



*European Association of Co-operative Banks
Groupement Européen des Banques Coopératives
Europäische Vereinigung der Genossenschaftsbanken*



Brussels, 13 September 2012

AS/B15/12-148

European Association of Co-operative Banks comments on the

European Commission's Proposal for a Regulation on key information documents for investment products

Procedure File: 2012/0619(COD)

The **European Association of Co-operative Banks** (EACB) is the voice of the co-operative banks in Europe. It represents, promotes and defends the common interests of its 28 member institutions and of co-operative banks in general. Co-operative banks form decentralised networks which are subject to banking as well as co-operative legislation. Democracy, transparency and proximity are the three key characteristics of the co-operative banks' business model. With 4.000 locally operating banks and 63.000 outlets co-operative banks are widely represented throughout the enlarged European Union, playing a major role in the financial and economic system. They have a long tradition in serving 181 million customers, mainly consumers, retailers and communities. The co-operative banks in Europe represent 51 million members and 750.000 employees and have a total average market share of about 20%.

The voice of 4.000 local and retail banks, 51 million members, 181 million customers

EACB AISBL – Secretariat • Rue de l'Industrie 26-38 • B-1040 Brussels

Tel: (+32 2) 230 11 24 • Fax (+32 2) 230 06 49 • Enterprise 0896.081.149 • lobbying register 4172526951-19

www.eurocoopbanks.coop • e-mail : secretariat@eurocoopbanks.coop



Key Points

The European Association of Co-operative Banks (EACB) welcomes the Regulation's aim to provide a Key Information Document (KID) for different types of retail products to enhance comparability and investor protection.

EACB understands the Regulation's original aim to be horizontally applicable across all kinds of financial instrument. The way this objective has been framed into the text in terms of scope, creates some confusion. In particular, EACB considers that the scope of the Regulation needs to more clearly define the nature of an investment product.

EACB agrees that the information presented about the investment product should be "accurate, fair, clear and not misleading" but wants to stress the fine balance that needs to be struck between simple, understandable concepts and legally precise terminology. The need for "simple, understandable concepts" is somewhat at odds with the reverse burden of proof for product manufacturers and is in contrast to the current practised liability scheme for UCITS KIDs.

EACB believes that the future risk indicator should not only contain an oversimplified numerical scale (i.e. from 1 to 7), but should also include the possibility of a narrative to explain the numerical risk indicator in further detail.

EACB is of the opinion that the Regulation should allow the product manufacturer to insert additional information into the KID that enhances the retail investors understanding of the product.

EACB would like to caution that not all information is available to the product manufacturer at the time of producing the KID, which rings especially true for the information on cost. Overall cost are only finalised on retail distribution level and are unknown to the manufacturer.

EACB understands the intention of the Regulation to be providing retail clients with comparable information before making his/her informed investment decision. The introduction of a continuous obligation to alert the client of every update and revision of the KID seems to be contradictory, as the investment decision has already been made. This obligation would only create excessive costs to the industry without practically helping the customer in advance of his/her decision.

A transitional provision should be established clarifying that a KID shall only be required for investment products that are issued after the Regulation shall come into effect. Application for investment products already issued would result in a burdensome legacy that could potentially affect the secondary market of existing investment products.



Introduction

The European Association of Co-operative Banks welcomes the proposed Regulation aiming towards more efficient selling practices in order to enhance investor protection for retail clients. We furthermore welcome the envisaged introduction of a level playing field concerning the rules for the sale and disclosure requirements for different types of retail products.

European co-operative banks are characterised by a decentralised network of branches with a very strong retail base serving approximately 181 million retail clients in the European Union. Co-operative banks are therefore amongst the major distributors of a large variety of retail investment products.

In the context of the upcoming negotiations in the European Parliament and the Council, the EACB invites the co-legislators to consider the below comments which address specific provisions of the proposed Regulation. In this respect, we would gladly elaborate further on some of the below points should the co-legislators wish additional information or explanation.

