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PER MAIL

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EUSIPA's position on the European Supervisory Authorities' Discussion Paper on Key Information Documents for Packaged Retail and Insurance-based Investment Products

Dear Sirs

EUSIPA would like to take the opportunity to comment on the above discussion paper (JC/DP/2014/02; hereinafter the **"Discussion Paper"**) on Key Information Documents for Packaged Retail and Insurance-based Investment Products (hereinafter **"PRIIPs"**) published by EBA, EIOPA and ESMA (hereinafter together the **"ESAs"**).

EUSIPA stands for European Structured Investment Products Association and represents the issuers of note-based and listed Structured Investment Products to retail customers. Our members are national industry associations from Austria, France, Germany, Italy, Sweden, Switzerland, The Netherlands and, as associated member, the relevant trade body (UK SPA) from the UK. Members of these national associations are major banking institutions. The product landscape in the EU's main markets Germany and Switzerland alone provides for a combined volume (called open interest) of around 247b Euro (Q1 2013).

We welcome the opportunity to comment at a very early stage of the process establishing Regulatory Technical Standards (hereinafter **"RTS"**) on key issues to be considered when drafting the RTS. We are convinced of the importance for the ESAs to work closely together with the market participants and share views on how to set technical standards which increase transparency of PRIIPs for retail investors in an adequate manner and at the same time keeping the administrative and operational burden of the PRIIPs manufacturers at a sensible level in order to ensure that the number and variety of PRIIPs available to retail investors remains as high as possible. ESAs should avoid setting RTS at levels which only a very limited numbers of competitors can fulfill. RTS should also not deprive retail investors from investing in PRIIPs of non-EU manufacturers.

We were very pleased to read in the Discussion Paper that the ESAs envisage to follow the Discussion Paper with a separate technical discussion paper this spring on more methodologically complex aspects of the RTS. It is based on this expectation that we

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limit our comments on methodologies for calculation of the summary cost indicator, for presenting performance scenarios and for cost transparency to very general aspects. We are willing to further assist the ESAs in defining the right methodologies for these key matters also by way of working meetings with representatives of the ESAs. Industry experts from our member associations are at your disposal with all their know-how and experience.

1. General Remarks

We think it is important for the RTS to guarantee a level playing field for all the PRIIPs. Accordingly, we are convinced that when elaborating the methodologies to be used to provide key information to retail investors, such as risk indicators or disclosure of costs, ESAs should endeavour to set standards which can be applied to all types of PRIIPs and lead to results which make the relevant key information comparable.

Moreover, we strongly believe that the methodologies used and the standards set for disclosing the key information should not discriminate PRIIPs against other financial investments. For instance, we believe that it would be discriminating for the risk indicator to create the impression that investments in all or certain types of PRIIPs are particularly risky as compared to other investments in financial instruments. This would wrongly neglect the fact that, on the one hand, PRIIPs and even PRIIPs of the same type may have very different risks associated to them and, on the other hand, that even volatile PRIIPs have a undisputable economic value and, when used correctly, may reduce the overall exposure to market risk of a retail investor from a portfolio perspective.

As to the scope of the Regulation (EU) No 1286/2014 of the European Parliament and of the Council of 26 November 2014 on key information documents for packaged retail and insurance based investment products (hereinafter the “**PRIIPs Regulation**”) outlined in section 1.6.2 of the Discussion Paper, we are of the view that structured securities which are paying a pure interest rate based return are not within the scope of the regulation, even if the interest rate variable and includes a minimum or maximum interest rate (cap or floor).

2. Answers to the specific questions in the Discussion Paper

In this section we will comment on the specific questions asked in the Discussion Paper. We will, thereby, focus on those questions and answers which are of relevance for the industry represented by EUSIPA, i.e. the structured products industry.

2.1 Ad Section 1 Introduction

2.1.1 Ad Section 1.7 Interaction with other EU legislation

Question 1:

Do you have any views on how draft RTS for the KID might be integrated in practice with disclosure pursuant to other provisions?

It is of utmost importance that the PRIIPs Regulation is considered as one of a number of pieces of regulations affecting the advice about and selling of PRIIPs to retail investors. A clear alignment and consistency with information requirements in other pieces of legislation should be ensured, in order to avoid unnecessary operational and administrative costs and excess of documentation for retail investors. When drafting the RTS, the ESAs should consider other European regulations, such as the Prospectus Directive, MiFID II, the UCITS Directive, the AIFMD and the Distance Marketing Directive for Financial Services.

