EFAMA\textsuperscript{1} is grateful for the opportunity to comment on the European Commission Services’ Consultation on legislative steps for the PRIPs initiative.

**General comments**

EFAMA fully supports the PRIPs initiative, which addresses crucial issues of investor protection and the lack of level playing field among retail financial products in the distribution of retail financial products. It is essential for this initiative to create a harmonized framework that eliminates regulatory arbitrage in the distribution of financial products to retail investors and ensures a high level of investor protection.

However, EFAMA believes that pensions should not be entirely excluded from the scope of PRIPs, as retail investors deserve protection in particular when purchasing products for their retirement, and many pension products are purely personal and voluntary in nature.

Our members strongly support a horizontal approach and welcome the fact that it will be used in the legislation for the disclosure elements of PRIPs. Regarding selling practices, a similar horizontal approach would have been preferable in our opinion, and we wish to reiterate our deep concerns that the Commission decision to use separate legislative instruments might lead to a lack of harmonized implementation for sales rules. We therefore strongly encourage the Commission Services to closely coordinate the work of the different Units in charge of PRIPs, MiFID Review IMD Review and Prospectus Directive, and ensure that the implementation of the PRIPs initiative is coherent and harmonized not only at the principle level, but also in the details (Level 2). Furthermore, regulators must also ensure the same coherence and harmonized implementation in their technical standards and Level 3 work.

We strongly encourage the Commission to involve all stakeholders in the discussion of the implementing measures of the PRIPs initiative, and believe that the Commission should draw lessons from the implementation of the UCITS KID before setting out requirements for PRIPs KIIDs. We would urge the European Commission to gather information from

\footnote{EFAMA is the representative association for the European investment management industry. Through its 27 member associations and 46 corporate members, EFAMA represents about EUR 14 trillion in assets under management, of which EUR 7.7 trillion was managed by approximately 53,000 funds at the end of September 2010.}

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representatives of investment management firms that are responsible for producing UCITS KIDs and have such relevant experience.

Detailed replies

Q. 1: Should the PRIPs initiative focus on packaged investments? Please justify or explain your answer.
Q. 2: Should a definition of PRIPs focus on fluctuations in investment values? Please justify or explain your answer.
Q. 3: Does a reference to indirectness of exposure capture the 'packaging' of investments? Please justify or explain your answer.
Q. 4: Do you think it is necessary to explicitly clarify that the definition applies to fluctuations in 'reference values' more generally, given some financial products provide payouts that do not appear to be linked to specific or tangible assets themselves, e.g. payouts linked to certain financial indices, the rate of inflation, or the overall value of a fund or business?
Q. 5: Do you have any other comments on the proposed definition? If you consider it ineffective in some regard, please provide alternatives and explain your rationale in relation to the criteria for a successful definition outlined above.

EFAMA supports the current approach by the Commission in defining the scope of PRIPs, and believes any definition of PRIPs should be broadly based on common economic features, thus being able to take into account future financial innovations.

The focus on the “packaging” element does not appear helpful to define the scope, as trying to define a “package” (or a wrapper) may be very difficult, and we fear it could lead to loopholes. It might therefore be best to refer to “direct” (or “indirect”) holdings.

We strongly disagree with the Commission’s statement on page 4 that “Packaging introduces additional layers of cost and risk.” This is not always the case. In fact, packaging in the case of a fund reduces risk, as it provides diversification, constant oversight of the portfolio, asset segregation, etc. The fees reflect the service provided to investors.

Financial products involving a wrapper clearly raise more issues in terms of investor protection. For this reason – and in order to achieve a speedy implementation of the PRIPs initiative – EFAMA accepts that products such as for example stocks and plain vanilla bonds should be out of scope. However, we wish to point out that investor protection and fair competition issues also exist with respect to plain vanilla products, in particular in reference to banking products. In fact, some EFAMA members believe that simple deposits should be covered by PRIPs as they are directly substitutable for money market funds.

