

**WORKING DOCUMENT OF THE COMMISSION SERVICES  
(DG INTERNAL MARKET)**

**Consultation by Commission Services on legislative steps for the Packaged Retail  
Investment Products initiative**

This consultation represents the views of the Commission services and does not represent or pre-judge the contents of any further work of the Commission in this field.

## Consultation by Commission Services on legislative steps for the Packaged Retail Investment Products initiative

### 1 Introduction and Background to this Consultation

#### 1.1 Purpose of Consultation

Important problems have been identified in the EU retail investment market. Product information about investments is often weak and difficult to use, conflicts of interest bedevil the distribution of products, and the regulation of the market is fragmentary and inconsistent. Retail investor confidence has collapsed following the financial crisis.

The April 30<sup>th</sup> 2009 Commission Communication on Packaged Retail Investment Products (PRIPs) announced that legislative changes were therefore necessary at the European level in two areas: product transparency (pre-contractual disclosures)<sup>1</sup> and sales rules.<sup>2</sup> A more horizontal approach to regulation would be developed to raise investor protection standards and rebuild trust following the crisis.<sup>3</sup>

**The purpose of this consultation is to gather feedback on concrete possible steps for delivering the PRIPs initiative.**

It is of relevance for retail investors, the producers and distributors of retail investments and other financial providers and intermediaries, national supervisors, and any other stakeholders interested in the evolution of investor protection measures in Europe. Views and feedback will be used by the Commission services to fine-tune and develop their proposals.

The consultation provides seeks your input in **three broad areas**:

- the **scope of the initiative (section 2)**;
- the broad **legislative approach** to be followed (**section 3**);
- the **content of a possible regime for product disclosure (section 4)**.

**This consultation should be read alongside the Insurance Mediation Directive (IMD) review consultation and Markets in Financial Instruments Directive**

<sup>1</sup> References in this consultation to 'pre-contractual disclosures' are intended to underline the disclosure of information **before** prospective investors enter into any commitment, that is information of general nature, intended to help an average retail investors to understand the essential characteristics of the products, without any prejudice to national legal systems' definition and treatment of pre-contractual or contractual legal relationships.

<sup>2</sup> See [http://ec.europa.eu/internal\\_market/finservices-retail/docs/investment\\_products/29042009\\_communication\\_en.pdf](http://ec.europa.eu/internal_market/finservices-retail/docs/investment_products/29042009_communication_en.pdf).

<sup>3</sup> The PRIPs initiative forms part of the programme of work outlined by the Commission in the 2nd of June Communication on "Regulating financial services for financial growth": [http://ec.europa.eu/internal\\_market/finances/docs/general/com2010\\_en.pdf](http://ec.europa.eu/internal_market/finances/docs/general/com2010_en.pdf). The initiative in fact pre-dates the crisis, but its importance was underlined by investor protection concerns arising during the crisis.

**(MiFID) review consultation.**<sup>4</sup> As is outlined in section 3, the Commission services propose to address the PRIPs work on sales rules through the IMD and MiFID frameworks. **For this reason, consultation on detailed options for sales rules will be carried out within these consultations and not within the current consultation.**

Throughout this consultation, the key proposals on which the Commission services are seeking your views have been highlighted by placing them in a box.

You do not need to respond to all questions, however please provide clear evidence to support your views where expressed. You are also welcome to present and support alternatives consistent with the goals of the PRIPs initiative where you disagree with a proposed solution.

In responding, please provide information about yourself to aid in our analysis. This should include your identity (individual or organisation) and the capacity in which you are responding (e.g. national authorities, industry trade bodies, individual firm or private respondent), and where relevant the member state of establishment and field of activity of your organisation (e.g. type of national authority, industry sector and type of firm). In particular, for firms, please indicate if you manufacture or sell PRIPs, and if so, the identity of these.

This consultation is open until **31 January 2011**.

Responses should be addressed to [MARKT-PRIPS-CONSULTATION@ec.europa.eu](mailto:MARKT-PRIPS-CONSULTATION@ec.europa.eu).

The Commission services will publish all responses received on the Commission website unless confidentiality is specifically requested.

## ***1.2 Background: the problem and Commission commitment to address it***

European retail investment markets are beset by two key market failings. Firstly, 'asymmetries of information' exist between investors and those producing and selling investments to them; secondly, the manufacturing and distribution of these products leads to principle / agent issues, e.g. those producing and selling investments face conflicts between their own interests and those of their clients.<sup>5</sup>

These issues are particularly significant for what can be termed packaged retail investment products (PRIPs), which offer exposure to underlying financial assets, but in packaged forms which modify that exposure compared with direct holdings. They are typically 'manufactured', by which they combine different assets into a single proposition, or introduce some element of financial engineering. Key examples of such products are investment funds such as those governed by the Undertakings for Collective Investment in Transferrable Securities (UCITS) directive or other non-harmonised retail investment funds, structured products (which can take many legal forms), and unit-linked insurance contracts.

---

<sup>4</sup> The MiFID consultation will be published shortly. The IMD consultation can be found at [http://ec.europa.eu/internal\\_market/consultations/2010/insurance-mediation\\_en.htm](http://ec.europa.eu/internal_market/consultations/2010/insurance-mediation_en.htm)

<sup>5</sup> [http://ec.europa.eu/internal\\_market/finservices-retail/docs/investment\\_products/29042009\\_impact\\_assessment\\_en.pdf](http://ec.europa.eu/internal_market/finservices-retail/docs/investment_products/29042009_impact_assessment_en.pdf)

Packaging introduces additional layers of cost and risk. In addition, PRIPs are often actively advertised and marketed at retail investors and often manufactured and distributed with these investors in mind. However, the situation can be complex; the entity selling the product may not be its manufacturer, and while the product might be bought by retail customers, it may be originally targeted at sophisticated investors.

A patchwork of uncoordinated regulation for these products has grown up at both national and European levels. This has led in particular to significant differences in the level of standards between sectors. Some products and channels are not regulated at all. Regulation is often more focused on the legal form that a product takes than its economic nature.