In particular with respect to securities such as structured products, a large number of European regulations apply, which aim at increasing transparency for investors. We strongly agree with the view expressed in the Discussion Paper that without a consistent approach, one risks to create legal uncertainty and increase confusion for retail investors. In particular the interaction with the Prospectus Directive and with MiFID II should be carefully considered.

As far as the Prospectus Directive is concerned, it is important that the KID, as the name of the document already implies, focuses on key information relevant for the retail investors to understand the main characteristics (in particular the main benefits and risks) of a PRIIP. It should be clearly stated that the retail investors will need to read the full offering documents to understand all the features of a specific PRIIP. References in the KID to the offering documents should be explicitly permitted. This is particularly true for the detailed terms and conditions of a specific PRIIP, but also for more general risk factors, in particular such risks, which are imminent to any investments in a financial product, be it a plain vanilla bond, share or life insurance product.

With respect to the interaction with MiFID II, we believe that the information on consumer types required to be included in the KID should be consistent with the target market concept used in MiFID II. We also agree with ESAs that investment firms should be able to rely on information on costs of the relevant financial instrument as disclosed in the prospectus and the UCITS key investors information documents (KIID) or the KID. Since MiFID II allows financial intermediaries to rely on cost disclosure in the KID, it is important to ensure coordination between the pieces of regulations in this point.

2.2 Ad Section 3 What are the risks and what could I get in turn?

2.2.1 Ad Section 3.3 Definition of risk and reward

Question 2:

Do you agree with the description of the consumer's perspective on risk expressed in the Key Questions?

Although we would generally agree with the statement that it is essential for an investor, be it a retail investor or a sophisticated professional investor, to know, on the one hand, whether he or she can lose part or all of its invested money or even more and what the likelihood of a loss is, and on the other hand, how much he or she can win and how likely he or she is to win, we believe that the question of whether risk and return are balanced contains a huge degree of individual assessment and a general, abstract answer cannot be given.

Concerning the estimation of likelihoods please see answer to question 6.

Question 3:

Do you agree that market, credit and liquidity risk are the main risks for PRIIPs? Do you agree with the definitions the ESAs propose for these?

We generally agree that market, credit and liquidity risk are the main risks for PRIIPs. The definitions for these three types of risks set out in the Discussion Paper are sensible.

We think it is essential to give manufacturers the flexibility to identify and disclose additional risks and/or refer to the specific risks within the three main categories, if this is considered necessary for retail investors to understand the specific risks of an investment in a PRIIP. The PRIIPs Regulation explicitly provides for a narrative explanation of the risks which are materially relevant to the PRIIP and which are not adequately captured by the summary risk indicator.

Furthermore, manufacturers should be permitted to add a reference to the offering documentation (including to the so-called summary of a Prospectus Directive compliant prospectus), where the retail investor can find a more comprehensive disclosure of the risks of a specific PRIIP.

Although we appreciate that inflation has an impact on the value of the PRIIPs, we believe that this impact is relevant for any cash investment. For structured products linked to an asset other than cash, it would be very difficult to assess what the impact of inflation would be. It would be very difficult for an investor to appreciate the impact of inflation and, thus, we believe that inflation should not be considered. In addition, inflation should be reflected in any sources of market price risk e.g. interest rate or stock market risk.

2.2.2 Ad Section 3.4 Measuring risks

Question 4:

Do you have a view on the most appropriate measure(s) or combinations of these to be used to evaluate each type of risk? Do you consider some risk measures not appropriate in the PRIIPs context? Why? Please take into account access to data.

We are of the view that all PRIIPs can be priced and, thus, that it is possible to derive a quantitative risk measure based on financial data accessible to all manufacturers, supervisory authorities and auditors. There is no doubt that quantitative measures are more sophisticated. They are superior as they can be applied across all different types of PRIIPs and permit a comparison of the different types of PRIIPs, which is free from any discriminatory subjective judgments and assessments. Quantitative measures can be applied systemically.

Concerning quantitative measures the two methodologies that stand out are: VaR and volatility.

Whatever the retained approach, it is of utmost importance to use a methodology which (a) is applicable in an unbiased manner to any type of PRIIP, (b) covers the main investment risks (market, credit and liquidity, the terms to maturity and other product characteristics such as strikes, barriers and guarantees), (c) is suitable for being applied also for whole investment portfolios, as this will facilitate suitability tests as well as target markets compliance under MiFID II, (d) enables an easy and cost-effective implementation by the industry, and (e) is based – if available – on established transparent European regulatory standards for other financial industries. In addition, the results of the measurements must be capable of being presented in a way which is easily understandable for the average retail investor.

