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MEETING DOCUMENT

From:	General Secretariat of the Council
To:	Working Party on Financial Services and the Banking Union (Retail Investment) Financial Services Attachés
Subject:	Retail Investment Strategy - CWP 13 October 2025 - Presidency note in preparation of 4th political trilogue on inducements

DK Presidency note in preparation of 4th political trilogue on inducements

Working Party on Financial Services and the Banking Union

Date: 6 October 2025

Retail Investment Strategy (RIS)

13 October 2025

Executive summary

In this note the Presidency (PCY) examines the proposals of the three institutions regarding inducements with a view to identifying possible landing zones for the inducement framework. It is based on the 4CT, the Commission's (COM) non-paper from 5 May 2025 and the COM's drafting from 15 September 2025, circulated non-papers by Member States (MS) with proposals for simplification, MS comments presented during and after the Council Working Party meetings on 19 May and 11 September 2025.

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

- 1.1. Simplification of the inducement test – assessment of the COM drafting
- 1.2. Transparency measures – Filtering tool with an option to identify products carrying inducements
- 1.3. Inducement ban in case of insurance intermediaries distributing IBIPs with advice given on an independent basis
- 1.4. The review clause
- 1.5. Other topics to be defended in the trilogue

Omnibus Directive – Inducements – Background

All political lines: II. 68a-68b, 201a-201d, 204, 208-209, 213-228a, III. 432a-432b, 751-762

On 19 May 2025 the Council discussed non-papers from the COM and two MS, including on the topic of inducements. In connection with the Working Party meeting on 11 September 2025, the Council expressed support for simplifying the inducement framework by moving

the existing Level 2¹ requirements up to Level 1, removing duplications, and harmonising across MiFID and IDD, where appropriate and with due consideration for the different nature of the products in scope. The Council also supported the idea, in the spirit of a compromise and in light of the simplification agenda, that new requirements for inducements should only be introduced if they are likely to increase investor protection significantly.

On September 15 2025 the COM shared its proposed legal drafting for the inducement tasked at the 2nd political trilogue on 9 July 2025 (the COM drafting). It is the PCY's understanding that the COM has aimed to preserve the existing standards for inducements while at the same time streamlining the test and making more harmonised rules across MiFID and IDD. The new criteria of "tangible" effects is aimed to replace the existing quality enhancement test in MiFID and the no detrimental impact test in IDD. The PCY also understands that the COM envisages that Level 2 provisions could still be needed to clarify the test requirements, but without duplications of Level 1 provisions. The COM drafting does not cover the other elements of the inducement framework as set out in the RIS proposal, including the partial inducement ban, transparency rules, scope, level of harmonisation and the review clause.

The PCY has mapped the provisions relevant to the inducement test in the current legal framework, and the Council mandate in the 4CT against the COM drafting of 15 September 2025. The mapping is included in the annex to this Presidency note.

1.1. Simplification of the Council's inducement test – assessment of the COM drafting

Political lines: 214-216, 751, 754-754a, 759-761

The inducement test in the COM drafting has been significantly simplified compared to the existing legal framework and the **Council mandate**.

The **PCY** considers that the **COM drafting** is a good baseline for harmonising the inducement framework at Level 1. Therefore, in this section, the PCY assesses whether the COM drafting on the inducement test, as a minimum, preserves the current level of investor protection, as established by the existing quality enhancement test in MiFID and the no detrimental impact test in IDD, or whether additional requirements are necessary to ensure a sufficiently clear and enforceable legal framework.

¹ MiFID Level 2: Commission Delegated Directive (EU) 2017/593, IDD Level 2: Commission Delegated Regulation (EU) 2017/2359

The PCY stresses that such new requirements should only be introduced if they are strictly necessary to strengthen investor protection.

The COM drafting on the MiFID inducement test generally maintains the current approach in MiFID, whereby an investment firm can only pay or accept and retain inducements if certain criteria are met, and the firm must keep an internal list of inducements and keep records demonstrating how the criteria are fulfilled.

