



The European Federation of Insurance Intermediaries

La Fédération européenne des intermédiaires d'assurances

BIPAR RESPONSE

European Commission's Consultation on legislative steps for the Packaged Retail Investment Products (PRIPs) initiative

January 2011

BIPAR Register ID number : 58041461167-22

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BIPAR, the European Federation of Insurance Intermediaries, is a non-profit European organisation grouping professional associations of insurance intermediaries in Europe. It presently has a membership of 50 national associations, established in 32 countries, and represents some 80,000 insurance agents and brokers, employing in all about 250,000 people. Founded in Paris in 1937, BIPAR headquarters were moved to Brussels in 1989. It is today the official and recognised voice of insurance intermediaries with the European Institutions.

I. Introduction

BIPAR welcomes the opportunity provided by the European Commission to give its views on possible future regulation of Packaged Retail Investment Products, referred to as PRIPs.

BIPAR promotes robust but proportionate regulation which does not destroy choice by the consumer and promotes competition.

BIPAR represents national associations of insurance and financial intermediaries in all EU Member States. Most of these intermediaries are micro, small or medium-sized enterprises.

In order to avoid administrative burden BIPAR believes that new draft regulation should be analysed on the basis of the following question: what is the cost of extra regulation compared to the level of potential consumer detriment avoided ?

In this respect, we inform the Commission that all life insurance contracts are already, for many years, subject to robust regulation and well organised supervision at product information- as well as at intermediation level. We therefore welcome the Commission's approach to treat insurance PRIPs as a specific case.

The 3L3 Task Force believes that the proportionality principle is a very important concept and should apply across the PRIPs regime to ensure a smooth implementation of its principles and rules, by providing flexibility according to the size, structure, complexity and nature of different firms and markets. "BIPAR entirely agrees with the 3L3 Task Force's view on this. We refer to the " Study on the Costs and Benefits of Potential Changes to Distribution Rules for Insurance Investment Products and other Non-MiFID packaged Retail Investment Products" prepared by Europe Economics on behalf of the Commission where on page 68 it is suggested that intermediaries as a specific type of company may be more vulnerable to the one-off cost impacts of implementing the proposed rules. Respondents highlighted also that intermediaries would be disproportionately impacted by the possible new regulations, both in terms of increased costs of doing business and for the need to undergo further training and qualifications. This was subsequently confirmed by its research amongst individual firms (p120).

II. BIPAR answers to the questions

2. Scope of the PRIPs Regime

2.3 Proposed solution

A PRIP is a product where the amount payable to the investor is exposed to fluctuations in the market value of assets or payouts from assets, through a combination or wrapping of those assets, or other mechanisms than a direct holding.

Questions

Q. 1: Should the PRIPs initiative focus on packaged investments? Please justify or explain your answer.

Q. 2: Should a definition of PRIPs focus on fluctuations in investment values? Please justify or explain your answer.

Q. 3: Does a reference to indirectness of exposure capture the 'packaging' of investments? Please justify or explain your answer.

Q. 4: Do you think it is necessary to explicitly clarify that the definition applies to fluctuations in 'reference values' more generally, given some financial products provide payouts that do not appear to be linked to specific or tangible assets themselves, e.g. payouts linked to certain financial indices, the rate of inflation, or the overall value of a fund or business?

Q. 5: Do you have any other comments on the proposed definition? If you consider it ineffective in some regard, please provide alternatives and explain your rationale in relation to the criteria for a successful definition outlined above.

BIPAR is of the opinion that for all products which include an investment risk pre-contractual information should be available. The pre-contractual information requirements should be adapted to and proportionate with the specificities of the product. Also existing regulation should be considered in the design of pre-contractual information requirements. Consumers should always be made aware of the investment risk and the characteristics of the investment product. The information on the product should reflect whether or not the product is a packaged product, whether or not there may be fluctuations in investment values, and what kind of "indices" or values the payouts are linked to or dependant on. Also information on any "guarantee" should be available.

