

**Mr Gabriel Bernardino**  
Chair  
European Insurance and Occupational  
Pensions Authority  
Westhafenplatz 1  
60327 Frankfurt am Main  
Germany

22 March 2018

Dear Sir,

## **Packaged Retail and Insurance-based Investment Products (PRIIPs)**

I write to you regarding the treatment of corporate bonds under the PRIIPs Regulation and more specifically the possibility that inclusion of certain well-established standard terms and conditions in these bonds would cause them to fall within the scope of the Regulation.

BusinessEurope supported reinforcing prudential rules and strengthening supervision as financial market stability is fundamental for the economy and European companies. We supported the development of a Single Rule Book for financial regulation, the creation of the European Supervisory Authorities (ESAs) and the commitment to completing the Capital Markets Union (CMU). We favour the development of efficient capital markets in Europe considering that there is a significant risk that as economic growth picks up banks will be unable to meet companies' funding requirements on the necessary scale. Current and future work on financial legislation should therefore ensure that the legislation functions effectively, encouraging growth and preventing damage to businesses in the wider economy.

Companies issue bonds to fund their investments through capital markets. Typically, corporate issuers also seek investments from retail investors, providing them with an opportunity to invest directly in investment-grade corporate bonds in a transparent and cost-effective way. In return, this provides corporate issuers access to an important, stable, and diversified investor base for their funding needs.

We have concerns that the inclusion of certain well-established standard terms and conditions in these bonds would cause them to fall within the scope of the PRIIPs Regulation. As a result, a Key Information Document (KID) would have to be published by the issuer. Preparing the KID is very burdensome, especially for smaller issuers, and would expose companies to significant liability risks if the information turns out to be incorrect. Consequently, it is to be expected that corporate issuers would exclude



retail investors from those bonds that are likely to fall under the PRIIPs Regulation cutting off an important funding source, jeopardising the objectives of the CMU.

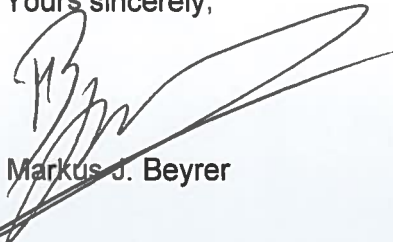
To avoid these negative consequences, we urge the regulator to clarify the scope of the Regulation in the context of corporate bonds and confirm that the use of certain well-established standard terms and conditions that are commonly included in these bonds do not cause these bonds to fall under the Regulation. Many national regulators are reluctant in providing clear guidelines and corporates quickly need legal clarity about bond issuance to continue investing and creating jobs.

To be more specific, BusinessEurope believes that the inclusion of market standard redemption rights (e.g. make-whole clauses) of the issuer in corporate bonds should not preclude selling these bonds to retail investors. They simply provide legal certainty for investors in case the issuer wishes to buy back an existing bond before maturity without financially harming them. Furthermore, as ESMA acknowledges in its Guidelines on complex debt instruments (November 2015) that the sole inclusion of standard tax clauses should not make an instrument complex, the exclusion of tax call clauses should be confirmed. They grant an additional redemption right in case of a change of the tax treatment of the bond. Similarly, caps and floors on the interest rate should be allowed as these features relate to the regular interest payments and not to the amount repayable at maturity which for corporate bonds is in general the nominal value. Callable and puttable bonds should also be allowed, as well as a 0%-floor for floating rate notes. In our view, Sub Bonds and Convertibles should in general also be allowed as instruments for retail. These well-established standard terms have not caused any problems in terms of investor protection in the past. They should therefore not fall into the scope the regulation.

Lastly, we are especially concerned about the fact that the rules are retroactive in so far as that existing bonds that are in the market and that are considered "packaged" would either need to be re-fitted (with the burdensome documentation effort) or not be sold anymore to retail investors. This would seriously undermine the CMU objectives to promote corporate bonds as finance tools, also for smaller issuers.

We hope that you share these concerns and remain at your disposal should you wish to discuss this further.

Yours sincerely,



Markus J. Beyrer