The Commission committed in its Communication on PRIPs to take the legislative steps necessary for addressing investor protection and level playing field issues in the retail investment market. Horizontal outcomes are to be sought, building on two clear benchmarks:

- For rules on **pre-contractual disclosures**, the 'key investor information' document, or KIID, as developed for UCITS. This was tested on investors themselves, and is a harmonised and standardised document, normally no more than 2 paged in length, that includes, amongst other things, a standardised risk rating.
- For rules on **sales**, relevant parts of MiFID. The key rules relate to avoidance and management of conflicts of interest (including handling of inducements), and a firms' conduct of business (assessments of suitability and appropriateness).

### 1.3 Supporting work

Background material for this initiative can be found on the Commission website at [http://ec.europa.eu/internal\\_market/finservices-retail/investment\\_products\\_en.htm](http://ec.europa.eu/internal_market/finservices-retail/investment_products_en.htm), which includes detail on further work the Commission services have undertaken. In addition, you should also consider the following supporting work:

- A **study** on the potential costs and benefits of different options for change in the area of sales rules for the distribution of non-MiFID PRIPs, launched in early 2010. The final report from this study is now available.<sup>6</sup>
- A **study** seeking to assess the quality of advice being offered across the EU. (Findings are expected before the end of 2010).<sup>7</sup>
- A **study** seeking behavioural economics insights on the different factors relevant to investor decision making. The final report from this study is now available.<sup>8</sup>
- A **joint task force** of the level three committees. The final report from this task force is now available.<sup>9</sup>

---

<sup>6</sup> [http://ec.europa.eu/internal\\_market/finservices-retail/investment\\_products\\_en.htm](http://ec.europa.eu/internal_market/finservices-retail/investment_products_en.htm).

<sup>7</sup> [http://ec.europa.eu/consumers/rights/fin\\_serv\\_en.htm#fin](http://ec.europa.eu/consumers/rights/fin_serv_en.htm#fin)

<sup>8</sup> [http://ec.europa.eu/consumers/strategy/consumer\\_behaviour\\_en.htm](http://ec.europa.eu/consumers/strategy/consumer_behaviour_en.htm).

The Commission services will reflect on the findings of these additional contributions alongside the feedback from this consultation.

## **2 Scope of the PRIPs Regime**

**This section sets out options for the scope of the PRIPs regime. It provides background on the issues, and seeks your views on a possible definition, potential qualifications to that definition, and on the use of indicative product lists.**

### **2.1 Background**

Retail investment products can take a wide variety of legal forms yet all fulfil broadly comparable functions for retail investors. They should offer retail investors a chance of exposure to investment returns from financial assets in a cost-effective manner, broadening participation in the capital markets.

Generally, a key characteristic of these products is that they are 'manufactured' – a firm constructs the PRIIP, by packaging or structuring different elements together, for instance by wrapping a financial asset or assets within another structure, or by providing investment management through a collective investment scheme, or by devising a financial instrument that creates exposure to other financial instruments, indices or reference values. This 'packaging' can increase complexity and risks and lead to the generation of conflicts of interest. In addition, the same basic investment proposition might be wrapped as an insurance contract, a UCITS fund, or a structured note. Retail clients are often unlikely to fully understand the significance of these differences – a proliferation in product design and innovation has rendered a complex market even more impenetrable for the average investor.

While in these basic terms the scope of the regime is easy to describe, establishing a clear definition of this scope is more difficult. The Commission services consider that any successful definition should:

- bring in scope all the key packaged investment products being marketed domestically and cross-border in the EU at present – this is an empirical test;
- be flexible enough to accommodate financial innovation: new products will develop that do not neatly fit current regulatory definitions, while history in some markets has shown that existing products that are currently not considered investment products can often be 're-purposed' as investment products if this is incentivised;
- avoid incentivising regulatory arbitrage, which could work strongly against the interests of retail investors, exacerbating the proliferation of investment forms and their complexity;
- yet nonetheless provide sufficient legal certainty so that all market participants and market supervisors, across the EU, can be clear as to what is or is not a PRIIP for regulatory purposes.

---

<sup>9</sup> See <http://www.cesr.eu/index.php?docid=7278>

## 2.2 *Possible options*

One way of effectively side-stepping the identified regulatory arbitrage issues is to define the scope very widely: for instance, all products sold to retail customers as investments could, by virtue of the fact of them being sold as investments, be covered by the present initiative. The test of scope in this case would be squarely in the hands of the seller at the point of sale.

Such an approach has the advantage of clarity and simplicity, at least from the perspective of the point of sale, and will by definition cover all retail investment business. From the perspective of the point of sale, the same requirements, e.g. on sales rules, might sensibly apply to all investment propositions. For financial instruments, this is already the case. This approach also can be considered consistent with the strong role of intermediaries, who actively sell these products to retail investors and are subject to key obligations and responsibilities towards their clients stemming from the provision of services to them.

On the other hand, it might be argued that a regulatory regime designed for all possible assets would be difficult to develop and hard to effectively target, especially in the area of product disclosure requirements. For instance, when looking at product disclosure requirements, it is clear that very different measures would be needed for packaged investment products, compared with the full range of possible investments that might be made in underlying assets themselves (e.g. shares in companies, property, etc.)

In addition, the particular nature and risks of PRIPs – the additional complexities that might be triggered by the packaged element – might be seen as justifying targeting them with a specific regulatory regime, to supplement, where appropriate, those which already apply to investments in general.

## 2.3 *Proposed solution*

Given these considerations, the Commission services propose maintaining the focus on packaged investments rather than investments more generally. In order to focus the scope of the initiative in this way, whilst minimising opportunities for regulatory arbitrage, a definition that concentrates on the economic effect of a PRIP for the investor seems necessary; it is thereby preferable for investor protection reasons to cast the definition of PRIPs relatively wide, rather than narrow. Analysis suggests that a definition of this kind can be found by bringing together two key elements: firstly, the concept that the returns of a PRIP are exposed to uncertainty or fluctuations (in very simple terms, the 'investment' element), and secondly, that there should be some form of 'packaging' or 'indirectness' to this exposure (the packaging, structuring or 'engineering' element).