BIPAR is also of the opinion that the design of regulation related to retail investment products the difference (in terms of risk) should be recognised between investment products where the initially invested amount is at risk and investment products where the initially invested amount is not at risk and where "only" the return is fully or partly variable. Also the type of guarantee may be taken into consideration when adopting the proportionality test in terms of regulation. In such an approach there is room for proportionality. Such an approach would also avoid administrative burden.

2.4 Clarifying the definition: Possible Exceptions

a) Deposits

Option 1

A deposit shall be a PRIP where [it is fully repayable, on terms under which] any interest or premium will be paid (or is at risk) according to a formula which involves the performance of:

- an index or combination of indices, excluding variable rate deposits whose return is directly linked to e.g. EURIBOR, LIBOR or another interest rate index;*
- a MIFID financial instrument or combination of such financial instruments;*
- a commodity or combination of commodities; or*
- a foreign exchange rate or combination of foreign exchange rates.*

Option 2

A deposit shall be a PRIP if either of the following conditions are met:

- its principal is not repayable at par;*
- its principal is only repayable at par under a particular guarantee or agreement provided by the credit institution or a third party.*

Questions

Q. 6: Should simple (non-structured) deposits be excluded from the scope of the initiative? Please justify or explain your answer.

Q. 7: Do you consider option 1 or option 2 preferable for achieving this? Please explain your preference, and set out an alternative if necessary, with supporting evidence.

Q. 8: Should such an exclusion be extended to financial instruments which might raise similar issues as deposits (e.g. bonds), and if so, how might these be defined? Please justify or explain your answer.

Our answer depends on what level of proportionality the “initiative” allows for. BIPAR is of the opinion that pre-contractual information related to each and every product which includes an investment risk for the consumer should be regulated (if not yet already regulated elsewhere) as long as this regulation is proportionate and adapted to the specificities of the product. Consumers should in any case be made aware of the investment risk and the characteristics of the investment product. The information on the product should reflect whether or not the product is a packaged product, whether or not there are fluctuations in investment values, and what kind of “indices” or values the payouts are linked to or dependant on. The concept of “comparable” pre-contractual information could also be applied to more “simple” products (as far as not yet applicable) including information such as whether or not the return is fixed or variable and to what extent. Also information on the “guarantee” could be available. The information could in the case of “deposits” refer to the main characteristics of “simple” “deposits”.

b) Pensions

In order to exclude pensions (at this time), it is likely necessary to develop a specific exclusion:

For the purposes of the PRIPs initiative, those products where the provisions of national law accord particular benefits to the client in relation to the product by virtue of its use for the purposes of retirement planning should be excluded from scope.

Questions

Q. 9: Should pensions be explicitly excluded from the PRIPs initiative at this stage? Please justify or explain your answer.

In view of the Commission's ongoing work in the pension field, we believe that it is too early to express our views on this. We refer, however, to our general principle outlined above. A basic set of pre-contractual information could be made available for every investment (or even in more general terms every financial) product including, as an example, pillar 3 pensions products.

Q. 10: Should annuities be treated in the same fashion? Again, please justify or explain your answer.

BIPAR refers to its answer to question 9

Q. 11: Do you have any comments on the proposed manner of achieving this exclusion?

Q. 12: Do you agree that variable annuities might need to be treated as a special case? If so, how should these be defined, and how do you think they should be addressed?

2.5 Clarifying the definition: Use of indicative lists of products

The Commission services consider it likely that the definition under 2.3 would need to be supplemented by an indicative list of products to which the regime would or would not apply. Such a list should be relatively open to revision and update, given product and market innovation, and capable of reflecting material differences in product types across national markets.

Questions

Q. 13: Do you see benefits from such an indicative list being developed? If not, please provide alternative proposals and evidence for why these might be effective.

BIPAR is of the opinion that the “initiative’s” definition would probably need to be supplemented by a more concrete list of products. Possibly categories need to be defined in order to enable the proportionality principle in terms of information requirements. Every initiative that creates legal certainty without administrative burden is welcome for the industry. Indicative lists have, however, also the obvious disadvantages.

