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Debate on Packaged Retail Investment Products Regulation's Scope of Application: Balancing Consumer Protection with Pragmatism

By [Orestis Omran](#), [Nora Wouters](#) on May 7, 2013

On July 3, 2012, the European Commission published a [proposal](#) for a Regulation of the European Parliament and the European Council on key information documents for investment products. The proposed regulation is intended to improve investor protection for retail investors and create a level playing field for packaged retail investment products (PRIIPs) providers. Currently being discussed in the Committee on Economic and Monetary Affairs (ECON) of the European Parliament, the proposal has generated considerable debate concerning its scope of application, which is still seriously contested. The proposal will be put to vote in the Committee on May 27, 2013 while a final vote at the European Parliament's plenary is forecasted for October 23, 2013.

Original scope

The original proposal provides for the application of the Regulation to all investment products where, regardless of the legal form of the investment, the amount repayable to the investor is exposed to fluctuations in reference values or in the performance of one or more assets which are not directly purchased by the investor, including investment funds, insurance products linked to financial markets and structured retail investment products.

Explicitly excluded from the original scope, however, are: a) insurance products which do not offer a surrender value or where that surrender value is not wholly or partially exposed, directly or indirectly, to market fluctuations; (b) deposits with a rate of return that is determined in relation to an interest rate; (c) securities referred to in points (b) to (g), (i) and (j) of Article 1(2) of Directive 2003/71/EC on the prospectus to be published when securities are offered to the public or admitted to trading; (d) other securities which do not embed a derivative; (e) occupational pension schemes; and (f) 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.

Suggestions to broaden the scope

It seems to be a common acceptance among a majority of Members of the European Parliament (MEPs) in the ECON Committee that the scope of application of the suggested Regulation shall be further broadened to cover other investment products. Nevertheless, no *consensus* has still been reached on which specific products should be added to coverage under the Regulation. In a meeting of the ECON Committee that took place on April 24, divergent views were expressed on how to expand the coverage of the Regulation.

While it seems to be the conviction of Pervenche Berès, the Rapporteur of the Committee, that shares, bonds, savings products and bank accounts should be included, other MEPs are very skeptical in particular with regard to a potential inclusion of savings accounts and government bonds. Recent examples of the implications of sovereign debt management in the EU and the case of Cyprus, where depositors were called to contribute to the saving of the banking system, have demonstrated that such products are not riskless, however concerns are expressed about the added value of such a broadened scope of the Regulation, given especially the overlap with other pieces of legislation on the same field.

Seeking balance and heavy financial consequences

Consumer protection has traditionally been one of the basic goals of the EU when adopting different types of finance regulation. The current debate concerning the scope of application of the proposed Regulation on key

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information documents for PRIPs can be dragged down into a search for balance between the undisputed need to protect investors and the realistic approach of ensuring the effective operation of the markets *via* clear cut non-overlapping regulation.

Investment product developers need to follow closely the relevant developments and be ready to comply with the new requirements for their product's marketing material - that will certainly increase compliance costs - in order to avoid the heavy fines suggested by the ECON Committee, which can be to 10% of the total annual turnover of a company or €5,000,000 for individuals who breach the Regulation.



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