

**Comments Template on
the Consultation Paper on
Product Intervention Powers under the Regulation on Key Information
Documents for Packaged Retail and Insurance-Based Investment Products
(PRIIPs)**

**Deadline
27 February 2015
17:00 CET**

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| Name of Company: | IRSG | |
| Disclosure of comments: | Please indicate if your comments should be treated as confidential: | Public |
| <p>Please follow the following instructions for filling in the template:</p> <ul style="list-style-type: none"> ⇒ Please insert a name in the box next to "Name of Company"; ⇒ <u>Do not change the numbering</u> in the column "reference"; ⇒ Leave the last column <u>empty</u>; ⇒ Please fill in your comment in the relevant row. If you have <u>no comment</u> on a paragraph or a cell, keep the row <u>empty</u>; ⇒ Our IT tool does not allow processing of comments which do not refer to the specific numbers below. <p>Please send the completed template, in Word Format, to CP-14-064@eiopa.europa.eu. Our IT tool does not allow processing of any other formats.</p> <p>Q1: Do you agree with the criteria and factors proposed?</p> <p>Q2: Are there any additional criteria and/or factors that you would suggest adding?</p> <p>Q3: Is there evidence that certain criteria do not apply under any circumstances to insurance-based investment products? Please elaborate.</p> <p>Q4: What would you estimate as the costs and benefits of the possible changes outlined in this Consultation?</p> <p>The questions listed here are those in the Consultation Paper on Product Intervention Powers under the Regulation on Key Information Documents for PRIIPs.</p> | | |

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| General Comment | <p>IRSG welcomes the opportunity provided by EIOPA to comment upon the Product Intervention Powers under the Regulation on KID for PRIIPs.</p> <p>As a general overview, IRSG considers of utmost importance the clear delimitation of EIOPA's intervention powers to exceptional cases, where the NCAs cannot intervene. Therefore, the flexibility should be required only if the NCAs fail to intervene but not as a general principle.</p> <p>EIOPA interventions based on the PRIIPs empowerment should be emergency measures applied in extraordinary circumstances and as a last resort. Also, they need to conform to principles of proportionality and subsidiarity.</p> <p>Therefore, the possibility of intervention should not be flexible and the criteria and factors should be specific, clearly determined.</p> <p>Regarding the threshold of “threat to the orderly functioning and integrity of financial marketes”, it should be considered a threat to the functioning of whole markets / segments or whole intermediary groups, or otherwise the majority of those mentioned, not just high losses for one company. In other words, risk should be already partially systemic (= macro-prudential) not just company-specific (= micro-prudential) in order to threat the stability of the whole or part of the financial system.</p> <p>The extensive (but even so non-exhaustive) list of possible sources of problems in the paper gives the (maybe mistaken) impression to use any material violation as a basis for an EIOPA intervention. This would not be covered by the rules and therefore unacceptable, if the very high thresholds mentionede above are not met.</p> <p>Intervention powers should neither directly or indirectly (e.g. by threat of their application) be</p> |

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| | <p>used to address possible products in scope, where the NCAs already have sufficient competencies. An intervention by the ESAs/EIOPA therefore should be extremely rare.</p> | |
| <p>Q1</p> | <p>Problems may arise in different areas. Therefore, a broad list is generally acceptable, but the criticality threshold for a crisis should be met, as a premise for intervention. Therefore, more effort should not be directed towards extending the non-exhaustive list of possible sources, but to define the criticality thresholds.</p> <p>With this in mind, the following aspects should be taken into account with respect to the criteria:</p> <ul style="list-style-type: none"> • complexity (section 1.16.1): is ambivalent and not problematic per se, especially if complexity of the products serves to provide substantial benefits for the customer. A case in point would be guarantees, which offer the customer a greater level of protection. In addition, opacities with respect to costs (see section 1.16.1 (b)) should be adequately addressed in the KID disclosure requirements and not lead to a product ban based on the rules discussed here. Moreover, complexity doesn't necessary arise from the insurance-based investment product or service being bundled with other products or services, as it can be a mixture of, for example, two very simple products. This factor can be understood as a criterion being met by any package of products, which can be considered of course more complex than a single product but not necessarily a problem. • the type of investors involved in an activity or practice or to whom an insurance-based investment product is marketed and sold (1.16.3): The PRIIPs regulation does not mention the term "target market", therefore it should be avoided also on Level 2. The term used in the PRIIPs regulation is "type of retail investor to whom the PRIIP is intended to be marketed". Banning the distribution of investment-based insurance products to particular investors could seriously interfere with the autonomy of the retail investors, whose risk profiles can be very different. • transparency (section 1.16.4): is also ambivalent (similar to argument of complexity). The construction of a guarantee or portfolio may not be fully transparent to the single customer yet be more beneficial than a fully transparent but more risky participation of | |

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| | <p>the customer in a fully unit-linked product. Transparency should be ensured through the Key Information Document (KID) required by the PRIIPs regulation.</p> <ul style="list-style-type: none"> • disparity between expected return and risk of loss (section 1.16.6) and pricing and costs (section 1.16.8): in no case the wording of the rules should lead to supervision or prescriptions for permissible pricing. In particular, rule 1.16.8 (b) should not be interpreted as a general “quality enhancement rule” for charges (as included in MiFID II). Retail investors will be thoroughly informed about the risks and the corresponding rewards of a product through the Key Information Document (KID). It should also be borne in mind that there is no legal basis for regulation of product design by EIOPA. The assessment by EIOPA or by the NCA of both criteria should be made with sufficient guarantees for the rights of the insurance undertakings. It seems that EIOPA or the NCA can decide that there is an “adequate” pricing range, or risk/return profile range, or cost structure range for an insurance-based investment product and any difference from the set ranges can justify an intervention by EIOPA or by the NCA. This could go against the free market principle or the Competition Law. • innovation (section 1.16.9): innovation per se should not be considered beneficial or problematic. In any case, innovation is necessary to meet customer needs and promote choice, variety and competition. Moreover, using the degree of innovation as a criteria (as per point a)) is risky as it may stop the very foundation of growth. • selling practices (section 1.16.10): the criteria provided should not contradict or even materially extend the rules currently discussed under IMD2/IDD. | |
| Q2 | <p>There should be a criteria related to the trigger for intervention: who announces EIOPA and by what means? Where does the information comes from? It should also be made very clear what intervention powers (normal cases) are conferred upon the NCAs.</p> | |
| Q3 | <p>Mentioning of pension savings (section 1.16.3 (d)) is not clear, since occupational and private pensions are excluded from the scope</p> | |

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| Q4 | Unclear very much dependent on exact application. Acceptable costs, if it can be made very clear to limit intervention powers to exceptional situations. Any additional parallel supervisory regime can potentially create material additional costs (which would ultimately have to be borne by the customers). Depending on the exact procedure which will be followed for EIOPA to receive the information on the situations where intervention is necessary, it is possible that further investigation of the situation to imply additional costs. | |
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