Q. 14: Do you have any suggestions on the possible contents for such a list, including on how to define items placed on the list?

The listed financial products should be well defined/described and clarified, if possible with the different names of the product used in EU Member States. Each description of the listed products should be as detailed as possible so that there is no discussion as to whether or not the product falls in or out of the scope of the (P)RIPs regulation.

Products could be “classified” in function of guaranteed capital or not, what kind of guarantee, variable or fixed return, applicable regulation.

3. Legislative approach to be taken in delivering the PRIPs regime

3.2 Rules on pre-contractual product disclosures

The Commission services consider a new disclosure instrument most effective for achieving the outcomes being sought.

The new instrument would require a pre-contractual product disclosure targeted at the retail market for all PRIPs sold in the retail market; it would apply the same broad principles (as developed for UCITS KIID, to be examined below under section 4) to all products that fall within the scope of the PRIPs initiative. Detailed requirements contained within implementing acts and/or technical standards would likely be tailored for each type of PRIP, along the lines of the KIID regulation for UCITS, so that differences between types of PRIP might be effectively handled.

Possible approaches to the interaction between such a new instrument and existing sectoral legislation (which may address other issues) including the UCITS Directive are discussed below under section 4.3.

3.3 Sales rules

The Commission services propose using both the IMD and MiFID to deliver the PRIPs initiative on sales rules, retaining these two distinct regimes, but aligning sales rules for PRIPs on the benchmark of MiFID.

The approach being considered would:

- Expand the application of MiFID sales rules to cover those PRIPs other than insurance PRIPs that might currently be not covered (e.g. structured deposits) [see MiFID review consultation];*
- Ensure that MiFID sales rules apply to all sales of PRIPs under MiFID, even where an exemption might otherwise apply [see MiFID review consultation];*
- Introduce into the IMD rules on sales of PRIPs that are consistent with those in MiFID (rules on conflicts of interest and on conduct of business) [see the IMD review consultation]; and*
- Make changes to the UCITS framework to ensure direct sales by UCITS asset managers are fully subject to MiFID sales rules.*

Questions

Note: specific questions related to possible MiFID and IMD changes as outlined here are not being raised in this consultation; for these areas please see the MiFID and IMD consultations, as set out above in section 1.3.

You may of course respond on the approach outlined in general here.

Although BIPAR is of the opinion that each and every investment product should have an adapted KIID, it is BIPAR's opinion that applying the MiFID regime in terms of sales rules may be administratively overburdensome and possibly not proportional to the risk for some of the products which would fall under (P)RIPs. BIPAR is of the opinion that in the design of (P)RIPs regulation the difference should be recognised between those products with a (presumed) (P)RIPs character but which are already subject to (other) regulation and those products with a (P)RIPs character which are not yet subject to (other) regulation.

Such a distinction may in specific cases lead to the exclusion of the specific product from the scope of (P)RIPs (because the issues are regulated elsewhere). In other cases (where no other regulation is in place) this distinction may lead to a nuance in the application of the requirements and the appropriate level of regulation for different product types within the (P)RIPs scope.

BIPAR is also of the opinion that in the design of regulation related to retail investment products the difference (in terms of risk) should be recognised between investment products where the initially invested amount is at risk and investment products where the initially invested amount is not at risk and where "only" the return is fully or partly variable. Also the type of guarantee may be taken into consideration when adopting the proportionality test in terms of regulation. A fully fledged MiFID inspired regime for the sales/advice or intermediation of a product where the initial capital is invariable (and well guaranteed) during the term of the investment, is not proportional. A key information document, in combination with a proportional set of sales rules would, for such a product, possibly be more efficient.

In such an approach there is room for proportionality, product differentiation and fine-tuned regulation based upon high level principles adaptable both in terms of instruments as in terms of requirements to the specificities of the products and the business models of the various "PRIPs" or other investment products.

Regarding the insurance PRIPs, BIPAR welcomes that the Commission has recognised that insurance PRIPs are different from other PRIPs. BIPAR would like to refer to its reply to the European Commission's Consultation document on the Review of the Insurance Mediation Directive (IMD) with regard to insurance PRIPs.

