SUMMARY
OF THE

TECHNICAL WORKSHOP

ON PACKAGED RETAIL INVESTMENT PRODUCTS

Brussels, 22 October 2010

Minutes of the Technical Workshop on Packaged Retail Investment Products, 22 October 2009

DG MARKT Services hosted a Technical Workshop on 22 October 2009 to discuss with industry experts and consumer representatives issues to be addressed in relation to the Commission's on-going work on Packaged Retail Investment Products (PRIPs). Industry experts represented the fund management, banking, insurance, securities and distribution sectors. Leading consumer associations ensured that consumers' views were presented. The Committee of European Securities Regulators (CESR), the Committee of European Insurance and Occupational Pensions Supervisors (CEIOPS) and the Committee of European Banking Supervisors (CEBS) were also present in an observer capacity. (A list of bodies who nominated participants can be found below in Annex 2).

The workshop followed the Commission Communication of 29 April 2009 in which the Commission announced moves towards a pan-European horizontal regulatory approach to rules on pre-contractual product disclosures and rules on sales for all PRIPs. As the project cuts across existing sectors and legislation the workshop aimed at providing the opportunity for the Commission to test with a wide range of stakeholders the main ideas contemplated in the course of the work on PRIPs. The workshop provided a forum for all interested stakeholders to clarify their positions and focus on practical aspects of the exercise.

The workshop was structured around an 'issues paper' developed for the discussion at the workshop and highlighting some of the key issues which need addressing within the PRIPs work. The issues paper is published on COM website: http://ec.europa.eu/internal_market/finservices-retail/investment_products_en.htm.

The agenda for the workshop can be found below in Annex 1.

Opening remarks

Emil Paulis, Director of the Financial Services Policy and Financial Markets Directorate, DG MARKT, opened the discussion, underlining the importance of this project for investor protection and that its main purpose can be seen as **empowering investors** to make adequate use of their rights. They should be given suitable information on the products they are considering buying and be able to trust the advice given to them on the products. The work on PRIPs will focus on two key areas: pre-contractual product disclosure and selling practices. The current siloed approach with patchy regulations and inconsistent standards shall be replaced by a horizontal approach. It will also be important to raise existing standards. As conceptual work is already advanced, the Commission would like to focus on concrete questions: how to achieve the horizontal approach in practice, what elements should be common to all PRIPs and which tailored for particular types of product, and how to align this work with other initiatives (in particular the MiFID and IMD reviews).

Ugo Bassi, Head of the Asset Management Unit in DG MARKT, clarified the organisational arrangements for the seminar (no tour de table but open discussion), and encouraged

participants to also provide the Commission Services with written contributions after the workshop (not later than mid-November). He assured that there will be further opportunities to engage stakeholders in this project as a Commission Orientation Paper will be published in the forthcoming months for wider consultations, possibly followed by an Open Hearing.

Session 1: Scope - *what products should fall within the scope of the PRIPs work?*

In the first session, attendees were invited to focus on the scope of the PRIPs work.

In the introductory statement the **Commission representatives** underlined that the issue of scope is challenging because it needs to be approached in a way which is different from the approach everybody is used to. It needs to adopt the perspective of investors, not the more usual "product-based perspective". Commission representatives recalled the aims which should be achieved by defining scope, namely to ensure that the definition covers the relevant PRIPs market across jurisdictions, is flexible enough to accommodate financial innovation, avoids regulatory arbitrage and provides sufficient legal certainty. Consequently, a definition was proposed that relied more on the common economic features of the products than on their legal form. The Commission sought to test whether this approach is the right one to achieving the goals that had been set out, and what position should be taken in case of specific products sitting on the boundary between PRIPs and non-PRIPs, such as certain types of traditional life insurance contract, derivatives, certain kinds of pension and pension annuities (so-called 'grey-zone products').

CESR underlined the crucial importance of this topic for investor protection which has been always critical for CESR's activity. In this respect the Commission Communication of April 2009 was welcomed and CESR's support underlined. CESR recently adopted an internal report on the PRIPs issues, setting out main policy lines which converge to a great extent with issues identified in the Commission discussion paper. It intends to work closely with CEIOPS and CEBS to identify a common approach to this topic. Regarding the scope of the regulatory framework CESR fully supported adopting an economic definition (a purely legal one was seen as unworkable, prone to be easily circumvented; a definition in a form of exhaustive list of products could soon become obsolete). As to the elements of the definition, points 1 and 2 on page 2 of the Commission discussion paper were supported. The list of products contained in Annex 1 was broadly accepted however in CESR's view it should include derivatives and shares of SICAV.

CEIOPS limited its observations to its area of expertise - the insurance sector. It supported the economic definition suggested by the Commission, though noted that it may well require different criteria especially with regard to 'grey-zone' products. These include certain mixed products such as certain forms of with-profit life insurance policies/traditional life insurance which will require further analysis. Due consideration should be given to pension products: in some MS certain pension products are similar to PRIPs and compete with PRIPs while in other MS pension products are bound up with the social security system etc. Therefore, there is need for more careful consideration on whether to include these products or not.

