EFI EuroInvestors

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The Managing Director

Brussels, 6 September 2010

Mr. Michel Barnier
European Commissioner
Internal Market & Services

Scope of "PRIPs"
Retail Investment Products Selling Practices

Dear Mr. Commissioner,

We wish to congratulate the European Commission for the "horizontal" approach of its PRIPs ("Packaged retail Investment Products") project, which is the right way to harmonize the selling practices of retail investment products, as most of them are "substitutable" for each other, and most of them are or can be sold by the same intermediaries. We do recognize it is innovative and challenging for the EC to cut through existing "silo" organigrams and directives.

We nevertheless regret that the retail investor's perspective is still not fully taken into account. The current definition and scope of PRIPs does not reflect reality at the point of sale. For example in France a lot of retail investment products would not qualify as PRIPs. Bank saving accounts, traditional life insurance contracts, equities, bonds and all long term savings and pension products that can be subscribed on a voluntary basis nevertheless constitute a big portion of retail investments offered to the public by French financial intermediaries.

1. All retail investment products - not only "packaged" ones

We regret that the initial name of the EU Commission project – **"substitute"** investment products – has been discarded for the narrower **"packaged"** investment products one. Investors do not care whether an investment product is "packaged" or not and most often do not know what the word "packaged" means anyway. The Commission has consequently excluded a large part of substitutable retail investment products for no explicit reason. "SRIPs" do matter for the retail investor, more than "PRIPs" only.

2. The criteria for in-scope products should be amended

Whilst we agree that the scope of the project should be based on economic criteria, we do not believe the criteria outlined by the Commission are able to capture the relevant market for Substitute Retail Investment Products:

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- Products - packaged or not - can still be substitutable for each other: example: an equity investment fund ("packaged" by the EC's definition) is substitutable for a portfolio of equities ("unpackaged" by the same definition), as long as the retail investor is knowledgeable enough to invest directly in securities. The reality is that many retail investors do both.

- "Packaged" products do not always substantially ***"modify the exposure to underlying financial assets"*** as compared with direct holdings: this is the case for example of index funds and index ETFs: the exposure to the DJIA ETFs is the same as the direct holding of the same portfolio of 30 shares.

- The primary function of PRIPs – either "packaged" or "unpackaged" is not always ***"capital accumulation"***. It can be income distribution as well (for example, fixed income funds with distribution shares, some structured deposits, etc.)

- From the point of sale perspective unfortunately it often does not really matter whether the product was "***designed with the mid- to long term market*** *in mind*". What matters is how they are sold. Experience shows, for example, that intermediaries and retail investors use products that may have been designed for mid- to long term purposes with a short term horizon in mind (example: the massive switch from life insurance-based savings to bank savings accounts in France in Q4 2008 when the latter yielded 4,50 % p.a. tax free, and the reverse move from Q2 2009 when the latter's yield dropped to 1,25%. Clearly perverse as life insurance products are designed for the long term, whereas savings accounts are designed for the short term, but is the reality of the market.)

- The notion of "*investment risk*" applies to **all substitute retail investment products** whether they are packaged or not. For example, even a basic bank savings account is exposed to interest rate risk and to counterparty risk.

- According to the EC proposals, one and the same retail investment product can be labeled at the same time as (a) a plain vanilla security (therefore "unpackaged") and (b) as a "packaged" product[1], clearly demonstrating another serious weakness of the "packaged" concept and approach.

- One criterion is missing: the investment product must be purchased on an individual basis and not mandatorily (this distinguishes personal long term savings and pension plans with collective and mandatory ones, the latter not being substitutes to other retail products for that reason).

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[1] For example, EuroInvestors has provided evidence to the EC of bank EMTNs (Euro Medium Term Notes), which are economically and legally plain vanilla listed corporate bonds, but are also labeled by the issuer itself as "structured notes". Structured notes are listed by the EC proposal as "packaged" products. Legally, they fall under the Prospectus Directive. The prospectus summary is quite inappropriate, very sub-par and inconsistent compared to the UCITS "KII" document, and does not even mention the interest rate of the bond.

