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IRSG Position Paper on the Packaged Retail Investment Products regulation

1. General

The EC PRIPs proposal aims to improve pre-contractual information by laying down uniform rules on the format and content of a key information document (KID) for investment products. Investment products are defined as all types of investment funds, insurance-based investments, retail structured products, and private pensions. The proposal however exempts UCITS products for a five year period.

The IRSG supports the EC initiative to improve consumer information and enhance the level of consumer protection. The IRSG recognises that combining simplicity and transparency is very challenging but it can, and should, be done.

Furthermore, the IRSG believes that the right balance needs to be struck, ie consumers need better and relevant information not simply more information. In this respect, the IRSG is especially concerned by the developments in the European Parliament where PRIPs is becoming a regulation covering multiple aspects of consumer protection to the detriment of the primary challenge, ie getting the KID's content and field of application right so consumers can make a well-informed comparison of investment products. The PRIPs regulation covers all financial sectors, which inevitably causes significant challenges in the development of a single key information document. As an insurance stakeholder group, in this opinion, the IRSG mainly focuses on the issues especially relevant to insurance.

2. Scope: packaged investment products

The EC proposal refers to products where different assets are packaged together. In order to ensure that the regulation only applies to such packaged investment products, the EC proposal states that, among others, insurance products that do not offer investment opportunities should be excluded from the scope as well as occupational pension schemes and pension products for which a financial contribution from the employer is required by national law and where the employee has no choice as to the pension product provider.

The IRSG supports to focus the scope on the packaged investment products as described above, in line with the original intention. Further widening the scope to include non-packaged, non-investment products would render it even more difficult to develop a precise, yet short document as packaged investment products require different pre-contractual information disclosures than non-packaged, non-investment products.

For insurance products, the IRSG believes that a focus on packaged investment products should result in the exclusion of the following product categories:

- All pension products. The IRSG believes all pensions should be excluded from the scope of PRIPs because pensions are not comparable to other packaged investment products. Unlike PRIPs, pensions offer limited or no access to the savings during the accumulation phase and/or pensions are a cover against the longevity risk rather than an investment product. The IRSG therefore considers that pensions should not be forced into the untailored scope of PRIPs and a separate exercise to examine how consumer information can be improved for pensions, would instead be desirable. The IRSG recognises the absence of an EU-wide definition for third pillar pensions, therefore as a fall-back private pensions could be referred to as "*all national and/or EU recognised pension products*".
- Life insurance products where the risk is not borne by the policyholder. The IRSG finds that life insurance products including elements of a minimum guaranteed return and/or profit sharing do not have the characteristics of a PRIP and should therefore be excluded from the scope of PRIPs. Profit sharing offers an additional bonus for the policyholder, not an investment where the policyholder risks losing part of his/her invested capital. A guaranteed minimum rate of return does not expose the investor to any investment fluctuations either, he/she will however receive a bonus if the company performs well.

3. The KID's character: standardised, pre-contractual product information

The IRSG supports that the KID is a standardised, non-personal document offering generic product information to consumers at the pre-contractual stage. The stated objective of the KID has always been to facilitate "shopping around" by consumers and help comparing general product offers. The IRSG therefore believes that the KID should be based on standardised, -product related information. Furthermore, the IRSG would like to note that transparency rules on intermediaries' sales costs are included in the Insurance Mediation Directive (IMD) 2 and the Market in Financial Instruments Directive (MiFID) 2. These directives deal with conduct of business rules and are therefore the appropriate instruments to cover non-product related information. They will ensure that the consumer is informed about these elements. Accordingly, duplication of information about intermediaries' costs, commissions, charges, benefits and tax information going beyond a general statement that tax will have an impact on the investment's returns in the KID should be avoided. Including detailed sales and tax costs into the KID would confuse the generic nature of the KID's disclosures with personal information.