CEBS indicated that the issue was not yet discussed in depth therefore its comments should be seen as a preliminary reaction from the perspective of the banking sector. The economic definition was supported, however it was stressed that a legal definition might not always be avoided. CEBS does not have yet a strict view whether structured term deposits should be in

or out of the PRIPs scope. The criteria presented by the Commission also merit further discussion particularly with respect to guaranteed products. CEBS stressed that the question of scope is very much linked to the way the horizontal regime would work and that this regime should apply proportionately, taking due account of the character of products.

EUSIPA underlined the need for a more fundamental discussion on the legal architecture of the PRIPs regulatory framework before embarking on the practicalities. Such a debate should clarify in particular the obligations attached to each side (product manufacturer/intermediary). Instead of making an artificial division between 'economic' and 'legal' definitions it was proposed to look at the background: for which categories of product are certain key risks for investors a substantial factor; which categories needs MiFID rules etc. The approach of the Commission already goes into this direction, however the list annexed to the Commission discussion might need further reflection. It would be necessary to make sure that the scope only covers products which are actually distributed to retail investors.

FAIDER congratulated the Commission for the horizontal approach, which they consider very important from the investors' perspective. They regretted the shift in the scope and title of the work from 'substitute investment product' to 'packaged retailed investment product' – a concept very difficult for retail investors to grasp. They recommended to return to the former terminology and cover all products offered at the point of sale; for them the main criterion for a PRIPs should be whether the product is substitutable at that point. They agreed on a criterion referring to "capital accumulation" as the right approach since this is the main interest of investors. They would consider a criterion referring to "PRIPs are products which are designed with the mid-to long term investment in mind" as not appropriate because investors often do not differentiate between long- or short-term products. Short-term products are sometimes offered for long-term investment purposes and vice versa (e.g. euro-contracts capital guaranteed are designed as long-term products but are said to be used for short term investments). Investors are not concerned with the design of the product but how it is sold to them. They suggested that the possibility for an individual investor to purchase a financial product as an investment should be used as another criterion. Consequently the PRIPs scope would be substantially widened.

EACB said that it is in favour of the Commission approach expressed in the discussion paper. They also opted for the exclusion of saving products from the scope of PRIPs. They stressed that the Commission argument – that the outcome of an investment in certain saving products can be foreseen - is true for term deposits with fixed interest, not for saving deposits which have a variable interest rate (Euribor etc.). With regard to saving deposits, the criterion for definition is that interest rates are floating, depending on the capital market: but there remains no open question as to the relative uncertainty of these products compared with investment products where outcomes depend on the behaviour of underlying assets because saving deposits are riskless products being guaranteed and covered by compensation schemes. They expressed strong reservation with regard to including within the scope of the PRIPs work non-standardised derivatives since they felt that there is no or little retail market business for OTC-products (mainly interest rate swaps and interest caps as hedging instruments) and regarding exchange traded options and futures they already must comply with high standards, so there is no need for another regime.

EFAMA expressed strong support for the Commission initiative stressing that only a horizontal approach can solve the problems faced by investors when confronted with a great variety of products. They advocated a broad approach including all insurance products with

an investment/accumulation component (but not those with pure risk coverage), banking products as identified and annuities. As to pensions the situation is more complicated - pillar III and personal pensions should be in scope but more work on classification is needed. They also stated that shares of listed close-end funds should be included in scope. They welcomed a principles-based economic definition, as other definitions would be easy to bypass.

EBF agreed with the broad outlines of the Commission proposal, stating that the qualifying factor for PRIPs should not be the possibility of substitution of products for one another, but a focus on the underlying asset – if the product gives access or exposure to a financial instrument the product should be in the PRIPs scope. They noticed that even if we accept the economic definition we will anyway end up with the legal one as the measure will be legally binding. They stressed that the precise legal definition is needed for PRIPs as there is a risk of disciplinary sanctions from competent authorities.

ISDA questioned the Commission position arguing that the meaningful test would be to ask who is selling to whom and with what purpose, i.e. whether the product is sold to retail investors and marketed as a long-term saving product. They stressed that the PRIPs measure should pre-empt provisions in other directives which means that it should not create a regime 'on top' of and in addition to the existing ones but a replacement one. Moreover new provisions should not apply to products which are not sold to retail investors. Furthermore, the system should consider the possibility of creating incentives for compliance (some kind of regulatory pay-off for compliance, e.g. offering a form of safe harbour) if it is to be successful.

FIN-USE drew attention to the fact that the naming of financial products can be a significant cause of detriment for investors. They called for a 'return to basics' where the name of a product is a clear and not misleading indication of what it is and what it does. They asked for cautious approach with regard to potential definition of products offering capital protection and capital accumulation as it will be important to capture and handle all such products in a consistent way.

VZBV/BEUC supported FAIDER's broad approach stressing that investors are buying a wide range of different sorts of product to satisfy their investment needs, e.g. they might buy short-term products to satisfy long term needs, possibly with the purpose of saving money for retirement. Therefore, they are in favour of including in the PRIPs scope a wide range of potentially 'substitutable' products, including bank deposits and saving accounts. It should be avoided that e.g. certain retirement savings plans (e.g. Riester-Savings Plans in Germany) linked to investment funds or insurance products would receive improved disclosure requirements whereas the same product linked to a bank savings plan would not. A narrow definition of PRIPs should be avoided as it would create loopholes. They also draw attention to the fact that some MS have already begun designing product information sheet for all kinds of investment products, based on KII (2 pages, clear, comparable, standardised). They also underlined the importance in their view of establishing consistent conflict of interest rules for intermediaries as there is a lot of mis-selling. They also raised the importance of looking at tax issues, as different taxation rules for different investments distort competition.

