EBF Ref.: D0006E-2011
Brussels, 31 January 2011

Set up in 1960, the European Banking Federation is the voice of the European banking sector (European Union & European Free Trade Association countries). The EBF represents the interests of some 5000 European banks: large and small, wholesale and retail, local and cross-border financial institutions.
The EBF is committed to supporting EU policies to promote the single market in financial services in general and in banking activities in particular. It advocates free and fair competition in the EU and world markets and supports the banks' efforts to increase their efficiency and competitiveness.

Response to the Commission Services' Consultation on Legislative Steps for the Packaged Retail Investment Products Initiative

Key Points

- The European Banking Federation supports in principle the idea of the "PRIPs" project and the objective to simplify pre-contractual disclosures. This is in order to help retail investors to better understand the essential characteristics of investment products, against a background of overflow rather than shortage of information.
- The EBF is however concerned that the proposed definition of PRIPs still lacks clarity. Indeed, the Commission's current proposals seem to add to the confusion rather than to clarify its previous definition. In the view of the EBF, the single most essential element to characterise a PRIP lies in the fact of its packaging.
- The EBF supports the objective of a high degree of standardisation in the presentation of the content of the KIIDs. Nevertheless, the wide scope will necessitate an appropriate degree of flexibility. As pointed out by the Commission itself, a "one size fits all approach" is unlikely to achieve the intended objectives and could be counter-productive. Not all aspects can be made comparable and the KIIDs must not include any over-simplified or otherwise misleading information.
- More generally, any new rules need to take full account of the considerable variety of structured investment products available in the EU, bearing in mind the distinction between complexity of the legal structure and the complexity or riskiness of payout.
- The content of the KIIDs should be provided by the product manufacturer, with according legal liability to be held by either the issuer or the product manufacturer.
- The relationship of the KIID with other legal disclosure requirements, notably the summary under the Prospectus Directive, must be carefully defined; bearing in mind the different purposes served by these documents.

Contact Person: Uta Wassmuth, u.wassmuth@ebf-fbe.eu
Related documents: COM Consultation Document:
http://ec.europa.eu/internal_market/consultations/docs/2010/prips/consultation_paper_en.pdf

Information about the EBF:	
EBF ID number in the COM Register of interest representatives: 4722660838-23	
Identity	Organisation
Capacity	Industry trade body
MS of establishment	Belgium
Field of activity/ industry sector	Banking & other financial services

Scope of the PRIPs Regime

General definition

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

The EBF agrees with the Commission's proposal to maintain the focus on packaged investments, rather than to broaden the scope to all types of investments. This is for the reasons set out by the Commission itself: while PRIPs are designed to deliver a specific risk profile to the investor, investors often find it difficult to fully understand the functioning of these products. Importantly, the difficulty that has been identified lies in the nature of the products' construction, rather than in the levels of risks involved in them. At the same time, any definition and legislation of PRIPs should have a neutral effect on the market and must not create any incentive for regulatory arbitrage.

The EBF therefore also strongly supports the conclusion that simple shares, as well as bonds, should be excluded, including bonds whose return is directly linked to EURIBOR, LIBOR or any other interest rate indicator. For such direct financing tools, it is most important to understand the general functioning of the instrument, i.e. to understand the basic functioning of financial markets. However, the same is true for derivative instruments, foreign exchange, and warrants. In the view of the EBF, such products should be out of scope unless indeed they are packaged together with other types of financial instruments.

European banks feel that the approach now proposed by the Commission is not sufficiently stringent in definition and would encourage the Commission to be consistent in focusing on the packaged elements of products, as targeted in its initial work around "PRIPs".

Certainly, such a focus approach should be adopted at the outset. On the basis of a good amount of experience gathered with KIIDs for different products, the EBF would stand ready to discuss in due course whether an extension of the scope to some additional products would be appropriate.

As regards the focus of the Commission's work on "retail" investors, the EBF would request the Commission to clarify that this is to be understood in alignment with MiFID, i.e. to mean retail clients as opposed to professional clients. In the view of the EBF, such clarification is important to ensure alignment with MiFID and to prevent any confusion about the categorisation of clients.

