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Consultation by Commission Services on legislative steps for the Packaged Retail Investment Products (PRIPs) initiative

Response of the French Banking Federation (FBF)

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NEED FOR A COHERENT APPROACH TO PRODUCT TRANSPARENCY AND DISTRIBUTION REQUIREMENTS FOR PACKAGED RETAIL INVESTMENT PRODUCTS

The **French Banking Federation** (FBF) is the professional body representing over 450 commercial, cooperative and mutual banks operating in France. It includes both French and foreign-based organisations.

As universal banks, the FBF members are highly concerned about an evolution of the legal framework of the packaged retail investment products (PRIPs), precisely on the current work for a coherent approach to product transparency and distribution requirements for PRIPs. They are interested as producers, as asset managers, as distributors, and as custodians.

The FBF supports in principle the idea of the PRIPs project and the objective to simplify pre-contractual disclosures in order to allow all actors to operate on a level playing field. This will help retail investors[1] in a better understanding of the essential characteristics of investment products, against a background of overflow rather than shortage of information.

However, we are very much concerned about the consistency of a new regulation with those already in force. To meet their obligations in terms of ethics and regulations, including respect for the primacy of client interests in any investment transaction, French banks already use a number of procedures that rely on software developed specifically for this purpose.
If the new rules differ from current rules, it would require reconsidering all these procedures with high costs both for the development of information system and for the training of employees. Those new costs would increase the cost of distribution, with no certitude about a tangible improvement in the pre-contractual information compare to the current situation in France.
Furthermore, we have not seen in Europe, even in the crisis context, a major market failure that would imply an immediate correction in the distribution of investment products.

Our response addresses the three broad areas of the consultation.

[1] As regards the focus of the Commission's work on "retail" investors, the FBF 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 FBF, such clarification is important to ensure alignment with MiFID and to prevent any confusion about the categorization of clients.

SCOPE ON THE PRIPS REGIME (Questions 1 to 14)

The FBF is of the opinion that the definition proposed by the Commission services is relevant as a starting point. *(A PRIP is a product where the amount payable to the investor is exposed to fluctuations in the market value of assets or payouts from assets, through a combination or wrapping of those assets, or other mechanisms than a direct holding).*

[Q6 to Q8] We think that simple (non-structured) deposits should be excluded from the scope of the initiative. 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. Those products, such as saving accounts whose interest rate is defined par the State even if the formula may involve index or combination of indices, must continue to be subscribed without any administrative burden. Concerning the definition of structured deposits, the preference of the majority of our members goes to the option 1 proposed. However, this definition needs to be adapted in order to clearly exclude products defined by the State mentioned above and interbank deposits.

[Q9 to Q12] We agree with the proposed exclusion of pensions from the scope of the PRIPs work at this time. We think the pension landscape in the 27 Member States is too heterogeneous with great differences in state-run pension schemes, occupational schemes and individual / voluntary private pensions.

[Q13 to Q14] The FBF would expect benefits from an – importantly – indicative list of categories 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 categories 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.

LEGISLATIVE APPROACH (Questions 15 and 16)

We strongly agree with the risk pointed out by the Commission services about a wholly new PRIPs sales regime, which would be particularly complex and raise uncertainty.

That is why we agree with the usage of both the IMD and MiFID to deliver the PRIPs initiative on sales rules. To go further, the main difficulty is that those directives are also under review consultations. Therefore, it is quite difficult to get the big picture.

Whatever the final regulation will be, it is important that it applies uniformly:

- To all PRIPs;
- In all Member States;
- To all actors.

Otherwise, the risk of creating distortions of competition and lower the overall level of protection and confidence of investors is high. An additional regulatory level will keep on increase the patchwork of requirements described by the Commission itself.

NEW PRE-CONTRACTUEL PRODUCT DISCLOSURE INSTRUMENT (Questions 17 to 43)

The FBF strongly disagrees with the Commission services point of view when it is written *"the difficulties retail investors face in understanding, comparing and using information provided to them about investments".*

According to several surveys, among the abundant sources of information for savings accounts or "risk" financial products, the banker and the financial advisor play the most important role. Some investors see distrust towards too many information and mainly the written document.

Concerning the distribution of financial instruments, the MiFID covers them all, the obligations about investment advice and the conduct of business rules are in force.

We agree that KIID for UCITS is a good benchmark for designing KIID for PRIPs. 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.

The KIID should be a balanced document if it is to allow investors to make an informed investment decision - it cannot simply be a list of risk warnings but must also give information on the merits of a product and the reasons to invest.

[Q27 to Q29] The product manufacturer should be solely responsible for producing the KIID since the entity manufacturing a product is normally best placed to have all information about it. The provision to retail clients of the document is the responsibility of the intermediary or distributor.

[Q36 to Q37] Risk is a key point for decision making by the investor. Therefore, developing a simple risk indicator that would work across all PRIPs is an attractive idea even if the task is difficult due to the great variety of situations. We believe that risk is a more relevant criterion than complexity for the retail investor. A false link is often drawn between complexity and product risk. Principal protected products may be highly complex precisely because they have been structured to reduce risk. What an investor needs to understand are the risks inherent in a product and its likely return not the financial engineering required to put it together. Perhaps counter-intuitively for some, the complexity of providing defined investment outcomes delivers a simpler risk exposure.

[Q38 to Q39] Concerning costs, we are of the opinion that the retail investor is only interest in the final cost. Concerning unit-linked life insurance products, it is important to distinguish clearly costs attached to the life insurance product and those attached to the unit-linked.