One needs to consider, however, that quantitative measures may potentially result in a higher volatility of the risk indicator for a specific PRIIP. Thus, it is important to present risk classes with an adequate range, , for each class, in order to keep the need for up-dates of the KID to a sensible number. We consider fundamental and real changes of risk indicators as valuable pieces of information for investors, however, erratic changes of the indicators should be avoided.

If the summary risk indicator was to be based on qualitative measurements – which would have the advantage of the indicator being static throughout the life time of a PRIIP, it must be made sure that no PRIIP is discriminated. For instance, it would be incorrect to assign all PRIIPS which expose investors to a downside market risk and to a credit risk to the highest risk class. We are very skeptical that a qualitative

measurement can be established, that fulfills all the criteria mentioned above in an adequate way. Should qualitative measures nonetheless be applied, the presentation should be in a narrative manner only (which, however, we do not believe to be consistent with the PRIIPs Regulation) and one should avoid just aggregating the number of risks and assign those PRIIPs with the highest number to a high risk class.

2.2.3 Ad 3.5 Aggregation of risk

Question 5:

How do you think market, credit and liquidity risk could be integrated? If you believe they cannot be integrated, what should be shown on each of the KID?

EUSIPA members have expressed contrasted views concerning the opportunity to aggregate risks.

- Some members are of the view that market, credit and liquidity risk can be integrated in one summary risk indicator, if based on a quantitative measurement. A single aggregated risk indicator is easier to understand for any retail investors as it might also show the weight a risk component (market, credit and liquidity) adds to total risk. Hence, it facilitates the comparison between different products.
- Other members consider that merging risks may create some confusion among investors and may lead to assume risks that we do not understand. If a choice were to be made for the sake of simplicity, these members would use the indicatory for information relating to market risk and use a narrative for the credit and liquidity risks.

In any case, it is important to permit manufacturers to add in a narrative description specific risk considerations which may be of importance for all or certain of the investors, e.g. a particular exposure to currencies or a particularly illiquid product.

2.2.4 Ad 3.6 Performance scenarios

Question 6:

Do you think that performance scenarios should include or be based on probabilistic modelling, or instead show possible outcomes relevant for the payouts feasible under the PRIIP but without any implications as to their likelihood?

The most relevant aspect of performance scenarios is to illustrate potential outcomes of the investment. As the estimation of real

probabilities of these outcomes is difficult, we are of the view that performance scenarios should not be accompanied by probabilities.

Question 7:

How would you ensure a consistent approach across both firms and products were a modelling approach to be adopted?

An approach should be defined as binding for all the PRIIPs governed by the PRIIPs Regulation. It is important that all manufacturers apply a consistent approach to avoid regulatory / product arbitrage.

If the scenarios were to be based on probabilistic modelling, which we would not recommend, the methodology should be aligned with the one used for the summary risk indicator to permit a consistent view on risk and reward.

Question 8:

What time frames do you think would be appropriate for the performance scenarios?

For PRIIPs with a fixed term to maturity, we believe that the performance scenarios should be based on the relevant term of the PRIIPs. However, it goes without saying that the longer the time frame is, the less meaningful the performance scenarios are – in particular if based on probabilistic modellings.

Question 9:

Do you think that performance scenarios should include absolute figures, monetary amounts or percentages or a combination of these?

We believe that, where possible, the scenarios should be presented for one unit of each PRIIP taking into account the issue price of the PRIIP. For PRIIPs which are bilateral agreements between manufacturer and retail investor, the scenarios should be presented for the amount invested by the relevant retail investors.

Whether the performance scenarios are then based on absolute figures, monetary amount or percentages will need to be established based on the results of consumer testing. We would assume that showing the effects as percentages is more sensible than displaying monetary amounts.

Question 10:

Are you aware of any practical issues that might arise with performance scenarios presented net of costs?

There are 2 types of costs one can think about when referring to “net of costs” : implicit costs (which are within the remit of the manufacturer) and external costs (such as additional entry, holding/custody, exit , brokerage costs...) which differ from retail investor to retail investor, depending on things like distributor, deposit bank, type of entry and exit transaction, holding period etc.