BIPAR stressed that advisers will continue advising on a range of different products being PRIPs or not. They stressed the importance of the investment component for being a PRIP. They see difficulties in including pensions in the PRIPs scope as MS have taken different approaches. Careful consideration is therefore needed in this area.

CEA, speaking on behalf of the European insurance industry, with the exception of the UK and Dutch markets, welcomed the Commission work on the scope of PRIPs. They stressed the need for a classification free of arbitrariness to ensure legal certainty. In their view, unit-linked and index-linked life insurance products as well as hybrid products should be covered. Pure risk life insurance products and products which are not linked to a fund or an index contractually agreed with the client and which guarantee the benefits and a minimum interest rate for the entire duration of the contract should be excluded. They suggested the following elements for the definition of hybrid insurance products: products offering benefits that are partly guaranteed and partly depend on the evolution of the assets chosen by the policyholder and contractually agreed. They asked the Commission to clarify the features of "structured products written as insurance policies" and "pure wrappers", as well as why the latter should be excluded from the scope of PRIPs. They explained that traditional life insurances, which can be both term policies or with-profits life insurances, offer the payment of a guaranteed amount of money as benefit in case of life or death. They reminded attendees that the call for evidence on competing products of 2008 excluded traditional life insurances from the scope of PRIPs as they are not complex products and they do not embed any risk for investors. Annuities and third pillar pensions are very similar to second pillar occupational pension schemes as they provide benefits for retirement purposes and provide biometrical risk coverage. Their long contract duration is not comparable with the short duration of speculation contracts that the Commission is targeting with its initiative on PRIPs.

AILO took the view that life insurance with profits/traditional life insurance should be within the scope of PRIPs. They also thought that the issue of pensions (especially Pillar III pensions) needed more work but that occupational pensions should nonetheless remain outside the PRIPs framework.

EFR was sceptical with regard to the horizontal approach seeing it as not realistic. Despite assurances that there will not be an overlap of rules they feared this would inevitably happen in practice, leading to complicated requirements and duplication. They suggested a focus on MiFID as the tool for achieving the appropriate level of investor protection and that unit-linked insurance and pension products should be brought into the scope of MiFID. No legislation would have to be developed from scratch.

EACB agreed in general with the Commission proposal acknowledging that the packaging of products constitutes for investors an additional layer of complexity which is not well understood. They supported a practical approach towards this project, and they stressed that the complexity of products cannot be the only criterion – that is, focus should be on risks for investors, rather than on whether a product has been 'packaged' or not. E.g., products with a capital guarantee should probably be subject to a different treatment. It would be important to focus on the perspective of investors and whether they understand the product. It might be also necessary to distinguish between "packaged" and "wrapped" products from this perspective. Even if the structure of some wrapped products might be complex the underlying risk/return profile of "wrapped" products is easy to understand for investors and therefore do not deserve to be included.

ESBG welcomed the Commission initiative and its approach on packaged products. They thought that simple products such as savings accounts should stay outside of scope. They also pointed to the need to clarify the concept of structured term deposits.

FECIF supported the Commission initiative as presenting a common sense approach. They were more concerned about the level 3 process and that the practical application of the rules would diverge among the 27 MS. They were of the view that the list in annex should cover all products and services otherwise there will be a room for regulatory arbitrage. They asked for a clear definition of PRIPs.

EBF warned against potentially negative effects that PRIPs legal framework may bring if it is overloaded. PRIPs should not be the "universal problem solver." They recommended taking into account the broad context – the existing Community legislation in the given areas and the existing domestic law including civil law in Member States.

FEAM suggested that with regard to the scope of PRIPs we should err on the side of being exclusive rather than inclusive.

Danish Shareholder Association strongly supported a broad approach to the scope, as exclusion of certain products that are or could be used by consumers to make investments would create incentives for the industry to jump into this 'unregulated' area. As a consequence the level playing field would be destroyed. Similarly, maximum harmonisation is needed as 27 different regimes would undermine the whole concept of greater consistency.

Session 2 A: Pre-contractual product disclosures – *identifying a common disclosure framework*

The first part of the second session aimed at identifying the key common principles and elements which would be applicable to all pre-contractual product disclosures for PRIPs.

In the introductory statement **Commission representatives** referred to CESR's work on UCITS disclosures, backed by extensive testing of consumers' understanding and preferences. Lessons had been learned through the process of developing the Key Information Document (KID) for UCITS: information should be short, straightforward with effective layout, focused on key messages presented in a way that investors can understand (investors currently struggle to understand financial products). These principles are commonplace in regulatory initiatives on disclosure, but putting flesh on the bones is painstaking work requiring extensive investor testing. Although being fully aware that the work on PRIPs will cover non-harmonised products, the Commission stressed that these also could be governed by the same principles, though the detailed requirements might need to be different. The importance of the risk disclosure (for UCITS a simple scale with series of buckets was proposed) was highlighted as an example of the kind of information in a disclosure that might need to be approached in a consistent or comparable way across all PRIPs. In many regards, however, it needs to be considered how far the detailed requirements for the KID for UCITS can work for other PRIPs and what elements would need to be specific to each type of product.