Accordingly, and drawing on input from the 3L3 PRIPs taskforce mentioned above, the Commission services propose the following definition as a starting point:

<p><b>A PRIP is a product where the amount payable to the investor is exposed to fluctuations in the market value of assets or payouts from assets, through a combination or wrapping of those assets, or other mechanisms than a direct holding.</b></p>
---

Such a definition of PRIPs would include products with capital guarantees, and those where, in addition to capital, a proportion of the return is also guaranteed. However, products where the precise rate of return is set in advance for the entire life of the product would be out of scope, since here the amount payable is not subject to fluctuations in the values of other assets.

It would rule into scope all investment funds, whether closed ended or open ended, and all structured products, whatever their form (e.g., packaged as insurance policies, funds, securities or deposits). Derivative instruments would also be in scope.<sup>10</sup> The definition would appear to rule out – as required – many 'vanilla' shares and bonds, insofar as these do not contain 'a mechanism other than a direct holding of the relevant assets'.<sup>11</sup> It would also rule out deposits which are not structured deposits (but see below).

Pure protection products would not be covered since they do not have a surrender value.<sup>12</sup> Other insurance products would not be covered where any surrender value offered is not wholly or partially exposed, directly or indirectly, to market fluctuations. On the other hand, 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.

The mechanisms by which pay outs are made would not be relevant for determining scope: products that yield an income, or provide a single pay out at maturity, or that adopt some other arrangement, would all be in scope in so far as they satisfy the general definition.

The definition does not include any reference to a product being intended for retail use. This is due to the fact that the retail element is relevant at the point of sale in particular, when the distributor sells a certain investment product to a retail customer, or provides advice on it. Furthermore, as noted earlier, it is possible for a product to be designed for non-retail investors and then sold to retail investors. However, it is important to stress that for product disclosure requirements the distinction between retail and non-retail remains relevant, since such product disclosures are targeted at retail investors (rather than institutional or professional investors), and, on the face of it, should only need to be prepared and delivered where retail investors are being sold an investment. Approaches to this are discussed below in section 4.2.

## Questions

Q. 1: Should the PRIPs initiative focus on packaged investments? Please justify or explain your answer.

<sup>10</sup> This would appear desirable, since derivatives might otherwise be used to gain the exact same exposure as a PRIP, thereby circumventing the regulatory regime. Derivatives may take standardised or non-standardised forms, and further work would be needed as to the application of PRIPs to these different forms.

<sup>11</sup> The concept of indirect holding of assets can be taken to rule out simple shares or issuances of debt, where the relevant asset is clearly 'one dimensional'.

<sup>12</sup> However, it may be necessary to explicitly include reference to the concept of 'surrender values', in that the definition might otherwise be considered to cover non-investment insurance benefits, where the payment of the benefit is dependent on an insured event. Crucially, the PRIPs regime targets investments.

- 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.

## 2.4 Clarifying the definition: Possible Exceptions

The definition of packaged retail investment products under point 2.3 might encompass financial products which are not targeted by this initiative, such that it may be proportionate to consider explicitly excluding certain types of product in the future legal texts – most likely on Level 1.

### a) Deposits

Deposits which pay 'simple' interest, whether fixed or variable, have not been targeted by this initiative.<sup>13</sup> This is on the view that savings products, including simple deposits, raise materially different consumer protection issues (e.g. in terms of distribution and transparency) to those raised by investment products. However, given their complexity, their similarity with certain other possible types of structured product, and the possible ways in which they might be used to package exposures that are very different in nature to a simple deposit, it would appear necessary for structured deposits to be treated as PRIPs rather than deposits. This entails clearly demarcating these structured deposits from 'simple' deposits.

The Commission services seek therefore views on how such a demarcation might be achieved or the criteria that might be used; two possible definitions are proposed as a basis for feedback.

The first emerged from the 3L3 PRIPs taskforce work:

#### **Option 1**

**A deposit shall be a PRIP where [it is fully repayable, on terms under which] any interest or premium will be paid (or is at risk) according to a formula which involves the performance of:**

- **an index or combination of indices, excluding variable rate deposits whose return is directly linked to e.g. EURIBOR, LIBOR or another interest rate index;**
- **a MiFID financial instrument or combination of such financial instruments;**

<sup>13</sup> Islamic financing, where there are deposits which do not pay interest but use other mechanisms, may need specific treatment.



- **a commodity or combination of commodities; or**
- **a foreign exchange rate or combination of foreign exchange rates.**

The second possible approach has emerged from the Commission work on deposit guarantee schemes:

### **Option 2**

**A deposit shall be a PRIP if either of the following conditions are met:**

- **its principal is not repayable at par;**
- **its principal is only repayable at par under a particular guarantee or agreement provided by the credit institution or a third party.**

Option 2 has the benefit of relative simplicity and consistency with the work on deposit guarantee schemes.

### **Questions**

- 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.

### **b) Pensions**

Pensions also might need special treatment. The pension landscape in the 27 Member States is heterogeneous and the interaction between first (state-run pension schemes), second (occupational schemes) and third (individual, voluntary private pensions) pillar pensions varies from Member State to Member State. These interactions make it difficult to identify those pension products which might fall under the scope of PRIPs. On the other hand, many pension products, particularly third pillar pension products, might have some or all the characteristics of PRIPs as defined economically, and these products might in some Member States compete directly with PRIPs. To this extent, any exclusion of these products from the PRIPs work would seem artificial. (Indeed, if requirements on transparency and distribution for pension wrappers were materially lower than for other investments, an incentive could be created to sell investments through such wrappers).

The Commission, in its Green Paper on Pensions,<sup>14</sup> is consulting on a range of issues relating to the European pensions market and pension provision, including on the appropriate distribution and transparency requirements. Regulatory arbitrage and level playing field issues between investments and pensions will be one of the matters that will need to be addressed as that wider work on pensions matures; in the view of the

<sup>14</sup>

<http://ec.europa.eu/social/main.jsp?langId=en&catId=89&newsId=839&furtherNews=yes>

Commission services, it would be premature to address these in isolation before the bigger picture has been considered.

