

PACKAGED INVESTMENT PRODUCTS INITIATIVE (PRIPs)

Contribution to the EC consultation on legislative steps for the PRIPs
initiative

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Summary

BEUC welcomes the consultation issued by the European Commission on the PRIPs initiative.

The PRIPs initiative is particularly important to retail investors. As it is now, financial products meeting the same kind of consumer expectations as regards savings or investment can be subject to very different legal regimes; whether it applies to rules regarding design of the product, supervision by a competent authority, pre-contractual information, conduct of business rules for intermediaries, rules to prevent conflicts of interest with the consumer or the tax system.

BEUC supports the goal of the PRIPs initiative to harmonise some PRIPs rules, and more specifically the pre-contractual disclosures, conduct of business rules, including prevention and information on conflicts of interest.

The PRIPs initiative is an important step in the right direction but leaves out some important issues. Our main demands and comments are the following:

- The principles developed in the PRIPs initiative should be applied to any form of savings or investment and should not be limited to 'packaged' investments;
- There are no valid reasons to exclude pensions or annuities from PRIPs. For most of the consumers, investments are made in the view of their retirement.
- By itself, the Key Investor Information Document (KIID) should enable consumers to compare investments and make an informed choice. The use of short, simple and understandable documents to inform consumers is very much in line with the findings of the study conducted for the Commission on retail investor behaviour;
- The standardization level of the KIID should be as high as possible;
- A synthetic risk indicator must become a major component and integral part of the KIID;
- The synthetic risk indicator, as it has been developed for UCITS, should be before to be used for PRIPs
- The KIID should include, besides the part prepared by the issuer, a complementary component developed by the intermediary;
- Risks / performance description should be based on so-called "Monte-Carlo" simulations.

General considerations

1. The importance of the PRIIPs initiative for the consumer

The investments products proposed to the retail investor are various: bank deposits, bonds or notes issued by a bank or a company, shares issued by a company, UCITS ¹ (with European passport), funds (without European passport), life insurances policies (with some guaranteed return or linked to the return of a fund), structured products (with capital guarantee/protection or not). A same fund can be distributed as UCITS, as national fund, or as unit-linked insurance. Structured product with the same intrinsic characteristics can be distributed as UCITS, national fund, note, deposit or life insurance.

A consumer who wants to make an investment has to choose between those products can not compare them. The reason is a lack of harmonization and the absence of short and understandable information about the products. Also, the conduct of business rules intermediaries and advisors who sell these products have to comply with vary according to the type of investment product. Finally, also the rules governing prevention and disclosure of conflict of interests vary according to the type of investment advised or sold.

As the costs and constraints are different, the industry chooses the best (most profitable) for her. It won't be the best for the consumer.

Consequently, legislative efforts to better protect or enhance the interests of consumers for certain investments are not adequate when financial service providers could continue to offer other products that remain less burdensome and more profitable.

BEUC supports the goal of the PRIIPs initiative aiming to harmonise some PRIIPs investment rules, and more specifically the pre-contractual disclosures, conduct of business rules, including prevention and information on conflicts of interest.

2. The national situations

Since the outbreak of the crisis, several countries have taken initiatives to establish national, simplified documents, including very simple indicators on the level of risk presented by different savings and investments products.

There was however no coordination between the national initiatives and most of the countries have taken any action in this area.

The Commission should however carefully consider the positive elements of these national initiatives, as required, by integrating them into the standard model of an information document.

3. The measures proposed by the Commission

The measures proposed in the consultation document (using the KIID for UCITS and the MiFID ² conduct of business rules as benchmark) tackle pre-contractual information and sales practices.

¹ Undertakings for Collective Investments in Transferable Securities.

² Market in Financial Instruments Directive

BEUC considers that there are other fields where the regulation's asymmetry is detrimental to the consumer and to the level playing field between UCITS and investment products that are perfectly substitutable to UCITS like unit-linked life insurance contracts.

The two main duties of the UCITS depositary, assets safe-keeping and oversight functions³, are one of the key elements for investor protection in the field of UCITS. That function should also be implemented in the field of unit-linked insurances to achieve a better investor protection and a better level playing field for UCITS and substitutable investment products.

Analysis of the questions asked by the Commission

2 Scope of the PRIPs Regime⁴

2.3 Proposed solutions⁵

A PRIIP 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 PRIIPs initiative focus on packaged investments? Please justify or explain your answer.
- Q. 2: Should a definition of PRIIPs 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.