The COM drafting on the IDD inducement test changes the current approach in IDD. Currently, insurance intermediaries and insurance undertakings must carry out an overall analysis that considers all relevant factors, including a list of specific criteria set out in the Level 2 text. These criteria may increase or decrease the risk of a detrimental impact on the quality of the service to the customer. The analysis must also consider any organisational measures taken by the insurance intermediary or undertaking to prevent such risks. The inducement test in the COM drafting is stricter, as insurance intermediaries and insurance undertakings must at a minimum meet the listed criteria. This is in line with the **Council mandate**.

Further, as discussed at the Working Party meeting of 11 September 2025, the PCY aims to establish an inducement framework, which is sufficiently clear at Level 1. The introduction of a Level 2 mandate should be avoided, as this would increase the complexity of the legal framework and imply a lengthier rule making process, resulting in legal uncertainty for firms and supervisors and a delay of the fulfilment of the RIS objectives. However, if the necessary clarity is not reached in the Level 1 text, a Level 2 mandate could still be needed.

PCY analysis

The COM drafting consists of elements that are all included in the **Council mandate** for both MiFID and IDD.

In addition, the COM drafting adds one new element in MiFID (COM drafting on MiFID paragraph 3(d)) that stems from the IDD framework, and four new elements in IDD (COM drafting on IDD, points (a) and (b), and the second and third subparagraph of paragraph 2a) that stem from the MiFID framework.

However, the COM drafting does not directly include all elements relevant to the inducement test in the existing legal framework for inducements in MiFID and IDD. To ensure that the existing level of investor protection is preserved, the PCY assess below whether those elements can nevertheless be covered by the inducement test set out in the COM drafting inducement.

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For MiFID:

- The existing concept of “quality enhancement” is not explicitly included in the COM drafting. According to the current legislation, the firm must ensure that the inducement is designed to enhance the quality of the relevant service to the client, i.e. the quality enhancement test, pursuant to Article 24(1)(a) of MiFID Level 1. The quality enhancement test is further elaborated in Article 11(2) of the MiFID Level 2. The following elements of the current quality enhancement test in Article 11(2) of MiFID Level 2 are not directly included in the COM drafting:

- First part of the first subparagraph of point (a): The inducement should enable clients to be offered additional services or services at a higher level than if the client had paid no inducements.

The PCY considers that this criterion would be covered by the “tangible benefit” criterion in the COM drafting (paragraph 3(b)) as an inducement that gives the client access to services that would already be available to the client if no inducements were paid (i.e. no provision of additional services or services at a higher level) could not be considered to provide “tangible benefit to the client”. Therefore, this would be covered by the “tangible benefit” requirement in the COM drafting.

- Point (a)(i)-(iii): Examples of services that would be in accordance with point (a).

The PCY considers that the examples specify, without being exhaustive, what services would constitute additional services or services at a higher level and proportionate to the inducements. With a view to the two sections above, this element would also be covered in the COM drafting.

- Point (c): Ongoing inducements should be justified by ongoing benefits for the client.

The PCY considers that this criterion would be covered by the second subparagraph of the COM drafting, which replicates the existing Article 11(3) of MiFID Level 2 and, in essence, has the same effect, namely that the investment firm shall fulfill the requirements of the inducement test on an ongoing basis for as long as they continue to pay or accept and retain the inducement.

- Second subparagraph of Article 11(2): The inducement cannot be considered acceptable if the provision of services to the client is biased or distorted as a result of the inducement.

The PCY considers that this criterion is a variant of the principle in the Council mandate for Article 24a(2)(a), which the PCY proposes to add to the recitals as presented below in the PCY proposals.

- Further, the requirement to inform the client of mechanisms for transferring back the inducement to the client, when applicable, pursuant to the second subparagraph of Article 24(9) in MiFID Level 1, has also not been directly included in the COM drafting. This will be discussed further below.

For IDD:

The existing concept of “no detrimental impact” is not included in the **COM** drafting. In the current legislation it is not fully specified in which cases an inducement or inducement scheme would be considered to have detrimental impact on the quality of services to the customer. Instead, the Level 2 act lists several criteria that the firm shall consider, in particular, when assessing whether an inducement has a detrimental impact, pursuant to Article 8(2) of IDD Level 2. The COM drafting changes this current approach in IDD. The inducement test in the COM drafting is stricter in the sense that it requires insurance intermediaries and insurance undertakings meet, as a minimum, all of the listed criteria. This approach is in line with the **Council mandate**. The following criteria in the existing no detrimental effect test in Article 8(2) of the IDD Level 2 are not directly included in the COM drafting:

- Point (a): A requirement to consider whether the inducement or inducement scheme could provide an incentive to the insurance intermediary or insurance undertaking to offer or recommend a particular insurance product or a particular service to the customer despite the fact that the insurance intermediary or insurance undertaking would be able to offer a different insurance product or service which would better meet the customer's needs.

