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**ESBG LOBBYING PAPER ON
PACKAGE RETAIL INVESTMENT PRODUCTS REGULATION**



European Savings Banks Group - aisbl
Rue Marie-Thérèse, 11 ■ B-1000 Bruxelles ■ Tel: + 32 2 211 11 11 ■ Fax: + 32 2 211 11 99
E-mail: first name.surname@savings-banks.com ■ Website: www.esbg.eu



I. Scope of the Regulation

The European Savings Banks Group (ESBG) welcomes that the European Commission intends to cover only products that are “packaged” and lead the investor to holding the assets in the indirect way. The European Commission decided to set the scope through a negative definition with a list of products that are exempted from the Regulation:

European Commission’s Proposal

Article 2

This Regulation shall apply to the manufacturing and selling of investment products.

However, it shall not apply to the following products:

- (a) insurance products which do not offer a surrender value or where that surrender value is not wholly or partially exposed, directly or indirectly, to market fluctuations;
- (b) deposits with a rate of return that is determined in relation to an interest rate;
- (c) securities referred to in points (b) to (g), (i) and (j) of Article 1(2) of Directive 2003/71/EC;
- (d) other securities which do not embed a derivative;
- (e) occupational pension schemes falling under the scope of Directive 2003/41/EC or Directive 2009/138/EC; and
- (f) pension products for which a financial contribution from the employer is required by national law and where the employee has no choice as to the pension product provider.

ESBG’s point of view

As a first remark, the ESBG would like to express its disappointment that a positive list of the products included under the scope has not been retained, as it would have brought clarity on the present and future products affected.

On the proposed scope, the ESBG would like to highlight that we strongly support the exclusion of simple bank deposit products such as saving deposits, saving pass books, demand deposits and time deposits which are neither packaged nor exposed to fluctuations other than a reference rate. These established products, which generally involve minimal risks, guarantee schemes, and at most modest interest-rate exposure, are already well understood by retail clients.

However, the current wording of the article 2 (b) is imprecise. It only exempts deposits linked to benchmarks, such as EONIA or EURIBOR (“rate of return which is determined in relation to an interest rate”). But the majority of simple products (savings deposits, fixed-term deposits, etc.) are either fixed-rate products or variable-rate products. Therefore the wording needs to be clarified to exclude all types of simple products from the scope of PRIPS.



The ESBG would like to add that there is also a need to exempt products that are made or customised for smaller groups, similar to the exemptions in the Prospectus Directive (Article 3 §2 of Directive 2003/71/EC). Otherwise customised products to small groups of investors would be delayed or too expensive to offer.

Furthermore, the ESBG agrees with the Proposal that all kind of life insurance policies should fall under the scope of the Regulation.

II. Responsibility

A. Responsibility to produce the KID

The European Commission chose in its proposal that the product manufacturer is the entity responsible for the production of the KID.

European Commission's Proposal

Article 1

This Regulation lays down uniform rules on the format and content of the key information document to be drawn up by investment product manufacturers and uniform rules on the provision of this document to retail investors.

Article 4

(b) 'investment product manufacturer' means:

- i) any natural or legal person who manufactures an investment product;
- ii) any natural or legal person who makes changes to an existing investment product by altering its risk and reward profile or the costs associated with an investment in the investment product;

ESBG's point of view

The ESBG fully shares the view that the product manufacturer should be responsible for preparing the KID, as it knows that product best and possesses the necessary information to set up the KID. The ESBG agrees with the exception to that rule put in place, indeed there are some defined cases, *e.g.* when distributors materially alter a product, where there should be a restriction to the general rules of attributing the responsibility to the product manufacturer. The product manufacturer cannot be held liable for changes it is not aware of.



B. Responsibility towards the KID's content

The European Commission is setting an unclear and wide responsibility on the product manufacturer when it comes to the accuracy of the KID's content:

European Commission's Proposal

Article 11

1. Where an investment product manufacturer has produced a key information document which does not comply with the requirements of Articles 6, 7 and 8 on which a retail investor has relied when making an investment decision, such a retail investor may claim from the investment product manufacturer damages for any loss caused to that retail investor through the use of the key information document.
2. When a retail investor demonstrates a loss resulting from the use of the information contained in the key information document, the investment product manufacturer has to prove that the key information document has been drawn up in compliance with Articles 6, 7 and 8 of this Regulation. [...]

ESBG's point of view

The responsibility for the information in the KID should be constructed in the same way as the responsibility for the KIID under UCITS IV, see article 79 §2 of the Directive 2009/65/EC. A wider and stricter responsibility risks being counterproductive in that the KID will likely be longer and more complicated in that case and there would be a larger incentive for producers to make products which are not covered by the KID obligation.

C. Revision of the KID

The European Commission foresees to have requirements under which the manufacturer would have to review the information contained in the KID. In parallel, delegated acts are contemplated in order to define a framework under which the investor would have to be informed of such.

European Commission's Proposal

Article 10 §2

2. [...]
 - (d) the circumstances in which retail investors are to be informed about a revised key information document for an investment product purchased by them.