CESR stressed the innovative character of KID which already has received good feedback from investors (in the process of testing). Therefore, there is no 'need to be innovative twice' for PRIPs; the KID should serve as a benchmark but it must be adapted to PRIPs purposes. The key word is 'comparability' – in terms of form, structure and presentation though full comparability will not be possible in the area of non-harmonised products. They suggested a two-level approach – a list of key principles on level 1 and detailed provisions depending on categories of products, assets etc. developed on level 2. This approach would keep pace with

financial innovations. With regard to the entity responsible for the preparation of a disclosure they are of the opinion that the product provider should not be necessarily always responsible for producing the disclosure; in some cases the obligation should lie with intermediaries.

CEIOPS agreed with the high level principles (simple, straightforward, short document) but stressed the need to take into account the specificities of especially insurance products which suggests that standardised approach may not be always appropriate. There might be the need for personalised (additional) information to be provided to the policy holder, reflecting the specificity of the insurance contract in question. CEIOIPS strongly opposed any ex-ante control of the disclosure relating to non-UCITS products by competent authorities, seeing such requirements as bureaucratic and with no added value.

CEBS underlined the need to take on board specificities of different types of PRIPs. Lower risk products might deserve a different approach. The exposure to risk or the liquidity of the underlying assets in case of early redemption should be taken into account when designing the disclosure.

EUSIPA agreed on the main principles that the disclosure should be based around. At the same time they reiterated that 'one size does not fit all' and that differentiation between information with regard to different products would be needed. They took the view that it would be important to allow the KID to be handed out as a part of a more comprehensive document.

ISDA was not convinced that KID could serve as a benchmark for all other PRIPs, seeing UCITS as a specific product for which there is little exposure to, e.g. credit risk or a number of other types of risk, where these may be more material for other products.

EFAMA agreed with the principles of the disclosure identified by the Commission as well as with the suggested use of KID as a benchmark (with appropriate modifications). They argued for the inclusion also of information on past performance in the KIDs for all PRIPs that continue to be marketed after launch and underlined that the methodology should be defined up front and harmonised for all product classes. The liquidity of the PRIP/redemption possibilities should also be included in the KID, as this is an important matter for investors.

FIN-USE welcomed the Commission approach as a good starting point. They stressed the consumers' perspective, notably how consumers define risk and that it is linked to consumers' expectations. Consumers have higher expectations of returns with regard to more complex products but no one can expect that consumers really understand such products. The disclosure need to tell consumers what is the purpose of the given product (is it short-, medium- or long-term product?). As argued in the first section, the names of products are often misleading, so it is important to address this ‘labelling’ issue. Costs born by consumers should be clearly stated in cash figures.

Danish Shareholder Association supported the idea to use KID as a benchmark, although KID was not yet operative. They recommended that KID should be adapted to be used for all products. It was possible that adaptation of KID to other products than UCITS could lead to changes and improvements of KID not only in the version to be used for other products, but also in relation to UCITS.. They stressed the usefulness of the disclosure in the dialog between sales persons, advisors and consumers. It may give better idea of differences between products. The time for delivery of the disclosure to the consumer should be further considered

taking into account lessons from the present situation where consumers may be given a pile of documents at the very moment when they sign the contract, without any realistic chance that they will be able to locate and read the most important details before committing themselves.

BEUC drew attention to the product information sheet developed by the German authorities for all financial products offered to consumers and incorporating certain principles consistent with those informing the KID. This disclosure requires information on 10 items: product name, product class, provider/issuer, product description, product aim, risks, performance, costs when buying and selling, availability/liquidity (how long consumer needs to hold it and how much it will get when he sells earlier), taxation, practical information.

FECIF signalled that manufacturers are focussed on reducing their liability which means that they are concentrated on checking if the content complies with the requirements and covers all eventualities, rather than developing information that will actually be useful – short, understandable – for investors. In their view intermediaries cannot be held responsible for product disclosures, and product manufacturers must try harder. There has been already a decrease in volume of information that consumers are supposed to read but there are limits on the effectiveness of requiring disclosures.

EBF suggested the use of 4 categories relating to the risk attached to the investment: 1) capital is completely guaranteed at maturity; 2) capital is partially guaranteed at maturity; 3) there is a risk of loss of invested capital; 4) the risk of loss is higher than invested capital. The liquidity issue should be carefully addressed as illiquid PRIPs are likely to be successfully sold to investors, so these investors need to understand the consequences. They added that synthetic risk indicators should take into account products' specificities. In particular, the calculation of VAR can not be the same for classical investment funds and for structured funds or structured products (especially when they benefit from a guarantee at maturity). Moreover, certain models (such as "risk neutral" ones) are totally irrelevant for structured products. Therefore, using them in the KII could be misleading.

BEUC underlined the importance of tax matters for investors in particular for those investing cross-border.