We call the Commission to evaluate separately the need for minimum standards of investor protection and disclosure for products outside the PRIPs framework, in order not to delay the implementation of the PRIPs initiative.
With regard to the Commission’s definition of PRIPs, we wish first of all to note that it does not include any reference to the product being intended for retail use. This should be clarified either in the definition (“A PRIIP is a product offered to retail investors...”), or through a clear statement that the duties to produce a KIID/adhere to distribution standards should apply only in relation to retail clients. Furthermore, the definition only refers to the “market value of assets” which is too narrow as it might exclude products with references to general investment factors such as volatility or inflation rate, or to real estate prices. EFAMA therefore suggests the following revised definition of PRIPs:

“A PRIIP is a product where the amount payable to the investor is exposed to fluctuations in the market value of assets or other reference values, or fluctuations in payouts from assets, or other mechanisms than a direct holding”.

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.

EFAMA disagrees with both Option 1 and Option 2 as currently formulated by the Commission and a very large majority of our members suggests the following definition of structured deposits:

“A deposit shall be a PRIIP, provided that its principal is not repayable at par at all times.”

The crucial element in the definition is “at all times”, which will include in the scope of PRIIPs deposits where the principal is only guaranteed at specific dates or at maturity (characteristics of structured deposits). The above definition better ensures that all structured deposits are covered than the proposed Option 1 or 2, but the same approach is clearly not applicable to bonds.

For structured bonds, the general definition of PRIIPs (see our reply above) should ensure their inclusion in scope.

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

EFAMA strongly disagrees that all pensions be excluded from the PRIIPs initiative at this time.

The Commission justifies an exemption from PRIIPs with the wider work envisaged in the EU Green Paper on Pensions. However, the Green Paper’s suggestions for regulatory action at EU level are clearly restricted to occupational pensions and aim in particular at improving
transparency of investments in DC schemes. Beyond that focused approach, there is no perceivable trend to enhance distribution standards or product information for pension products in general. Hence, the pursuit of new initiatives in this field on the basis of the EU Green Paper appears unlikely from the today’s perspective and would be extremely limited. In any case, awaiting the results of that initiative would significantly delay the implementation of appropriate distribution and product transparency standards for all pensions.

The proposed wording of the pension exclusion would apply to all pension products which enjoy any kind of benefit under national law by virtue of their use for retirement planning. Traditionally, such benefits pertain to product taxation and are mostly granted to insurance products. Tax advantages are powerful arguments and are regularly used by distributors when selling financial products, often to sell retirement products even for pure saving purposes. Tax advantages should not be a reason for less investor protection or disclosure, and specific information on tax treatment could be foreseen (in the KIID, if necessary).

Furthermore, in some Member States such tax advantages are bestowed also on products which are exactly identical to personal savings products. In Sweden, there are no specific “pension funds” offered to retail investors. The same investment funds (i.e. UCITS) can be offered directly as savings products or be building blocks in unit-linked insurance contracts, or be used in pillar 1 and 3.

A distinction needs to be made among different types of pensions. State-run pension schemes should be exempted from the PRIPs initiative, whereas personal pension products (individual, voluntary pensions) should be included under PRIPs as they have all the characteristics of a PRIP (and the general definition of PRIP could be used).

Furthermore, Defined Benefit (DB) pensions typically have no member discretion and therefore it seems inappropriate to require provision of information in a format designed for investment decisions.

As far as occupational pensions are concerned, they take many forms and a large majority of our members believe that some of them should be included in PRIPs due to their characteristics. Specifically, pension products with the following characteristics should be included in the PRIPs initiative:

- An individual contract with the retail investor
- Choice of investments by the retail investor.

Some EFAMA members also consider that the potential for conflicts of interest (despite employer intermediation) should be considered as a criterion for inclusion in PRIPs.

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?

EFAMA believes that all annuities should be included in the PRIPs initiative when offered to retail investors, and they should be subject to the definition test applicable to all PRIPs. As long as they include an element of capital accumulation, annuities should provide the same level of disclosure and investor protection as other financial products. All annuities, although sometimes referred to as “decumulation products”, are accumulation products. Providers compete on the interest they pay on the initial lump sum (principal) from which annuity instalments are paid out and deducted from the principal.

Some EFAMA members are also in favour of including fixed rate annuities in PRIPs, as they share almost all characteristics of PRIPs: represent a form of indirect holding, have an element of capital accumulation, and conflicts of interest arise also in relation to their distribution. Furthermore, they expose investors to counterparty risk.