The ESBG is concerned that this provision might lead to an extreme case where the updated KID would have to be communicated to the investors throughout the life-time of the product. As it would not be technically feasible, the ESBG would be in favour of being required to communicate the revised KID only in very specific situations.

III. Characteristics of the KID

A. Content of the KID

The European Commission in its proposal provides a rather detailed description of the KID. The ESBG would like to make some comments on the proposals.

1. “What is this investment?”

European Commission’s Proposal

Article 8 – paragraph 2 – sub-paragraph (b)

Under a section titled "What is this investment?", the nature and main features of the investment product, including

[...]

The ESBG welcomes the content of this section but would like to make some suggestions for additional information that might be helpful for the investor:

- A new section including the product’s data containing: the International Securities Identification Number (ISIN), the International Standards on Auditing (ISA) number, the interest rate, the stock exchange linked to the product, its currency and the issue date.
- A section outlining which legal entities and parties are involved in bringing each product to the market so that customers fully understand the roles and responsibilities of each party. The PRIIPS Regulation currently only states that the manufacturer needs disclosing – in some scenarios, this entity might be different to the deposit-taking institution or the securities issuer.
- A statement mentioning that the national tax legislation of the investor’s home Member State may have an impact on the return of the investment.

2. “Could I lose money?”

European Commission’s Proposal

Article 8 – paragraph 2 – sub-paragraph (c)

Under a section titled "Could I lose money?", a brief indication of whether loss of capital is possible, including[...]



The ESBG is concerned that this name of the heading is likely to put off customers, as the answer will always be “yes”. Furthermore the ESBG suggests to combine these provisions with point 2 (e), as we consider that all information about risks should be condensed in one section.

3. “What is it for?”

European Commission’s Proposal

Article 8 – paragraph 2 – sub-paragraph (d)

Under a section titled "What is it for?" an indication of the recommended minimum holding period and the expected liquidity profile of the product including the possibility and conditions for any disinvestments before maturity, having regard to the risk and reward profile of the investment product and the market evolution it targets;

The ESBG is of the opinion that the title does not fit the proposed content. It should be either renamed “What is its availability?” or the content should be moved to point 2 (a).

4. “What are the risks and what might I get back?”

European Commission’s Proposal

Article 8 – paragraph 2 – sub-paragraph (e)

Under a section titled "What are the risks and what might I get back?", the risk and reward profile of the investment product, including a summary indicator of this profile and warnings in relation to any specific risks that may not be fully reflected in the summary indicator;

As detailed for the point 2 (c), the ESBG suggests to combine points 2 (c) and 2 (e).

The ESBG would like to particularly stress its negative opinion towards the intention to only include the Risk & Reward profile of the product under this heading.

First of all the ESBG is uncomfortable with the idea to have an indicator of the risk. Will it lead to a rating of products? If a risk rating is used, for instance with a scale from 1 to 7 as it is the case for the UCTIS KIID, then investors will rely solely on the risk rating to make their decision and neglect to thoroughly read the rest of the information in the KID. It may become the ‘ultimate summary’. The ESBG is of the opinion that it may go against the purpose of giving a good overview of the product, produce the sentiment that it gives a guarantee for the future losses and returns, and ultimately encourage mis-selling.



A synthetic indicator may also end up in clumping risks together and therefore in giving less visibility to key risks. For example, the Lehman bankruptcy has underlined counterparty risk as a major disclosure obligation, but if this just becomes one factor in the Risk & Reward indicator, its prominence will be lost.

A synthetic indicator cannot also take into account the evolution of the product's risk profile. This might be problematic for long term products where initially the strategy may be relatively 'higher' risk, but moves gradually to 'lower' risk as retirement approaches.

As a conclusion, the ESBG considers that the Risk & Reward indicator of the product cannot fit all the kinds of products and therefore the ESBG strongly supports the provision of a narrative explanation of risks in addition to a synthetic risk indicator in order to counter-balance its drawbacks.

5. "What are the costs?"

European Commission's Proposal

Article 8 – paragraph 2 – sub-paragraph (f)

Under a section titled "What are the costs?", the costs associated with an investment in the investment product, comprising both direct and indirect costs to be borne by the investor, including summary indicators of these costs;

The ESBG would like to highlight that the product manufacturer cannot know the exact amount of distribution costs or custody costs of the entity selling the product, and as the product manufacturer only is responsible for producing the KID this might be problematic. Furthermore, the UCITS KIID does not contain this obligation.

6. "How has it done in the past?"

European Commission's Proposal

Article 8 – paragraph 2 – sub-paragraph (g)

Under a section titled "How has it done in the past?", the past performance of the investment product, if this is relevant having regard to the nature of the product and the length of its track record;

The ESBG would like to first indicate that this title is interesting given that some national authorities have erred away from including past performance. For instance, the UK FSA considers this as 'not a reliable indicator of future performance'¹. This kind of information is open to abuse by advisers and

¹ <http://fsahandbook.info/FSA/html/handbook/COBS/4/6>



could also be very misleading to customers who invest on this basis. There have been examples where past performance has resulted in large mis-selling and complaints, *e.g.* mortgage endowment policies.