Additionally, the IRSG finds that splitting responsibility of producing the KID between the product manufacturer and the person selling the investment product complicates the issue of responsibility and liability to the detriment of consumers. The product manufacturer should be solely liable for the KID. He should not be held responsible for additional, sales related information generated by a person selling the investment product who is not affiliated with the product manufacturer. The person selling the investment product should be responsible for such information. The redress mechanisms for the consumers should also be clear and evident in the KID.

4. The KID's disclosures: insurance specific and relevant

The KID is intended to offer product information allowing consumers to understand and compare investment products across financial sectors in the "shopping around" phase.

4.1. The KID should allow comparison of products from different financial sectors

The KID offers pre-contractual product information so a consumer can understand and compare different products, on a cross-sectorial basis, before taking an investment decision. The IRSG therefore supports that comparability between different PRIPS is best achieved by developing a single KID for all PRIPs.

4.2. The KID should not overload consumers with duplicative information

The EC proposal requires parallel application of Solvency II and PRIPs disclosure requirements even though a number of these are equivalent/identical (eg, risk, term, disinvestments, costs). The IRSG considers that a parallel application will cause an unwelcome overload of information for consumers. Therefore, product manufacturers should be able to provide all equivalent Solvency II disclosures through the KID instead of having to provide equivalent information twice in a different form.

Furthermore, member states should also take into account the overlap between their national pre-contractual information requirements and the KID. For example, the review of national customer information directives in Germany should consider the potential overlaps between the PRIPs KID and the obligatory "Riester customer information leaflet".

4.3. The KID should always inform consumers about insurance specific features

Despite the fact that the KID applies to packaged investments across financial sectors, the IRSG strongly supports that the KID always informs consumers whether a product offers insurance benefits. The IRSG believes that such information is indispensable to allow consumers to adequately compare products as investors should understand that an insurance PRIP, unlike other PRIPs, offers protection against risk in addition to the investment.

The IRSG believes that consumers should also be made aware of the difference between premium costs and investment costs and that guarantee and capital protection are not subject to the same stringent prudential requirements in all financial sectors.

4.4. The KID should provide relevant disclosures at the product and underlying asset level

If insurance PRIPs are regarded as "life insurance products where the risk is borne by the policyholder" it means that such products generally offer investments into underlying assets (such as funds). The IRSG believes that this makes the provision of some categories of information in the format suggested by the EC extremely challenging because, eg the riskiness at product level can only be assessed when the consumer has chosen the underlying funds. The IRSG therefore believes that a two-tier approach distinguishing between the product and fund level within the KID document would be more appropriate. For example, insurance benefits information can be provided at the product level and a risk and reward indicator at the asset level. This allows consumers to understand the product's structure and aids them in choosing the underlying funds.

5. Other consumer protection issues

The IRSG finds the enhancement of pre-contractual product information for retail investors highly important. This task should be completed without entangling it with other consumer protection issues; particularly given it is still a challenge to develop a meaningful and useful cross-sectorial KID. The IRSG therefore believes improving pre-contractual product information should not be complicated by also addressing other issues of consumer protection – not related to pre-contractual information - such as sales rules, product development, product approval, product intervention. Many of these aspects are in any event addressed in IMD 2 or MiFID 2.

6. Issues relevant to all financial sectors

6.1. Past performance

Past performance may be helpful but it has to be over a sufficiently meaningful timeframe. Moreover, it is not a guide to a certain future performance and the IRSG believes consumers should be well-informed about this by including a warning in this respect. Similarly, future projections are only predictions which may be even more misleading for consumers and therefore not favoured by the IRSG.

6.2. Risk and reward indicator

It will be extremely challenging to develop a common risk and reward indicator across financial sectors for it to be meaningful. Level two implementation should pay particular attention to developing a simplified risk/reward tool that is useful for consumers and subjected to consumer testing (see point 6.3 below).

6.3. Consumer testing

The IRSG finds that rigorous consumer testing should be undertaken by the European legislator once the KID is discussed at level two. Therefore, the level one text while offering clarity should not be overly prescriptive. This is especially important in light of the consumer challenges around financial capability. The IRSG however does not believe the generic KID can serve as a key step or a substitute in terms of financial education as some MEPs have suggested.