



EUROPEAN COMMISSION
IMPACT ASSESSMENT BOARD

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Opinion

Title

DG MARKT - Impact Assessment on: Proposal on Product Disclosures for Packaged Retail Investment Products

(draft version of 17 March 2011)

(A) Context

The May 2007 ECOFIN Council requested the Commission to examine the coherence of disclosure and distribution regimes applying to different types of retail investment products in the EU law. In April 2009, the Commission adopted a Communication on Packaged Retail Investment Products (PRIPs) which noted two areas of further work: rules applying to sales processes and rules on product disclosures. This impact assessment report relates to product disclosures of PRIPs other than Undertakings for Collective Investment in Transferable Securities (UCITS) funds, as the disclosure regime for the latter product has already been modernised (UCITS key investor information (KII) regime).

(B) Overall assessment

The report provides an adequate quality of analysis overall, although certain issues should be explained in a more detailed and transparent fashion. Firstly, the report should better locate the initiative in the overall regulatory framework that aims to improve investors' protection and should explain its relationship with other Community initiatives in this field. Against this background, and reflecting upon the ongoing implementation of (and taking into account the effects of) UCITS KII, the report should strengthen the case for EU action. Secondly, the report should be clearer about the scope of the proposal and should assess in greater detail whether the suggested definition of PRIPs (other than UCITS) can be considered as sufficiently operational. Thirdly, the report should provide greater clarity on the options related to sanctions and liabilities. Fourthly, it should improve the assessment and comparison of options and should make clearer that factors other than information disclosure influence the decisions of private investors. The report should provide a more realistic assessment of the expected benefits by basing them on the market size of the PRIPs covered by the current initiative and comparing them with the estimated overall costs. Finally, the different positions of stakeholders should be transparently reflected throughout the main report.

(C) Main recommendations for improvements

(1) Better explain the overall policy context and the case for EU action. The report should better explain how this proposal is linked to existing Community legislation and to other new initiatives aiming to improve investors' protection, in particular the UCITS Directive and the ongoing review of the Markets in Financial Instruments Directive and the review of the Insurance Mediation Directive. It should discuss how consistency between the current proposal and the related initiatives will be ensured, for example as regards the product categories covered. On that basis, the demonstration of the necessity for and the value added of EU action should be strengthened, given that the report focuses on the pre-contractual information only (and not on advice/selling or financial education), and given the relatively small cross-border market for PRIPs and the small share of non-UCITS PRIPs in retail investment markets. The report should also better justify the timing of the initiative, given the fact that the proposal is based on the key investor information document for UCITS, which is currently being implemented and for which no results on its effectiveness are available.

(2) Be clearer about the scope of the proposal. The report should explain the diverging views of stakeholders and should assess in greater detail whether the definition of PRIPs provided in Annex 1 can be considered as sufficiently operational to allow for a clear delimitation of products falling in/out of the scope of the proposal. It should explain whether the foreseen review mechanism will be flexible enough to follow the developments in PRIPs products and innovation in financial markets.

(3) Clarify the options related to sanctions and liabilities and better explain their relation to the identified problems. The report should be clearer about the civil liability attached to PRIPs products disclosures, and the sort of failures that could trigger redress. The potential link between the severity of the sanction and the importance of the missing information on the product disclosures in PRIPs should be better explored. The report should also clarify how the presented options fit into the context of the 2010 Communication on sanctions (COM (2010)716).

(4) Better assess and compare options. The report should further clarify that factors other than information disclosure influence the decisions of investors. This should be reflected in the qualitative assessment of impacts (for instance, strong positive social impacts in relation to consumer protection (p. 46) appear overstated at this stage of the proposal, when detailed implementation arrangements are not yet established). The risks and uncertainties related to the capacity of the proposed options to improve investor decision making (p. 47) should be included in the assessment of policy options and their comparison. The report should also discuss whether there is a risk of a "perverse effect" whereby retail investors could have a false sense of security based on the regulated pre-contractual information. In this context, the appraisal should use the outcomes of the consumer testing exercise conducted to support the preparation of the KII for UCITS. Finally, the estimates of the expected benefits resulting from a possible reduction of 'mis-sales' should be based on the market size of the PRIPs covered by the current initiative, and should thus exclude the UCITS part of the market. The revised benefits should be compared to the estimated overall costs.

Some more technical comments have been transmitted directly to the author DG and are expected to be incorporated in the final version of the impact assessment report.

(D) Procedure and presentation

The different positions of the stakeholders should be transparently reflected throughout the report. An annex summarising the results of the public consultation should be added. In terms of the structure, the description of options, their assessment and comparison should be presented in separate sections. The executive summary should be drafted in more accessible language and should include a sufficiently developed section on monitoring and evaluation.

(E) IAB scrutiny process

Reference number	2010/MARKT/045
External expertise used	No
Date of Board Meeting	13 April 2011