The ESBG furthermore questions the necessity to have a section on past performance with regards to the poor amount of data available for a lot of products. The extremely broad nature of the “PRIP” universe presents a number of practical issues in defining what these performance metrics should be. Care must be taken, as well, that retail investors do not jump to erroneous conclusions.

Where a product does indeed have a track record, a simple graphical illustration of growth in invested capital can be quite helpful to understand its value in the context of the historical trend in this reference value. However, we do not view a blanket requirement for performance presentation across all PRIPs as either practical or helpful.

7. Others

The ESBG supports the inclusion in the KID of the compensation details as well as the complaint process.

The ESBG would like to make some comments regarding the flexibility of the contents. As the proposal moves forward to level 2, it will be essential that requirements allow some degree of flexibility across the broad range of existing and future PRIPs, particularly in the following key components of the KID:

- Description of the product, its structure and objectives;
- Existence of a guarantee;
- Risk/reward proposition;
- Practical information;
- Disclaimer.

B. Form of the KID

The ESBG would like to make comments regarding article 6.

European Commission's Proposal

Article 6 §3

The key information document shall be drawn up as a short document which is:

- (a) presented and laid out in a way that is easy to read, using characters of readable size;
- (b) clearly expressed and written in language that communicates in a way that facilitates the retail investor's understanding of the information being communicated, in particular where:
 - (i) the language used is clear, succinct and comprehensible;
 - (ii) the use of jargon is avoided;
 - (iii) technical terms are avoided when everyday words can be used instead.



As to the length of the KID, the ESBG's view is that, while a maximum of three pages would certainly be desirable, this would not be sufficient for more complex instruments. Indeed, The KID is not long enough to contain all the information a customer may need or want to know on complex products such as certificates or pension products. Therefore it either has to be expanded, or there has to be sign posts to other documents, *e.g.* terms & conditions or customer-friendly brochures.

Regarding the sub-paragraph 3.b, the ESBG would like to point out that these requirements are subjective and may pose a problem in combination with the reverse of the burden of proof, in particular on the requirements for the language used.

IV. Relation with other information documents

The European Commission in its proposal made the choice of adding the KID to the list of information documents.

European Commission's Proposal

Recital 8

In order to provide clarity on the relationship between the obligations established by this Regulation and obligations established by Directive 2003/71/EC of the European Parliament and the Council of 4 November 2003 on the prospectus to be published when securities are offered to the public or admitted to trading and amending Directive 2001/3413 and Directive 2009/138/EC, it is necessary to establish that these Directives continue to apply in addition to this Regulation.

Nevertheless, the European Commission is aware that already existing information documents have similar purposes and have overlapping content.

European Commission's Proposal

Explanatory memorandum

In relation to other disclosure requirements in Union law, it should be noted that the KID required under this Regulation is a new disclosure document which will be designed in a way which is exclusively tailored, in terms of its contents and design, to the needs of ordinary retail investors when considering and comparing different investment products prior to an investment. Its design and its purpose are therefore not fully identical with other disclosure requirements such as the summary under the Prospectus Directive or disclosure requirements under Solvency II. These disclosures seek to fulfil purposes in addition to the delivery of key information to retail investors, such as ensuring transparency towards financial markets or a full picture of all details in relation to a proposed contract. Therefore, the KID cannot easily replace these other requirements and will exist in parallel to these requirements. However, the experience with the requirements of this Regulation will show whether in practice the KID requirements should be



further developed, for instance so as to replace certain disclosures required under other Union law.

ESBG's point of view

The Proposal results in a situation where:

- Under the Prospectus Directive regime investors will have a base prospectus, final terms, and a summary to read.
- Under PRIPs, they will have the - additionally - KID, and under local financial promotion rules of many Member States, they may currently have further brochures to read.

These two documents serve the same purpose - short information for the client - and will contain substantially identical information and would be distributed to an identical client group, in other words there would be a useless duplication for the client without any added value and a further increase of the "paper flood".

As a holistic package, investors will have more documentation in the future, not less, so the ultimate goal of simplifying documentation for investors as well as increased transparency will not be achieved.

ESBG strongly believes that the KID should not be a separate document, but rather a building block together with other brochures (e.g. prospectus, information brochures) and investment advice. The relation between the KID and the prospectus summary needs to be clarified. As both documents have the same spirit, only one single document should exist.

ESBG strongly supports the replacement of the summary prospectus by the KID through tailoring the KID to satisfy the summary prospectus requirement. Both documents substantially contain the same information and are geared to the same audience, and thus their parallel existence would impose added administrative costs while only serving to confuse retail investors. Although the European Commission considers that it may be discussed in the future, this needs to be carefully assessed today in the context of this Regulation.

To reach a binding set for all member states it should be debated whether EU-regulation should rule out any additional national legislation for short information.

The ESBG would also like to invite decision-makers to take into account the national legal frameworks. For example, in Germany, regulations see a brief product information sheet (Produktinformationsblatt) to be provided to prospective investors as a selling document, whereas in the United-Kingdom, they currently have a 15- 40 page additional brochure to read.