Some of our member consider that performance scenarios should be presented net of implicit costs (i.e. a product which contractual terms offer capital protection and 80% with 1% implicit cost should be presented as such, i.e. net of the 1% implicit cost).

Presenting performance scenarios net of external costs would require that a material part of the costs deducted from the performance. Some of the EUSIPA members consider that, since external costs (i) do not affect the economic pay-out of the product (typically direct costs paid directly by the retail client to third parties such as custody costs, brokerage commissions) and (ii) are not under the control of the manufacturer, they should not be part of the performance scenarios.

Question 11:

Do you have any preferences in terms of the number or range of scenarios presented? Please explain.

For a large universe of products the basic numbers of scenarios is three (worst, normal, best). However, for PRIIPs with specific terms, such as barriers or protection levels, caps and/or floors, it might be sensible to present a higher number of scenarios than for more products with less features. Generally, presenting a negative, a neutral and a positive scenario should be sufficient.

2.2.5 Ad 3.7 Options for presentation

Question 12:

Do you have any views, positive or negative, on the different examples for presentation of a summary risk indicator? Please outline advantages and disadvantages, and provide any other examples that you are aware of that you think would be useful.

As pointed out above, it is essential that irrespective of the abstract presentation manufacturers have the right to add narrative explanations to describe specific risk aspects of a PRIIP which may not be adequately reflected in the summary risk indicator.

We agree with the view that a risk information that is exclusively narrative, is inconsistent with the PRIIPs Regulation, which explicitly requires a separate summary risk indicator. Such summary risk indicator

should consist of a single visual element for risk. We share the view that multiple elements are too complex for retail investors and reduce engagement and, in addition, we believe they would be inconsistent with PRIIPs Regulation which requires one summary risk indicator.

We believe that the visual element should be as easy to understand as possible. Taking into account the limited space available on a KID, we would prefer a numerical scale showing 5 to 7 risk classes and assigning the PRIIP to one of the categories. We would not propose to use any additional graphical elements or colors, as this might give misleading impressions.

We recommend that the visual element for the presentation of risks (risk indicator) should be comparable to the visual illustration of costs (cost indicator) or other indicators if required.

Question 13:

Do you have any views, positive or negative, on the different examples for presentation of performance scenarios? Please outline advantages and disadvantages, and provide any other examples that you are aware of that you think would be useful.

We strongly support the presentation of the performance scenarios in table form, leaving the choice of the number of scenarios to the discretion of the manufacturers (see answer to question 11), explaining the effects of a specific change in the price or value of the underlying to the value of the PRIIPs. Such a table is easy to understand for a retail investor, although it is narrative only. Further, it assists retail investors in better understanding the features of a PRIIP.

Question 14:

Do you have any views on possible combinations of a summary risk indicator with performance scenarios?

Performance scenarios should be presented in a table, rather than in visual performance scenarios. The descriptions of the scenarios in a table will help investors to better understand how a PRIIP works.

We consider that risk and performance presentation should be distinct from the risk indicator section because the risk indicator and the performance scenarios serve different goals. The purpose of performance scenarios is to explain how the product works in different market conditions, while the risk indicator indicates a level of risk.

EUSIPA therefore recommends not to visually combine the risk indicator and the performance scenario. Yet, EUSIPA appreciates that consumer testing should shed light on how effective the combination of a visual risk indicator and narrative performance scenarios is in practice.

2.3 Ad 4 What are the costs

2.3.1 Ad 4.3 Key Questions

Question 15:

Do you agree with the description of the consumer's perspective on costs expressed in the Key Questions?

Generally speaking, the Key Questions accurately express an investor's perspective on costs. We are of the view, however, that a short document produced by the manufacturer of a PRIIP will not be able to provide answers to all the Key Questions or will result in a too great focus on the cost aspect.

We believe that any attempt to answer all the Key Questions in the KID will result in a confusing simplification of information, which may be misleading for retail investors. In particular, as some of the information are not available to the manufacturer and depend on the whereabouts of the single retail investor.

We do not think it is appropriate and feasible to include the costs for other PRIIPs with a similar economic rationale in the KID for a specific PRIIP. The retail investor (or its advisor) can easily compare the costs by reviewing different KIDs for different products.

An important aspect should be added in the KID: typically costs, paid from the investor to the issuer or distributor, are a reward for a service (e.g. structuring a product, fund or life insurance or investment advice). Investors should understand that it is impossible to buy a product without costs. The KID should enable investors to understand these cost-reward relationships.

