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## **MEETING DOCUMENT**

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**From:** General Secretariat of the Council  
**To:** Working Party on Financial Services and the Banking Union (Retail Investment)  
Financial Services Attachés

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**Subject:** Retail Investment Strategy - CWP 11 September 2025 - Presidency note in preparation of 3rd political trilogue on inducements

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# Presidency note in preparation of 3<sup>rd</sup> political trilogue on inducements

Working Party on Financial Services and the Banking Union

Date: 5 September 2025

## **Retail Investment Strategy (RIS)**

11 September 2025

### Executive summary

In this note the Presidency (PCY) examines the proposals of the three institutions regarding inducements with a view to identifying possible directions for moving forward on the inducements framework. It is based on the 4CT, the Commission's non-paper from 5 May 2025, circulated MS' non-papers with proposals for simplification, MS comments presented during and after the Council Working Party meeting on 19 May 2025 and bilateral talks with MS. The aim of the note is to seek guidance on possible ways forward from MS ahead of the upcoming trilogue with the EP. Namely, at this relatively early stage, it is not expected to identify the final landing zone between MS.

The PCY proposes to structure the discussion in the following manner:

1. Inducements – Simplification
  - 1.1. Possible ways forward for the inducement test
  - 1.2. Possible ways forward for initiatives directly related to the client journey
2. Inducements – Outstanding issues

### **Omnibus Directive – Inducements - Background**

*All political lines: II. 68a-68b 201a-201d, 204, 208-209, 211-228a, III. 432a-432b, 749-762*

Under the current MiFID framework, firms may charge inducements in connection with transactions involving an investment service or an ancillary service, including investment advice and execution-only services. However, this is subject to certain conditions which are mainly set out in Level 2, e.g. the inducements must provide the investor with access to

quality-enhancing services. Charging inducements in the context of portfolio management is banned.

Under the current IDD framework, there is no partial ban on inducements. However, firms must ensure that an inducement does not have a detrimental impact on the quality of the relevant service to the customer, in accordance with certain criteria currently set out in Level 2.<sup>1</sup>

The **Commission's (COM)** initial proposal introduces a partial ban on inducements, prohibiting manufacturers from paying fees to distributors in an additional two situations: (i) the reception and transmission of orders (RTO) or the execution of orders on behalf of retail clients under MiFID II (i.e. execution-only services without an advice relationship), and (ii) non-advised sales of IBIPs under the IDD.

Both the **European Parliament (EP)** position and the **Council mandate** removed the proposed partial ban for non-advised services.

The **Council mandate** introduces a new "inducements test". This test requires firms paying or receiving inducements to comply with a set of principles, sets out criteria for compliance with the firms' duty to act honestly, fairly and professionally in the best interest of the client, and sets out further obligations in relation to inducements. More specifically, this inducement test in Level 1 reintroduces the existing provisions governing inducements that are already contained in MiFID Level 2. The **Council mandate** also adds new principles and criteria (line 211-227a). In IDD, the **Council mandate** contains the same framework as in MiFID for firms that pay or receive inducements, except that the provisions requiring that the inducement must be designed to enhance the quality of the relevant service to the client have not been introduced (line 749-755). The **Council mandate** also includes a Member State (MS) option to ban inducements (fully or partially) and to impose stricter criteria for inducements (line 228a, 756). The **COM proposal** and **EP position** both contain this option in relation to IDD. Finally, the Council has proposed a requirement for filtering of products with regard to inducements when firms offer a filtering tool.

The **EP position** has proposed to keep the inducement framework in the MiFID Level 2 act, but simplifying it by deleting the quality enhancement test.

On 19 May 2025 the Council discussed non-papers from the COM and two MS. The COM indicated support for the new inducements test proposed by the Council, however, the COM

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<sup>1</sup> Commission Delegated Regulation (EU) 2017/2359 and Commission Delegated Directive (EU) 2017/593

highlighted the need to clarify that the test is a back-office assessment. The MS non-paper suggested a partial or complete removal of the new inducement test.

At the 2<sup>nd</sup> political trilogue on 9 July 2025 the COM committed to propose legal drafting for the inducement test ahead of the next political trilogue (shortly after the CWP), clarifying that this is a back-office test and streamlining it, while not lowering existing standards.

### **1. Possible ways forward**

The Council's mandate has been criticized for being overly complex. Some MS have argued that the proposed changes to the existing framework do not provide sufficient additional investor protection to justify the burdens of implementing the new framework for firms, regulators and supervisors.