There should also be no exemption for variable annuities, which are defined by CEIOPS as “unit-linked life insurance contracts with investment guarantees which, in exchange for single or regular premiums, allow the policyholder to benefit from the upside of the unit without losing out when the unit loses value” (see Consultation Paper no. 83 - Draft Report on Variable Annuities2) – clearly still involving capital accumulation and investment risk. Besides the risk on the upside, the guarantees on the downside vary from one product to another.

EFAMA strongly agrees with the Commission’s acknowledgment (p. 7) that “the range of insurance products caught would include those whose surrender values are determined indirectly by returns on the insurance companies own investments or even the profitability of the insurance company itself”. However, pure protection insurance products should be out of PRIPs scope.

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

A very large majority of EFAMA members see benefits from the development of an indicative list, as long as it is purely indicative, as it will be impossible to provide an exhaustive list of PRIPs owing to the swiftly changing environment and market innovation. It should also be subject to review and control to take account of developing markets. The list must therefore be capable of being updated frequently and on short notice and it is recommended that it should be maintained by the European Supervisory Authorities (at Level 3).

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

We do not have specific suggestions for the content of such a list.

Q. 15: Should direct sales of UCITS be covered by means of including the relevant rules within the UCITS framework?

Yes, they should be covered in the UCITS Directive, in alignment with MiFID rules. In particular, it should be ensured that UCITS management companies are able to provide advice to investors under the UCITS Directive in relation to direct sales of funds.

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)?

Please see our general comments on our concerns regarding the Commission decision to use separate legislative instruments (with different timeframes), which might lead to a lack of harmonized implementation for sales rules. Such divergences in the approach have already emerged in the revision of Level 1 of the Prospectus Directive, which has been completed before PRIPs was finalized and will have to be revised.

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.

EFAMA fully agrees with the objective of the KIID.

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.

Yes, it should be a separate document.

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

In order to make informed decisions, retail investors will require standardized and comparable disclosure documents. To that effect, the structure of the KIID needs to be standardized and the basic elements/building blocks must be the same for all PRIPs, on the basis of the UCITS KID. The elements of the UCITS KID give ample possibility to provide essential product information on banking and insurance PRIPs.
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?

EFAMA agrees with the Commission's suggestion to define principles at Level 1, while detailed requirements would be tailored for different types of PRIPs by means of implementing measures. With regard to the latter, the implementing measures to the UCITS Directive should be considered a blueprint for regulatory action. In other words, the Commission should propose quite detailed Level 2 measures, to be followed by regulators’ technical standards. A mandate at Level 1 for technical standards could result in large differences in the implementation and is not recommendable.

The Commission should consider the use of a Regulation (as was used for the UCITS KID) to ensure an effective and harmonized implementation of the KIID for PRIPs.

Standardisation of the KIID is crucial to foster comparability among PRIPs, one of the key aspects of this initiative. Tailoring of the KIID will be necessary to a certain extent, but it should be limited in order to ensure comparability, and some key elements should be required for all PRIPs 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?

Yes, no additions should be possible. Additional information can be provided either through marketing material or through other means (website, etc.).

However, while the content of the KIID should be subject to comprehensive regulation, EFAMA believes there should be no mandatory pre-approval in the context of the product authorization; it should be sufficient to file the KIID for PRIPs with the competent authorities in line with the requirements of the UCITS Directive.
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?

EFAMA recognizes the difficulties of the task, and therefore recommends that sufficient time be given to in-depth analysis and consumer testing. However, we believe the outlined principles are appropriate and can be equivalently applied to the PRIPs universe.

We reiterate that the Commission should propose quite detailed Level 2 measures, to be followed by regulators’ technical standards.

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?

Product manufacturers in principle should be responsible for preparing the KIID, as they are in the best position to do so. However, “manufacturer” in this case must be defined as the manufacturer of the wrapper, as only the wrapper manufacturer has full knowledge of all the costs (the product plus the wrapper costs). For example, in the case of a unit-linked insurance product based on UCITS, the product manufacturer responsible for the KIID would be the insurance company, not the UCITS producer. The producer of the product(s) in the wrapper must provide sufficient information to the “manufacturer” to enable it to produce the KIID.