The PCY considers that this criterion is similar to the principle in the Council mandate for Article 29a(1)(a), which the PCY proposes to add to the recitals as presented below in the PCY proposals.

- Point (b): A requirement to consider whether the inducement or inducement scheme is solely or predominantly based on quantitative commercial criteria or whether it takes into account appropriate qualitative criteria, reflecting compliance with applicable regulations, the quality of services provided to customers and customer satisfaction.

The PCY considers that the effect of this criterion is unclear, and the PCY doubts that it would be essential for maintaining the current level of investor protection.

- Point (d): A requirement to consider whether the inducement is entirely or mainly paid at the moment of the conclusion of the insurance contract or extends over the whole term of that contract.

The PCY considers that this is not a suitable criterion to be included in the inducement test, as both payment options are possible, and if it is specified how the inducement should be paid, it would add burdens that would not result in a significantly higher level of investor protection.

In summary, the **PCY** finds that the COM drafting significantly simplifies the existing inducement requirements in MiFID and IDD by summarising the conditions for paying or accepting inducements in the current legal framework resulting in a more streamlined inducement test. The PCY also considers that the essential existing requirements are all directly or indirectly covered by the COM drafting. Therefore, in light of the simplification agenda and with a view to a compromise with the EP, the PCY sees merit in the COM drafting.

However, with a view to ensuring that the new inducement test is sufficiently clear for firms to apply and for supervisors to enforce, the PCY has made the following assessment of whether there would be merit in adding one or more of the elements from the **Council mandate**, which are not already included in the COM drafting:

The PCY's analysis and proposal below are made on the basis of the Council mandate on MiFID article 24a(2) and (3) (lines 214, 215), and the PCY will note for each criterion whether the same applies to the Council mandate on IDD.

- Paragraph 2(a): 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 PCY considers that this is a variant of the existing criterion in the current article 11(2), second subparagraph, which specifies the general requirement to act in the best interest of the client. The PCY finds that adding this criterion on top of the other criteria in the COM drafting would not have a significant impact on investor protection. Instead, the **PCY proposes** to add this element in a recital to further clarify the aim of the inducement test.

The same applies to the criterion in the Council mandate on IDD, article 29a(1)(a).

- Paragraph 2(c): 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.

The PCY does not see a need to specify in the legal framework that inducements paid or accepted within the same group shall be treated in the same way as inducements paid to

or accepted from other entities. Namely, this would already be clear from the legislative framework. Therefore, the **PCY proposes not to include** this element.

The same applies to the criterion in the Council mandate on IDD, article 29a(1)(c).

- Paragraph 2, second subparagraph: Investment firms shall explain in their inducements policy or procedures how they comply with the overarching principles.

The **PCY** considers that such requirement would already be covered by the general governance rules. Therefore, the **PCY proposes not to include** this element.

The same applies to the criterion in the Council mandate on IDD, article 29a(1), second subparagraph.

- Paragraph 3(a): The inducement takes into account qualitative criteria, such as compliance with applicable regulations.

The **PCY** finds that the criterion is unclear, although it is already known in the no detrimental impact test in IDD Level 2 Article 8(2)(b), and the PCY doubts that it will have a significant effect on investor protection. Compliance with applicable regulations is not specific to inducement but a general obligation to abide by. Therefore, the **PCY proposes not to include** this element.

The same applies to the criterion in the Council mandate on IDD, article 29a(2a)(a).

- Paragraph 3(c): 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.

The **PCY** considers that this would already be required under the product governance rules. Therefore, the PCY does not find it necessary to include it in the inducement test as well and **proposes not to include** it.

The same applies to the criterion in the Council mandate on IDD, article 29a(2a)(b).

- Paragraph 3(d): 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.

The **PCY** considers that the current wording indicates that clients could make use of the mechanism if the clients have been harmed as a result of the firm's non-compliance with any of the investor protection requirements in MiFID. The wording originates from IDD.