³ See Consultation paper on the UCITS depositary function and on the UCITS managers remuneration, pages 11-11:

http://ec.europa.eu/internal_market/consultations/docs/2010/ucits/consultation_paper_en.pdf

⁴ From this point, we follow the titles as mentioned by the European Commission in the consultation document.

⁵ All framed texts are taken from the Commission's consultation document and do not contain BEUC comments.

Q 1-5

BEUC believes that the principles developed in the PRIPs initiative should apply to any form of savings or investment and should not be limited to 'packaged' investments.

The basic principles of the PRIPs initiative, namely an understandable, pre-contractual disclosure that would enable consumers to compare different investment products, as well as a certain generalization of conduct of business rules regarding the advice suitable to the consumer profile and the prevention and disclosure on conflicts of interest, are basic principles that should apply to any saving or investment.

Consumers who invest in deposits or bonds should not be a sub-category of investor or investors who would settle for less comprehensible non-standardized information, which would make comparisons more difficult. The consumer is to be protected against conflicts of interest of the intermediary, whether he has invested in *Packaged* products or not.

Should the 'packaged' criterion be maintained, it should not be based on the risk presented by the investment, but primarily on complexity, lack of transparency and uncertainty generated by the underlying assets or the conditions set for performance. The fact that the amount originally invested or part of the return is guaranteed or covered is not relevant. Risk is an essential element of the disclosure to the consumer to enable him to compare investments and to make his choice, but this is not the risk for determining whether an investment is packaged or not.

Some consider that if the uncertain part of the investment return is rather low, it should not be considered as a PRIP or it should be left to the Member State to decide if it is a PRIP or not. If the Commission intends to retain a threshold of return certainty to exclude investments from the scope of the PRIPs initiative, BEUC considers that the remaining uncertainty should be minimal compared with the global expected return. If the certainty threshold is low, there will be an important competition distortion due to the fact that some Member States are more interested to attract the industry than to protect consumers.

2.4 Clarifying the definition: Possible Exceptions

a) Deposits

It would appear necessary for structured deposits to be treated as PRIPs rather than deposits.

The Commission services seek therefore views on how such a demarcation might be achieved or the criteria that might be used; two possible definitions are proposed as a basis for feedback.

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.

Q 6-8

BEUC believes that all savings products and investment should be subject to the principles of the PRIPs initiative (see Q 1-5).

To not include structured deposits in the scope of the PRIPs initiative would create a significant loophole that would stimulate credit institutions to market structured products as structured deposits.

Q 7

BEUC believes that if the second definition should be accepted, this would create a significant loophole for structured products with capital guarantee.

If the structured deposits with a capital guarantee should be excluded from the definition of PRIPs, the lack of information and obligations to comply with when offering or advising this type of deposit would push the industry to use this format for structured investments whose capital is guaranteed.

Yet it is precisely a form of investment hardly transparent, including high fees - usually hidden in the structuring of the product - and often advertised with high yields that generally have very little chance of being reached. BEUC believes it is necessary to strengthen the quality of information and advice provided to the consumers who are offered such deposit or investment.

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

Q 9

For most the consumers, investments are made in the view to their pension. The pension objective is not a relevant criterion to consider if a saving or investment product should or not be considered as a PRIP.

BEUC believes that the investment products benefiting from tax or social incentives in connection with the establishment of a capital or an annuity supplementary pension should remain within the framework of the PRIPs initiative when the choice of the investment lies with the consumer. There is no reason to delay further the provision of clear information to compare the investment or to delay the prevention of conflicts of interest in this area.

Excluding the third pension pillar of the initiative would mean that PRIPs products, yet identical to pensions, are sometimes subject to pre-contractual information and sometimes not, depending on whether they are distributed under the third pillar or not. How to make the consumer accept such differences?

Q 10

BEUC sees no valid reason to exclude annuities under PRIPs.

The way the insurance company or financial institution carries out its benefits, once or several times as an annuity, is not a relevant criterion to apply or waive the basic rules of the PRIPs initiative. Consumers who have purchased a product with annuities are no less entitled to quality information and the prevention of conflicts of interest than those who have subscribed to a product that provides for the payment of a lump sum.

