EuroFinuse Response to Sven Giegold MEP Call for Input on UCITS, PRIPs and IMD Legislation

The European Federation of Financial Services Users (EuroFinuse) is deeply involved in the discussions on the latest three most important legislative proposals for EU financial services users: the revision of the Insurance Mediation and Undertakings for Collective Investments in Transferable Securities Directives; and the Packaged Retail Investment Products Regulation, all proposals from July, 3rd 2012.

We would like to respond to the questions specifically raised in the call from Sven Giegold MEP for comments and insights of professionals and stakeholders on the aforementioned EU legislations.

Before addressing to the questions specifically raised by MEP Giegold, we would like to make some general comments related to our experience with the aforementioned legislations:

- As we stated in our Position to the Consultation on legislative steps on PRIPs from the European Commission, we believe in the "horizontal" approach used for the PRIPs legislation, e.g., harmonizing selling practices between a wide range of products;

-However, we believe that the PRIPs Regulation is having a too narrow scope. We believe that all investment products in the retail point of sale should be included.

-In the same line, we definitely believe in standardised pre-contractual informative documents as considered in the UCITS Directive (the KIIDs or Key Investor Information Documents) and we regret KIIDs have not been applied horizontally to all kinds of retail financial products;

Finally, we would like to respond to the issues on which MEP Giegold was requesting specific input:

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1. Remuneration of asset managers (UCITS V)

EuroFinuse has previously tacked the issue of the remuneration of on its Response to the European Commissions' Green Paper on corporate governance in financial institutions and remuneration policies.

More specifically, we consider that due to the long-term investment horizon that UCITS funds managers have to consider, their remuneration packages should include this long-term perspective as well.

A specific issue we would like to point out is that commissions from depositories or custodians to asset managers on transaction fees, which are relatively common in EU member states such as France, should be forbidden.

2. Insights of professionals concerning sales commissions in insurance mediation (IMD II)

We are obviously not "professionals" or belonging to the industry; we would very much like however to point at certain specific issues concerning sales commissions in insurance mediation.

In our view, inducements in insurance products are even more widespread and more damaging to the interests of the end-user than for MiFID-covered products (i.e. securities and funds).

We would like to draw the attention on the three main problems linked to this kind of products, especially for unit-linked insurance products:

-the existence of at least two layers of fees (instead of usually one for funds, except funds of funds);

-usually total consolidated fees (insurance contract fees + fees of the underlying "units"- most often funds) are almost never disclosed;

-the existence of at least two levels of inducements (on the insurance contract fees plus on the underlying units' fees[1]), which explains why these are one of the most attractive product for insurance brokers, agents , etc. and why tied sales are so widespread: one can subscribe a straight life insurance contract with an attractive guaranteed interest rate for the first year provided he invests at least 20% of the amount into a unit-linked contract (where typically he bears all the financial risks and where the

[1] These multiple layers can even be found in "straight" (for profit) insurance policies.

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broker is making much more money than on the straight life insurance part). This is a very widespread sales practice, for example in France, where life insurance is by far the number one retail investment product.If necessary, we would be willing to provide further evidence related to the aforementioned points.

3. Loopholes and flaws in the proposal for PRIPs

Unfortunately and contrary to the initial EC goal, the PRIPs Regulation proposal regards only pre-contractual information and not sales practices. Those will still be different according to the retail product although they are substitutable and can be sold by the same intermediaries: securities and funds will follow MiFID rules, insurance products IMD rules and God knows what (certainly not IORP up to now) for non mandatory so-called "occupational" pension products.

Regarding specifically pre-contractual information, we believe that the main loopholes in the proposal for a PRIPs Regulation mainly come from the restricted scope as considered by the European Commission. In general, we are very concerned that very ample and relevant categories of retail investment products are left outside the scope of the Regulation. This does not achieve the EC stated goal of consistent investor protection rules whatever the substitutable product. It causes also the risk to lead to massive regulatory arbitrage by the financial industry.

In particular, we reject the exclusion of the following categories of products from the scope (article 2 of the EC proposal):

First of all, non-mandatory occupational pension products covered by Directive 2003/41/EC and Directive 2009/138/EC (e.g., occupational pensions arranged between the employer and the employee, either individually or collectively) can be considered as the biggest loophole in the Proposal for a PRIPs Regulation from the European Commission, according Article 2 e) of the proposal for PRIPs Regulation.