However, it is unclear what the need is for harmonisation across IDD and MiFID with respect to this rule. As the criterion could potentially be burdensome for firms, the **PCY proposes not to include it**.

For IDD only, the **COM** drafting includes a requirement that a mechanism must exist for reclaiming the inducement in case the product lapses or is surrendered at an early stage or in case the interest of the customer has been harmed as a result of non-compliance with the investor protection requirements. This is also included in the Council mandate on IDD, article 29a(2a)(c). The **PCY** considers that this is particularly important given the long-term nature of IBIPs. However, the **PCY** notes this approach would create inconsistency across MiFID and IDD.

The **COM** has explained that it considers that a mechanism to reclaim inducements in case a product lapses or is surrendered at an early stage is most relevant for long-term products, such as IBIPs. The **COM** further explains that for IBIPs, early surrender may indicate that something was wrong from the outset, whereas under MiFID, a client may simply decide to sell a product early because the client changes the investment strategy.

- Paragraph 3(g): 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 **PCY** considers that this criterion addresses the risk that the inducement requirements could be circumvented if firms structure their fee arrangements so that inducements are “hidden” together with other fees exchanged between firms (in line with ESMA 35-43-349 MiFID II Q&As on Investor protection Ch.12, question 3). The **PCY** sees merit in keeping this criterion specified in the inducement test in Level 1 and **proposes to add it to the COM drafting**.

The same applies to the criterion in the Council mandate on IDD, article 29a(2a)(f).

- Paragraph 3, second subparagraph: For the purposes of paragraph 3(b), an inducement or inducement scheme shall be considered to be designed to enhance the quality of the relevant service to the client if it is justified by the provision of an on-going benefit to the relevant client in relation to an on-going inducement and it is justified by the provision of an additional or higher-level service to the relevant client, proportional to the level of inducements received. Points (i)-(iii) give examples of services that fulfill paragraph 3(b).

The **PCY** considers that this text is relevant for specifying the term “tangible benefit”. However, the proportionality criterion is already included in the **COM** drafting, paragraph 3(c), and the **PCY** considers that the other elements are already covered by other elements of the **COM** drafting inducement test, as discussed above. Instead, the **PCY proposes to**

clarify in the recitals that the inducement test preserves the existing requirements that the inducement must be justified by the provision of an ongoing benefit to the client in relation to an ongoing inducement, and that it is justified by the provision of an additional or higher-level service to the client, proportional to the level of inducements received. Finally, the PCY does not find the examples in points (i)-(iii) strictly necessary to ensure sufficient clarity, and therefore **proposes not to include** them.

Such wording for IDD is neither included in the Council mandate, nor the COM drafting. However, considering that in essence, the tangible effect criteria should preferably be the same across MiFID and IDD, the **PCY also proposes** to ensure the same clarification in the IDD recitals as in MiFID.

PCY proposal compared to COM drafting

Based on the COM drafting, the **PCY** proposes to establish the same inducement test across MiFID and IDD (as opposed to the **Council** mandate, which includes in both a set of overarching principles and a set of criteria). In summary, the **PCY** proposes the following amendments compared to the COM drafting:

PCY drafting suggestions are highlighted **bold red** and **bold blue** to contrast the **bold black** of the text of COM drafting.

Line 214 (MiFID)

2. Where the investment firm is not prohibited from paying or accepting and retaining inducements, in relation to services provided to its clients, it shall ensure that the reception or payment of such inducements does not impair compliance with the investment firm's duty to act honestly, fairly and professionally in accordance with the best interest of its clients. Investment firms shall be considered not to comply with their duty to act honestly, fairly and professionally in accordance with the best interest of their clients if their inducements or inducements schemes do not meet at least the following criteria:

(a) the inducement is based on a clear, comprehensible and transparent calculation method;

(b) the inducement provides a tangible benefit to the client;

(c) the level of inducements paid or accepted and retained is proportionate to the value of the financial instrument and the level of service provided to the relevant client;

(d) 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;

(e) 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.

Investment firms shall fulfil the requirements set out above on an ongoing basis as long as they continue to pay or accept and retain the inducement.

Investment firms shall keep an internal list of all inducements paid or accepted and retained in relation to the provision of investment services or ancillary services and keep records of the inducements test performed in accordance with this Article.