Q. 2: Should a definition of PRIPs focus on fluctuations in investment values? Please justify or explain your answer.

European banks consider that a clear definition of PRIPs is essential to the success of the project. While it might not be possible to achieve absolute certainty with respect to every single product in the basic legal act, European banks are concerned that the Commission's current thinking still seems far too unclear.

In progressing towards a better targeted definition, the European banking industry invites the Commission to refocus on products that are packaged, i.e. composed of a number of underlyings to achieve a certain risk profile. Another helpful criteria lies in the fact that such products are managed or designed for retail clients. In its December 2009 Communication, the Commission also suggested to focus on products that create exposure to investment risk for the investor, with a primary focus on capital accumulation.

As opposed to this, European banks do not believe that "fluctuations in investment values" constitute an essential criterion to define PRIPs.

Q. 3: Does a reference to indirectness of exposure capture the 'packaging' of investments? Please justify or explain your answer.

A reference to "indirectness of exposure" is not sufficient to deliver legal or even conceptual clarity. On the contrary, such a criterion would include derivatives which should be out of scope. Furthermore, the criterion of "indirectness of exposure" lacks a clear definition in itself, leaving scope for different interpretations for what constitutes a direct holding and related scope for regulatory arbitrage. Should the Commission decide to maintain this criterion in the definition of PRIPs, the EBF suggests that this will need to be further clarified.

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?

The EBF is concerned that the Commission's current proposals for the definition of PRIPs imply greater uncertainty than its previous thinking, rather than to lead to clarification. The EBF recalls that the Commission proposed, in its Communication of 30 April 2009, the following definition:

- They offer exposure to underlying financial assets, but in packaged forms which modify that exposure compared with direct holdings;
- Their primary function is capital accumulation, although some may provide capital protection;
- They are generally designed with the mid- to long-term retail market in mind; and
- They are marketed directly to retail investors, although may also be sold to sophisticated investors.

The EBF believes that this was a good starting point. As opposed to this, a reference to ***"fluctuations"*** in reference values is not seen to lead to essential clarification in the definition of PRIPs. Nevertheless, the term "reference value" in itself, instead of "financial assets" could provide further clarification. It would include, as one sub-category, values derived from an underlying, subject to all of the above criteria being met.

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.

The EBF recognises the difficulty of defining PRIPs in an unambiguous way. However, the Federation would encourage the Commission to go back to the elements identified in its April 2009 Communication and seek further clarification on that basis.

Questions have also been raised regarding the meaning of "assets" proposed in the PRIPs definition.

Besides, it has been noted that the scope of PRIPs should exclude products that are listed directly on the market, without an offering period.

Possible exceptions

Q. 6: Should simple (non-structured) deposits be excluded from the scope of the initiative? Please justify or explain your answer.

Upfront, the EBF understands that the term "deposits" in this context would be understood as money entrusted to a credit institution which is fully repayable to the investor, save in the event of the default of this credit institution.

Yes. Applying the PRIPs regime to simple deposits would be disproportionate for simple savings products. There are no indications that depositors find it difficult today to understand the functioning of simple bank deposits, or if they do this is due to a serious lack of understanding of financial matters in general which would not be helped by providing the applicable information in a different format.

Q. 7: Do you consider option 1 or option 2 preferable for demarcating structured deposits from simple deposits? Please explain your preference, and set out an alternative if necessary, with supporting evidence.

European banks are not convinced that either option delivers the necessary clarity and ensures that "ordinary" deposits are clearly excluded from the scope, as should be the intention. At a minimum, it must be clear that exposure to changes in interest rates is a feature of ordinary deposits and does not turn products into "PRIPs". Furthermore, the fact that deposits have a guarantee attached to them (e.g. provided by the government) does not mean that they are "structured".

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.

The EBF believes that both simple shares, as well as bonds, should be excluded from the scope of the PRIPs project, including variable rate bonds whose return is directly linked to EURIBOR, LIBOR or any other interest rate indicator. The concerns raised by the

Commission in respect of "PRIPs" are clearly linked to the packaged aspect of investment products, as opposed to direct financing instruments. However, bonds should already be excluded from the scope through the very criterion of "packaging" or "indirectness" of exposure. The EBF is unclear about what instruments and what issues the Commission is thinking of in its above question.