EACB supported in general the Commission approach but stressed the importance of supplementing the disclosure with a disclaimer on liability. They generally are in favour of the use of KID benchmark but underlined that the PRIPs disclosure would need to be adapted to different products ('no one size fits all' approach). On the timing of delivery, they emphasised that the disclosure should be provided precontractually but not "in good time before the commitment is made". Preferably it should form part of the provision of investment advice under MiFID requirements. Further thought is needed on the relationship between the PRIPs disclosure and the Prospectus Directive where EACB favours a strict separation between the summary and the KID and national rules e.g. on information on retirement products.

EFR underlined that consumers' needs with regard to the information on investment products vary, e.g. depending on their experience and preferences. They therefore encouraged the use of signposting to add layers of information as appropriate for different investors' needs, and exploring the possibilities of electronic formats. They suggested the following elements to be covered: 1) capital protection (whether the investment is protected in 100%, 50% or not at all); 2) minimum profitability guarantee, 3) term of investment (5 or 10 years); 4) liquidity.

Different types of products could be marked using the 'traffic lights' (red, yellow and green). They were sceptical that KID could serve as a direct template for other PRIPs, as UCITS is a harmonised product.

CEA, speaking on behalf of the European insurance industry, with the exception of the UK and Dutch markets, agreed with the Commission approach towards 1) high level common principles for all PRIPs, as listed in p.5 and annex 2 of the issues paper, 2) the proposed common categories of information for all PRIPs and 3) more specific disclosure for specific products falling within the scope of PRIPs. The CEA updated the workshop attendees on work on developing a so-called Key Information Checklist – KIC – for unit linked life insurance. The attention was drawn to a few issues on which the CEA raised opened questions: the level of prescriptiveness of the KID for UCITS might not be right for other PRIPs, and too much prescriptiveness might endanger product innovation. A 2 page disclosure document might be an ideal outcome, but, taking the example of the KID requirement on disclosure of investment objectives, this might raise challenges for other PRIPs. Past performance information or performance scenarios are neutral and objective, but they may create certain expectations which could be misleading for clients; projections of possible outcomes may be considered as speculative. Finally, the notion of guarantees (as this exists for instance in the insurance sector under Solvency II) does not exist in the asset management world. Therefore, the CEA believes that the notion of guarantee should be exclusively used if the guarantee techniques meet appropriate capital requirements.

AILO suggested that investors should be informed about the costs of the product and that monetary values would be preferred by consumers but other methods such as "total expense ratios" or "reductions in yield" might need to be used. They also saw requirements which are too prescriptive as a potential problem. They also argued that gold plating would be a problem if requirements were not harmonised to the largest possible extent.

ESBG highlighted the importance of consumer testing. They also noted the importance of being careful not to mislead investors by oversimplifying information. Developing a synthetic risk indicator for all PRIPs will be considerably more difficult than for UCITS. In this context the disclosure being a short document, cannot replace the advice or complete information such as can be found in the prospectus where there is one.

ICMA highlighted the difficulties of transferring the KID as developed in the context of UCITS to other PRIPs. It would be important therefore to avoid being too prescriptive.

FAIDER congratulated CESR for the tremendous work done on the KID and agreed with the Commission approach to extend the KID concept to other PRIPs. They stressed that investment products are becoming too complex and difficult to understand not only by investors but also intermediaries and banks; nevertheless, distributors should be able to understand the products they sell. Essential elements for the PRIPs disclosure would be: maximum comparability between products, short size (maximum 2 pages); also information on performance should be accompanied by a benchmark (past performance is a weak indicator of future performance and this data can be easily manipulated). For unit linked products consolidated costs should be disclosed. Costs should also be disclosed by cash examples since percentages are too difficult for many investors to understand. Total expense ratios are not exhaustive as they do not include initial subscription fees.

Session 2 B: Pre-contractual product disclosures – *tailoring disclosures for particular products*

The second part of the second session focused on those elements of the PRIPs disclosure which should be specifically designed for different part of PRIPs e.g. in cases where PRIPs were not harmonised on the Community level or offered different features. The discussion focused also on who should be responsible for the preparation of the PRIPs disclosure.

EFAMA expressed the opinion that the disclosure should be prepared by the producer if in the course of distribution or wrapping the product is materially modified. The change of costs should be seen as a material modification, and in such cases the wrapper manufacturer or the distributor should be responsible for preparing the disclosure. In those cases, the producer should provide all relevant information to the wrapper manufacturer or the distributor, enabling them to produce the KID. They also pointed out the differences in the approach in UCITS where the KII should be provided to all investors (retailed as well as professional), while in PRIPs proposal only retailed investors are to obtain the disclosure. They would favour the latter approach also for UCITS.

EUSIPA underlined the need for consistency in the market which means that the obligation to provide the disclosure should be linked with the MiFID obligations vis-à-vis investors. The responsibility issue should be left for the contractual arrangement between the producer and the distributor. They suggested that a horizontal directive on PRIPs disclosure should regulate the content and format of the disclosure while MiFID rules should regulate the basic requirement to provide investors with a KID, preferably limited to the sphere of investment advice. They also warned against a simple copying of costs disclosures as required in the KID for UCITS to the disclosure for other PRIPs, as this may have unintended consequences such as creating an unlevel playing field where charges structures are different. They suggested that the focus might be better placed on the disclosure of inducements. They also stressed the sensitivity of the exact wording of the requirements which will be proposed by the Commission on responsibilities of distributors and providers. In this context they wondered specifically how a disclosure regime attaching on the producers' side would work in case of unsolicited sales.

