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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 the 4th political trilogue on client categorisation – revised proposals no 2

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Working Party on Financial Services and the Banking Union

Retail Investment Strategy (RIS)

13 October 2025

During the last Council Working Party, the Council has agreed a revised approach towards client categorisation, with the objective to reduce the administrative burden for certain categories of sophisticated clients. This would help reduce administrative requirements for firms and enable sophisticated clients with more flexibility and choice. At the same time, it would maintain strong protections and no opt-out possibilities for less knowledgeable, less experienced and less affluent clients.

Client categorisation was discussed at the last political trilogue on 23 September 2025. However, even though the Council and the EP came close to a political agreement, no final agreement has yet been reached. Following the discussions at the last political trilogue and in view of closing this chapter at the next trilogue, the Presidency (PCY) suggests revisiting two specific issues to ensure the proposed changes work as intended:

- The suggested transaction frequency (sub-)criterion for business angels and
- The exemption for a specific investor group from the KID requirement in PRIIPS.

It should be noted that amendments and drafting in this paper have not yet undergone technical work and some aspects will be subject to further refinements at a technical trilogue.

The PCY's new drafting is highlighted **bold red** to contrast the **bold black** of the text of the Council approach.

1. Criterion 1 - the transaction frequency criterion for business angels (line 968a)

During the last Council Working Party, the PCY had suggested the following transaction criteria:

<p>Line 968a</p> <p>- the client has carried out, in significant size, on the relevant market at least</p> <p>a) 15 transactions per year over the last three years, or</p> <p>b) 30 transactions over the previous year, or</p> <p>c) 5 transactions directly in unlisted companies over the previous year where each transaction amounts to at least EUR 100.000.</p> <p>Monthly transactions in an investment plan are considered as only one transaction, unless they are of significant size,</p>

During the last Council Working Party on 11 September 2025, most MS supported the PCY's proposal for a tailored transaction frequency threshold for business angels ("direct investment in unlisted companies") combined with the specific threshold suggested (5 transactions over the previous year of at least 100.000 €). Some MS specifically indicated that the threshold should not be further lowered, whilst other MS indicated that they could be in favor of lowering the threshold.

Following the CWP and the political trilogue on 23 September, the PCY has revisited the issue. The transaction frequency criterion had been criticised for being solely tailored for the needs of active traders in public markets and not taking into account the characteristics of long-term investors in illiquid asset classes which invest at considerably lower frequency. In that respect, sub-criterion c) was meant to reflect the characteristics of long-term investors (such as business angels) and enable them to more easily request classification as professional clients.

The Commission has stated during the last political trilogue that it supported the objective of better accommodating long-term investors, but indicated that the suggested thresholds would be too high and not effective in accommodating this specific client group.

Having reconsidered the issue and in particular its importance for the Savings and Investments Union, the PCY considers that the previously suggested threshold does not appear appropriate for this specific asset class (given that the transactions are not carried out frequently). The PCY thus suggests reconsidering it.

According to the European Business Angels Network (EBAN), EUR 100.000 is the size of an average early-stage startup financing round, where several angels participate as investors. The average contribution of an individual business angel may typically be between EUR 10.000-30.000, depending on the geographic region.

In light of this, the PCY notes that criterion c) would also have to cater for a longer period of time for transactions as the current proposal of five transactions per year would be quite challenging for most business angels to comply with, as their investments take place over a longer time span. The PCY therefore proposes a transaction frequency requirement for direct investment in unlisted companies of 10 transactions of at least 30.000 EUR each over a period of 5 years. The PCY considers that EUR 30.000 as the figure would appear accessible for most business angels and thus ensure that this exemption is actually effective and achieves its purpose, while the figure also reflects the former discussions among MS in the Council. At the same time, given that the exemptions only concern direct investments in unlisted companies which are generally not sold to regular retail investors and given that the exemption still requires 10 transactions of together at least 300.000 €, the PCY considers that this exemption would not create loopholes for the protection of retail investors.

Proposal 1: Line 968a

- the client has carried out, in significant size, on the relevant market at least

a) 15 transactions per year over the last three years, or

b) 30 transactions over the previous year, or

c) ~~5~~-10 transactions directly in unlisted companies over the ~~last 5 previous~~ years where each transaction amounts to at least EUR ~~10~~ 30.000.

Monthly transactions in an investment plan are considered as only one transaction, unless they are of significant size,

Questions to MS on proposal 1:

Q1. Do MS agree with the proposed approach and drafting proposal in proposal 1 by the PCY? If no, please explain.