Furthermore, we would like to make the following comments related to MiFID:

- BIPAR is in favour of measures which create transparency and further protect the consumer in every kind of (P)RIPs product in a proportionate way.
- BIPAR is however of the opinion that the highly prescriptive and detailed rules under MiFID are for smaller and mid-sized intermediaries from a cost/benefit analysis creating too much cost compared to the intended benefits.
- MiFID defines the conflict of interest rules from the perspective of the best interest of the client (only). Conflicts of interest principles in a liberal market should reflect the reality of the market which is that it is allowed (and normal) that interests are aligned (between the producer, the intermediary and the client).

Regarding the inducement rules in MiFID and regarding a question in the MiFID consultation re possible prohibition of inducements, BIPAR is of the opinion that every intermediary has the right to be fairly remunerated for his or her services.

A pure fee-based market excludes many people (in particular smaller investors or savers) from access to any level of advice or assistance in their search for an adapted investment product.

The prohibition of remuneration from providers would be an obstacle to free market principles of fair remuneration for services rendered. Indeed, it would become impossible for intermediaries to be remunerated by product providers for the work they do on their behalf (and which is work that is done also in the interest of the client).

We are of the opinion that regulation prohibiting market players from receiving remuneration from other market players is in conflict with the general concept of free, liberal markets in a modern world. Indeed, the financial and investment market and the intermediation market are highly competitive and freedom of remuneration between the parties should be considered to be a basic right of entrepreneurs in every free market around the world.

The existence of intermediaries allows investment firms to extend their geographical and client reach without having to incur the fixed costs of a fully-fledged distribution network. The rule prohibiting freedom of remuneration makes it more difficult for foreign investment firms or new nationals starting up investment firms to enter the national market. Also it discourages (or even reduces the number) of people or entrepreneurs to become intermediaries. In the longer term this may create a spiral which will have also its consequences on the competition in the national market and reduces choice for consumers. Intermediaries stimulate the market and stimulate innovation.

Our other area of concern with any prohibition of freedom of remuneration is that it completely ignores the value of an intermediary in any transaction. An intermediary, somewhat uniquely, renders services to both the client and the investment firm.

These principles on remuneration reflect that financial intermediaries play a valuable role in the insurance process and the overall economic development of a country. To allow intermediaries to continue to provide needed insurance products and services to customers and the market, BIPAR believes that regulation should be aimed at encouraging an open and competitive market.

Every intermediary or adviser should have the right to choose his or her own business model and should be transparent about offered services, fees and commissions.

The coexistence of various remuneration systems, and in particular the freedom to decide on the remuneration systems (commission or fee) is the best guarantee for competitive and dynamic markets.

The question that arises here is why destroy choice? Choice on the basis of clear information is clearly in the interest of the consumer and in the interest of competition. Clients, as matters stand, can choose to use an intermediary or not. In a system where there is choice, clients or investment firms can choose to pay intermediaries by fee or commission or a combination of both. Why deny the investment firms, intermediaries, and their clients the right to choose for themselves on the basis of what they consider

best adapted to their own situation? Also why deny the possibility for these systems to compete with another?

We believe that a solution can be found in a balanced policy on transparency and conflicts of interest adapted to the kind of investment product, in combination with a Key Investor Information Document about the product, and with the following transparency principles for every investment product which is intermediated by financial intermediaries (on the basis and under the condition of a level playing field):

1. Intermediaries should provide buyers with sufficient and clear information to make informed decisions about the nature of their services.
2. Intermediaries should inform clients about the existence of delegated authorities in relation to the product on offer.
3. BIPAR proposes that intermediaries will inform the client about the nature of their remuneration, be it commission, fee or a combination of both.
4. BIPAR is of the opinion that transparency about all costs (including distribution and/or intermediary costs and remuneration) related to the investment product is necessary (making clear the difference between the amount paid and the actual invested part of that amount).
5. BIPAR requires the same level of transparency from alternative forms of distribution of investment products and from substitutable (or comparable) investment product providers.

