EUROPEAN STRUCTURED INVESTMENT PRODUCTS ASSOCIATION

To:

Mr Steven Maijoor
Chairman, European Securities and Markets Authority

Mr Gabriel Bernardino
Chairman, European Insurance and Occupational Pensions Authority

Copy:
Mr Olivier Guersent, Director General, European Commission
Mr Sven Gentner, Head of Unit, European Commission
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Implementation of EU PRIIPs regulation | inadequate calculation results

Dear Mr Maijoor, dear Mr Bernardino,

In our capacity as representatives of EUSIPA, the European roof association uniting issuers of structured products, we would like to draw your urgent attention to severe problems of the industry in complying with some of the requirements for the Key Information Documents (KIDs). These relate to the methods prescribed for the calculation of cost, performance scenarios and the Synthetic Risk Indicator (SRI), all of which form an integral part of the KID's content.

The banks represented by EUSIPA and its member associations have, in the absence of regulatory guidance, devised different strategies to ensure compliance with at least the *ratio legis* of the PRIIPs implementation rules, while at the same time avoiding to establish misleading information for investors to the extent practically possible.
In order to create at the same time both legal certainty and meaningful information for investors, we would however urgently ask regulators and the EU Commission to review the relevant rules and applicable methodologies and to provide (updated) regulatory guidance on this basis.

To illustrate issues on a more technical level, the entire product area of leverage products faces a complete lack of clarity as for how to determine an appropriate recommended holding period for their products based on the relevant provisions.

Together with the prescribed determination methods for the performance scenarios, this leads to partly abnormal figures, and, as regards the prescribed annualisation approach, even to an objective impossibility to comply with all elements of the methodological prescriptions at the same time.

In addition to before problem there are a number of other examples where the prescribed methodologies result in misleading cost, performance scenario-related or risk indicator information.

Whilst in these cases the banks represented by EUSIPA and its member associations do not see any room for adapting the relevant methodological rules so to minimise the risk of misleading investors, a substantial part of the industry has taken the view that investors at least have to be informed about the methodological problems, to avoid reliance on the results of these computations for their investment decisions.

Accordingly, the following ways of informing investors are currently discussed within the industry for initial implementation of the PRIIPs requirements:

- Additional textual information in the PRIIPs-KID,
- Explanatory note/document added to the PRIIPs-KID,
- Modification and/or selective omission of certain elements of the information provided visually, e.g. with regard to (parts of) the displayed performance scenarios (see issue 1 below).

Hereunder we set out two single problematic cases that have been detected by the industry in the course of implementing the methodological requirements under PRIIPs.

1) RETURNS IN EXCESS OF ONE THOUSAND PERCENT OR EXCESSIVE LOSSES

Products with very short recommended holding periods, in particular open-end products where the recommended holding period is always one day, often show positive scenarios with returns in excess of one million percent. These leveraged products react very sensitively to movements in the underlying. Due to the recommended holding period of one day, the scenarios are calculated based on a single day investment. When the figures are being annualized, the scenarios compound to 365 times the actual one day performance. Furthermore, as costs which are only paid once are re-applied every day for 365 days, total costs are strongly driven up. The extreme values shown in the KID will thus confuse investors in their investment decision. They are suggesting potential gains which are not realistic and imply that investors can lose more than the amount invested (which is not a feature of these products).

2) DISCLOSURE OF ZERO COSTS FOR PRODUCTS WHOSE MODERATE PERFORMANCE SCENARIO CORRESPONDS TO A TOTAL LOSS

Since the Reduction-in-Yield shown in the KID is calculated as a difference between 2 internal rates of return and based on the assumption that the moderate performance scenario realises, products where the moderate scenario has a significantly negative return or even a total loss of capital, show a Reduction-in-Yield that would suggest no or very low costs. This flaw could easily be addressed by changing the relevant RTS items, eg by allowing for a calculation of a Total Expense Ratio expressed as the annualized amount of entry cost and adding the annual on-going costs.

As we are keen to avoid investors taking a decision on the basis of information which obviously is false, in the way that it is not truly indicative of the real performance likelihood and costs, we would like to raise the attention of the European regulatory authorities and also the EU Commission with regard to these issues.

Being fully aware of costs and time constraint in the implementation of the EU PRIIPs regulation we nonetheless think **it is imperative that above mentioned issues are being addressed as soon as possible not only by way of an informative communication of their existence to retails investors but actually on a fundamental basis, including an adaptation of relevant Regulatory Technical Standards**.

We hope you find these considerations useful and would encourage you to get back to us for more background, including sample calculations so to discuss the best way forward,

Yours sincerely,

Heike Arbter
Chairwoman

Thomas Wulf
Secretary General

Nikolaus D. Neundörfer
Chairman, Legal Committee

About EUSIPA

EUSIPA is a Brussels-based industry body that was founded in 2009. It bundles the issuers of structured investment products in main European markets, amongst them all major banking groups active in the Eurozone, UK and Switzerland. EUSIPA's members are the national issuer associations of Austria (ZFA), Belgium (BELSIPA), France (AFPDB), Germany (DDV), Italy (ACEPI), Sweden (SETIPA), Switzerland (SVSP), The Netherlands (NEDSIPA) and the UK (UK SPA).

At the end of the September of 2017 the markets in structured products as covered by EUSIPA had a year-to-date volume of 87.2 billion Euros in turnover, counted 1.7 million products in total and had an invested volume (assets under management) of at least 257 billion Euros.

More information on EUSIPA can be found on the website www.eusipa.org.