2.3.2 Ad 4.4 Identifying, quantifying and measuring costs

Question 16:

What are the main challenges you see in achieving a level playing field in cost disclosures, and how would you address them.

The PRIIPs Regulation focuses on comparability of PRIIPs. With respect to costs this would mean that a methodology should be defined to ensure that the cost figures disclosed in the KID are comparable across the different types of products. In addition, we are of the view that PRIIPs should not be discriminated from other investment instruments. Finding

the right methodology for a comparable cost figure across all types of PRIIPS is a huge challenge. We do not believe that it is possible to answer this question in these commentary remarks to the Discussion Paper. The answer should be found in discussions with and among experts from the various industries. Experts from our member associations are at your very disposal with all their know-how and experience contribute to this process. Our industry is very determined to find a common approach on how to increase transparency on the cost side for investors in PRIIPs.

Question 17:

Do you agree with the outline of the main features of the cost structures for insurance-based investment products, structured products, CfDs and derivatives? Please describe any other costs or charges that should be included.

See answer to Question 16 for structured products with respect to the embedded costs. We believe that the other costs mentioned on page 57 of the Discussion Paper should only be disclosed if not embedded in the issue price of a structured product.

The same principles should apply to derivatives and CfDs.

Question 18:

Do you have any views on how implicit costs, for instance costs embedded within the price of a structured product, might be best estimated or calculated?

See answer to Question 16.

Question 19:

Do you agree with the costs and charges to be disclosed to investors as listed in table 12? If not, please state your reasons, including describing any other cost or charges that should be included and the method of calculation.

Costs should be considered to the extent they have an impact on the promised performance of a PRIIP.

EUSIPA believes that retail investors' primary concern is the total amount of fees they may be charged, and their impact on performance, rather than the detailed fee structure of the product. We would hence assume that the cost element listing in table 12 is not meant to be part of the KID in this (breakdown/single figures) format. ...

Also, if the promise is to receive the net asset value of an asset, all costs having an impact on the net asset value of the relevant asset, should be disclosed (including portfolio transaction costs, performance fees etc.). For structured products with a predefined return, see answer to Question 16. In this sense, we agree with the list of costs in table 12.

However, this table also lists items that are not costs but pricing parameters (dividends) or production costs that are not charged to clients as such (portfolio management techniques, costs embedded in pricing parameters) and are embedded in actual costs charged to clients. Several of the items proposed in the table are in our view not relevant and would result in providing details difficult to individualize and too complex to use in the KID.

Question 20:

Do you agree that RIY or similar calculation methods might be used for preparing “total aggregate cost” figures?

The RIY is more a method of presenting the costs and their effect on performance, rather than a methodology for calculating the costs. In this sense and as pointed out in our answer 16, the main challenge will be to agree on a standard methodology across all types of PRIIPs on the cost parameters to be included in the calculation of the aggregated cost figure, for such a cost figure to be consistent across all PRIIPs. Whether, once the right methodology is agreed, the costs are presented by disclosing the value of PRIIP, a total expense ratio or the RIY seems less of a challenge.

Also, as mentioned in our reply to question 15, it is important to note that, despite their costs, the services provided for the structuring of a product are a direct contribution to its final intrinsic value.

In this respect, despite its academic value, the RIY approach may, if taken literally with no additional comment, lead to the wrong perception that the value of a structured product is a mere addition of its two basic components (i.e. its bond and derivative components). This perception fails to account for the dynamic monitoring of the derivative component that is essential in a structured product and whose value is embedded in the acquisition price.

Question 21:

Are you aware of any other calculation methodologies for costs that should be considered by the ESAs?

No.

Question 22:

Do you agree that implicit or explicit growth rates should be assumed for the purpose of estimating “total aggregated costs”? How might these be set, and should these assumptions be adjusted so as to be consistent with information included in the performance scenarios?

Assuming growth rates for PRIIPs and their underlying instruments respectively, could lead to a biased presentation of costs due to the huge impact of the growth rates on the PRIIP’s return.

Question 23:

How do you think implicit portfolio transaction costs should be taken into account, bearing in mind also possible methods for assessing implicit costs for structured products?

We refer to our answer to question 19.

Question 24:

Do you have any views on possible assumptions that should be made, and how these might be calibrated or set?