The annuity accumulation phase is the period where the policy holder (the annuitant) makes contributions to the account. Once this phase ends, the annuitant starts making withdrawals from his or her annuity account in the distribution phase. The 'accumulation value' of an annuity is the raw value of the account after interest is credited or after adding and subtracting the performance results of investment choices. The annuity paid by the insurance company can be deferred (a minimum return on investment is guaranteed) or variable (the paid amount is linked to the performance result of investments).

Whenever there is uncertainty - other than that resulting risk of death – regarding the amount of reserve accumulation or the amount of periodic annuity, there should be no question of excluding the annuity of PRIPs.

Q 12

The answer provided to question 10 is a fortiori valid for variable annuities for which the uncertainty of the paid amount and the link with the underlying assets is more important for fixed annuities.

3 Legislative approach to be taken in delivering the PRIPs regime

Questions

- Q. 15: Should direct sales of UCITS be covered by means of including the relevant rules within the UCITS framework?
- Q. 16: Do you have any comments on the identified pros and cons of this approach, and any evidence on the scale and nature of impacts (costs as well as benefits)?

Q 15 - 16

BEUC has no comments to make on this.

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.
- Q. 18: Should the KIID should 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.
- Q. 19: What measures do you think will be necessary to ensure KIID remain streamlined and focused solely on key information?

Q 17

BEUC supports the use of such short, simple and understandable documents to inform consumers. Using this type of document is very much in line with the findings of the study conducted for the Commission on retail investor behaviour⁶:



INITIAL RECOMMENDATIONS - INFORMATION

- *Don't rely on financial education as a silver bullet*
- *Financial literacy/education has relatively small impact*
- *Do simplify product information disclosure*
 - *Require/encourage presentation of a small number of key pieces of information*
 - *Clearly separated from extraneous information*
- *Do standardize product information disclosure*
 - *The same information for different products within a class*
 - *And, where possible, across product classes (e.g. regular savings vs. pension)*
- *Do standardize information disclosure format*
 - *So alignment of product information is straightforward*
- *And pay close attention to the central importance of advice...*

⁶ Consumer Decision-Making in Retail Investment Services. A Behavioural Economics Perspective; Nick Chater, University of Warwick; Roman Inderst, Goethe Universität Frankfurt; Steffen Huck, UCL.

Presentation for the Conference organized by the Commission on 22/11/2010, especially slide 19: http://ec.europa.eu/consumers/conferences/behavioural_economics2/docs/decision_technology_22_112010_en.pdf

Complete report: http://ec.europa.eu/consumers/strategy/docs/final_report_en.pdf

Conference program, presentations and video:

http://ec.europa.eu/consumers/conferences/behavioural_economics2/programme_en.htm

Q 18

By itself, the KIID should enable consumers to compare investments and make an informed choice. This is one of the basic principles of KIID for UCITS. BEUC strongly supports this principle without which the KIID loses its usefulness and mislead the consumer.

The KIID must be consistent with other available information (e.g. a prospectus) and to not mislead the consumer in relation to the contents of the prospectus and contract documents. The responsibility of the person who prepares the KIID must be committed on this point.

Q 19

We have no specific recommendation in response to this question.

b) Level of standardisation

Any new product disclosure instrument should apply a horizontal framework to all PRIPs through level 1 measure, 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.

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.

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?

Q 20 - 21

BEUC is in favour of a level of standardization of KIID that is as high as possible⁷. The various sections, their position in the document and how to describe the key elements listed on page 18 of the consultation document should be harmonised.

Standardization is a necessary condition for the comparability of different investments. Also, using as much as possible a single model will foster consumer's familiarity with the document and increase the chance of them using it.

Q 22

The financial crisis erupted more than two years ago. Some Member States did not wait for this consultation to take initiatives to better inform the consumer. Germany has developed a kind of KIID. Denmark is developing a simple indicator of risks linked to the presence or absence of risk to the invested capital and its performance. (The Danish indicator will be a colour code of green, orange or red – see below under Q25.)

BEUC believes that initiatives should be taken to establish a KIID, particularly as regards the synthetic indicator of risk, which can apply to as many forms of savings and investment.

To facilitate the reading of KIID and comparability of investment, to stimulate the consumer reflex to consult the KIID, using a standardised document is essential. Using differently structured documents or risk indicators for each different type of investment would bring confusion.

Q 24

The KIID should be controlled a priori by the competent supervisory authority.