On this basis, the Commission services are considering excluding pensions from the scope of the PRIPs work at this time. There is one possible exception, however: investments packaged as variable annuities appear to occupy a grey area between pensions (as generally understood) and investments. Views are therefore sought on whether these should be excluded or not; on the face of it, the definition under 2.2 would catch these within scope.

In order to exclude pensions (at this time), it is likely necessary to develop a specific exclusion:

**For the purposes of the PRIPs initiative, those products where the provisions of national law accord particular benefits to the client in relation to the product by virtue of its use for the purposes of retirement planning should be excluded from scope.**

#### Questions

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

### 2.5 Clarifying the definition: Use of indicative lists of products

It is likely in practice that the definition as developed under point 2.3, including any exceptions, would need some further clarification, so as to provide sufficient legal certainty for market participants and their supervisors.

This clarification might be best provided through further work at a secondary level. For instance, implementing measures could further elaborate the criteria with respect to their application to concrete products. This could take the form of an indicative list of products to which the PRIPs regime would or would not apply, with the definitions of product types within such a list developed (and updated, as necessary) so as to ensure consistent application across different Member States. Such a list might also take the form of technical standards or guidance, or be supplemented by these. A 'layered' approach would have the advantage of being relatively open to revision and update, which would appear vital given the impact of product innovation and market developments on the applicability and effectiveness of regulatory frameworks.

The Commission services consider it likely that the definition under 2.3 would need to be supplemented by an indicative list of products to which the regime would or would not apply. Such a list should be relatively open to revision and update, given product

and market innovation, and capable of reflecting material differences in product types across national markets.

### Questions

- 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.
- 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?

## 3 Legislative approach to be taken in delivering the PRIIPs regime

**This section sets out the broad legislative approach proposed for the PRIIPs initiative, addressing the rules on pre-contractual product disclosures and sales separately. It specifically seeks your views on the handling of direct sales by UCITS.**

### 3.1 Introduction

The legislative form of the PRIIPs regime is in principle independent from its content. In particular, the Commission services have been considering in detail the possible instruments that might be used to achieve horizontal outcomes in the retail investment markets (consistent levels of protection; aiding investors in comparing between products).

In taking a position on this issue, the many existing European instruments that make up the patchwork of current regulation on PRIIPs need to be considered – these include the Insurance Mediation Directive (IMD), the Markets in Financial Instruments Directive (MiFID), the Prospectus Directive (PD), the Undertakings for Collective Investment in Transferable Securities (UCITS) Directive, and the Solvency II Directive.<sup>15</sup>

### 3.2 Rules on pre-contractual product disclosures

For pre-contractual product disclosures, the regulatory landscape is particularly fragmentary. Solvency II, the UCITS Directive, and the PD (and in a different context, the IMD and MiFID) contain various requirements on retail disclosures aimed at improving investment decision making, but these vary significantly in approach and degree of harmonisation, and do not offer a basis for comparisons between different types of product. Structured deposits are not covered at all.

Achieving consistency across such a landscape might in principle be done either through aligning the content of sectoral instruments, but keeping them separate, or through the introduction of a new cross-sectoral instrument.

The second option might well be simplest to develop and most effective and efficient in aligning requirements between different sectors. It would also likely be most effective at

<sup>15</sup> It also potentially interacts with the Distance Marketing in the Financial Services Directive and the E-Commerce Directive, amongst others.

addressing gaps in coverage: a new instrument could be designed to be directly applicable according to the scope of the PRIPs project. The particularly fragmented legislative landscape lends some force to this.

Furthermore, it is likely that the second option might better ensure the strongest degree of comparability between PRIPs, by ensuring the framework and its detailed measures could be developed and negotiated in a holistic manner. Consistency and standardisation were identified in the Communication as key to encouraging and enabling retail customers to compare different PRIPs.

The Commission services consider a new disclosure instrument most effective for achieving the outcomes being sought.

The new instrument would require a pre-contractual product disclosure targeted at the retail market for all PRIPs sold in the retail market; it would apply the same broad principles (as developed for UCITS KIID, to be examined below under section 4) to all products that fall within the scope of the PRIPs initiative. Detailed requirements contained within implementing acts and/or technical standards would likely be tailored for each type of PRIP, along the lines of the KIID regulation for UCITS, so that differences between types of PRIP might be effectively handled.

Possible approaches to the interaction between such a new instrument and existing sectoral legislation (which may address other issues) including the UCITS Directive are discussed below under section 4.3.

### **3.3 Sales rules**

There is less of a 'patchwork' of requirements at the EU level on sales as for pre-contractual product disclosures. Two instruments are relevant: MiFID, which applies to all financial instruments (including PRIPs that are financial instruments), and the IMD, which applies to all PRIPs that are insurance products. These two instruments cover the great majority of PRIPs and their distribution channels (the exception being structured deposits).

Also in this case, different approaches could be adopted, such as aligning sectoral instruments, or through the introduction of a new cross-sectoral instrument.

The Commission services consider that a wholly new PRIPs sales regime would be particularly complex and raise uncertainty; those firms subject to a PRIPs regime would normally still be subject to either MiFID or IMD, leading to duplication of requirements or complex interactions, e.g. between PRIPs and non-PRIPs business. In addition, PRIPs sales rules are only a small subset of the rules relevant for distribution and mediation, which must cover other areas such as registration and authorisation requirements, so a PRIPs regime could not stand on its own, further complicating its interaction with existing requirements. In addition, since there is less of a 'patchwork' in the area of sales rules, the rationale for introducing a new instrument is weaker than in the area of disclosure. Extending an existing framework (i.e. MiFID) raises similar issues, though it should be recognised that certain jurisdictions have already elected to extend elements of MiFID at the domestic level to cover other areas, under their own discretion.

Given this, the Commission services consider an alignment of distribution rules for PRIPs in the IMD and MiFID preferable. The present review of the IMD also offers an efficient opportunity for developing this option further.

