



Vice-President Dombrovskis
European Commission
200, Rue de la Loi
B-1040 Brussels

Dear Sir,

The Securities and Markets Stakeholder Group (SMSG) advises ESMA on all regulatory and supervision matters. In compliance with EU Law, it is composed of expert representatives of financial markets participants operating in the union and their employees, of consumers, users of financial services and of independent top-ranking academics.

“PRIIPS” (Packaged Retail and Insurance-based Investment Products) cover a large range of investment products that are marketed to savers and individual investors. The pertaining regulation seeks to enhance comparability and transparency for those investors especially by requesting to provide a Key Information Document (KID).

During the legislative process, the SMSG dealt intensively with the dossier and in October 2015 warned in a letter to the co-legislators and the Commission that the legal requirements planned at that time, especially to indicate the future performance of the product, could lead to misleading investor information.

Since the PRIIPS Regulation has been in force since January this year, the manufacturers, the distributors and their staff, and in particular the investors as the actual beneficiaries of the summary information, have had negative experiences.

While the aim of better investor information is generally shared and the principal intention behind the PRIIPS-regulation to enhance comparability and transparency through short and concise information is generally recognized, unfortunately in practice very often cases arise in which the PRIIPS KIDs do not fulfil these requirements but on the contrary are simply misleading, incomprehensible and unusable.



It is a shared view among the members of the SMSG that it is very urgent to put an end to this undesirable situation and to bring about the necessary changes at the various levels of financial market regulation and supervision.

Scope

We believe that some of the problems, e.g. the unclear scope of the PRIIPs regime can be solved by appropriate interpretation and supervision practice on the part of the European Commission or the supervisory authorities. In keeping with its name, the PRIIPs regulation should focus on investment products packaged for retail investors. An interpretation that corporate bonds fall under the regulation for packaged products as it is currently being discussed by the market has already the undesirable consequence that such instruments are no longer available for purchase by retail investors.

Equally questionable is an extension to derivative products, when they are not intended for investment purposes but for risk hedging. If the scope of application was to be extended to those instruments, much of the information intended for investment products would not make sense.

Cost Information about Funds

It is also striking that the cost information for fund products is often peculiar. One reason for this is the inclusion of cost items arising from the management of the fund in the overall cost presentation visible to the investors. Without an explanation of the background, these specifications too often lead to a negative transaction cost disclosure that is incomprehensible to most retail investors. It is currently unclear whether clarifying information from the supervisory authority or just a change in the applicable law can help. Another reason is that cost calculations are based on a PRIIPs recommended holding period, computed on one of the four required performance scenarios only. On which one, however, is not disclosed. Thus, it is impossible for investors to calculate costs for another than the recommended holding period and, as a consequence to compare even similar products if their recommended holding period differs.

Performance scenarios

As already stated in our letter to the relevant EU institutions dated 13 October 2015 (ESMA/2015/SMSG/028), we continue to believe that the elimination of the requirement for the disclosure of past performance of PRIIPs and their chosen benchmarks in favour of four future performance scenarios without any benchmark leaves retail investors in the dark as they will not know whether these products have met their investment objectives or made any money in the past. Not will they be able to compare one KID with another as the use of these future performance scenarios using different holding periods makes it impossible to meaningfully and reliably compare performances despite this being one of the main goals of the



PRIIPs regulation. Therefore we strongly reiterate the need to amend the legal requirements for the disclosure of future performance as a matter of priority. The application of the prescribed methodology to products with a recommended holding period of less than one year leads to highly absurd results in terms of performance, which must be stated on an annual basis. Performance data of several billion percent p.a. can be found on the market using the specified methodology.

It is also difficult to determine the future performance on the prescribed basis of the last 5 years. This rule leads to the continuation of a past trend which in no way needs to be actually reproduced by the market, as example calculations show in years with a reversal of the general market trend.

Here, significantly longer base periods are needed. And at least a prominent warning as required by MiFID II, that such forecasts are not reliable indicators of future performance, would be needed.

We believe that, at least with a view to performance scenarios and cost calculations, an early revision of the PRIIPS regulation or its implementing provisions is truly urgent in order to protect consumers and investors and to not discredit the well-intentioned brief information KID as a whole. With a view to the fact that the current transparency regime for UCITS has proven to be effective, we believe that the current exemption of UCITS funds and certain AIFs from PRIIPS should be extended from 31/12/2019 for at least another three years.

The SMSG therefore respectfully asks the co-legislators and the Commission to take the necessary steps as soon as possible.

Yours sincerely,

[signed]

Rüdiger Veil
Chair

c.c. Director-General Olivier Guersant, ESMA Chair Steven Maijoor, EBA Chair Andrea Enria, EIOPA Chair Gabriel Bernardino