Pensions

The EBF does not wish to comment on the pensions-related questions in detail. The Federation notes however that there are large divergences in the regulation of pension systems at national level which will require thorough consideration. Nevertheless, there are important level playing field considerations in respect of the treatment of pension products and care must be taken to ensure that pension products are generally subject to a comparable set of regulation, as regards substance and level of detail.

Indicative list of products

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.

Yes, the EBF would expect benefits from an – importantly – indicative list of products to complement a clear definition in the basic legal text. This could either take the form of a – non-exhaustive - "positive" list of all groups of instruments considered to be PRIPs, or the form of a "negative" list of products excluded from the scope.

In order to ensure the periodic updating of such a list, a transparent process including appropriate stakeholder consultation would need to be put in place.

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?

As a general consideration, the list should contain categories of products, rather than a list of individual products.

Legislative approach

Sales rules

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

European banks generally support that the direct sales of UCITS be subject to the same rules as the sale of UCITS through intermediaries. It is important to ensure a level playing field in this respect. The EBF does not however have a preference for the legal vehicle to deliver this outcome.

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)?

Questions of costs and benefits are best answered by individual institutions. As a federation, the EBF does not have any estimates in this respect.

A new pre-contractual product disclosure instrument

The EBF notes that not only the KIID is currently subject to discussion and content definition, but a review of the contents of the summary under the Prospectus Directive is currently ongoing in parallel. This means that there are two moving targets, which will have to be made consistent on the basis of the following principles:

- Clarity on the relationship between the different documents required for different financial instruments, in terms of both legal role and substance.
- This must be achieved taking into account the different roles of the KIID and the summary prospectus. In the view of the EBF, the KIID serves purely the role of informing investors. The summary prospectus, on the other hand, has an important role for passporting purposes and should be maintained so that there would be no need to translate the full prospectus. However, the summary prospectus can also be useful for retail investors.

On this basis, there are divergent views within the EBF's membership about whether or not it would be possible to integrate the KIID in the summary prospectus.

- In principle, it is desirable that the number of legally required documents be kept at a minimum. Therefore, it could be preferable to integrate the KIID in the summary prospectus.
- On the other hand, there is a concern that the KIIDs are still poorly defined and should not be part of the summary prospectus, at least not until there is greater clarity and experience on how to deliver the intended objectives of the KIID.

The EBF expects that the further discussions around the KIID and more clarity on the substance will help to identify the preferable approach.

European banks further suggest that MiFID be amended to determine that in respect of a PRIP, a KIID complying with the PRIP's legal framework is regarded as appropriate information for the purposes of the second and fourth indents of Article 19(3) of Directive 2004/39/EC (as regards the fourth, this would be with respect to those costs and charges that are related to the PRIP itself).

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.

Clearly, the objective of the KIID must be to facilitate retail investors' choice. In the view of the EBF, the first and most essential aspect of simple pre-contractual disclosures is to help retail investors understand the key characteristics of products and how they relate to retail investors' investment needs and preferences. While standardisation can help to compare different products, comparability must not be forced to an extent that could blur the differences between different financial solutions. The EBF welcomes in this context the Commission's recognition that a "one size fits all" approach would not be conducive to the intended objectives and that it will be necessary to consider to adapt the KIIDs to different types of PRIPs. Such tailoring will be a necessary precondition to ensure that retail investors receive the genuinely most relevant information.

Furthermore, as acknowledged by the Commission, a high degree of simplification in the KIIDs crucially requires an appropriately shaped liability regime which provides legal certainty to product issuers and product distributors and exempts them from any legal claims unless information provided in the KIIDs is false or misleading.

Q. 18: Should the KIID 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.

The work that has been carried out for investors' use of key information documents in this respect for UCITS-type investment funds should be helpful to shape the format of pre-contractual disclosure documents for other PRIPs. Certainly, retail investors will wish to obtain information which is clear and distinct, but which also points them to additional and more detailed information. This should then be easily accessible, notably through internet links.

However, please cf. below our response to Question 19 on the necessary pre-conditions to allow the successful creation of such highly reduced information.