The quality of information contained in KIID is critical for accurate consumer information and will allow consumers to make a good choice.

If KIID is not controlled a priori and if the responsibility of its issuer is limited, there is no guarantee of quality. It will be at the end of its investment, when the financial loss has happened, that the consumer will discover the financial loss and the misleading nature of the KIID. The consequences of bad choices will then be irreparable. Moreover, it is unrealistic to assume that consumers have the resources to take legal action against the financial institution, which requires the expertise of specialised lawyers.

Ex ante control is also needed to offer the financial industry a higher level of certainty as to the validity of KIID.

⁷ See answer to question 17 + footnote.

c) Content of the PRIPs KIIDs

General requirements sitting at level 1

KIID must:

- be "fair, clear and not misleading".
- be short – 2 pages where possible, exceptions to be outlined in detailed implementing measures;
- be written in plain language suited to the target retail investor;
- be presented in an appealing and consumer-friendly manner;
- focus on key information, as necessary for the average investor to make an informed decision on the PRIP in question;
- 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]
- be provided to retail clients using a durable medium that is appropriate to the context / manner of the proposed sale of the PRIP.

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 and 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.

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

Q 25

BEUC generally agrees with the principles proposed for the content of KIID.

However, BEUC would like to draw the attention of the Commission to some problems.

1. To maintain high comparability and standardisation of KIIDs, their content must be detailed at a sufficiently high level of legislation, which is not less than a Level 2 (L2) instrument. The report of the 3L3 Committees Task Force, as well as the statements heard at IMD Open Hearing on review showed that not all Committees - which in the

meantime became Authorities - have the same commitment to advancing the quality of consumer information and to put consumers in a position to more easily compare investment products with the same economic characteristics but issued in different packaging.

2. The synthetic risk indicator is a major component of KIID. BEUC considers it regrettable that the risk – an essential element of which consumer should be conscious about when deciding to invest – is linked to the reward aspect. This creates a false impression that the risk and the chances of higher return present a linear relationship for all investments, which is not always the case. On the other hand, combining risk information with the chances of return dilutes the perception of actual risk.
3. The **synthetic risk indicator** developed for UCITS should be adapted.
 - a) It has been developed for investments that involve a risk of loss of part of the capital. The first level of the used risk scale is related to a real risk of loss of (part) of the capital, although it is unlikely. But for the average man and woman in the street, the lowest level on a scale, it is normally the level where the risk is zero, as the beginning of the scale of a speedometer indicates the absence of movement.
 - b) Moreover, the consumer does not understand correctly the actual involvement of this scale: the first levels suggest that there is a risk of losing some of its capital, which is not correct. The consumer does not perceive that there is a (very) low risk of losing a significant portion of its capital, if not all. A consumer invested in a 3 years structured investment. Its risk category was 1 on a 0 – 6 scale. After three years the loss amounted to 58% of invested amount! It is therefore necessary in all cases to mention what is the maximum possible loss.
 - c) As mentioned above, Denmark is developing a traffic light indicator. The first level indicates that capital and return are safe, the second level indicates the expected positive return is uncertain but without risk to the capital, while the third level mentions a risk loss of a part (or all) of the capital. The risk scale developed for UCITS is suitable only for the third category of investments. The PRIPs initiative should not ruin such laudable efforts made by these Member States.

Q 26

1. The KIID as provided by the Commission does not contain all the elements necessary to compare PRIPs investments and make the right investment choices. The different types of PRIPs (unit-linked life assurances, bonds and notes, structured products of various types) are subject to different tax regimes. Same investment product can be wrapped differently and have different tax regimes: life insurance is generally taxed differently than mutual funds. Information on the tax system is essential to bring the consumer to make the right choice and should be disclosed.
2. In terms of life insurance, the information necessary to choose the investment may be broader than those provided by the PRIPs regime. This will for example be the case when part of the total premium is used to cover a complementary benefit (additional risk of death or disability).

Article 185 of the Solvency II Directive provides for more detailed information than the PRIIPs KIID regime. If some of this information is not necessary for a comparison between different types of PRIIPs, they are still very useful in understanding the proposed insurance contract. They should be disclosed when relevant.

d) Allocation of responsibilities for 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 PRIIP 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.
- 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?
- Q. 29: If intermediaries or distributors might be permitted to prepare the documents in some cases, how would these cases be defined?