BIPAR kindly invites the Commission to consider the above rules as an alternative to the current inducement rules in MiFID. In any event, BIPAR is also of the opinion that inducement rules should in any case only be imposed for products with an investment character under the following conditions:

- Product providers or portfolio managers must be allowed to facilitate the payment of fees for investment advice and services by intermediaries or advisers to be paid by the client.
- Intermediaries or advisers must have the possibility to receive payments (to be remunerated) for services rendered to the product provider or portfolio manager.
- A full level playing field (including comparable remuneration and cost transparency for all investment products and services in all distribution channels).
- At any time it must be clear to the client in what capacity the seller, intermediary, adviser is acting.

4. A new pre-contractual product disclosure instrument

4.2 Possible content of new regime

a) Principles underlying the design of the regime

The Commission services consider that the focus in the PRIPs work should be squarely on ensuring key information is provided in a timely fashion and in a form which understandable and useable by the retail investor, with the purpose of aiding investment decision making.

The documents used for providing such information must not be overburdened with information which is not necessary for making an investment decision; the Commission services will explore possible legal techniques for ensuring the documents remain streamlined and focused solely on key information.

Questions

Q. 17: Should the design of the KIID be focused on delivering on the objective of aiding retail investment decision making? If you disagree, please justify or explain your answer.

BIPAR believes that buyers of all (P)RIPs should be provided with sufficient and clear information to make informed decisions about the purchase of the product and therefore welcomes the European Commission's proposed concept of a "KIID" for PRIPs.

BIPAR believes that "manufacturers" of (P)RIPs should provide product information that is clear, fair, not misleading and timely. As far as is reasonably possible, the product information should be provided by the manufacturer in a format that facilitates comparison of the features with other (P)RIPs products or with other comparable products (recognising the specificities).

This KIID should be produced by the manufacturer as he is the one who developed the product.

While the precise form and content may vary according to the nature of the specific product, BIPAR is of the opinion that manufacturers should develop product information tools which include, where relevant, information on the following:

- Key product characteristics (that may vary according to product type),
- Investment risk and in particular the minimum agreed capital (which can vary in time)
- Performance indicators; and
- The total amount of all costs.

In terms of contents of such a KIID this should take into consideration the specificities of the PRIP: they entail risk coverage, duration, etc... These specificities are important in the decision of the retail investor of buying one or other PRIPs. In some Member States, such as Belgium for example, the sector has already developed Key Information Documents for Life with investment element insurance. These may well be used for inspiration.

Q. 18: Should the KIID be a separate or 'stand alone' document compared with other information that might be necessary, e.g. background information, other disclosures, or contractual information? Please justify or explain your answer.

The KIID should be a stand-alone document, tailored to the specificities of the PRIPs product but with a standard look so that the consumer can compare the different (P)RIPs. The content may vary according to the nature of the specific product. Please see also above.

Q. 19: What measures do you think will be necessary to ensure KIID remain streamlined and focused solely on key information?

b) Level of standardisation

Any new product disclosure instrument should apply a horizontal framework to all PRIPs through level 1 measures, with the same overarching principles.

Detailed requirements would be tailored through implementing measures – for different classes or types of PRIP (with these classes or types to be defined at the level of the implementing measures). Such tailoring might include differences in requirements to address differences in the information needed by retail investors for different classes or types of PRIP, and should be based on testing of options with retail investors.

However, so as to enable effective comparisons, there are certain key areas of the detailed information – on costs, performance, risks, guarantees – where common approaches defined in implementing measures are likely to be necessary for all PRIPs. In addition, a common layout and 'look and feel' for the KIID for different PRIPs is desirable.

Questions

Q. 20: While the same broad principles should be applied to all PRIPs, should detailed implementations of some of these principles be tailored for different types of PRIP? Please justify or explain your answer, and provide examples, where relevant, of the kinds of tailoring you might envisage.

In terms of contents of a KIID, and while respecting a level playing field, this should take into consideration the specificities of each PRIP. These specificities are important in the decision of the retail investor of buying one or other PRIPs.