### ***Addressing remaining gaps***

This general approach leaves the question open as to how three remaining regulatory gaps in relation to sales rules might be addressed: sales of deposit-based PRIPs, direct sales of insurance-based PRIPs by insurance undertakings, and direct sales of UCITS.

- *Sales by deposit-based PRIPs* will be addressed in the MiFID review consultation. Here the most effective solution would appear to be to extend the rules relevant to PRIPs in MiFID to cover sales of these deposit-based PRIPs; a sectoral regime solely for the sellers of these deposit-based PRIPs, merely to apply conflicts of interest and conduct of business rules, would appear disproportionate, while the banks that appear to present the key distribution channel for these products already fall under MiFID in certain other areas.
- *Direct sales by insurance undertakings* will be addressed in the IMD review consultation, which will explore bringing such sales into the scope of the IMD.
- *Direct sales by UCITS* could feasibly be handled either by bringing them within the scope of MiFID or by including the relevant rules within the UCITS framework. Given that all activities of UCITS management companies (e.g. including marketing) are currently regulated under the UCITS Directive, it might be more complex in legislative terms to bring UCITS direct sales under MiFID, and might also introduce some uncertainty into the UCITS framework. On this basis it seems preferable to address such sales through the UCITS framework rather than through MiFID. This would entail some targeted adjustments to the UCITS framework (most likely both on Level 1 and Level 2). So as to ensure greatest consistency in requirements across all PRIPs, modifications to the UCITS framework so as to directly apply relevant MiFID requirements, e.g. by direct cross references, might be explored.

The Commission services propose using both the IMD and MiFID to deliver the PRIPs initiative on sales rules, retaining these two distinct regimes, but aligning sales rules for PRIPs on the benchmark of MiFID.

The approach being considered would:

- Expand the application of MiFID sales rules to cover those PRIPs other than insurance PRIPs that might currently be not covered (e.g. structured deposits) [see MiFID review consultation];
- Ensure that MiFID sales rules apply to all sales of PRIPs under MiFID, even where an exemption might otherwise apply [see MiFID review consultation];
- Introduce into the IMD rules on sales of PRIPs that are consistent with those in MiFID (rules on conflicts of interest and on conduct of business) [see the IMD review consultation]; and
- Make changes to the UCITS framework to ensure direct sales by UCITS asset managers are fully subject to MiFID sales rules.

## Questions

*Note: specific questions related to possible MiFID and IMD changes as outlined here are not being raised in this consultation; for these areas please see the MiFID and IMD consultations, as set out above in section 1.3.*

*You may of course respond on the approach outlined in general here.*

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

## 4 A new pre-contractual product disclosure instrument

**This section addresses the details of a possible new PRIIPs pre-contractual product disclosure regime.**

**It seeks your views on the goals of the regime, the level of standardisation possible, the broad contents of the new documents, and on who should be responsible for producing them. It also seeks views on possible ways of aiding socially responsible investing, on consequential impacts or changes to pre-existing legislation, and provisionally outlines some detailed areas to be covered in future work.**

### 4.1 Introduction

The PRIIPs initiative focuses on improving pre-contractual product disclosure due to the difficulties retail investors face in understanding, comparing and using information provided to them about investments. Investors who do not understand, compare or use product disclosures cannot make informed investment decisions for themselves or shop around for products, reducing efficiency and competition in retail investment markets.

Diagnostic work has shown that much needs to be done.<sup>16</sup> The financial services in general have a very poor track record in explaining themselves to retail investors in terms that retail investors can understand. Improving product transparency is not simply a matter of ensuring that information is disclosed (though that is a crucial step), but also must address how information is disclosed. Whether the information is presented in an appealing fashion that is readily understandable, using simple language, is just as important as its pure content.

When developing the key investor information (KII) document for UCITS the Commission tested options with retail investors themselves as a necessary step in

---

<sup>16</sup> Information disclosures provided to investors typically have failed to address these problems. Information is often long winded, filled with legalistic jargon. Important messages can be lost, for instance buried within exhaustive disclosures of all possible risks, with only weak attempts made to prioritise messages or present key messages in a way the average investor can grasp. Information that would be useful for comparing products – on costs, on overall risks, on possible performance, on key features of the product – is often presented in a way which makes comparisons difficult, or based on metrics which are specific to a particular firm or product type.

moving forwards.<sup>17</sup> The Communication announced the plan to build on the successful work that has been completed for UCITS, and apply the lessons learned and process followed to the development of retail disclosures for other PRIPs.

#### **4.2 Possible content of new regime**

As was set out in section 3 above, the Commission services consider a new disclosure instrument necessary. It is expected that this would take a Lamfalussy form, and so split a high-level framework (level 1) from measures designed to harmonise, where desired, its technical implementation (level 2 measures and/or 'technical standards').

This section focuses on the essential issues to be tackled in developing the high-level framework, rather than its detailed or technical implementation.

##### **a) Principles underlying the design of the regime**

Before addressing the content of the regime, its broad design and purpose should be considered. In this regard, the UCITS KII regime has followed certain broad principles:

- The UCITS regime aims at addressing retail investors' needs for **pre-contractual information so as to improve decision making**. The information must be provided to the retail investor and given due prominence, at a sufficiently early point in the decision making process to be able to inform the decision making.
- Each UCITS KIID must provide **sufficient information for the average retail investor to make an informed decision**: the document is intended to be capable of informing an investment decision without reference to other material, though reference to other material or 'layering' of information may still be useful as a supplement.
- So as to ensure the UCITS KIID does not become over-laden by legal material, caveats, full risk disclosures, etc., there is an **explicit delimitation of the civil liability attached to**; it was felt that the document should be focused on communicating **key points** with retail investors.

For the UCITS KIID, it was considered that a focus on providing key information in a timely fashion before a decision is taken was vital if the information was to be effective in aiding decision making.

This implies a separation between such key information (the KIID) and other disclosures. For UCITS a full prospectus is separately required, which contains detailed information which is not necessarily essential for the retail investor making an investment decision, but which is necessary for other reasons. This is true for certain other PRIPs, such as those subject to the PD, where for instance the prospectus has a vital and wider role, e.g. for increasing market transparency in the broader sense, or providing full details of the investment for reference purposes. Investors may rely on the prospectus to have a full idea about the issuer, the security and the market itself.