Line 751 (IDD)

2a. Where the insurance intermediary or insurance undertaking is not prohibited from paying or accepting and retaining inducements, in relation to the distribution of insurance-based investment products, it shall ensure that the reception or payment of such inducements does not impair compliance with the insurance intermediary's or insurance undertaking's duty to act honestly, fairly and professionally in accordance with the best interest of its customers. Insurance intermediaries and insurance undertakings shall be considered not to comply with their duty to act honestly, fairly and professionally in accordance with the best interest of their customers if their inducements or inducements schemes do not meet at least the following criteria:

(a) the inducement is based on a clear, comprehensible and transparent calculation method;

(b) the inducement provides a tangible benefit to the customer;

(c) the level of inducements paid or accepted and retained is proportionate to the value of the insurance-based investment product and the level of service provided to the relevant customer;

(d) 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;

(e) an appropriate mechanism exists for reclaiming the inducement in nominal value in case the product lapses or is surrendered at an early stage or in case the interests of the customer have been harmed as a result of non-compliance of the insurance intermediary or insurance undertaking with investor protection requirements;

(f) the inducement can be identified separately from other fees, commissions or non-monetary benefits (such as fees relating to services for other customers) and payments or benefits which are necessary for the provision of services.

Insurance intermediaries and insurance undertakings shall fulfil the requirements set out above on an ongoing basis as long as they continue to pay or accept and retain the inducement.

Insurance intermediaries and insurance undertakings shall keep an internal list of all inducements paid or accepted and retained in relation to the provision of manufacturing and/or distribution of insurance-based investment products and keep records of the inducements test performed in accordance with this Article.

Questions to MS:

Q1: Do MS agree with the PCY proposal to make a single inducement test (as opposed to a test divided into overarching principles and criteria)?

Q2: Do MS agree with the inducement test criteria proposed by the PCY? If not, do MS identify any criteria that must be added to or deleted from the test for each of MiFID and IDD? Please bear in mind that the aim is to avoid the need for a Level 2 mandate.

Q3: Do MS agree with the PCY proposal to add certain elements to the recitals in MiFID and IDD (as specified above) when useful for the purpose of clarification, but which would create duplications if added to the COM drafting on the inducement test?

1.2. Transparency measures – Filtering tool with an option to identify products carrying inducements

Technical lines: 227a, 754e

The **Council mandate** includes a requirement in cases where investment firms, insurance intermediaries and insurance undertakings that distribute financial instruments (MiFID) or IBIPs (IDD) through digital means without advice use a filtering tool to make it possible for

retail clients/customers to select financial instruments on the basis of various criteria. According to the Council mandate, in such cases, the filtering tool should also include an option that allows its clients to easily identify financial instruments for which the firm does not pay or receive inducements. If the firm does not offer such products to retail clients, it shall prominently state this in the filtering tool.

The **COM initial proposal** and the **EP mandate** do not include such a requirement. Some MS are strongly in favour of the filtering tool requirement, whereas others are against it.

PCY analysis

The PCY considers that, on the one hand, providing clients with the option to identify products that do not carry inducements could be very useful in enhancing transparency regarding inducements. This option would also contribute to the financial literacy agenda by raising awareness of the significance of inducements and their impact on clients' returns.

In the current legislation, no requirement exists for firms to enable clients to easily identify products that do not carry inducements. This makes it very difficult for clients to understand to what extent firms offer investment products carrying inducements or investment products that do not.

On the other hand, such a requirement for filtering options based on inducements would introduce regulatory complexity and burdens for firms, and may be overly detailed and specific to the context of firms offering a filtering tool. Further, developing such an option could be costly for smaller firms, in particular. This level of specificity could also run the risk that the legislation will not be future-proof.

PCY proposal

To simplify the Council mandate and reduce burdens on firms, the **PCY** proposes to amend the wording in the Council mandate to require that firms distributing financial instruments (MiFID) or insurance-based investment products (IDD) shall publish information on their website, which enables clients to easily identify products for which the firm pays or receives inducements.

This would broaden the scope of the requirement to also include advised services. However, the burdens on the firms in scope would be lower, as compared to the Council mandate. Namely, the provisions would be simplified and provide more flexibility to firms with respect to compliance. At the same time, it could still have a significant, positive impact on investor protection.