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

Again, the work that has been carried out for investors' use of key information documents should be a helpful starting point in determining the content of key information. However, as noted above it will be crucial to shape the liability regime in a way which allows product issuers to narrow down the information to what looks most relevant *a priori*, but without incurring any extra risks (e.g. in the case that a potential investment risk which was omitted in the KIID materialises).

The European banking industry believes that the regime which currently applies under the Prospectus Directive for the summary prospectus would be useful to this effect. On this basis, no civil liability would be attached to the KIID unless it is misleading, inaccurate or inconsistent, when read together with the other parts of the relevant offering document; or it does not provide, when read together with the other offering documents, key information in order to aid investors when considering whether to invest in such securities.

Any greater level of liability would not be conducive to investor protection, but would rather lead to an over-cautious approach in the drafting of the KIIDs, meaning that the documents would contain more or less clear information than desirable. Alternatively, if combined with a strict limit on the length of the KIIDs, any greater liability standard than that suggested above would place an unacceptable level of risk on the party responsible for the KIID. This could subsequently lead to a decision not to offer certain products to retail investors, thereby reducing competition and investor choice.

In this context, the EBF notes that the PRIPs Consultation Paper includes a statement according to which the introduction of pre-contractual disclosure requirements would be without prejudice to national legal systems' definitions and the respective law governing pre-contractual and contractual relationships. This is a central consideration which will have implications for, e.g., the objective of the KIIDs and for the possible use of the KIIDs as standalone documents. The EBF therefore considers that this point requires further elaboration.

Furthermore, the KIID should be limited to information that is directly linked to the product itself, as designed by the manufacturer; whilst excluding any information linked to distribution (distribution costs, separate custody costs) and other pieces of information that are separate from product manufacturing.

Level of standardisation

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.

As the Commission rightly notes, the specifics of different types of products will necessitate flexibility in the specific content of the KIIDs for different products. The most appropriate way to display risks and rewards, costs, and guarantees will need to be analysed and targeted by group of products.

Notably, it is questionable that the synthetic risk-reward indicator which has been designed for UCITS would be useful for other types of products (cf. response to Question 36). It might have to be replaced by a narrative description of the risks and potential upward returns of an investment. Furthermore, the UCITS KII includes a section on past performance. This would be of little meaning for retail investor certificates, whose payout structure is designed in respect of an underlying product rather than being actively managed. Instead, performance scenarios would be more suitable for this type of products.

However, tailoring should only be with respect to the characteristics of different types of products, as opposed to goldplating at national level to which the EBF would object.

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.

A priori, the EBF expects that it should be possible to broadly follow the same structure of presentation for all KIIDs, and certainly the EBF would support that detailed work for the design of all KIIDs start out with this aspiration. However, the variety of products to be covered is large and will require a certain degree of flexibility. Clarity of presentation and the display of a product’s most essential characteristics must be prioritised over a high degree of standardisation of the KIIDs. A certain structure of presentation is not an end in itself but can only be part of a range of tools to help retail investors to better understand a certain investment proposition.

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.

The work on the UCITS KII has already demonstrated the difficulties of designing a consistent synthetic risk-reward indicator, even for a harmonised group of products. While supporting in principle the objective of consistency of presentation in the KIIDs, the EBF is sceptical that the same degree of consistency could be achieved for other types of products. Rather, trying to do so would likely risk leading to misinterpretations and other unintended consequences. Risks will most likely have to be described in writing, for most types of instruments.

As regards costs, the KIIDs should in principle disclose production costs and ongoing costs (to be further defined) related to the product itself. As opposed to this, distribution costs and other costs that vary by distribution channel and/ or by investor would have to be disclosed in separation, in line with the applicable MiFID rules.

It will certainly be possible to consistently display the costs of the active management of products. On the other hand, it will be more difficult to deal with costs of distribution as these will differ between distribution channels, while the EBF expects that the substance of the KIID would normally be provided by the product issuer. Please also cf. the EBF's response to Question 39 in this respect.

Similarly, where custody costs vary by distribution channel or individual investor, they cannot be included in the KIID as the manufacturer would not be aware of the details of such custody agreements.

Thought will also have to be given to explain both the nature and the potential limits of guarantees. One way of doing so could be to indicate the rating of the guarantor, which might however run counter to currently ongoing efforts of reducing the use of external ratings in regulation.