---

<sup>17</sup>

[http://ec.europa.eu/internal\\_market/investment/docs/other\\_docs/research\\_report\\_en.pdf](http://ec.europa.eu/internal_market/investment/docs/other_docs/research_report_en.pdf)

The PRIPs initiative seeks to address the challenge that retail investors are not comfortable relying on such full disclosures and are unlikely to use them: hence, the focus is on drawing out key information into a more digestible format, the KIID. This raises a question as to the proper relationship between such a KIID and other (perhaps fuller or more detailed) disclosures that might be made. In addition, for those PRIPs where there is no requirement for a fuller disclosure, for instance those which are insurance based, introducing a KIID analogous to that required for UCITS raises a question as to how best to address the disclosure of fuller or other information, e.g. as may be contractually necessary but which might not be relevant for making an investment decision.

In the Commission services view, the consumer testing results that underpinned the strongly shortened form of the KIID for UCITS are a good guide to the approach necessary for designing KIID for other PRIPs: a trade off exists, such that the more information is included that is extraneous to investment decision making, the less effective a document will be at informing such decision making. For this reason it is crucial, in developing a regime, to be clear as to the purpose of that regime, so that requirements can be appropriately targeted.

The Commission services consider that the focus in the PRIPs work should be squarely on ensuring key information is provided in a timely fashion and in a form which understandable and useable by the retail investor, with the purpose of aiding investment decision making.

The documents used for providing such information must not be overburdened with information which is not necessary for making an investment decision; the Commission services will explore possible legal techniques for ensuring the documents remain streamlined and focused solely on key information.

#### **Questions**

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

#### ***b) Level of standardisation***

The UCITS KII regime includes detailed measures designed to **harmonise and standardise the KIID**: the format of the document, its length, the order of items, the use of language, and the document's content are all specified in great detail.<sup>18</sup> The

<sup>18</sup> Length is strictly limited (2 sides of A4 for most funds). The KIID includes an innovative risk rating which presents levels of possible market risk for each fund through a simple rating, based on a detailed methodology that can be consistently applied by all UCITS. The KIID also includes a streamlined and standardised presentation of fund costs and standardised presentation of information about performance.



specification of the UCITS KII is exhaustive – there is no possibility of supplementation. This harmonisation and standardisation is designed to improve comparability between UCITS and to ensure consistently high standards of information.

Unlike UCITS, other PRIPs are not harmonised products at the European level. This means there is in practice a greater degree of variation as to product features, structures, charging and pricing arrangements, risks, etc, as compared with UCITS.

For instance, the UCITS framework is designed to ensure UCITS possess sufficient liquidity to meet requests for redemptions and subscriptions, and controls exposure to counterparty risk, conditions which may not apply for other PRIPs; likewise, for insurance-based PRIPs insurance benefits will typically be offered that are unique to these products, and which may in fact be dependent on the particular life assured.

For this reason it is not possible to harmonise and standardise disclosures for all PRIPs to the exact same extent and in the same way; effectively, "one size does **not** fit all". Nonetheless, evidence suggests that greater standardisation aids comparisons and could be effective in raising standards across the EU.

Any new product disclosure instrument should apply a horizontal framework to all PRIPs through level 1 measures, with the same overarching principles.

Detailed requirements would be tailored through implementing measures – for different classes or types of PRIP (with these classes or types to be defined at the level of the implementing measures). Such tailoring might include differences in requirements to address differences in the information needed by retail investors for different classes or types of PRIP, and should be based on testing of options with retail investors.

However, so as to enable effective comparisons, there are certain key areas of the detailed information – on costs, performance, risks, guarantees – where common approaches defined in implementing measures are likely to be necessary for all PRIPs . In addition, a common layout and 'look and feel' for the KIID for different PRIPs is desirable.

## Questions

- 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?

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?

*c) Content of PRIPs KIIDs*

Initial thoughts on the broad content and format of the document were outlined in the Commission update published in December 2009.<sup>19</sup> The focus here is on possible general requirements that would sit at level 1.

**General requirements sitting at level 1**

- KIID must be 'fair, clear and not misleading'.
  - KIID must be short – 2 pages where possible, exceptions to be outlined in detailed implementing measures.
  - KIID must be written in plain language suited to the target retail investor.
  - KIID must be presented in an appealing and consumer-friendly manner.
  - KIID must focus on key information, as necessary for the average investor to make an informed decision on the PRIP in question.
  - KIID must include, as relevant for the PRIP, information on:
    - The identification of product and who has produced it;
    - What the product is and how it works – the basic investment proposition;
    - The nature / limits of any features provided, including the nature / limits of any guarantees offered.
    - The broad 'risk / reward' proposition represented by the product;
    - The costs of the product;
    - The performance of the product (where it has a track record) or information about possible performance scenarios (where relevant);
    - Practical information (such as information on compensation schemes, on finding the value of the investment, on subscribing to or redeeming an investment, on finding further information, etc).
- [Detailed implementing measures will be specified at L2 or through technical standards across these different areas, varying as necessary between different classes or type of PRIP]
- KIID must be provided to retail clients using a durable medium that is appropriate to the context / manner of the proposed sale of the PRIP.
  - KIID must be kept 'up to date' and accurate, so that investor can rely on it without reference to other information.

**Questions**

<sup>19</sup> [http://ec.europa.eu/internal\\_market/finservices-retail/docs/investment\\_products/20091215\\_prips\\_en.pdf](http://ec.europa.eu/internal_market/finservices-retail/docs/investment_products/20091215_prips_en.pdf)

- 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?

***d) Allocation of responsibilities for production of KII***

Production covers such steps as gathering information, the writing and drawing up of documents, making these documents available on paper or through another durable medium, as appropriate, and keeping documents up to date, including reviewing documents on a periodic basis.

