

FIRST-CISL GENERAL SECRETARY, COLOMBANI: “MiFID II, THE REAL CHALLENGE IS INDEPENDENT ADVICE”

The first image that comes to my mind every time we discuss the MiFID II directive is that of a splendid building that has remained unfinished: the intentions of the Community legislator, which we know were to raise the standard of protection for savers, have remained partly on paper. Two years after its adoption, it is time to question its limits and possible remedies and, therefore, we welcome the initiative taken by the European Commission to promote a public consultation among the social actors in order to receive **feedback from those who have to apply the rules of the directive on a daily basis.**

The need for greater transparency between financial intermediaries and clients has always been at the top of First-Cisl reflections, which are condensed in the **manifesto AdessoBanca**, an overall proposal to reform the banking system! The public questionnaire circulated by the EU Commission gave us the opportunity to offer an articulated contribution to the discussion, able to stimulate an overall review of the regulations and their theoretical assumptions, not only of punctual corrections.

We've been regularly pointing out how central the issue of independent advice is. Today it is a marginal experience, almost unknown and not perceived by clients as an alternative to the "classic", non-independent advice offered by banks. The available offer therefore remains restricted to a few financial products, in fact placed almost as 'over-the-counter products', which can spoil the intermediary-client relationship. This issue is closely linked to that of incentives. The EU Commission questions their power to influence placement practices and whether they should go beyond the current discipline. I believe, however, that the problem should be approached from a broader perspective.

Let us start with the observation that **rules and regulations are sometimes implemented by banks, at least in the Italian experience, in an inappropriate way.** In line with the European Directive, art. 52 of the (Italian) Consob Regulation on Intermediaries prescribes that intermediaries themselves may not, in relation to the provision of an investment service, pay or receive fees or commissions or provide or receive non-monetary benefits from any person other than the client, unless such incentives have the primary purpose of increasing the quality of the service and provided that they do not prejudice the fulfilment of the obligation to act in the best interests of the client. There is, unfortunately, a considerable gap between standards and enforcement practices.

The regulatory issue also has a clear impact on remuneration and incentive policies for staff employed by financial intermediaries. These policies cannot be incompatible with the duty of intermediaries to serve the best interests of their clients. But that is not enough. The experience of these years shows that **it is not enough to set regulatory limits to the incentive system (inducement) to ensure investor protection.** Today, in fact, compliance with the rules is left almost exclusively to the bank's internal control function, which is the driving force behind disciplinary action, most often triggered by a client's complaint, thus sanctioning individual behaviour rather than unfair organisational and commercial practices.

Bank staff receive continuous verbal commercial pressures to achieve the budgets through the massive placement of financial products, with indications that often conflict with the company's written policies. As a result, opportunistic behaviours (moral hazard) aimed at achieving quantitative sales budgets are often not only tolerated, but actually rewarded. A greater diffusion of independent advice would surely reduce these distortions. By definition, in fact, incentives are not allowed and the service is paid for by the customer, regardless of the number and type of financial products sold.

Independent advice is clearly a way of fulfilling the advisory mandate. An employee who works for a financial intermediary can also provide advice on an independent basis. The MiFID II Directive distinguishes between professionals not according to whether they are employed or self-employed, but according to how the client remunerates the bank. This allows the investor to immediately perceive the type of advice he is receiving, whether independent or not. If such an offer were actually present on the market, the problem of conflict of interest (which is at the basis of the discipline of limiting incentives) would be, if not resolved, certainly less impacting. **The banks' organisational and distribution model is therefore to be profoundly transformed.**

The other unresolved issue in the complex dynamics between intermediaries and clients, is the way the Mifid questionnaire is drawn up to identify and certify the risk 'profile' of the client receiving financial consultancy services and the consequent levels of protection. **Currently, the MiFID questionnaire is a non standardized private act, prepared autonomously, and with wide editorial discretion criteria, by each bank operator.** Moreover, the saver himself is 'profiled' in a potentially different way from bank to bank, and this diversity, which in itself determines the range of financial offers available and customizable, becomes in itself an element of improper competition between banks.

It would therefore be necessary to neutralise these differences, which are partly regulatory and partly technological, by standardising procedures, i.e. introducing a single MiFID questionnaire for each client, according to a single model and form, the drafting and variation of which must be entrusted to the competent supervisory authority. **The effective valorisation of financial consultancy on an independent basis and the single MiFID questionnaire are at the same time the prerequisites and solutions for a healthier competition between companies providing financial consultancy services oriented towards the effective protection of savings.**

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