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Dr. Steven Maijor, Chair of the European Securities and Markets
Authority
Mr. Gabriel Bernardino, Chair of the European Insurance and Occupational
Pensions Authority
Mr. Andrea Enria, Chair of the European Banking Authority

Review of the PRIIPs Regulation

Dear Vice-President,

According to Art. 33 of Regulation (EU) No 1286/2014 (PRIIPs regulation) the Commission shall review the Regulation by 31 December 2018. To our knowledge, the Commission has not yet taken any initiative in this regard. To the contrary, there have been indications that the review will be postponed by one year.

This raises strong concerns since the Key Information Documents (KIDs) that are drafted in full compliance with the legal requirements laid down at Level II contain information that can be false and misleading for investors. Manufacturers and distributors of PRIIPs are confronted with many questions regarding the contents of the KIDs. Most of them have introduced further explanations to adequately inform investors of the products. While we see and appreciate the efforts to address some of the issues through Q & As, they are not sufficient to rectify all problems stemming from Level II measures.

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Many supervisors and regulators are well aware of the problems. Just to name a few:

- With regards to KIDs for OTC derivatives, the ESAs have stated in their Q & A that "*the prescribed wording creates a risk that the retail investor will be misinformed about the characteristics of the product*" and have adjusted the text laid down at Level II. To our knowledge, further modifications via Q & A have already been discussed.
- On January 24 2018, the FCA has stipulated that the performance scenarios can be misleading.
- On May 11 2018, the German government has stated in a reply to a parliamentary question that they are aware of the problems. The German government has claimed that the problems caused by EU regulations need to be addressed at European Level.

Due to the amount of problems caused by the methodologies foreseen at Level II, we strongly urge the Commission to prioritize the legislative review of the PRIIPs regime. In the interest of effective investor protection, the risk of false or misleading information in the PRIIPs KID should be eliminated as soon as possible. Such an initiative is also being requested by many consumer organizations who likewise have stated their concerns regarding the contents of the KIDs and the effect they may have on consumers.

Therefore, the Commission should not miss the opportunity to address at least the biggest problems in the review process foreseen in Art. 33 of the PRIIPs Regulation:

- The scope of the PRIIPs Regulation is not fully clear with regard to different products (especially foreign exchange derivatives and corporate bonds), which creates legal uncertainty whether some of these products fall under the PRIIPs regulation.
- The methodology laid down at Level II to calculate the performance scenarios and costs causes major problems. The scenarios displayed in many KIDs are overly optimistic and can lead to false expectations by investors. The PRIIPs standards require calculation of future performance scenarios on the basis of past performance figures for the last five years. For most products this means that the excellent market performance of the last five years is indiscriminately projected into the future.
- In many cases the methodology foreseen at Level II to determine transaction costs for funds results in misleading information on costs such as negative cost figures. E.g. the methodology requires to determine transaction costs as the difference between the execution price and the mid-market price of an asset. It assumes that in every market and for every asset, there is a valid and determinable "arrival price" as a reference for the calculations. This is absolutely not the case.
- With regard to OTC derivatives we would be very happy if the Commission reconsidered whether these products are in scope of the PRIIPs Regulation since in most cases OTC derivatives are no investment products. As mentioned above, the ESAs have already altered the prescribed wording in the KIDs for OTC derivatives. If the Commission is nevertheless of the opinion that OTC derivatives are within the scope of the PRIIPs Regulation, the Commission should at least foresee another KID template taking account of the particularities of OTC derivatives.
- UCITS and other retail funds are currently exempted from the scope of the PRIIPs Regulation until 31 December 2019 (Art. 32 Reg. (EU) No 1286/2014). In the absence of legislative actions, the exemption from scope will expire. Hence, retail funds will be bound to produce PRIIPs KIDs from 1 January 2020 onwards. At the same time, UCITS will still be subject to the obligation to provide

investors with UCITS KIIDs since under the UCITS framework no sunset clause is foreseen. From the investor protection point of view, it is of utmost importance that a situation will be avoided where two similar legal information documents (UCITS KIID and PRIIPs KID) with largely inconsistent data will need to be provided to the investor.

We remain at your disposal to discuss these matters further.

Yours sincerely,

on behalf of the
German Banking Industry Committee

on behalf of the
German Derivatives Association

on behalf of the
German Investment Funds
Association

by proxy



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