FIN-USE stressed the need to consider how the final product will be described in the disclosure in case of products such as life insurances where complex issues are raised such as the cost of protection. They also suggested taking inspiration from the Capital Requirements Directive in addressing consumer protection issues more widely, where there is a notion of a risk management plan.

FAIDER noticed the link between this discussion and the ongoing debate on investor education and suggested that the basic rule should apply that the product should not be sold to somebody who does not understand it. The concept of 'investor licence' or restrictions to 'qualified investors' for certain products might be helpful.

EACB stressed that strict classes of products and linked requirements should be avoided as these requirements may become too simplified or easily circumvented. With regard to non-harmonised products they favoured a simple level of explanation (simple language, not overambitious, sophisticated indicators etc.).

CEA, speaking on behalf of the European insurance industry, with the exception of the UK and Dutch markets, agreed with the Commission approach that information should be tailored in some regards for specific products. When it comes to insurance products they suggested to include elements that are needed for retail clients to make an informed decision, such as the premium (e.g. the method and frequency of payment), duration of the contract, consequences of early withdrawal, and to adapt the contents of certain categories of information. For instance, the category on benefits should also include the insurance benefits, e.g. the risk covered.

AILO drew attention to the biometric risks which characterizes insurance products and which require personalisation of information. They also pointed out to the difficulties in estimating costs of a wrapper given wide range of potential underlyings (the 'universe' of funds).

EBF underlined the importance of discussing who should be responsible – distributor or producer. French law provides, they noted, a formal agreement between the producer and the distributor according to which the producer is to provide the distributor with all relevant information and verifies whether materials prepared by the distributor comply with the prospectus. It is the distributor who submits all documents to investors. They noticed that in the asset management sector the situation is relatively simple unlike in other sectors, where there can be a range of interconnected entities (e.g. an insurance company, an asset manager, a bank, a distributor etc.).

BIPAR expressed the view that manufacturer should be responsible for producing the disclosure while the distributor should make sure that it is suitable for the client as information may be misleading if it is outdated. They stressed that level playing field should be ensured in all distribution channels. They also warned on the drawbacks of a "traffic light" system. Asset allocation sometimes requires investors to have some more risky assets in the overall portfolio and therefore 'traffic lights' would not necessarily deliver the intended consumers protection: risk messages depend on the investors' actual position (e.g. existing portfolio, investment needs)

Session 3: Selling practices – *forging a horizontal regime for sales of PRIPs and refining the consumer protections needed for sales of PRIPs*

The third session aimed at testing with stakeholders the application of MiFID-benchmark rules on conflicts of interest, inducements, suitability and appropriateness to non-MiFID PRIPs and exploring the room for refinements necessary for achieving consumer protection objectives.

The Commission representatives introduced the topic recalling the main principles of MiFID which, as it was indicated in the Commission Communication, the Commission believed could also apply to all PRIPS: the obligation to act honestly, fairly and professionally in accordance with the best interests of clients; the duty of the advisor to assess the suitability of any product being recommended for the investor; the conditions put on intermediary remuneration, including effective disclosure so that investors are aware of commissions paid to the advisor. The remuneration issue is closely related to the requirement that conflicts of interest must be avoided or managed so that they cannot adversely affect investors. The

Commission gave also a brief overview of the forthcoming revision of the Insurance Mediation Directive (IMD), stressing that it aims at increasing the level of professionalism in the market, and that the review will also be co-ordinated with the MiFID review and take into account the work on PRIPs.

CESR supported the Commission approach to using MiFID as a benchmark, pointing in particular to the rules on appropriateness and suitability as well as inducements.

CEIOPS underlined the special challenge that this Task Force faced in assessing the applicability of MiFID inspired concepts to the insurance sector, as MiFID is not its area of particular expertise. It seems that the high level principles within MiFID do not generate any difficulties themselves. CEIOPS sees however that a combination of the best provisions of MiFID and other Community legislation such as IMD might be the most appropriate way forward in formulating a horizontal approach to sales practices, since there are consumer protection measures envisaged in the IMD that have no equivalent in MiFID.

CEBS explained that there is no overreaching conduct of business framework in the banking sector and that this area has been left for domestic codes. The Committee intends to look closely at the selling practices for PRIPs and stressed the need for differentiation between products with different level of risk.

FAIDER fully supported the key principles presented by the Commission and the introduction of a horizontal selling regime for all the retail investment products retail customers are exposed to. They also supported the co-ordination between the regulatory reform of MiFID and IMD. It was made clear that they do not consider the extension of MiFID to cover insurance products as problematic, since according to national action in France the MiFID level 2 Directive applies to the insurance sector without causing significant difficulties. They are predominantly concerned with the following issues however: 1) conflict of interest rules, which they consider are not sufficiently enforced under MiFID in all Member States; 2) tax neutrality – there are tax incentives that they believe lead to the development of products that are not transparent and easy to understand, and 3) problems with the commissions/fee structures which are difficult to track down and which have an impact on the costs ultimately paid by investors which are not transparent, so that investors are unable to assess for themselves the incentives of those selling to them. They also agreed with the principle of equal treatment of transparency of remuneration across all distribution channels and used the example of France where vast majority of products are distributed by banks which are much less open in disclosing incentives than independent agents.