The PCY has assessed the following options for the inducement framework:

1. Retain the existing framework in Level 1 (and Level 2) (no change in MiFID or IDD)
2. Move the existing Level 2 requirements up to Level 1 (baseline is MiFID approach for harmonisation in IDD)
3. Make targeted changes that directly impact the investor journey

The PCY considers that points 1 and 2 relate to back-office processes in firms, whereas point 3 relates to the investor journey.

Points 1 and 2 will be assessed in the following sections. Point 3 has been added to the list of outstanding issues in Section 2 below that the PCY has proposed to discuss at a later stage during the trilogue negotiations. The PCY has chosen this approach because we see a need for a more in-depth discussion on point 3 which can be done independently of points 1 and 2.

#### **1.1. Retain the existing framework in Level 1 (and Level 2)**

Several MS have stated that they cannot accept lowering the current level of investor protection, including by deleting the current quality enhancement test in MiFID Level 1 and 2 as proposed by the EP.

To maintain the existing level of investor protection, one option is to simply retain the existing inducement framework in Level 1 and Level 2 without amendment. This would imply market stability, and firms would not be subject to the implementation burdens associated with legislative change. Namely, the existing inducement framework is already well recognised and used by firms and supervisors. Further, NCAs have gained considerable experience with these rules and can continue to refine their supervisory practices.

Several MS have expressed support for the simplification of the inducement test included in the **Council mandate** as a compromise if it is not deleted in its entirety. However, other MS support the more detailed provisions, arguing that it could strengthen investor protection.

### **PCY analysis**

The **PCY** agrees that it would not be acceptable to lower the current level of investor protection in the inducement framework. Inducements can lead to conflicts of interest that may harm retail investors, and such risk should continue to be addressed in the legal framework.

With the aim of simplification, the **PCY considers** it preferable to amend the current inducement framework with a focus on establishing clear, simple, and effective rules.

Namely, the current legal framework contains duplications that could be simplified, and further, certain provisions could be clarified to be more suitable for application by firms and supervision by NCAs. Revising the current inducement framework would also allow for greater consistency across MiFID and IDD, where relevant.

Introducing new rules would create implementation burdens for national legislators, as well as implementation efforts and associated costs for firms and NCAs. Any changes to the current framework should therefore only be pursued if they provide clear and tangible improvements to investor protection that are proportionate to the additional burdens placed on firms and authorities.

### **1.2. Move the existing Level 2 requirements up to Level 1**

The remaining sections of this note outline the option of updating the current legal framework for inducements by moving the existing Level 2 requirements up to Level 1, expanding and simplifying the criteria where relevant, and harmonising them across IDD, as included in the **Council** mandate.

The inducement test proposed by the **Council** is essentially composed of existing provisions governing inducements in Level 1 and Level 2 of MiFID, combined with some new components. The following sections focus on the MiFID provisions, with the understanding that IDD should be aligned accordingly, with a few exceptions.

In short, the main new components in the **Council mandate** on the inducement test are:

- Principles applicable to firms paying or receiving inducements:

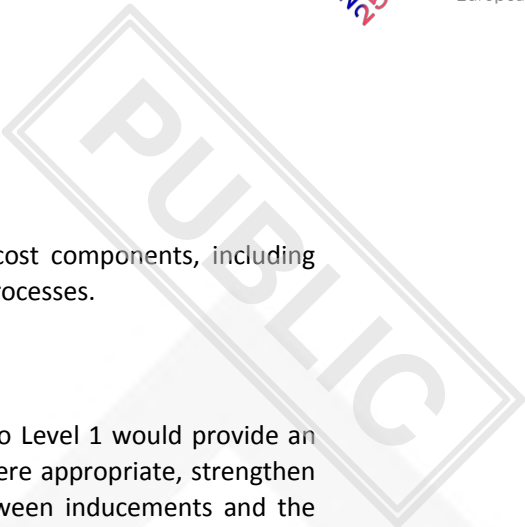
- Inducements do not provide an incentive to the investment firm to offer or recommend a particular financial instrument or service over others to the client;
- The level of inducements paid or accepted and retained is proportional to the value of the financial instrument [...];
- Inducements paid to or accepted and retained by entities belonging to the same group are treated in the same way as inducements paid to or accepted and retained from other entities;
- Investment firms shall explain in their inducements policy or procedures how they comply with the overarching principles.
- Criteria applicable to firms when receiving inducements:
  - the inducement takes into account qualitative criteria, such as compliance with applicable regulations;
  - the investment firm can demonstrate that, where linked to a financial instrument, the inducement was taken into account in the context of the product governance requirements when assessing the cost structure of the financial instrument;
  - an appropriate mechanism exists for reclaiming the inducement in nominal value in case the interests of the clients have been harmed as a result of non-compliance of the investment firm with investor protection requirements set forth in this Directive;<sup>2</sup>
  - the inducement does not contain any form of variable or contingent threshold or any other kind of value accelerator which is unlocked by attaining a target based on volume or value of sales;
  - the inducement can be identified separately from other fees, commissions or non-monetary benefits (such as fees relating to services for other clients) and payments or benefits which are necessary for the provision of services.

