: There are no additional requirements to MiFID investment firms (including credit institutions) on disclosure for MiFID financial instruments and structured deposits.

However there are specific requirements for firms exempted from the MiFID regime. These requirements are set out in the Consumer Protection Code which does not make performance disclosure mandatory, but instead specifies detailed requirements where performance disclosures are made. This regime will disappear as soon as MiFID II starts to apply and all firms will have to comply with the MiFID II regime.

- vi. PT: When the remuneration is paid to the client, credit entities are required to report to investors the detailed information, including the amount paid and the rate of return (gross nominal annual rate). In addition, credit entities must provide this information to investors periodically.



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