EBF disagreed with the FAIDER's opinion on the failures in the enforcement of conflict of interests rules. They stressed that due to these rules in the banking area the situation is more transparent. They pointed out difficulties arising in past case-law from considering advice as a duty and not as a service. They welcomed the MiFID approach where investment advice is defined as an investment service.

EACB expressed its concern that the discussion paper opens the debate on open architecture with regard to advice and the MiFID handling of conflicts again (question 17 sentence 2) whereas the MiFID regulation in this regard is very clear and explicit. Article 19 para. 1 and 2 Implementing Directive 2006/73/EC denies the need for explicit information about the range of products.

ISDA was sceptical with regard to the effectiveness of current appropriateness tests. They also noted that MiFID rules should be clarified as regards their application to direct sales by originators.

EFAMA expressed general satisfaction with the Commission proposal, but it pointed to the fact that commission payments cannot be avoided (contrary to what is stated in the Commission issues paper with regard to conflicts of interest), although they are considered as inducements under MiFID. While agreeing with the necessity of disclosure and of managing the resulting conflicts of interest, they put forward the view that in the future review of MiFID it would be desirable to recognize the necessity of distribution fees.

AILO stressed the need to ensure a level playing field for insurance intermediaries. They responded in the affirmative the questions raised in the Commission discussion paper. They considered a fee-based approach to remuneration (as is being developed in Finland, for instance, where commissions have been abolished and independent intermediaries had become tied agents to the detriment of the consumer) as a dangerous approach, as this might lead to restrictions on investors access to advice.

CEA welcomed the announced co-ordination between the MiFID and IMD reviews and the PRIPs work. They raised a series of open questions: firstly as to the different scopes of both directives, drawing attention to potential difficulties in applying MiFID rules (designed for investment activity) to insurance intermediaries, which are usually of very small size. Similar difficulties may arise in case of applying MiFID rules on inducements to tied agents. There are differing approaches between the two pieces of legislation, for instance there is no classification of clients in the IMD, which means that all clients benefit from the same level of protection. They raised the need to adopt a consistent approach on the right of withdrawal as a consequence of the horizontal approach towards all PRIPs. As conflicts of interest is concerned IMD obliges the disclosure to clients of the contractual obligations within companies as well as capital links. As to the disclosure of remuneration, they draw attention on the fact that, in the insurance sector, there are different structures of remuneration across different distribution channels including non-monetary benefits. They expressed the view that an alternative could be the disclosure of total costs. This would make costs between providers more comparable for the clients.

VZBV agreed that MiFID handling of conflict of interest should be refined for PRIPs. They also agreed with the Commission suggestions that acting in the best interest of the client constitutes a common overarching principle for all PRIPs and therefore the client should be duly informed on the basis of recommendations and underlying reasons underpinning the advice. They also stressed that all costs should be disclosed to clients and that the manufacturer cannot be made solely responsible for this disclosure.

In **FECIF**'s opinion MiFID does not represent an ideal benchmark since they consider that rules such as those on remuneration have pushed many intermediaries out of business. They are very much in favour nonetheless of a single horizontal directive regulating distribution across all PRIPs. As regards remuneration they agree with the principle that it should be disclosed however this duty should not lie only on intermediaries. In particular, they advocated the full disclosure of costs including the cost of a product and all hidden/extra costs built into the product. (This opinion was also supported by BIPAR). An advisor should also inform the client that he works as a broker if it is the case.

FIN-USE stressed, referring to the discussion, that the investment product should be a 'point of departure' which means that if an investment product is sold to the client it does not matter to the client who sells it, whether it is a bank or another entity. What counts is the behaviour of the entity itself and the product the client buys. Therefore the sales of such products must be treated in an equal manner.

Danish Shareholders Association – referring to the costs and remuneration issue, they drew attention to the fact that investors need to know how much of the sum they are investing would be lost to costs and how much would be invested. It is also vital that they can rely on advisors giving advice that is tailored to the client's situation.

ISDA noted that intermediaries' incentives and product costs are separate as the former is subject to the MiFID regime while the latter is not.

EFPA suggested that reflection is needed with regard to the quality of the advice given to consumers and that the appropriate qualifications of advisors have a bearing in this respect.

Concluding remarks

In the brief **summing up** of the discussion **Ugo Bassi** underlined general consensus (with certain exceptions) on the broad outlines of the Commission initiative and the proposed horizontal approach. With regard to the scope the opinions were divided between the proponents of maximum extension and those favouring a narrower approach. There was a general consensus among participants with regard to the principles for the PRIPs disclosure, though some differences on the extent and nature of 'tailoring' needed, and on the relative responsibilities of product providers and product distributors.

On selling practices, the use of MiFID as a benchmark garnered widespread agreement from participants, though interesting points were made on possible refinements. The Commission will continue its reflection and welcome all contributions.

