

Insurance Europe Key Messages on the EC proposal for a PRIIPs Regulation

Insurance Europe supports a high level of consumer protection and recognises the importance of improving consumer information. The Packaged Retail Investment Products (PRIIPs) regulation's disclosures should however require better information relevant to consumers, not merely more information which does not benefit consumers.

1. SCOPE

A. Pensions should be excluded from the PRIIPs regulation's scope

Pension products are not comparable with other investment products because, unlike other PRIIPs, the products (i) are a type of savings product which must provide a secure income for retirement; and (ii) offer limited or no access to these savings during the accumulation phase. Insurance Europe believes that given these features of pension products, the disclosure requirements suggested in the PRIIPs KID are not appropriate. Therefore, it should not be the aim of the proposal to force all pension products within the untailored scope of PRIIPs but rather to ensure – as indicated in the Commission's White Paper on Pensions – that consumer information for individual pension products is improved building on the PRIIPs initiative.

- Insurance Europe requests all pensions are outside the scope of the PRIIPs regulation.

B. Inclusion of those life insurance products only where the investment risk is borne by the policyholder

Currently it is unclear which products are captured by the PRIIPs regulation's scope. For Insurance Europe, it should be clarified that only life insurance products where the investment risk is borne by the policyholder, have the characteristics of a PRIIP and should be in the scope of the PRIIPs regulation. The existing European legislation¹ already differentiates between those life insurance products where the risk is borne by the policyholder and others. For the interest of consistency, Insurance Europe suggests only including those products where the policyholder bears investment risk in the scope of the PRIIPs regulation.

Other life insurance products than those where the investment risk is borne by the policyholder contain elements of a minimum guaranteed return and/or profit sharing and do therefore offer comparable or even higher protection against investment risks than some other products excluded from the scope (eg deposits). Furthermore, profit sharing offers an additional bonus for the policyholder based on the profitability of the insurance company. Life insurance products with a contractual agreed minimum rate of return do not have the characteristics of PRIIPs because (i) there is no investment risk for the policyholder and (ii) there is no element of wrapping/packaging.

- Insurance Europe advocates only including "life insurance products where the investment risk is borne by the policyholder" in the scope of PRIIPs. (*)

2. KEY INFORMATION DOCUMENT REQUIREMENTS

C. The KID in its current form can only be applied to underlying funds. If applicable at insurance product level, the KID should highlight insurance features.

Given the lack of information on key features relevant to insurance products, Insurance Europe believes, in its current form, the KID can only be applied at underlying fund level. By providing the KID at fund level, it ensures the underlying funds are comparable to the UCITS funds and other funds within the PRIIPs regulation's scope. Moreover, insurance information is disclosed to consumers on the basis of Solvency II disclosure requirements.

- Insurance Europe believes the KID, in its current form, can only apply to underlying funds.

¹ For example in Article 132 of Directive 2009/138/EC.

Insurance Europe believes that consumers should be well-informed about insurance product features. These features distinguish insurance PRIIPs from other PRIIPs products and are thus an important evaluation factor. This applies at (i) a general level, ie always disclosing whether or not a PRIIPs product offers insurance benefits and (ii) at a more detailed level, ie where certain information categories require inclusion of insurance specific disclosures to allow a well-informed product comparison.

Therefore, if the intention is to apply the KID at product level, then it must be tailored accordingly. Information on insurance product features is inadequately covered in the KID. There is only one minor reference in Article 8.2(b)(iv) that is applicable where insurance benefits are offered. Additionally, there are sections of the KID that prescribe information disclosures that are irrelevant or inappropriate in an insurance context and which does not benefit consumers.

- If the KID is applicable to insurance products, Insurance Europe requests the inclusion of insurance specific features, including a separate section on insurance benefits, to be completed for all PRIIPs products.

D. The KID applies inappropriate headings

Insurance Europe supports the use of clear, succinct and comprehensible language. However, the KID headings use rather informal and negative wording, particularly compared to the requirements for UCITS funds. Negative questions such as "Could I lose money" may unduly alarm consumers without achieving the objective of comparability and rather discourage consumers to invest. Finally, using questions in the first person wrongly creates the impression the KID contains personalised information rather than general product information.

- Insurance Europe requests using more neutral headings in the KID.

3. INTERACTION WITH OTHER DIRECTIVES

E. The KID duplicates pre-contractual Solvency II and national disclosures causing consumer confusion

The PRIIPs proposal explicitly states Solvency II pre-contractual information requirements should be applied in parallel (Article 3.2 PRIIPs regulation). This parallel application of disclosure requirements will cause:

- an unwelcome information overload for consumers as the parallel provision of comparable and simultaneous disclosure under PRIIPs and Solvency II along with national disclosure requirements could cause consumers to be overloaded with information;
- legal uncertainty for insurance undertakings as it is unclear whether information covered by Solvency II and the PRIIPs KID has to be provided twice or only via the KID.

- Insurance Europe requests identical Solvency II requirements are met by the PRIIPs KID.

F. UCITS products should be included in the scope of PRIIPs

UCITS products benefit from a transitional five year period during which they are not subjected to the PRIIPs regulation (Article 24 PRIIPs regulation).

Insurance Europe believes the UCITS exemption is detrimental to consumers as the parallel use of the PRIIPs KID and UCITS KIID negatively impacts the PRIIPs regulation's goal, comparability between investment products.

- Insurance Europe requests UCITS products equally apply the PRIIPs KID.

4. OTHER

G. Sanctions

The PRIIPs regulation introduces strict and prescriptive sanctions (Article 19.2 PRIIPs regulation), including a product ban and sanctions' publication.

Insurance Europe opposes introducing sanctions at European level given they are already dealt with at national level and therefore the subsidiarity and proportionality principle are not respected. Moreover, sanctions provided in Solvency II already apply to insurers and there is therefore no need for alternative provisions. Especially the publication and product ban can be misunderstood by the public and affect the entire industry.

As a minimum, the product ban should include procedural safeguards prior to its imposition. The publication should be an ultimate measure subject to all pre-conditions other PRIIPs sanctions are subjected to.

- Insurance Europe opposes the introduction of sanctions at European level. As a minimum, the necessary safeguards should be put in place for a product ban and sanctions' publication.

H. Liability regime

The PRIIPs regulation introduces a strict liability regime if the product manufacturer has produced a KID not complying with the PRIIPs regulation (Article 11 PRIIPs regulation).

Insurance Europe opposes a strict liability regime for a standardised KID being a first contact with the consumer who may require further, especially personalised, information in a second step to take a well-informed purchase decision.

The UCITS regime recognises a standardised document cannot lead to strict liability for the product manufacturer.

- Insurance Europe opposes a strict liability regime.

I. Delegated acts

Although Insurance Europe is generally not critical of the power to adopt delegated acts, Insurance Europe is concerned about the breadth of the power given to the European Commission and EIOPA to adopt extensive level 2 measures. A regulation whose main objective is to harmonise information requirements should not leave critical issues such as the presentation, content and details of the KID and the presentation of additional information required by the investor to take a decision, open to be determined at a later stage. This creates legal uncertainty because it is impossible to assess how the PRIIPs regulation will be applied in practice.

- Insurance Europe requests, as a minimum, the industry will be consulted timely and appropriately before the adoption of the delegated acts allowing the assessment of the full impact of the PRIIPs regulation.

(*) The Dutch Association of Insurers does not support Insurance Europe's position on life insurance products.