Specific comments

Interaction with already existing summary information documents (i.e. Prospectus Directive)

Before delving into the Proposal itself, we would like to highlight the overarching, potential peril that this Regulation will create the need to produce duplicate summary documents on the basis of already existing European legislation which also aim to facilitate the understanding of certain financial product to retail investors. Here the most relevant example would be the Prospectus Directive and its summary prospectus which will require intermediaries selling certificates (structured debt obligations) and warrants¹ to supply both KID and summary prospectus. We therefore would like to suggest putting priority to an alignment of the PRIIP Regulation with other summary investor information to both reduce the workload of product manufacturers as well as not to destroy the Regulation's intention of better comparability of financial products by suffocating the clients with various summary sheets containing the same basic information.

CHAPTER I - SUBJECT MATTER, SCOPE AND DEFINITIONS

Scope (Article 2)

The EACB understands the importance and inherent difficulty in defining the cross-sectorial scope with regards to the wide range of financial instruments. However, the scope of the Regulation does not yet contain a clear enough definition as to what should be considered as an investment product. Our below thoughts try to distinguish this train of thought in more helpful detail.

¹ A warrant is a security that entitles the holder to buy the underlying stock of the issuing company at a fixed exercise price until the expiry date.



Clear exemption for savings books, term and sight deposits and plain vanilla bonds without derivative elements

With regards to lit. b we would welcome a more refined definition of “deposits with a rate of return that is determined in relation to an interest rate”. This expression should clearly exclude savings books, term and sight deposits which are tied to either a fixed or variable interest rate. We believe that such simple deposits cannot be considered as investment products and should therefore be clearly exempted from the scope of this Proposal².

Furthermore, we would clearly support the refinement of lit. d and the exemption of “other securities which do not embed a derivative”. In this regard we find it important to mention that, for example, plain vanilla bonds (incl. covered bonds) should be outside of the scope of this Proposal.

Further alignment of exemptions with the Prospectus and UCITS Directive

We believe that further refinements are required to the scope and provision of a KID, which would include the following cases:

We would recommend further alignment of the scope with the already existing exemptions to products covered by the Prospectus and UCITS Directives. In the case an investment product has been exempted from the prospectus requirements, we would argue that this exemption should also apply to this Regulation therefore exempting the product from the KID requirement.

No provision of KID under portfolio management

We would also like to highlight the special case of the purchasing of investment products under portfolio management. Under this construction the portfolio manager, who has been delegated the investment decision for his client, should have ample knowledge about the investment. We therefore believe that there should be no obligation to provide a KID to retail investors in relation to investment products sold under the portfolio management provided.

CHAPTER II - KEY INFORMATION DOCUMENT

Section II - Form and content of the key information document

General comments on the KID (Article 6)

KID as a stand-alone document

The Proposal defines the KID in Article 6 para. 2, as “a stand-alone document” in the sense that retail investors should not be required to read other documents to be able to take an informed investment decision. We believe that the KID shall assist the client to understand the essential details of the financial instrument.

² In this respect we would like point out the forthcoming definition of “structured deposits” under MiFID. We would therefore strongly welcome a common definition of excluded deposits between the two legislations.



The KID nevertheless, given its concise nature, is inherently not exhaustive and should therefore not be considered a substitute of the official offering documents (e.g. prospectus). We therefore believe that the KID should include reference to the official offering documents, if applicable (see also our observations to Article 8 para. 1).

Manufacturers should be allowed to provide additional information beyond the KID requirements

We are of the strong opinion that the KID should not be locked down in a way that only the legally required information can feature in the KID. We believe that the product manufacturer should be allowed to include further information in the KID that could help the customer more clearly understand the product's nature. As investment products are quite different within Europe, we believe that certain products could not be fully explained by only provided the legally required information. This additional information could include further details on the availability of the product, possible sales restrictions or a reference to a prospectus that might contain further information being of interest to the consumer. This additional information may take the form of an additional paragraph or of a reference to other official documents (e.g. prospectus).