PUBLIC

PCY drafting compared to Council mandate

PCY drafting suggestions are highlighted **bold red** and **bold blue** to contrast the **bold black** of the text of Council mandate.

Line 227a (MiFID)

7a. Member States shall ensure that an investment firm that provides **investment services** ~~reception and transmission of orders or execution of orders to or on behalf of retail clients~~ in relation to financial instruments falling under the definition of packaged retail investment products in accordance with Article 4(1) of Regulation (EU) No 1286/2014 of the European Parliament and of the Council ~~through digital means without advice, using a filtering tool to make it possible for retail clients to select financial instruments on the basis of various criteria, includes an option~~ **publishes information on its website** that allows its clients to easily identify financial instruments for which the investment firm ~~does not pay~~ or receives inducements. ~~If the investment firm does not offer such products to retail clients, it shall prominently state this in the filtering tool.~~

Line 754e (IDD)

2e. Member States shall ensure that insurance intermediaries and insurance undertakings that distribute insurance-based investment products ~~in accordance with Articles 30(2) and 30(3) through digital means without advice, using a filtering tool to make it possible for customers to select such products on the basis of various criteria, include an option~~ **publish information on their websites** that allows their customers to easily identify insurance-based investment products for which the insurance intermediaries or insurance undertakings ~~do not pay~~ or receive inducements. ~~If the insurance intermediary or insurance undertaking do not offer such products to customers, they shall prominently state this in the filtering tool.~~

Q4: Which of the following alternative options do MS prefer:

- A) PCY proposal for mandatory information on the website allowing clients to identify products carrying inducements
- B) Maintaining the Council mandate for a filtering tool requirement allowing filtering of products depending on whether they carrying inducements
- C) No implementation of the filtering tool requirement

1.3. Inducement ban in case of insurance intermediaries distributing IBIPs with advice given on an independent basis

Political lines: 758a-758d, 813-815a

The **COM proposal**, **EP position** and **Council mandate** all include a requirement that where an insurance intermediary or insurance undertaking distributing IBIPs informs the customer that advice is given on an independent basis, the insurance intermediary or insurance undertaking 1) assesses a sufficiently large number of products which are sufficiently diversified, and 2) does not accept and retain any inducements in relation to the provision of the service to customers.

In addition, the **EP position** specifies that this requirement shall not prevent insurance intermediaries whose legal status qualifies them as independent, from presenting themselves as not contractually tied to a specific insurance undertaking if they indicate that they receive inducements.

The **EP position** adds that the new paragraph *“shall not prevent insurance intermediaries whose legal status qualifies them as independent, from presenting themselves as not contractually tied to a specific insurance undertaking if they indicate that they receive inducements”*.

The **Council mandate** includes similar wording, that the paragraph *“shall not prevent insurance intermediaries that are not employed by or contractually tied to an insurance undertaking, but receive inducements from the insurance undertaking and that fall within the scope of Article 29a, from presenting themselves as not contractually tied to a specific insurance undertaking”*.

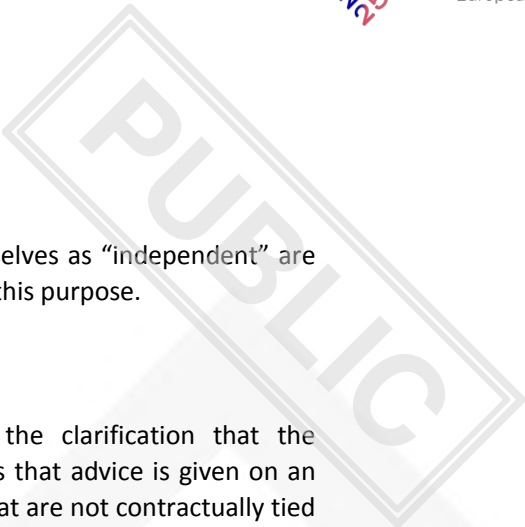
Some MS strongly support such wordings. Others do not.

The COM and the Council have included the provisions in article 30 on suitability and appropriateness and reporting to clients, whereas the EP has included it in article 29a on inducements. One MS has expressed support for the EP’s approach.

PCY analysis

The **PCY** considers that Article 30 is the best place in the legal text for the conditions for firms informing the customer that advice is given on independent basis.