It is essential that the definitions of “manufacturer” and “distributor” be correctly drawn, in order to ensure that full disclosure of costs is made by the appropriate entity.

EFAMA believes that responsibilities should be clearly regulated, in order to avoid non-compliance or the imposition of liability on the wrong party in the chain. Should distributors be allowed to prepare KIIDs or add information to them, they should also be clearly liable for that information.

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?

In EFAMA’s view transparency in reporting on Responsible Investment products to investors should take place both in the pre- and post-investment phases only for those investment products that are labelled as RI products. In the pre-investment phase the KIID (and other issuing documents such as the prospectus for a fund) should indicate that the investment policy follows certain RI standards. A reference to where further information of those
standards can be found should be included, as the limited space in the KIID will not allow a lengthy description.

In the post-investment phase the periodic reports of a fund should provide transparency on the fund’s RI policy. The same approach could be applied to all PRIPs where relevant.

The aim of the transparency would be to allow investors to better compare products labelled as RI products. For those products that are not labelled as RI products, no additional disclosure should be necessary.

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

The development of standards for transparency and consistency of product labelling should be detached from the PRIPs initiative. The understanding of “socially responsible” strategies varies considerably across Europe and we expect defining of consistent criteria to prove a difficult and lengthy task. EFAMA has started working on a common understanding of responsible investing and will be happy to inform the Commission of the results in due time.

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?

Yes, the summary should be replaced by the KIID for retail investors to avoid duplication. EFAMA agrees with the suggested approach for the UCITS KIID.

We agree that it would be desirable to ensure that there is no duplication of requirement arising under the PRIPs regime and other pre-existing disclosure regimes. However, it is important that, in addressing the overlap, the Commission remains focussed on the overarching objective of supplying consumers with a document at point of sale enabling them to make fair comparison and an informed buying decision. All necessary changes to relevant legislation such as the Prospectus Directive and Solvency II must therefore be made in order to achieve that aim.

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?

EFAMA has no comment.
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?

It will be challenging to find a single risk rating approach that is meaningful for all PRIPs. EFAMA recommends the UCITS risk rating as a starting point for the discussion, which should be modified only if it proves unsuitable for certain types of PRIPs. In particular, the standardized presentation by means of a synthetic indicator should become a mandatory part of disclosure for all PRIPs, in order to ensure comparability of investments. However, should the same methodology prove unsuitable, it should be carefully considered how to present the risk indicator to avoid confusing and/or misleading investors, who may not grasp the different underlying methodologies.

We agree with the Commission’s view that counterparty or liquidity risks might be very pronounced in some PRIPs and should be adequately captured by the applicable calculation methodology. If that is not possible, they should be suitably highlighted in the narrative accompanying the risk indicator.

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

The presentation of past performance (for example over 10 years) is also very helpful in showing the volatility of the product, and therefore the risk involved.

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

Q. 39: How can retail investors be aided in making ‘value for money’ comparisons between different PRIPs?

The main challenge will be to find metrics that make all costs and types of remuneration transparent (for example, discounts granted to distributors instead of commission payments). Furthermore, more study will be necessary regarding disclosure for products where part of the costs represent the margin for the producer or – more broadly – for products that are balance-sheet based.

However, we wish to point out that costs to be disclosed within the KIID must be clearly related to the product level and information on entry / exit charges (where appropriate) should be only included in the form of the maximum allowable. The exact costs of distribution are entirely dependent on the individual circumstances of a client (including the distribution channel chosen) and should be subject to disclosure at the point of sale pursuant to MiFID / IMD rules, not in the KIID.

EFAMA stands ready to support the Commission’s work regarding a common cost metric.
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?

Yes, performance should always be included, as it is an important part of retail investors’ decision-making process. However, in some cases performance scenarios could be used instead of past performance, as foreseen for structured UCITS.

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?

EFAMA fully supports a clear and consistent approach to the disclosure and description of guarantees and capital protection, in order to enable fair comparisons among investment products.

We agree that it would be desirable to disclose information on the costs of guarantees, but acknowledge that in practice it is very hard to see how this could be achieved in many cases.

We hope our comments will be helpful to the Commission and remain at your complete disposal for any clarifications that may be necessary.

Peter De Proft
Director General

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