EUROPEAN STRUCTURED INVESTMENT PRODUCTS ASSOCIATION

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To:
Mr. Sven Gentner
European Commission
Head of Unit
GD FISMA, Directorate Financial Markets, Unit C4

Mr. Timothy Shakesby
European Insurance and Occupational Pensions Authority
Chair of the PRIIPs Sub Group

Per mail only

Brussels, 02 February 2016

Implementation of the EU PRIIPs regulation
Comments on items not dealt with in the recent PRIIPs consultation

Dear Sven, dear Tim,

As was announced in recent meetings, please find attached to this letter a brief outline of items which EUSIPA and her member associations have identified as being of crucial importance from an operational perspective in the upcoming implementation of the PRIIPs regulation. Given that these items have not been dealt with in the recently held public consultation (to which EUSIPA responded separately) we thought it most useful to draw your attention to them by way of this letter.

We would also highly appreciate being kept in the loop on how the discussion of these items continues on your side. Do not hesitate to ask us for further input or sense-check any practical solution that you are about to consider.
As there is time-wise a high pressure on this file, we would also be very supportive of having a joint meeting and discuss the open points directly with you.

Sincerely,

Dr. Nikolaus Neundörfer
Chair Legal Committee
EUSIPA

Thomas Wulf
Secretary General
EUSIPA

ATTACHMENT

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Single items of high relevance to the implementation/application of the EU PRIIPs regulation (Outside the scope of the Joint Consultation Paper of the ESAs on draft RTS)

1. Clarity on the PRIIPs product scope and manufacturer

EUSIPA would strongly favour to clarify the scope of products the PRIIPS regulation is applicable to. This includes, for example but not only, derivatives. Many derivative products, whether structured or not, are being used for hedging purposes only. Their coverage would clearly collide with the intention of the regulation which seeks to provide information material for products bought for investment purposes.

A further clarification we think is needed in this context with regard to the term "manufacturer". It has to be made absolutely clear which entity will have legal responsibility to comply with the manufacturer requirements, particularly in situations where several parties work together on the design and structuring of a new product.

2. Grandfathering

EUSIPA wishes to underline that there are hundreds of thousands of PRIIPs in today's markets which have not matured yet. Whilst there is nothing provided in the regulation's text on this issue, we are convinced that by way of interpretation the rules implicitly provide for an effective date to be applied to existing products. We would therefore appreciate a confirming guidance on this issue. Otherwise we fear that the national regulatory treatment of products launched (but not yet matured at the moment of the regulation's enforcement) is highly likely to differ from one jurisdiction to the other.

3. Home/host country principle - use of KIDs in other than their original market

It needs to be clarified in the view of EUSIPA that a home/host country principle applies for manufacturers (and KID content). The definition of home country should be linked to the market the KID is mainly produced for or, alternatively, correspond to the home country definition under the MiFID directive.

Under the application of such home/host country principle is should also be clarified that the „host" country authorities could be entitled to ask for an advance information of the „imported" KID but are not entitled to modify its content. We consider this clarification absolutely vital as otherwise there will realistically be no EU-wide homogenous KID for many products falling under the PRIIPs regulation and, consequently, no level playing field in a wide part of the retail product landscape.

Operationally, from an issuer perspective, it will become necessary in cross-border sales scenarios that the issuer is in a position to submit the KID to all relevant host country authorities. This not only requires the establishment and update of a list of distribution markets but also would ideally be handled via an ESMA-linked interface which ensures a semi-automated forwarding of a PRIIPs-KID to relevant national authorities in host countries pre-selected by the issuer.

In this context EUSIPA considers it of importance to clearly define as of when a product is being distributed in another than the home market in a way that its distribution triggers the obligation for the issuer to submit a KID to relevant host country authorities. (This may be called "issuer-

attributable distribution" to distinguish it from any other distribution of a product beyond the control of the issuer, e.g. by independent financial advisory firms operating cross-border.) Such "issuer-attributable distribution" may then be defined by, e.g. distribution based on agreements between the issuers and selected distribution banks in other than the home market or direct marketing by the issuer done via host-country specific or host-country accessible websites.

4. Update obligation

From a legal perspective EUSIPA takes the view that the obligation to update the KID could be subject to the same principles as the home/host country rules set out above under 3.
EUSIPA underlines in this context again that any fair application of an update obligation requires necessarily an attribution of the KID to be updated outside its home market, to the issuer/ manufacturer.
Once there is clarity on before point, particular attention needs to be given, in our eyes, to the question which precise events in the product lifecycle, if any, should trigger the update obligation and which not. EUSIPA clearly objects to base the update requirement solely on the existence of a secondary market for or the listing of a PRIIP.

5. Guidance on content

Product manufactures also need further guidance on content and text structure of the KID's most relevant parts, in particular the "What is this product?" section, to enable them to start drafting KIDs without facing the risk that at a later point in time, more detailed rules will be added which were not reflected in their drafts. This guidance could also come in the form of a clarification that no further specification on these requirements will be given at any level of implementation rules, including at national level. The before approach (of not prescribing the KID content in too much detail) has worked well for certain product information sheets currently existing at national level, notably in Germany.

6. "How can I complain?" section

EUSIPA wishes to point out that the issuer-fed distribution channels for a single product may be manifold, including a variety of business lines, entities and individuals in many jurisdictions. We would therefore strongly suggest allowing for generic statements with regard to claims addressed to the issuer but made with regard to distribution practices.

7. Ex-post communication of the KID and use of generic KIDs

EUSIPA takes the view that the use of generic KIDs should be permitted in case the pre-trade provision of a KID may be materially impossible.
This is the case notably with OTC flow products such as swaps. These products are generally sold to sophisticated retail clients (e.g. corporate clients classified as retail and active on the FX or commodity markets or private bank clients that have recurring FX hedging needs). A generic KID would in this situation be provided pre-trade with complimentary information being submitted post-trade.

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