Responsibilities for production of the KIID can be approached in two broad ways:

- Responsibilities for production are placed solely on the product manufacturer. Distributors are unable to produce a KIID themselves.
- Responsibilities are not explicitly assigned: no PRIP can be sold to a retail client without the disclosure being provided, but either the distributor or the product manufacturer could produce the document. (As a different form of this option, the allocation of responsibilities could be left open, but it be required that this is addressed as a contractual matter between the manufacturer and the distributor. Liabilities would attach to whoever was contractually responsible for production of the document.)

The first option has the benefit of clarity and simplicity. Given the practical difficulties intermediaries would face in developing disclosures without support from the product originator, it seems sensible to attach responsibilities clearly to the manufacturer. However, a question arises as how to handle a situation where the manufacturer is unable or unwilling to produce a disclosure, whether in such circumstances an intermediary or distributor might be able to do so. This is an important point, as in general a PRIP could not be sold to a retail customer without a KIID being provided.

The second option offers distributors or intermediaries greater flexibility in this respect, but it may be practically difficult to develop clear requirements on production of KIID without assumptions being made as to whom is producing the document.

The 3L3 task force has been examining this specific issue, and a majority of its members considered that, as a general approach, the product manufacturer should be responsible for producing a KII.

It is important to note that requirements on the production of the document need to be carefully separated from those relating to its provision to retail clients. As outlined above, in all cases a KIID must be provided to a retail client before a PRIP can be sold to that client. Responsibility for provision of the document would be the responsibility of the intermediary or distributor; this is a matter for sales rules. For direct sales this would be the product originator; for indirect sales the intermediary, whether they are tied to the originator or an independent broker or advisor.

The Commission services consider that an approach which places clear responsibilities for preparation of information on the provider is likely to be preferable, since the entity that manufactures a product is normally best placed to be responsible for preparing information on it. However, a question remains as to whether in certain cases an intermediary that seeks to sell a PRIIP to a retail client might be permitted to assume the responsibility for the production of the relevant KIID.

#### **Questions**

- 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?

#### ***e) Labelling and enhanced transparency of PRIIPs in relation to socially responsible investments***

The European Commission recently announced, in the Single Market Act, a wide package of measures for ensuring prosperity and jobs.<sup>20</sup> As part of this work, it is considering the possibility of a social business initiative, to look for measures to encourage and support social entrepreneurship.

This may have some relevance for PRIIPs KIIDs. For instance, these documents could be an important means for ensuring investors receive relevant information about the social and environmental impacts of the investments they contemplate.

In addition, where a product is labelled by its manufacturer as 'green', 'ethical' or 'socially responsible' (or such other relevant labels or claims as may be relevant), an issue arises as to the transparency of such labels and the importance of ensuring they are not misleading. It might also be argued that a lack of consistency across the EU in the use of such labelling limits the development of the market in such investments.

Options might be explored for raising transparency, comparability and consistency around the use by product manufacturers of labelling to denote socially responsible investments (e.g. 'green' 'ethical').

#### **Questions**

- Q. 30: What detailed steps might be taken to improve the transparency of the social and environmental impacts of investments in the KIID for PRIIPs?
- Q. 31: How might greater comparability and consistency in product labelling be addressed?

### **4.3 Interaction with and amendments to existing legislation**

<sup>20</sup>

See [http://ec.europa.eu/internal\\_market/smact/index\\_en.htm](http://ec.europa.eu/internal_market/smact/index_en.htm)

As noted above, a number of existing instruments contain disclosure requirements, with a variety of objectives.<sup>21</sup> While these sectoral requirements are generally not identical to the framework just outlined, there is overlap with the purpose of the KIID. While some existing requirements are clearly designed to satisfy a similar purpose as the PRIPs KIID (providing retail investors with key information before an investment so they can make informed decisions), others are not designed with the same purpose in mind, addressing, for instance, wider market transparency or contractual disclosure issues.

The Commission services consider that for reasons of legal certainty and proportionality it will be necessary to make some amendments to existing requirements. The aim would be to ensure there is no duplication of similar requirements between the PRIPs KIID regime and other pre-existing disclosure regimes.

To address possible duplications, the introduction of the new PRIPs regime might entail:

- *amending the PD*, so that for every PRIP subject to PD a KIID, as defined in the new pre-contractual disclosure instrument, would be taken to satisfy the requirement for a 'summary prospectus', in so far as this is the case;
- *amending Solvency II*, so that for every PRIP subject to Solvency II a KIID, as defined in the new pre-contractual disclosure instrument, would be taken to satisfy any duplicate disclosure requirements; and
- *clarifying interaction with UCITS*. In principle, the same approach might be taken, with targeted amendments made to the UCITS directive along the same lines.

However, for logistical and technical reasons such an approach may not be possible. Level 2 measures on the UCITS KIID have only recently been adopted; the UCITS KIID regime is currently being implemented by firms and supervisors. The importance of a speedy and effective completion of this process was recognised by the co-legislators, who urged the earliest possible transition. In addition, the UCITS KIID is the benchmark for other PRIPs, and the focus of the work is clearly on applying the lessons learned in developing the UCITS KIID to other types of product.

The Commission services do not therefore envisage changes to the content of the UCITS KIID framework at this time. Nonetheless, the process of developing KIID requirements for other PRIPs might lead to the identification of certain adjustments that might be considered for the UCITS KIID, as may be necessary for ensuring the greatest degree of comparability between the KIIDs for different PRIPs. The Commission services consider that any such adjustments might be addressed within the context of the normal post-implementation review work on the UCITS IV regime, as was already set out in the impact assessments that accompanied the UCITS IV legislative proposals.

---

<sup>21</sup> UCITS level 1 includes general principles, as set out in 4.2 (a) above, and detailed level 2 implementing measures in the form of a regulation. The PD level 1 requires a prospectus and 'summary prospectus' to be produced, so that investors are capable of making informed investment decisions and as a common basis for offering securities on a cross-border basis. These disclosures must cover information both about the security being offered and the issuer; the summary prospectus provides information in a more succinct form than the prospectus, suited to the average investor. Solvency II level 1 outlines the information that must be provided and the timing of provision; it covers pre-contractual, contractual and ongoing disclosures.