Q 27 – 29

As stated above (Q 25), to make a correct choice, let alone the best choice, the consumer must have information that not only comes from the investment issuer, but also information related to the distributor (the exact amount of fees by investing through it) and to the country of residence of the investor (the tax). Choosing an investment based solely on a KIID prepared only by the issuer is justified only in the case of direct sales by the issuer. In other cases, it is necessary to have information that the distributor can provide.

Responsibility in developing the KIID should be shared: The issuer or wrapper is responsible for all aspects specific to the investment. The distributor, in turn, should specify the charges, his commission and taxes.

Specifically, the KIID should include, besides the party prepared by the issuer, a complementary component developed by the intermediary. In case of direct distribution by the issuer, this alone should have the responsibility to develop the entire KIID.

e) Labelling and enhanced transparency of PRIIPs 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?
- Q. 31: How might greater comparability and consistency in product labelling be addressed?

Q 30 - 31

The appearance of a socially responsible investment strongly influences consumers who are sensitive to these values.

BEUC considers that concepts like 'green' or 'ecological', 'ethics', 'socially responsible' to be used in a KIID should be defined by independent authorities. An issuer should not be authorized to use those labels unless the investment is certified by a third party.

One way to ensure a degree of transparency could be to develop a harmonized list of investments types. The issuer / manager of the PRIP should specify which investments subject to discussion s/he did not exclude from the investment strategy of the PRIP.

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

Q 32

BEUC considers that the KIID for PRIPs could be the template for pre-contractual information applied to all financial instruments.

Q 33

Article 185 of the Solvency II Directive, which requires the disclosure of pre-contractual information to the candidate subscriber, must be implemented in Member States legislation by 1 November 2012. Information to be disclosed under this Directive is more detailed than the key information provided by the KIID.

Most of the necessary information is already included in the key information PRIPs regime, but some should be added, particularly when complementary benefits (protecting life or disability) are added to the investment part of the life insurance.

A more detailed analysis, based on actual cases would seem useful.

The period in which article 185 shall be implemented allows adapting the provisions to make them consistent or compatible with the PRIPs initiative.

Q 34

BEUC is concerned that the arguments raised by the Commission to postpone the implementation of the KIID for PRIPs to UCITS are similarly to the ones chosen by the insurance industry (and supervisors) to postpone its implementation in the field of life insurance due to the implementation of Solvency II. A common date for the two areas, UCITS and life insurance, should be adopted.

Issuers of UCITS PRIPs should be allowed to use the KIID for PRIPs template when it will be implemented in Member States' legislation. Otherwise, some issuers would have to use different KIID templates depending on whether the PRIP is a UCITS or not.

4.4 Issues to be addressed by developing appropriate implementing measures

Risks

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?

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

Q 36-37

Any kind of risk description leaves the problem of uncertainty. Nevertheless, the consumer needs clear information regarding possible losses instead of abstract risk categories.

The principal drawback of the synthetic risk indicator is that it doesn't provide clear information on risk quantification for retail investors to base their investment decision on. For instance, risk class does not say anything about the possible risk to lose a certain amount of money, which is relevant information for the consumer. The risk class only indicates in an abstract way that the financial product with risk class 3 is more risky than the financial product with risk class 2 and 1 but less risky than a product with risk class 4 and 5.

A way to solve this drawback may be found in the so-called 'Monte-Carlo-simulations'. Disclosure could helpfully provide consumer with following indications:

- Chances to incur a loss (x %)
- Chances to get one's money back (y %)

- Chances to get a lower return than fixed income products (z %)
- Chances to get a higher return than fixed income products (w %)

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 PRIPs.

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

Questions

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

Q 40 – 41

As there is no certainty regarding the performance one could consider setting a performance description aside. If the commission insists on performance information, it is compulsory to find a harmonised standard for it. This harmonised standard should be based, especially regarding structured products, on a 'Monte-Carlo-simulation' (see answer to Q. 36-37).

Performance information should include costs. That means the performance has to be reduced by the costs.

Guarantees

Comparability between guarantees or capital protection for PRIPs 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 PRIPs. 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?
- Q. 43: What information should be provided to retail investors on the cost of guarantees?

Q 42 - 43

The description of guarantees and capital protection should be consistent among structured products (UCITS, non-UCITS funds, notes, unit-linked life insurances, etc.).

The cost of guarantee or protection should be disclosed.

END