The wording of the inducement test is harmonised across MiFID and IDD. However, the IDD would not include provisions on quality-enhancing services.

The new inducement test proposed by the **Council** expands the existing legal framework for inducements with several new elements, which aim to specify the obligations for firms in order to fulfil the duty to act in the best interests of the client (or, in the case of IDD, to ensure there is no detrimental impact). In addition, some of the provisions relate to obligations governed by other parts of the legal acts, including the requirement to implement policies

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<sup>2</sup> Only included in IDD



and procedures in relevant areas of business and to assess cost components, including inducements, as part of the product approval and governance processes.

### **PCY analyses**

Lifting the current requirements in Level 2 on inducements into Level 1 would provide an opportunity for legislators to clarify legal expectations and, where appropriate, strengthen the rules. Further, this approach could reinforce the link between inducements and the quality-enhancing services provided to clients. This could indirectly strengthen the client journey, for example by ensuring that inducements are only permitted where they translate into tangible improvements in the products and services offered to retail investors.

The **PCY** acknowledges that the new components in the inducement test proposed by the Council, in addition to the existing (re-introduced) provisions, would be relevant for addressing conflicts of interest that may arise in relation to inducements.

On the other hand, the **PCY** is concerned that the additional components create further duplication of the existing rules and creates legal complexity. In addition, duplications in the current legal framework should also be addressed to further simplify the inducement framework. Therefore, it should be carefully considered whether the added components strengthen investor protection sufficiently to justify the additional complexity they would introduce into the legal text.

### **Proposal:**

The **PCY proposes** that the Council should not support any amendments resulting in a lower level of investor protection under the current inducement framework.

Considering the complexity of the current legal framework (including duplications in MiFID and IDD Level 1 and Level 2, as well as inconsistencies across MiFID and IDD), the **PCY proposes** to amend the current framework through the following measures:

- moving the MiFID and IDD Level 2 rules to Level 1;
- removing duplications; and
- harmonising across MiFID and IDD, where relevant.
- In the spirit of a compromise and in light of the simplification agenda, the **PCY** considers that new requirements for inducements should only be introduced if it is likely to increase investor protection significantly.

The **PCY** will also take into account the coming drafting from the COM, when available. Concrete drafting proposals would be presented at a later stage.

**Question to MS on proposal 1:**

**Q1: Do MS agree with the proposed approach in proposal 1 by the PCY? If not, please explain.**

## **2. Inducements – Outstanding issues**

The PCY finds that the proposal on inducements touches on a range of aspects aside from the goals in proposal 1 above which will also need to be addressed to find the final landing zone for the inducement framework. The PCY notes that certain aspects may not need a lot or any changes, but it is preferable to look at it collectively where any need for change will be clearly indicated.

Mindful of the importance of developing a sound inducement setup, the **PCY proposes** to discuss the following topics in more detail at a subsequent WP meeting:

- The specific provisions to be finally included in the inducement test at Level 1
- Make targeted changes that directly impact the investor journey
  - Transparency on inducements – filtering tool in MiFID II and IDD
  - Disclosures on inducements is topically connected to this issue but the PCY has chosen to address when dealing with disclosures in general at a later stage.
- The review clause
- New MS option for stricter requirements than in MiFID II
- Definition of “inducements” and “inducements schemes”
- Keeping the inducement ban for portfolio management in MiFID II and changing the term to “do not pay or receive” to the term “do not accept and retain”
- Different scope of the exemption of minor non-monetary benefit in MiFID II art. 24a(5) and recital (4)
- Different scope of the exemption of minor non-monetary benefits as newly introduced in IDD
- Inducement ban in case of distributing IBIPs with advice given on an independent basis

The PCY notes that specific rules for the provision of research by third parties in MiFID II are connected to this framework. However, given that rules on inducement and research have very recently been amended by the Listing Act these should not be reopened at this time.

**Question to MS on outstanding issues**

**Q2: Do MS agree with the scope of outstanding issues? If not, please explain.**

**Q3: Do MS consider other or additional topics related to inducements to be relevant for further, more detailed discussion?**