All decisions on the content of the KIID for different PRIPs and its relationship with other disclosures should be considered in the light of their effectiveness in helping retail investors make better investment decisions before entering into a contract.

#### **Questions**

- 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?
- 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?

#### **4.4 Issues to be addressed by developing appropriate implementing measures**

In this section we cover some issues that will need to be addressed following the establishment of a common disclosure framework on level 1; further work will need to be undertaken in these areas, but their broad shape needs to be clear in order to clarify the form and content of level 1 requirements.

A key goal of the PRIPs initiative is to aid investors in making comparisons between different PRIPs, so a fundamental focus of this further work will be on identifying the further steps that can be taken to aid such comparisons. Further work will in addition be focused on any necessary tailoring of detailed measures for the different types of PRIP.

##### *Risks*

For a UCITS KIID, risk disclosures are handled by means of a graphical presentation of investment risk (supported by short narrative disclosures relating to other possible risks). The graphical presentation operates by means of a scale from 1 to 7; a common methodology has been adopted by CESR by which funds can be assigned to this scale.<sup>22</sup> This methodology uses historic volatility data for the fund (there are some predefined exceptions).

This approach was tested with investors. In general, the best outcomes in terms of use of the information and understanding of the information were achieved where this relatively simple presentation was adopted.

For many PRIPs (e.g. unit-linked insurance contracts that link to funds such as UCITS) this broad approach might be adapted with little modification, at least at the level of the unit (the contract as a whole could combine a number of different units in varying proportions, thereby leading to a contract-specific risk profile). Also, since the UCITS approach includes a method for rating structured funds, it might also be adapted for

<sup>22</sup> See <http://www.cesr.eu/index.php?docid=6961>

retail structured products more generally. In both cases, a re-calibration of the rating scale for the new universe of products might be necessary to ensure comparability.

However, certain risks, e.g. relating to counterparties or liquidity, are relatively controlled for UCITS, but may be materially important for other PRIPs. Possible adjustments to the methodology developed for UCITS need therefore to be examined, to see whether the method can handle the wide range of possible PRIPs risk profiles. Other possibilities, such as supplementing the measure in some cases, might also be explored.

Further work is necessary to consider the options for risk disclosure. Approaches should be tested with investors.

The broad principle of encouraging comparability and transparency in relation to risk information is central to addressing information asymmetries in the retail investment markets. The next step will be to assess in detail how a simple risk indicator might work across all PRIPs.

### **Questions**

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

### *Costs*

Cost information is central for retail investors when comparing between different PRIPs. PRIPs offer access to a defined risk/reward profile or investment proposition. Each profile bears costs of engineering, either explicitly or implicitly.

For fund-based PRIPs, costs typically have a familiar form, with certain one-off (entry, exit) costs, ongoing costs (e.g. management fees and the expenses of running the fund), and, in some cases, contingent costs such as performance fees. Testing has shown that a simple, structured presentation of such cost information (not showing, for instance, a detailed breakdown of the ongoing charge into its different elements) aids comparisons between funds.

For some PRIPs however this approach might not be possible. For instance, costs of engineering are taken through pricing spreads at the point of structuring the PRIP or when unravelling the structure. In these cases, while it is clear what an investor must invest to buy the PRIP, it is not so clear how to assess the 'value for money' of the PRIP and compare it with other PRIPs. In addition, actual costs might be dependent on individual customer's circumstances, or the distribution channel chosen, and so only clear at the point of sale.

The question of 'value for money' cuts across all PRIPs and is not simply a matter of cost. For instance, guarantees may be provided using a variety of different structures, which may or may not carry explicit costs. How are investors to be aided in comparing a PRIPs 'value for money' of these different structures? Are there any metrics that might

be used or developed for this purpose, e.g. some common measure of the cost for a given, standardised quantum of risk exposure?

Further work is necessary to identify the key information about costs that should be provided to retail investors for different types of PRIP.

Work may be necessary to identify possible metrics or measures of cost that might facilitate comparisons across all PRIPs, starting with the UCITS model, and to test these metrics for comprehension by retail investors.

#### **Questions**

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?

#### *Performance*

Currently information about performance can take a variety of forms. For UCITS, the KIID includes either past performance (a track record for the fund, if it has one, based on its NAV) or, for certain kinds of structured funds, so-called prospective 'performance scenarios'. (Performance scenarios are designed to aid an investor understand how a particular formula for a structure fund might work). For certain insurance products in certain jurisdictions information tailored to the specific contract may currently be provided, projecting how a contract might perform in the future under various indicative circumstances.

It is not clear how far these sectoral approaches might be applied more widely. However, comparing information about performance between different PRIPs is currently difficult, and evidence shows retail clients often misunderstand or misuse such information if not carefully presented.

The Commission services consider that further work is necessary to identify possible common approaches to performance information capable of facilitating investor comprehension and comparisons of PRIPs.

Particular attention will need to be paid to possible performance information for retail structured products and in relation to insurance-based PRIPs.

#### **Questions**

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?

#### *Guarantees*



Guarantees or some form of capital protection are of essential importance for retail investors. Research has shown that retail investors are typically loss averse, so that they place a strong emphasis, typically, on products that provide down-side protection. The mechanisms for delivering such protection in PRIPs are varied – they may e.g. operate by means of prudential requirements on issuing firms, or by means of financial engineering, creating different forms of exposure to counterparty risks.

Communicating the extent and the nature of the protection being offered is of key importance. Information about guarantees is also linked to information about the risk exposure of the PRIP – to what extent does the mechanism for delivering protection also generate counterparty risks, and if so, how important are these? The cost of guarantees, addressed above, is also of importance here.

Comparability between guarantees or capital protection for PRIPs is fundamentally important, however there are significant challenges in communicating key messages.

Further work is necessary to identify the common messages and information that should be provided so as to facilitate the clearest and most informative comparisons between PRIPs. Related to this, it may be relevant to limit the use of certain labels (e.g. 'guaranteed') that have a strong meaning for retail investors.

#### **Questions**

- 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?