Q. 21: Do you foresee any difficulties in requiring the KIID to always follow the same broad structure (sequence of items, labelling of items)? Please justify or explain your answer.

Possibly not but it should be tested. It should be possible for manufacturers to produce KIID's adapted to the specificities of the different PRIPs products, but which all have a common look and structure, allowing consumers to compare these KIID's. KIID's for Life with investment element insurances will, for example, have different features than other (P)RIPs.

Q. 22: Do you foresee any difficulties in requiring certain parts of the key information and its presentation (e.g. on costs, performance, risks, and guarantees) to be standardised and consistent as possible, irrespective of tailoring otherwise allowed? Please justify or explain your answer.

Q. 23: Can you provide examples and evidence of the costs and benefits from your experience that might be expected from greater standardisation of the presentation and content in the KIID?

Q. 24: Should the content of the KIID be controlled so that there is no possibility for firms to add additional information unless expressly allowed for?

It depends what is meant with "controlled " and by whom. We believe that changes in the KIID can only be made by or in cooperation with and after approval by the manufacturer. The "manufacturer" would need to be defined.

BIPAR is in favour of an adequate level of ex-post control.

If broad principles are in place and understandable, key requirements formulated, and a standard format for look and feel is in existence, it can possibly be left to the manufacturer to develop the specific KIID's. Supervisors should however do "checks" and control compliance. Within the legal framework for the KIID the manufacturer should be free to tailor the information for each product to the KIID.

c) Content of PRIPs KIIDs

General requirements sitting at level 1

- *KIID must be 'fair, clear and not misleading'.*
- *KIID must be short – 2 pages where possible, exceptions to be outlined in detailed implementing measures.*
- *KIID must be written in plain language suited to the target retail investor.*
- *KIID must be presented in an appealing and consumer-friendly manner.*
- *KIID must focus on key information, as necessary for the average investor to make an informed decision on the PRIP in question.*
- *KIID must include, as relevant for the PRIP, information on:*
 - *The identification of product and who has produced it;*
 - *What the product is and how it works – the basic investment proposition;*
 - *The nature / limits of any features provided, including the nature / limits of any guarantees offered.*
 - *The broad 'risk / reward' proposition represented by the product;*
 - *The costs of the product;*
 - *The performance of the product (where it has a track record) or information about possible performance scenarios (where relevant);*
 - *Practical information (such as information on compensation schemes, on finding the value of the investment, on subscribing to or redeeming an investment, on finding further information, etc).**[Detailed implementing measures will be specified at L2 or through technical standards across these different areas, varying as necessary between different classes or type of PRIP]*
- *KIID must be provided to retail clients using a durable medium that is appropriate to the context / manner of the proposed sale of the PRIP.*
- *KIID must be kept 'up to date' and accurate, so that investor can rely on it without reference to other information.*

Questions

Q. 25: Do you foresee any difficulties in applying these broad principles to the KIID for all PRIPs, as the building blocks on content and format for a 'level 1' instrument? Please justify or explain your answer.

We do not foresee any difficulties as long as it is allowed to adapt the KIID to the specificities of the different PRIPs products.

Q. 26: Are there any other broad principles that should be considered on content and format?

The date on which the KIID document is produced should be included in the document, as well as the address of the manufacturer of the KIID, enabling the consumer to ask questions about the KIID.

We would suggest that it should be possible for the KIID to be available in either hardcopy or softcopy format.

d) Allocation of responsibilities for the production of KIID

The Commission services consider that an approach which places clear responsibilities for preparation of information on the provider is likely to be preferable, since the entity that manufactures a product is normally best placed to be responsible for preparing information on it. However, a question remains as to whether in certain cases an intermediary that seeks to sell a PRIP to a retail client might be permitted to assume the responsibility for the production of the relevant KIID.

Questions

Q. 27: Should product manufacturers be made generally responsible for preparing a KIID? Please justify or explain your answer.