Elemer Tertak, Director, Financial Institutions Directorate in DG MARKT concluded the workshop by reiterating the importance of the work on PRIPs for retail investors whose protection has been always given a prominent position in the Commission agenda especially in the time of crisis. He underlined the wish of the Commission to deliver a horizontal approach but reflecting the right balance so that the differences between different investment products and services would receive due recognition. Finally, he encouraged the participants to actively contribute during the whole process which will be as open and transparent as possible. He announced that public consultations on the Commission's upcoming orientation paper, to be made public in the coming months, would create the next such opportunity.

Annex 1 Agenda for workshop

9:30	15'	**1. Opening remarks by Emil Paulis, Director, Financial Services Policy and Financial Markets, DG MARKT**
9:45	10'	**2. Workshop format by Ugo Bassi, Head of Asset Management Unit, DG MARKT**
9:55	80'	**3. Scope (section II of Issues Paper)** ***What products should fall within the scope of the PRIPs work?*** We are searching for an approach to scope which is flexible (able to accommodate financial innovation), resistant to regulatory arbitrage, yet capable of offering sufficient legal certainty. In the issues paper we identify a broad 'economic' approach for defining PRIPs, supplemented if necessary by an indicative list of products that are 'in' or 'out' of scope. We wish to focus in the workshop on whether this approach is right, but importantly also on detailed issues thrown up by such an approach, notably: • **Q3:** the handling of 'traditional' or 'with profits' insurance contracts (i.e. those which are not unit-linked); • **Q4:** investment products that fall on the boundary of the PRIPs definition; • **Q5:** the handling of pensions and annuities.
11:15	*15'*	*Coffee break*
11:30	60'	**4. Pre-contractual product disclosures (section III of Issues Paper)** ***Identifying a common disclosure framework*** In the Communication we committed to developing a horizontal approach for pre-contractual product disclosures. This raises the question as to what the common elements are that should apply to all PRIPs through a common horizontal framework (such as common high-level principles, a common structure to all pre-contractual product disclosures for PRIPs, and common approaches to information used for comparisons, e.g. on risks or costs). • **Q6** & **Q7**: the key common principles and elements for all pre-contractual product disclosures for PRIPs; identification of key points of comparison for retail investors (how risky is the product? how much does it cost? is it 'value-for-money'? what guarantees are there, if any?)
12:30	*60'*	*Lunch*
13:30	50'	*Continuation of pre-contractual product disclosures* ***Tailoring disclosures for particular products*** While a horizontal approach implies common elements, there are still likely to be areas in which different types of PRIP need to be treated differently, e.g. where PRIPs are not harmonised at the European level or offer different features / function in different ways. • **Q8, Q9 & Q10**: the elements of pre-contractual disclosures that might need to be tailored for different types of PRIP (e.g. for closed-ended funds, for retail structured products, for unit-linked life insurances).

14:20	55'	**5. Selling practices (section IV of Issues Paper)** ***Forging a horizontal regime for sales of PRIPs*** The Communication clearly identified MiFID as a benchmark for the sales regime that should apply to PRIPs. This raises challenges in relation to applying MiFID-inspired requirements to other sectors. • **Q14:** Application of MiFID-inspired requirements (on conflicts of interest, inducements, suitability, appropriateness) to non-MiFID PRIPs; technical adjustments needed to apply MiFID-inspired requirements to non-MiFID PRIPs.
15:15	*15'*	*Coffee break*
15:30	60'	*Continuation of selling practices* ***Refining the consumer protections needed for sales of PRIPs*** While MiFID is the clear benchmark for PRIPs sales rules, are there any refinements that can or should be considered for the framework applying to PRIPs sales, to ensure consumer protection objectives are achieved? • **Q19-20:** A key area in which concerns have been raised relates to remuneration and the possibility this creates of product and provider biases working to the detriment of retail investors. Possible refinements to the consumer protections for retail investors could include steps to standardise disclosures relating to remuneration.
16:30	15'	**6. Closing remarks by Elemer Tertak, Director, Financial Institutions, DG MARKT**
16:45		*End of workshop*

Annex 2 Bodies nominating participants

Acronym	Body
	Danish Shareholders Association
AILO	Association International Life Offices
AMICE	Association of Mutual Insurers and Insurance Cooperatives in Europe
BEUC	European Consumers Organisation
BIPAR	European Federation of Insurance Intermediaries
CEA	European Insurance and Reinsurance Federation
EACB	European Association of Co-operative Banks
EAPB	European Association of Public Banks
EBF	European Banking Federation
EFAMA	European Funds and Asset Management Association
EFPA	European Financial Planning Association
EFR	European Financial Services Round Table
EFRP	European Federation for Retirement Provision
ESBG	European Savings Banks Group
ESF	European Securitisation Forum
EUSIPA	European Structured Investment Product Association
FAIDER	Fédération des Associations Indépendantes de Défense des Epargnants pour la Retraite
FEAM	Forum for European Asset Managers
FECIF	European Federation of Financial Advisers and Financial Intermediaries
FIN-USE	Forum of Financial Services Users
ICMA	International Capital Market Association Limited
ISDA	International Swaps and Derivatives Association
VZVB	Federation of German Consumer Organisations

Observers

Acronym	Body
CEBS	Committee of European Banking Supervisors
CEIOPS	Committee of European Insurance and Occupational Pensions Supervisors
CESR	Committee of European Securities Regulators