If applicable, consistent modelling guidelines and assumptions are mandatory to ensure level-playing field for all PRIIPs. Consistency is important not only for all types of PRIIPs but also for all manufacturers. Thereby, the definition of appropriate holding periods is one of the main challenges. We believe that for cost calculations the holding period should equal the maturity of the product or if not available the proposed holding period (e.g. for open-ended investment funds). Expected total costs – based on historic values - should be related to this holding period and for comparison reasons should be expressed in annual terms.

2.3.4 Ad 4.5 Presentation of cost disclosure in the KID

Question 25:

What do you think are the key challenges in standardising the format of cost information across different PRIIPs, e.g. funds, derivatives, life insurance contracts?

The main challenges are the different characteristics of each PRIIP especially the definition of appropriate holding period for spreading the costs over the holding period.

Question 26:

Do you have a marked preference or any objection for any of the presentational examples? If so, why? Please provide any alternative examples which you believe could be useful.

Provided a sensible methodology is found to clearly define and calculate the costs to be disclosed for all PRIIPs in a standardised manner, we believe that a simple presentation as in Option 2 on page 66 of the Discussion Paper would be appropriate. More complex presentations as in the examples 4 ss. would be very difficult to read and understand for retail investors.

Question 27:

In terms of a possible breakdown of costs, are you aware of cost structures for which a split between entry or exit costs, ongoing costs, and costs only paid in specific situations or under specific conditions, would not work?

We are not aware of any such impediment. However, as pointed out in our answer to Question 26, we believe that any such split would make it very difficult for a retail investor to understand the impact of costs.

Question 28:

How do you think contingent costs should be addressed when showing total aggregated costs?

These costs could be disclosed on a narrative basis.

Question 29:

How do you think should cumulative costs be shown?

See our answer to Question 26.

2.4 Ad 5 Other Sections of the KID

2.4.1 Ad 5.2 Identity – Article 8(3)(a)

Question 30:

Do you have any views on the identity information that should be included?

Any identity information should be kept as brief and simple as possible. We agree that a link to the specific “contact and further information” page of the website of the manufacturer would be a sensible way and would presumably work for all different types of PRIIPs.

The ISIN reference is certainly to be considered as a sensible product identifier for structured products or other PRIIPs issued as securities.

2.4.2 Ad 5.3 Comprehension Alert

Question 31:

Do you consider that the criteria set out in recital 18 are sufficiently clear or would you see some merit in ESAs clarifying them further?

We do not believe there are any merits in clarifying the second and third criteria set out in recital 18 any further.

It is important, that there is a fair handling of different product types (level playing field). Hence the alert(s) should be applied to all equivalent pay offs independent of the product type (look through principle).

2.4.3 Ad 5.4 What is this product?

Question 32:

Do you agree that principles on how a PRIIP might be assigned a “type” will be needed, and do you have any views on how these might be set?

We agree that principles will need to be elaborated to reduce the risk of potential confusion amongst retail investors comparing different KIDs. The sensible starting point is certainly the legal form of the contract or instrument.

Within the relevant legal type of instruments, further classifications according to types of PRIIPs (mainly based on the product features) are sensible and the ESAs should use the already existing classifications as a starting point, in particular, with respect to structured products, the classification developed by our association.

Question 33:

Are you aware of classifications other than by legal type that you think should be considered?

We believe that a classification based on the product features is an effective way to increase comparability of PRIIPs for retail investors. We refer to our answer to Question 32.

Question 34:

Do you agree that general principles and as necessary prescribed statements might be needed for completing this section of the KID?

We agree with the ESAs that general principles and, as necessary, prescribed statements are helpful to create a level playing field between different PRIIPs and distribution channels. These principles and

statements should aim at making it easier for retail investors to compare different products and to understand their features.

They should, however, be kept to a minimum and leave to manufacturers the flexibility needed to describe a specific PRIIP and its peculiar product features as correctly as possible. Both the facts that (a) PRIIPs differ considerably for one national market to another and (b) the innovation power of the industry to develop suitable and appropriate PRIIPS should not be restricted by formalistic content requirements, demand that manufacturers are granted discretion in completing the relevant section of the KID.

When setting general principles, ESAs should keep in mind, that the KID only contains the key information and that investors should be referred to the full offering document or other contractual document to get a full understanding of the relevant product and its features.

Question 35:

Are you aware of other measures that might be taken to improve the quality of the section from the perspective of the retail investor.