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?

European banks support the objectives of a reasonable degree of standardisation in the presentation and content of the KIIDs with the objective of helping retail investors understand the functioning of the products, against the background of a current overload with rather than shortage of information. Most importantly, this should support investors in making the right choices and should lead to greater confidence in their choices. From the perspective of advisers and distributors, these benefits could in turn lead to greater customer satisfaction. However, these potential benefits are subject to the proper crafting of the documents and to avoiding misunderstandings and mistaken expectations.

Examples and concrete estimates of costs and benefits are best provided by individual firms.

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?

European banks are concerned about the meaning of the term "control" of contents. Banks would clearly object to a requirement for the pre-marketing authorisation of the KIIDs.

However, the EBF would support a high degree of definition of the content of the KIIDs, including certain restrictions for additional information. Nevertheless, this must be subject to ensuring that the KIIDs leave sufficient flexibility to highlight the specificities of each category of products.

Whilst such flexibility is necessary to allow the faithful representation of the most significant characteristics of products, this is as opposed to the possibility for Member States to modify the KIIDs. National divergences should rather be avoided, and most importantly for products that are marketed cross-border.

Content of PRIPs KIIDs

Q. 25: Do you foresee any 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.

The proposed principles seem overall appropriate.

However, the EBF expects that there are limits to the requested use of "plain language". Whilst agreeing that the KIIDs should seek to describe products in the most straight-forward way possible, the Federation notes that questions of financial investments are in themselves complex, implying the need to refer to some complex notions. Avoiding such terms would mean to fail to accurately describe the products and would evoke liability concerns, notwithstanding the clarification of the limited liability that may at all be attached to the KIIDs.

Furthermore, the requirement to keep products up to date should, as a matter of principle, only apply to products that are offered on a continuous basis. As the KIIDs are pre-contractual documents, it would not be appropriate to require their updating once that distribution has taken place and no new products are offered. However, the EBF envisages that the definition of offerings "on a continuous basis" will require further definition.

Furthermore, the EBF understands that the objective that the investor can "rely on the KIID without reference to other information" is meant to indicate that the information provided in the KIID can be read and understood without reference to additional information. As opposed to this, it must be clearly understood that the KIIDs only provide a very limited amount of information and that only the full documentation (e.g., the prospectus under the Prospectus Directive) is meant to describe the product in a comprehensive way.

Q. 26: Are there any other broad principles that should be considered on content and format?

The EBF would remind the need to clarify, on the KIIDs, the liability regime attached to these documents.

In addition, the EBF notes that it will be essential to ensure consistency with the requirements applicable to distributors under MiFID, as well as to avoid duplicative requirements with respect to either other EU legislation or local legislation.

Responsibilities for the production of the KIIDs

Q. 27: Should product manufacturers be made generally responsible for preparing a KIID? Please justify or explain your answer.

The EBF agrees that product manufacturers should generally be responsible to provide the substance of the KIID, as they have all the applicable information about the functioning of the product. However, where a product manufacturer acts on behalf of an issuer, there is a strong case that such issuer would hold the legal responsibility for the KIIDs.

Making the documents available on paper or through another durable medium, on the other hand, could also lie in the responsibility of the distributor.

It will however be necessary to ensure that it is clearly stated which entity is the product manufacturer, for each product. For instruments that fall under the Prospectus Directive, the responsibility for the KIID should clearly lie with the issuer who is also responsible for the prospectus.

In terms of making the documents available to retail investors, there will be a need to consider different distribution channels. In the case of internet-based distribution, for example, it should be sufficient that the KIID is available on the issuer's website.

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?

The EBF underlines that as a result of the fact that the KIIDs are provided by the product manufacturers and will be used in a range of distribution models, it will not be possible to include distribution costs. Rather, distribution costs are subject to separate disclosure and information requirements, notably pursuant to MiFID but also other pieces of regulation. The same is true for custody costs, where these vary by distribution channel.

Furthermore, the EBF would invite the Commission to clarify the situation where a product manufacturer is located outside the EU, and to clarify in particular that such a situation could not lead to impose the responsibility for the KIID on the distributor.

Q. 29: If intermediaries or distributors might be permitted to prepare the documents in some cases, how would these cases be defined?