The **PCY** considers that both the EP and Council texts provide useful clarification that insurance intermediaries can still present themselves as “not contractually tied” (as opposed



to “independent”) even when the criteria for presenting themselves as “independent” are not fulfilled. However, the PCY finds the Council text clearer for this purpose.

PCY proposal

The **PCY** proposes to maintain the Council’s wording on the clarification that the requirements for insurance intermediaries informing customers that advice is given on an independent basis shall not prevent insurance intermediaries that are not contractually tied from presenting themselves as such.

The **PCY** proposes to maintain the provision on insurance intermediaries giving independent advice in Article 30. However, the PCY also proposes to be flexible towards the EP proposal to include it in Article 29a.

Questions to MS:

Q5: Do MS support the PCY proposal concerning insurance intermediaries that are not contractually tied? If not, please explain.

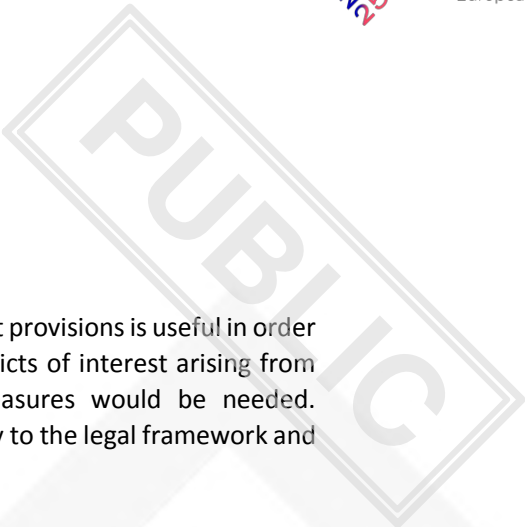
1.4. The review clause

Political lines: 228, 762

The **COM proposal** and the **Council mandate** both include a review clause stating that the COM, after consulting ESMA and EIOPA shall assess the effects of inducements on retail clients (MiFID) and customers (IDD), in particular in view of potential conflicts of interest and as regards the availability of independent advice, and shall evaluate the impact of the relevant MiFID and IDD provisions on retail clients/customers. If necessary to prevent consumer detriment, the COM shall propose legislative amendments to the **EP** and the Council. The COM proposes a review period of three years after the date of entry into force. The Council proposes a period of five years.

The **EP position** has deleted the review clause.

Several MS support the review clause. Some MS support deleting it. One MS has proposed to amend the Council mandate and link the start of the period of five years to the date of application of the amending directives.



PCY analysis

The **PCY** considers that a review clause specific to the inducement provisions is useful in order to assess whether the new provisions sufficiently address conflicts of interest arising from inducements and inducement schemes, or if additional measures would be needed. However, generally, a review clause could add further complexity to the legal framework and some uncertainty regarding future rules.

PCY proposal

In light of the simplification and burden reduction agenda, the **PCY** proposes to delete the review clause, as also proposed by the EP.

Questions to MS:

Q6: Do MS support the PCY proposal to delete the review clause specific to inducements? If not, please explain.

1.5. Other topics to be defended in the trilogue

The **PCY** understands that the **Council** is aligned on the listed topics related to inducements and that the simplification and burden reduction agenda has not given rise to any revision of the **Council** mandate. Against this background, the **PCY** proposes to defend the existing **Council** mandate on these topics with some room for the necessary technical amendments:

- Definition of “inducement” and “inducement scheme” (*lines: 68a-68b, 432a-432b*) – not introduced by the EP.
- Exemption for minor non-monetary benefits (*lines: 218, 754c*) – content close to EP position.
- Alignment of MiFID provisions with the Listing Act regarding provision of research by third parties (*lines: 219-224*) – deletion is defended on the grounds that the EU Listing Act already addresses this topic.
- 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” (*line: 213*) – content similar to EP position.

In addition, the PCY considers that the Council has already given a sufficient mandate for the PCY to defend the Member State option for stricter requirements (*lines: 228, 756*), including a full inducement ban, in both MiFID and IDD. If such Member State option would not be included, it would be a red line for some MS.

Questions to MS:

Q7. Do MS agree with the list of topics to be defended in accordance with the Council mandate? If not, please explain.