Structure of KID (Article 8 para. 1)

On the basis of the above considerations on the KID as a stand-alone document (Article 6 para. 2) we would suggest to expand the explanatory statement of the KID in such a manner to relate that a KID does not contain all information available and is non-exhaustive and that other official documents are available for further information.

Structure of KID (Article 8 para. 2)

We support the Commission's approach to only include high-level principles (i.e. the inclusion of information on cost, past performance, etc.) in the current Proposal – mirroring the approach taken with the UCITS KID. We believe that the elaboration of the specific content for each topic is best handled through technical standards elaborated by the Commission and ESMA.

Performance scenarios (Art. 8 para.2 lit. b point vi)

In order to ensure the coherence of information provided to the client, we believe that the KID should only contain performance scenarios, if this information is already contained in the official offering documents.

Recommended minimum holding period (Art. 8, para. 2, lit. d)

We are of the opinion that the inclusion of the investment product's due date is more beneficial to the consumer than a recommended minimum holding period. This recommendation has to take in account market conditions which can fluctuate given rapidly changing market conditions, therefore misleading investors.

Indicator for specific environmental, social or governance outcomes (Article 8 para. 2 lit. b point iii)

We believe – due to the inherent limited space of the KID – that there will not be enough room to include enough meaningful background information on whether the investment



targets any specific environmental, social or governance outcomes. We believe that it will therefore be an underused feature of a KID.

Risk/Reward Profile and summary risk indicator (Art. 8 para. 2 lit. e)

Article 8 para. 2 lit. e mandates the use of a summary indicator. We share the Commission's idea to encourage comparability and transparency. With regards to risk information this is a vital way to address information asymmetries in the retail markets. However, the approach to include a single risk indicator – a graphical presentation by means of scaling the investment risk from 1 to 7 – does not constitute the most effective indicator for the risk/reward profile. Such a presentation leads to an over-simplification of the investment risk on the part of the retail investor. From our perspective the KID should first and foremost contain a narrative indication of the risks giving emphasis on features like a capital guarantees, difficulties in obtaining liquidity, etc. Such a narrative will help the customer understand the intrinsic risk of the product better and will not let him solely rely on an arbitrary figure that is impossible to reflect all risks presented throughout different investment products.

A narrative approach will also take better into account the fact that the risk/reward profile of certain investment products can change during their lifetime. A single risk indicator will not be able to reflect this possibility.

In addition, it must be considered that manufacturers of investment products have already implemented valuation of the risk/reward profile of the investment products based on parameters already defined by the current financial regulations. As an example, the parameters used to assess suitability and appropriateness could be different from the risk indicator used in the KID. Providing only the risk indicator value, as prescribed by PRIIPS, could therefore confuse the investors.

Taking the above into consideration, we would consider that the use of a quantitative risk indicator has its merits but should remain optional.

Information on cost (Art. 8 para. 2 lit. f)

Article 8 para. 2 lit. f requires listing the breakdown of the cost of a packaged product. We would like to highlight that the product manufacturer cannot always be aware of all final costs of a product as some costs are only constituted on the retail level, which are often out of control of the product manufacturer. This creates a problem in terms of the manufacturer providing the cost breakdown not only from a practical but also from a liability perspective.

We would furthermore like to underline the open nature of the expression "direct and indirect cost" which we would regard as a prime example of a provision requiring further definition through technical standards by ESMA.

Obligation to inform investors of a revised KID (Art. 10 para. 2 lit. d)

The EACB agrees with the Commission's approach to request the periodic review of the KID in order to ensure that all information presented is still current and up-to-date. Nevertheless, we are very critical about Art. 10 para. 2 lit. d that forces the intermediary to inform the client each time a KID revision has taken place. The intention of PRIIP



Regulation and the KID is to give the consumer ample relevant information to make an informed decision *before* purchasing an investment product. This obligation would force intermediary into a continuous flow of information towards its client about an already made investment decision. Instead, we suggest that the manufacturer includes information to an open website that contains to the up-to-date version of the KID. This regularly reviewed and revised KID would have to be made available by the product manufacturer as long as the investment product is being offered to retail investors.