The EBF is sceptical that intermediaries or distributors would have all relevant information to prepare the KIIDs. Rather, the Federation agrees with the requirement on product manufacturers to provide the substance of the KIIDs. I.e., distributors would only have the responsibility for the production of the KIIDs where they manufacture the product themselves.

Labelling and enhanced transparency of PRIPs in relation to socially responsible investments

Q. 30: What detailed steps might be taken to improve the transparency of the social and environmental impacts of investments in the KIID for PRIPs?

It is true that an aspiration to or promise of socially responsible investments is an essential element of a financial product for an increasing number of investors. Clearly, the KIID should allow to point out this part of the investment policy. It is not clear, however, that a special section in the KII will be necessary to do so. Rather, the section of the KIID that will provide a general description of the product (the "basic investment proposition") could be used for this purpose. This is all the more so as there is today no clear definition of what constitutes a "socially responsible investment", nor should there be a box-tick approach that implies that non-compliant investments are socially irresponsible. Indeed, whether or not an investment can be considered to be "socially responsible" is not a question which can be answered by a simple "yes" or "no". An accurate response would rather be based on a scale, but inevitably also depends on personal viewpoints.

Q. 31: How might greater comparability and consistency in product labelling be addressed?

European banks believe that it would be difficult to define what constitutes a socially responsible investment. Most likely, greater detail on the financial instrument's investment policy will be necessary to describe the criteria that determine eligible investments.

<u>Interaction with and amendments to existing legislation</u>

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.

The EBF strongly agrees that the summary prospectus under the PD should be replaced by the KIID (for stand-alone issues). There is evidence that the summary prospectus is currently little used by retail investors. It still has an important role for the passport, but should ideally be replaced by the KIID also in this respect. Otherwise, requiring a third document for products regulated under the PD would clearly not serve any purpose in terms of investor protection but would only place an unnecessary burden on product issuers.

However, thought will have to be given to a number of specific aspects around the PD. For example, in the case of base prospectuses the KIID will have to be based on the final terms of the offering. In order to use the KIID for cross boarder purposes, it will also be necessary to require its translation into a language common in international finance.

According amendments to the Prospectus Directive will have to be made in parallel with developing the PRIPs initiative.

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.

The EBF believes that this would ideally be the case, in terms of legislative consistency and competitive equivalence. The insurance industry will be best placed to consider potential obstacles.

Q. 34: Do you agree with the suggested approach for UCITS KIIDs?

The EBF agrees that the UCITS KIID should not be amended for the pure sake of providing consistency with non-UCITS KIIDs. The UCITS KIIDs are the result of year-long thorough research and have already received much praise. Going forward, adjustments should be considered as and when better practices are identified as a result of the practical application of the UCITS KIIDs or as a result of the work on non-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?

Elements that concern either local or distribution aspects should be disclosed in separation from the KIIDs. This would notably include relevant information about the product's tax treatment, as well as distribution costs and custody costs, where these vary by distribution chain or individual investor.

Appropriate implementing measures

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?

It must be assumed that a large number of investors will use the KIID as the most important source of information to guide their investment decision. Importantly, the KIID must not include a skewed indicator or mislead investors with respect to the riskiness of certain products.

The EBF is sceptical that it would be possible to apply the same method for a synthetic risk-reward indicator to the whole PRIPs universe. As rightly pointed out by CESR, the types of risks to be considered are different. For example, it will be very difficult to appropriately incorporate counterparty risk into the current two-legged methodology of either historical volatility, or value at risk. On the other hand, re-calibrating the UCITS risk indicator would likely mean to blur the distinction between different UCITS funds, i.e. the risk indicator would lose much of its meaning in helping investors to choose between different UCITS.

The EBF also agrees that it would be difficult to integrate liquidity risk into the risk-reward indicator, as e.g. evidenced by the fact that liquidity is even not taken into consideration by classical risk ratings.

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

The EBF suspects that a narrative description of the events that might negatively impact on the investment's performance might often be the preferable option to a synthetic indicator. Generally, the EBF anticipates that it will be necessary to leave a degree of discretion in the way risks are presented, subject to the overarching requirement that such presentation is fair and clear.