BIPAR believes that “manufacturers” of (P)RIPs should provide the product information. They should be responsible for preparing a KIID that is clear, fair, not misleading and timely. As far as is reasonably possible, the product information should be provided by the manufacturer in a format that facilitates comparison of the features with other (P)RIPs or with other comparable products. The KIID should be made by the manufacturer as he is the one who knows the underlying contents of the product.

BIPAR requires a comparable level of product information from all (P)RIPs manufacturers.

We believe that the manufacturer is not only responsible for producing the KIID, but he is also responsible for the delivering/transmitting of the KIID to the consumer, either directly or indirectly via an intermediary. In the last case it is up to the parties involved (the product manufacturer and the intermediary) to (contractually) organise this transmission. The product manufacturer is also responsible for making relevant post-contractual information available.

Q. 28: Are you aware of any problems that might arise in the distribution of particular products should responsibilities for producing the KIID be solely placed on the product manufacturer?

We are not aware of any problems but it is necessary to have a definition of product manufacturer.

Q. 29: If intermediaries or distributors might be permitted to prepare the documents in some cases, how would these cases be defined?

The manufacturer is responsible for the KIID. If an intermediary would (be allowed to) position itself as product manufacturer, that intermediary should know he assumes the responsibility for the product and can be held responsible as the manufacturer.

e) Labelling and enhanced transparency of PRIPs in relation to socially responsible investments

Options might be explored for raising transparency, comparability and consistency around the use by product manufacturers of labelling to denote socially responsible investments (e.g. 'green' 'ethical').

Questions

Q. 30: What detailed steps might be taken to improve the transparency of the social and environmental impacts of investments in the KIID for PRIPs?

We believe that labelling as green, ethical or socially responsible is certainly important information. The danger is however that such labels could distract the attention from the real risk. This kind of information should not be part of the KIID. We do not say that this label information should not be given to the consumer at all, but there are other ways to bring this to the attention of the consumer, for example in other information documents. In order to avoid misunderstandings – labels, definitions and criteria, if any, should be strictly controlled.

Q. 31: How might greater comparability and consistency in product labelling be addressed?

Please see above.

4.3 Interaction with and amendments to existing legislation

To address possible duplications, the introduction of the new PRIPs regime might entail:

- amending the PD, so that for every PRIP subject to PD a KIID, as defined in the new pre-contractual disclosure instrument, would be taken to satisfy the requirement for a 'summary prospectus', in so far as this is the case;*
- amending Solvency II, so that for every PRIP subject to Solvency II a KIID, as defined in the new pre-contractual disclosure instrument, would be taken to satisfy any duplicate disclosure requirements; and*
- clarifying interaction with UCITS. In principle, the same approach might be taken, with targeted amendments made to the UCITS directive along the same lines.*

However, for logistical and technical reasons such an approach may not be possible. Level 2 measures on the UCITS KIID have only recently been adopted; the UCITS KIID regime is currently being implemented by firms and supervisors. The importance of a speedy and effective completion of this process was recognised by the co-legislators, who urged the earliest possible transition. In addition, the UCITS KIID is the benchmark for other PRIPs, and the focus of the work is clearly on applying the lessons learned in developing the UCITS KIID to other types of product.

The Commission services do not therefore envisage changes to the content of the UCITS KIID framework at this time. Nonetheless, the process of developing KIID requirements for other PRIPs might lead to the identification of certain adjustments that might be considered for the UCITS KIID, as may be necessary for ensuring the greatest degree of comparability between the KIIDs for different PRIPs. The Commission services consider that any such adjustments might be addressed within the context of the normal post-implementation review work on the UCITS IV regime, as was already set out in the impact assessments that accompanied the UCITS IV legislative proposals.

All decisions on the content of the KIID for different PRIPs and its relationship with other disclosures should be considered in the light of their effectiveness in helping retail investors make better investment decisions before entering into a contract.

Questions

Q. 32: Should the summary prospectus be replaced by the KIID for PRIPs? Please outline the benefits and disadvantages you see with respect to such an approach.

The summary prospectus should be replaced by the KIID for PRIPs, thus avoiding possible duplication and reducing administrative burden.