Liability and reversed burden of proof (Art. 11 para. 1 and 2)

The EACB can furthermore not agree with the Commission's tight liability regime and especially with the reversed burden of proof for the product manufacturer. Such a reversal is inherently contradictory to what the KID aims to be. The liability envisaged requires a much longer KID that contains more technical and legal language which would diminish the original intention of the Regulation to make the product more understandable to the retail investor. Along the lines of our considerations on Article 6 and 8 we would like to stress again that the KID should not be considered a substitute for other official documentation.

With this in mind we would like to highlight the already existing UCITS KID. Just the production of such a document does not create civil liability and this is explicitly stated in the Article 79 para. 2 of Directive 2009/65/EC:

*Member States shall ensure that a person **does not incur civil liability solely on the basis of the key investor information**, including any translation thereof, unless it is misleading, inaccurate or inconsistent with the relevant parts of the prospectus. Key investor information shall contain a clear warning in this respect³.*

We therefore would suggest an alignment with the UCITS Directive/KID with regards to its liability and burden of proof.

Section III - Provision of the key information document

Provision of KID "in good time" (Art. 12 para. 1)

We would value further precision of the expression "in good time" before the conclusion of the transaction when providing a retail investor with the KID. We either suggest a more detailed definition in level-1 or a further technical standard to be provided by ESMA on level-2. The expression "in good time" should not lead to a situation where investors cannot conclude the transaction during a single visit to his/her adviser. The meaning should not make potential investors having to go back home to read the KID and return to conclude a transaction. This would be neither beneficial to the adviser nor the client.

Investor choice between information in paper or electronic form (Art. 13 para. 4 lit. b and para 5 lit. b)

In case the KID can be provided by both the product manufacturer and the intermediary in electronic format, the use of a website to provide access to the KID should be

³ Bold and underlined highlights by the author



facilitated. In this regard we would prefer clarification of Art. 13 para. 4 lit. b and para 5 lit. b stating that the retail client would only have to consent once – and until further notice – to an electronic provision of the KID and not at every instance a new KID is available.

Make all KID revisions available to retail investor (Art. 13 para. 5 lit. d)

In line with our previous comments on to inform investors of a KID revision in Article 10, we also are strictly against the requirement in Art. 13 para. 5 lit. d to make available all KID revisions to the retail investor, as this would mean that every KID iteration of a product would have to be published. We are of the strong opinion that the costs for creating and maintaining such databases widely exceed the benefits for retail investors which have to have access to the most recent KID iteration at the time to make an informed investment decision. Instead and as stated above we suggest that the manufacturer includes in the KID information to a website on which the up-to-date version of the KID is accessible.

CHAPTER IV - FINAL PROVISIONS

Transitional provision for UCITS (Article 24)

We welcome the Commission's approach to exclude the recently introduced UCITS KID in the current Proposal which enables the industry to continue to use the UCITS KID in accordance with Directive 2009/65/EC for at least for five years.

Further transitional provisions

As a transitional provision it should be established that a KID shall only be required for investment products that are issued after the Regulation has come into effect. Application of the KID requirement for investment products issued in the past would result in a burdensome legacy that could potentially affect the secondary market of existing investment products.



Contact

The EACB trusts that its comments will be taken into consideration. Should there be any need for further information any questions on this paper, please contact:

Ms Marieke VAN BERKEL

Head of Retail Banking, Payments and Financial Markets

m.vanberkel@eurocoopbanks.coop

or

Mr Andreas STEPnitzKA

Adviser for Financial Markets

a.stepnitzka@eurocoopbanks.coop