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3. The result: a limited and artificially defined scope that will not meet the Commission's objectives

All substitute retail investment products at the point of sale must be included, or we believe the Commission would be unfortunately wasting its' time and efforts to adopt a horizontal approach. This would result in a rather limited and artificially defined section of the retail investment products market. Regulatory arbitrage would likely be very widespread and the retail market playing field very uneven, which is what the EC wanted to avoid in the first place.

4. Our request: include all retail investment products substitutable at the points of sale

As a result, quite a few popular retail investment products are missing in the indicative list of included products proposed by the EC **We kindly ask that the EC includes all "substitute" retail investment products that are offered at the points of sales in the "PRIPs" scope:**

- **Listed Shares**
  An equity investment fund is substitutable to a portfolio of equities, as long as the retail investor is knowledgeable enough to manage it; also preferred shares can often be looked as a substitute to long term bonds or even annuities. Three decades ago, before the emergence of the investment funds (which generally provide more diversification and professional management, but generally charge higher commissions), direct shares and bonds investments were much more often offered by intermediaries to individuals),

- **Listed Bonds** (sovereign, corporate, standard, asset-backed, convertible)
  especially banks EMTN routinely sold as high yield substitutes to savings accounts at the point of sale; large corporate issues are also often sold to retail investors either directly or through unit-linked insurance contracts, and often presented as a substitute to savings or term bank accounts, or to capital guaranteed life insurance contracts (like "contrats en euros" in France, "Branche 21" in Belgium.

- **Other fixed income securities**: bank certificates of deposit, commercial paper, Government treasury bills
  Example : - "bons du trésor" in France

- **All investment funds offered to retail investors**
  This include all retail UCITs and non-UCITs funds, all ETFs (mostly UCITS), whether they are index ETFs or structured ETFs.

- **Traditional life insurance**: all life insurance contracts with an investment component, whether they provide cash or annuity returns
  Examples: - the € 1100 billion invested by French households in "euro contracts", by far the most popular long term investment

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product there: it is neither unit-linked nor index-linked or hybrid). these products which are being substituted to savings accounts, investment funds, long term savings plans, bonds, etc

- With profit policies in the UK
- "Branche 21" life insurance in Belgium

- **Unit-linked insurance products** – whether internal funds only or open architecture.
  Example: - "Branche 23" life insurance in Belgium

- **All Savings accounts, whether standard or "structured"**
  All SRIPs include "investment risk", even bank savings accounts (for example the risk of fluctuating interest rates). Also standard savings accounts are clearly competing and "substitute" to money market funds and we have evidence that they are also proposed as an alternative to bank EMTNs, or to Straight life insurance contracts.

- **"Structured" products and certificates**
  Investment products offered by banks or other financial institutions that neither qualify as securities or as investment funds (UCITS) like some structured notes (not all of them, see footnote 1) and all investment certificates.

- **Individual non mandatory pension and annuity products** (all "Pillar 3" pension products as long as the individual is free to decide whether or not to use them)
  They are also totally substitutable to other SRIPs offered to individuals; as long as the products can be subscribed individually and purely on a voluntary basis, they must be included.
  Examples:
  - "PEE", "PERCOs", "PERPs" in France,
  - all "Riester" Plans in Germany.
  - Defined contribution products in the UK
  - Variable annuities

- **Some derivatives**
  As long as they are often sold to retail investors, like:
  - listed equity warrants,
  - listed equity options,
  - and certificates for difference (CFDs).

  These are SRIPs: therefore they should be included.

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As of to-day, this request to the European Commission is supported by:

- **EuroInvestors (European Federation of Investors)**
- **Euroshareholders**
- **FECIF (European Federation of Financial Advisers and Financial Intermediaries)**
- **AILO (Association of International Life Offices)**

We also understand that the **European Consumer Organisation** (BEUC) shares our views on the scope of the "PRIPs" project.

We would of course be happy to have the opportunity to discuss this request with your team.

Best regards,

c.c. Jonathan Faull, Director General, Internal Market & Services
Emil Paulis, Director, financial services policy and financial markets
Elemér Tertak, Director, financial institutions

We undersigned fully
endorse the present letter
Geneva, November 1st, 2010

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