Q. 33: Should Solvency II disclosures provided prior to the investment decision be replaced by the KIID for PRIPs? Please outline the benefits and disadvantages you see with respect to such an approach.

As commented above, for PRIPs insurance the KIID may need to have some different features (different from other PRIPs because of the insurance specificities). We believe that all Solvency II requirements should continue to exist as they are considered to be relevant. These requirements could possibly be reflected in a KIID which is tailor-made for insurance products. If necessary, other SII information can continue to exist and be included in the insurance contract itself.

Q. 34: Do you agree with the suggested approach for UCITS KIIDs?

The proposed approach for UCITS KIID's seems fair.

Q. 35: Are there any disclosures, e.g. required by the existing regimes, which you believe the PRIPs KIID should not include, but which should still be disclosed, e.g. separately to the KIID? Do you have any practical examples for such elements?

4.4 Issues to be addressed by developing appropriate implementing measures

Further work is necessary to consider the options for risk disclosure. Approaches should be tested with investors.

The broad principle of encouraging comparability and transparency in relation to risk information is central to addressing information asymmetries in the retail investment markets. The next step will be to assess in detail how a simple risk indicator might work across all PRIPs.

Questions

Q. 36: What in your view will be the main challenges that will need to be addressed if a single risk rating approach is to work for all PRIPs?

The main challenges will be:

1. to compare the "value for money" when comparing PRIPs
2. to organise reliable risk and value rating

Q. 37: Do you consider there are any other techniques that might be used to help retail investors compare risks?

There are other techniques that might be used to help retail investors compare risks. There are examples of these techniques in different markets but a cost/benefit study should first be made to see if these techniques are efficient. These measuring instruments could be a part of the KIID. These instruments should take into account characteristics such as rating (of the manufacturer and/or third parties), volatility (we need a clear definition at European level, which would encompass actual and historical volatility) and principal investment strategies. The measurement of these characteristics should be updated on a regular basis.

Costs

Further work is necessary to identify the key information about costs that should be provided to retail investors for different types of PRIIP.

Work may be necessary to identify possible metrics or measures of cost that might facilitate comparisons across all PRIIPs, starting with the UCITS model, and to test these metrics for comprehension by retail investors.

Questions

Q. 38: What in your view will be the main challenges that will need to be addressed in developing common cost metrics for PRIIPs?

Q. 39: How can retail investors be aided in making 'value for money' comparisons between different PRIIPs?

Performance

The Commission services consider that further work is necessary to identify possible common approaches to performance information capable of facilitating investor comprehension and comparisons of PRIIPs.

Particular attention will need to be paid to possible performance information for retail structured products and in relation to insurance-based PRIIPs.

Questions

Q. 40: Do you consider that performance information should always be included in a KIID?

Yes, performance indicators should always be included in a KIID. Clear warnings (possible standard wording in this respect) should be made about the (relative) value of the (future) performance indicators.

Q. 41: What in your view will be the main challenges that will need to be addressed in ensuring performance information can be compared between different PRIIPs?

The time perspective of the various PRIIPs products is a real challenge when comparing products (and in particular when comparing potential performance). It would be important to be able to rely on performance indicators that are comparable, preferably on the basis of the calendar year (for the last five years).

Guarantees

Comparability between guarantees or capital protection for PRIIPs is fundamentally important, however there are significant challenges in communicating key messages.

Further work is necessary to identify the common messages and information that should be provided so as to facilitate the clearest and most informative comparisons between PRIIPs. Related to this, it may be relevant to limit the use of certain labels (e.g. 'guaranteed') that have a strong meaning for retail investors.

Questions

Q. 42: Do you agree that a consistent approach to the description of guarantees and capital protection in the KIID should be sought, e.g. through detailed implementing measures, for different PRIPs?

We agree with the Commission on the importance of information on capital protection and to be more careful with guarantees (and the label “guaranteed”) and the necessity of more detailed information for different PRIPs.

Q. 43: What information should be provided to retail investors on the cost of guarantees?

We are not sure of the necessity of too detailed information on the cost of guarantees for consumers. For most consumers a total cost approach will be more effective.