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Most surprisingly, this approach is inconsistent with the EC Green Paper on retail financial services (2007), which rightly recognised the need for pension savings products to be the most transparent of all due to their long term and critical nature: "*Due to the nature of long-term savings and pension plans, particular care is needed to ensure that consumers are being offered products that are really adapted to their needs and marketed appropriately. These are major, once in a lifetime, financial decisions for consumers. Therefore, consumers must be in a position to make their choices in full knowledge of the product, correctly assessing their circumstances and needs*". Strangely and sadly enough, five years afterwards, the EC is now doing exactly the contrary by excluding part of long term savings products from the scope of the PRIPs Regulation, and also from the scope of harmonised sales practices provisions.

We defend the inclusion of such non mandatory[2] occupational pensions inside of the PRIPs Regulation for three main reasons: First, we consider the expected shrinkage of welfare-related benefits in most EU countries, due to restrictions in Member States' budgets to reduce sovereign debt levels and to the continuous increase in life expectancy. Second, we are concerned about the recommendations of international organisations such as OECD to develop defined contribution pension schemes (part of Pillar II and Pillar III pension schemes), although they have been on average destroying the real value of pension savings over at least the last five years[3], and the willingness of the European Commission to follow this line as expressed in its Green Paper on Pensions. In any case, such occupational pension benefits will acquire growing importance within the forthcoming years. And finally, the Proposal from the European Commission expresses its intention to bring into the PRIPs Regulation scope all financial instruments with "*capital accumulation that beats the interest-free rate*"[4]. We definitely consider that non mandatory occupational pension schemes have that purpose so, if we are to consider a horizontal approach for all such substitute investment instruments, non-mandatory occupational pension schemes should definitely be into the scope of the Regulation.

Second, we are opposed to the exclusion of all deposits whose rate of return is determined in relation of an interest rate (i.e. most savings accounts), according to Article 2 b); as there is ample evidence that EU citizens do often arbitrate their savings between these products (the EC decided to leave them outside of the PRIPs scope) and in-scope products such as straight life in insurance (switches between savings accounts and straight life insurances are extremely

[2] Mandatory contributions to occupational pension plans cannot be considered as "savings" as the individual does not have any choice.
[3] See OECD 2012 Pensions Outlook.
[4] Proposal for Regulation on key information documents for investment products, COM (2012) 352/3 , Page 7

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common in France for example). Indeed, we believe selling practices are not correct in many cases because, for instance, bank savings accounts are commercialised as If they were insurance products, in spite of the fact that these are not short term but long term investments.

As we argued in EuroFinuse's Response to the Consultation from the European Commission on legislative steps for the PRIPs initiative, those products are commercialised in the point of sale as perfect substitutes of other products that indeed fall within the scope of the Regulation (as currently drafted). In any case, the scope of the Regulation as currently stands in the Proposal from the European Commission is very likely to produce regulatory arbitrate –something which indeed the proposal from the Commission was intending to avoid-. Most products could be packaged as deposits, linking them to variable interests and even without guaranteeing the capital invested; such products would not have to face PRIPs Regulation requirements.

Third, we oppose the exclusion of securities which do not embed a derivative (e.g., shares and bonds, among other products), according to article 2 d). The EC proposal mentions the need to review the Prospectus Directive with some harmonisation in mind, but this is far from enough: the quality of the summary prospectuses of issued shares or bonds is appalling. For example, the summary prospectus of those fixed rate bank bonds known as EMTNs (Euro Medium Term Notes, sold at banks' retail branches) do not even mention the interest rate provided (we provided detailed evidence of this to the European Commission).

Finally, we raise doubts about the first exclusion by the EC of life insurance products "with no surrender value". This could justify the exclusion of very opaque and poorly performing pension savings products which are technically deferred annuities[5]: millions of EU citizens hold tens of billions of euros of these products.

[5] Essentially these are pension saving product where you get your savings back only through annuities, with a few exceptional cases. For many of these products and despite the repeated demands of member organisations of EuroFinuse, the surrender value and its very existence are not disclosed to the clients.

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