The manufacturer should – always keeping in mind that a KID is a short, easy to understand document – have the right to include additional information on the PRIIP, to help retail investors to better understand the relevant features of the specific PRIIP.

Question 36:

Do you have any views on the information PRIIPs manufacturer should provide on consumer types?

We believe that manufacturers should have a high degree of autonomy in describing the type of retail investors to whom the PRIIP is intended to be marketed. The examples outlined in the Discussion Paper are sensible. However, we do not think it necessary for the draft RTS to outline principles for what should and should not be included in this section of the KID.

We agree that it is important to stress that information included in the KID should be consistent with the PRIIP manufacturer's identified target market for the PRIIP dealt also with MiFID II level two work.

Question 38:

Are you aware of PRIIPs where the term may not be readily described, or where there are other issues.

No.

2.4.4 Ad 5.5 What happens if [the name of the PRIIP manufacturer] is unable to pay out?

Question 39:

Are you aware of specific challenges arising for specific PRIIPs in completing this section?

No.

2.4.5 Ad 5.6 How long should I hold it and can I take money out early?

Question 40:

Are you aware of specific challenges arising for specific PRIIPs in completing this section?

Information on how long a retail investor should hold the PRIIP seems only sensible with respect to PRIIPs that where a minimum holding period is required for tax or other reasons or where contractual penalties are applied in case of redemption before a certain time. For structured products the maturity should be used as a natural holding period.

2.4.6 Ad 5.7 How can I complain?

Question 41:

Are you aware of specific challenges arising for specific PRIIPs in completing this section?

No.

2.4.6 Ad 5.8 Other relevant information

Question 42:

Do you agree that this section should link to a webpage of the manufacturer?

Yes.

2.5 Ad 7 Review, Revision and Republication

2.5.1 Ad 7.2 Discussion

Question 49:

Do you agree with the measures outlined for periodic review, revision and republication of the KID where “material” changes are found?

We share the view that the KII Regulation can serve as a starting point in dealing with reviews, revisions or republications of KID, however, significant changes would be necessary to address the features of PRIIPs that are different from UCITS. The basic principle adopted for PRIIPs should be that manufacturers should (a) only be obliged to up-date the KID to reflect changes likely to significantly impact investment decisions relating to primary market sales and (b) should have the discretion to up-date the KID if deemed necessary by the manufacturer to inform retail investors.

Question 50:

Where a PRIIP is being sold or traded on a secondary market, do you foresee particular challenges in keeping the KID up-to-date?

We are of the firm view that the manufacturer should only be obliged to review and revise the KID as long as it actively offers the PRIIP in the primary market. Where a PRIIP is being sold or traded on a secondary market, the manufacturers should have the right, but not the obligation, to keep the KID up-to-date.

Question 52:

Are there circumstances where an active communication model should be provided?

In our view there are no such circumstances. It would constitute a disproportionate administrative burden for manufacturers and distributors to alert retail investors about the new KID or even send it to them. A publication of the new KID on the PRIIP manufacturer's website would be sufficient.

2.6 Ad 8 Timing of delivery

2.6.1 Ad 8.2 Discussion

Question 53:

Do you agree that Recital 83 of the MiFID II might be used as a model for technical standards on the timing of the delivery of the KID?

It is important to ensure consistency with MiFID II on timing of delivery of the KID. Therefore, Recital 83 should be used as model.

Question 54:

Are you aware of any other criteria or details that might be taken into account?

No.

2.7 Ad 9 General aspects of the KID

2.7.1 Ad 9.2 Use of templates to establish consistent “look and feel” or visual style

Question 55:

Do you think that the ESAs should aim to develop one or more overall templates for the KID?

We agree that the development of one or more overall templates for KID by the ESAs might in general be helpful to create a level playing field between different PRIIPs and distribution channels.

However, we think that it is an extremely difficult task to come up with sensible templates which can be applied for all PRIIPs and, in particular, for new or innovative structures. Accordingly, in order not to jeopardize product innovation, it seems more sensible if the ESAs limit themselves to provide guidance on the general principles and some key statements, rather than to provide templates. This should ensure that manufacturers keep a certain degree of discretion and flexibility to cater for the peculiarities of the specific products and the specific markets and target clients.

Should this be seen as useful, we would certainly be delighted to deliver further technical reasoning on any of above mentioned items. Please do not hesitate to contact us in that case.

Sincerely,

Reinhard Bellet
President
EUSIPA

Thomas Wulf
Secretary General
EUSIPA