2. Revised exemption for a specific investor group from KID requirement in PRIIPs (new lines 25a-25c of PRIIPs regulation)

During the last Council Working Party on 11 September 2025, the PCY suggested the following exemption for a specific investor group from the PRIIPs Regulation:

New line 25a

(1a) Article 2 is amended as follows:

New line 25b

(a) The following paragraph 3 is added after paragraph 2:

New line 25c

3. This Regulation shall not apply to companies established for the purpose of holding carried interest for managers or directors of an investment fund.

The purpose of this exemption was to address the situation in which managers either want to/are expected to invest themselves in the fund or are remunerated with shares of the fund. These are considered common market practices in order to align incentives.

Under existing rules, fund managers (or other knowledgeable employees like the sales team) would not be eligible to classify as professional investors. This means that where they themselves invest in the fund, or if they receive remuneration in the shape of fund shares, the whole fund would have to be treated as a retail fund. This would include a requirement for those employees to produce a PRIIPs KID.

However, the PCY understands that an exemption from the PRIIPs KID would only address part of the problem. Indeed, while it would ensure that, in the situation described, no PRIIPs KID would need to be provided, it would not resolve other difficulties that may arise. In fact, in case a fund manager who is categorised as retail client, holds a stake in the very funds

he/she manages (or distributes), his/her stake in such funds would lead to a reclassification of those funds as funds marketed to retail investors (“retail funds”). This would trigger a series of regulatory requirements and the fund would also lose the ability to market itself through the EU passport. This would restrict cross-border distribution and undermine the competitiveness of the European asset management industry. Addressing this issue is therefore particularly important for the private equity sector, where scale and international fundraising are essential to success. Furthermore, in practice there may be other knowledgeable employees like the sales team in charge of marketing the fund or instruments under the AIFMD that also would wish to or are incentivised to hold a stake in the fund. They would not be covered by the proposed solution in PRIIPS as it focuses on managers or directors of an investment fund.

The whole problem can thus not be addressed through an exemption from the PRIIPS Regulation. Considering the focus on knowledge and experience of persons rather than the legal vehicle or the product itself, it should be addressed through a provision in MiFID.

For this reason, the PCY has reassessed the issue and believes that the provision (considered in lines 25 a-c) should not be included in PRIIPS, but an additional, targeted exemption covering the specific situation should be provided for under MiFID. This exemption should enable those fund managers and other knowledgeable employees of a fund to be classified as professional – but only for holding and acquiring shares of the specific fund they manage or market. This is a strong safeguard which would ensure that the exemption applies only in relation to the collective undertakings, which the persons concerned manage or market. In line with the burden reduction agenda, the classification of such employees should be per se under Annex I, section I. Requiring them to apply for professional status under Section II would be an extensive process obliging each employee to demonstrate an understanding of transactions and risks related to products they market themselves. It would not serve a substantive purpose, as the assessment in such cases would be purely pro forma. In practice, the fund would be assessing its own staff.

The proposal focuses on AIFMD and therefore does not cater for employees and managers of UCITS. The UCITS Directive requires UCITS (including funds marketed to professionals) to have a KIID (Key Investor Information Document).¹ However, if a PRIIP KID is produced, there

¹ DIRECTIVE 2009/65/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 13 July 2009 on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS), Article 78

is no need to produce a KIID.² Conversely, if a PRIIP KID is not produced, a UCITS KIID must still be produced. In practice, most UCITS prepare a PRIIP KID regardless, since UCITS are primarily targeted at retail investors and benefit from the standardised format of the PRIIP KID. Thus, it would not benefit these investors to be exempt from making a PRIIPs KID or be included in the new PCY proposal. Moreover, it is the PCY's understanding that the situation being addressed is not a problem in the UCITS sphere. **Proposal 2:** The new exemption for MiFID (replacing the previously suggested PRIIPS exemption) should as below be placed in MiFID, Annex II, section I.1 as a new point 3b (following the earlier PCY proposal for a new point 3a for per se professionals):

New line 963ac:

Employees of AIFs responsible for the management or the marketing of AIFs, as defined in Article 4(1)(x) of Directive 2011/61/EU (AIFMD) in respect of investments in these AIFs.

Questions to MS on proposal 2:

Q2: Do MS agree with the proposed approach and drafting proposal in proposal 2 by the PCY? If no, please explain.

² DIRECTIVE 2009/65/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 13 July 2009 on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS), Article 82.