Costs

Q. 38: What in your view will be the main challenges that will need to be addressed in developing common cost metrics for PRIPs?

The EBF agrees with the difficulties identified by the Commission in assessing the value of e.g. guarantees. Generally, it is not clear that there is an objective way of assessing “value for money”. The EBF is not aware of any metrics that could be used in this respect.

Q. 39: How can retail investors be aided in making 'value for money' comparisons between different PRIPs?

The EBF understands that this question revolves around the comparability of costs and charges between products with entirely different legal profiles and entirely different financing structures.

In particular, a distinction should be made between:

(a) Packaged products based on the collective management of a pool of assets for which a fee is charged pro rata on the investors whose assets are being managed; and

(b) Products whose payout structure is defined on the basis of a certain formula, or which pay a form of fixed return.

In the former case (a), the charges are explicitly defined and simple to identify and to disclose. Fees are deducted from the performance of the underlying assets and are charged directly to the customer. The customer should be informed about such fees so that he is enabled to calculate his expected returns, taking into account the level of these costs.

In the case (b), i.e. defined return products, fees and costs are built into the payout formula. The manufacturer’s profit will vary depending, on e.g. market conditions or issuance size. The investor’s interest, in turn, is in a specified return, rather than in an asset manager’s expertise and fiduciary performance. It could therefore be argued that a comparison with investments where fees are subtracted from investment management performance is of little meaning or misleading to the investor: profits made on a hedge are not comparable to fees paid for a fiduciary service.
There is therefore a wide-spread view among European banks that only those costs should be disclosed which result in a reduction to the payout to the investor, such as management fees charged by an asset manager, distribution fees, and product entry or redemption fees.

However, one EBF member has suggested that the costs embedded in certain fixed return products could be estimated in accordance with the market price of each underlying of a structured product. Nevertheless, such a procedure is seen to be overly cumbersome and impracticable in reality by the majority of EBF members. In addition, a comparison of components purely on the basis of prices would ignore the counterparty risk implied by different providers of product components.

Performance

As a general observation, care must be taken to ensure that requirements to indicate performance, as well as other key elements of investment products, are fully in line with the respective MiFID requirements.

Q. 40: Do you consider that performance information should always be included in a KIID?

Performance indications are one of the most important pieces of information for an investment decision, and for many PRIPs the single most important element. While the uncertainty of returns must be clearly pointed out to investors, refraining from giving an indication about possible returns would likely be perceived as a major shortcoming of the KIID and reduce its value for especially those investors that make use of few other information sources. The way of doing so would vary for different PRIPs: for actively managed funds, a backward-looking comparison with a certain benchmark can be useful. For defined return PRIPs, it can be meaningful to define certain return scenarios. Nevertheless, the EBF does not exclude the possibility of altogether omitting performance indications for certain exceptional products.

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?

Due to the uncertainty around future performance, the EBF believes that there is a natural limit to making such information comparable. One notable challenge would be to develop a harmonised set of assumptions or different scenarios on the basis of which payout would be modelled.

Generally, it will be important to clarify for potential investors the link between risks and return linked to all investment products, i.e. if comparability is being sought, it should be in relation to both aspects at the same time. However, it must also be clearly stated that all indications of risk and return are only indicative and based on a number of assumptions, and that real outcomes will unavoidably deviate from the scenarios provided or from historical outcomes. I.e., investors must understand the limits of the information provided to them so that they do not feel misled if an investment does not perform as expected.

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?

European banks agree that it is of major importance that retail investors understand well the nature and conditions of any payouts linked to investment products. The clarification and clear distinction of terms such as “guarantee”, “capital protection” and “principal protection” would be helpful in this context. Furthermore, it must be clearly pointed out that the payout of any structured product is linked to the issuer’s creditworthiness, including proposals of capital protection. As opposed to this term, a guarantee would exist where there protection is provided by a third party, which will however also entail a risk of its own.

Q. 43: What information should be provided to retail investors on the cost of guarantees?

Retail investors could generally be informed that guarantees have an opportunity cost, i.e. that they lower the upside chances of their investment. The EBF does not however believe that the specific cost of guarantees is of particular importance to the investor, and certainly the EBF does not believe that such information should be considered “key information”.