

REPORT 8/2012 BY THE JOINT COMMITTEE FOR EU AFFAIRS, DATED OCTOBER 8, 2012, ON COMPLIANCE OF THE PRINCIPLE OF SUBSIDIARITY BY THE PROPOSAL FOR A REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL ON KEY INFORMATION DOCUMENTS FOR INVESTMENT PRODUCTS (TEXT WITH EEA RELEVANCE) [COM (2012) 352 FINAL] [2012/0169 (COD)] {SWD (2012) 187 FINAL} {SWD (2012) 188 FINAL}

BACKGROUND

A. The Protocol on the application of the principles of subsidiarity and proportionality attached to the Lisbon Treaty of 2007, in force since December 1st, 2009, establishes a procedure allowing national parliaments to verify European legislative initiatives' compliance with the subsidiarity principle. The said Protocol has been developed in Spain by Act 24/2009, of December 22, amending Act 8/1994, of May 19. In particular, new articles 3 j), 5 and 6 of Act 8/1994 are the legal basis for this report.

B. The Proposal for a Regulation of the European Parliament and of the Council on Key Information Documents for Investment Products has been adopted by the European Commission and conveyed to the national parliaments, which have a period of eight weeks to verify the subsidiarity check of the initiative, being the deadline October 12, 2012.

C. The Bureau and the Spokespersons of the Joint Committee for EU Affairs agreed on September 11, 2012, to examine the said European legislative initiative, appointing to that end as Rapporteur MP Mr. José López Garrido, and requesting the Government the report envisaged in section 3 j) of act 8/1994.

D. No report has been conveyed by the Government.

E. The Joint Committee for EU Affairs, in its meeting held on May 8, 2012, adopted the following

REPORT

1.- Article 5 of the Treaty on the European Union indicates that “*the use of Union competences is governed by the principles of subsidiarity and proportionality*”, and adds that “*under the principle of subsidiarity, in areas which do not fall within its exclusive competence, the Union shall only act in so far as the objectives of the proposed action cannot be sufficiently achieved by the Member States, either at central level or at regional and local level, but can rather, by reason of the scale or effects of the proposed action, be better achieved at Union level*”. The Protocol on the application of the principles of subsidiarity and proportionality attached to the Lisbon Treaty of 2007, sets out the aim, procedure and results of the subsidiarity monitoring which is to be carried out by EU Member States (articles 5(3) and 12(b) of the TEU).

2.- The examined legislative proposal is based on Article 114 of the Treaty on the Functioning of the European Union, whose paragraphs 1, 2 and 3, lay down the following:

1. Save where otherwise provided in the Treaties, the following provisions shall apply for the achievement of the objectives set out in Article 26. The European Parliament and the Council shall, acting in accordance with the ordinary legislative procedure and after consulting the Economic and Social Committee, adopt the measures for the approximation of the provisions laid down by law, regulation or administrative action in Member States which have as their object the establishment and functioning of the internal market.

2. Paragraph 1 shall not apply to fiscal provisions, to those relating to the free movement of persons nor to those relating to the rights and interests of employed persons.

3. The Commission, in its proposals envisaged in paragraph 1 concerning health, safety, environmental protection and consumer protection, will take as a base a high level of protection, taking account in particular of any new development based on scientific facts. Within their respective powers, the European Parliament and the Council will also seek to achieve this objective. (...)

3.- The Proposal for a Regulation of the European Parliament and of the Council whose subsidiarity analysis is to be conducted by this Committee is about improving transparency in the investment market for retail investors.

Retail investment products – which include investment funds, retail structured products and certain types of insurance contracts used for investment purposes – are essential for meeting the needs of EU citizens for products with which to build up savings and investments, whilst also contributing to efficient capital markets that help fund EU economic growth.

However, asymmetries of information about investment products exist between retail investors and those designing such products and seeking to sell them to these investors. Retail investors are not thereby well equipped in protecting their own best interests.

Such investors often face confusing and overly-complex information about possible investments, where risks and costs of products are difficult to assess or compare. This undermines the efficiency of the investment markets, leading to higher prices for investors. It also contributes directly to the purchase of unsuitable products by retail investors, leading to detriment to these investors either through unexpected costs or losses, missed opportunities, or, in the worst case, through the loss of life savings with a dramatic impact on individual and family wellbeing.

Existing disclosures vary according to the legal form a product takes, rather than its economic nature or the risks it raises for retail investors. The comparability, comprehensibility and presentation of information vary, so the average investor can struggle to make necessary comparisons between products. Indeed, product disclosures are often focused more on reducing legal risks for the manufacturer rather than providing effective, open and balanced communication to potential customers about the product in a form that the customer is likely to understand and use. Information – other than marketing – is typically overly lengthy and does not sufficiently highlight key points or information.

We share the view of the European Commission, who has presented this Proposal, that it is essential to restore confidence. To this end, it is vital to improve provisions dealing with transparency for retail investors and bear in mind their needs.

4.- The Proposal for a Regulation, as we have already mentioned, is based on Article 114 of the TFUE. It lays down uniform rules on investment product disclosures for retail investors.

It aims to ensure that retail investors are able to understand the key features and risks of retail investment products and to compare the features of different products. At the same time it also aims to ensure a level playing field between different investment product manufacturers and those selling those products. It aims therefore to establish uniform conditions for the way investors in the Union are informed about investment products by the means of a short document and how the information is provided to them. This proposal therefore harmonises the operating conditions in relation to the information on investment products for all relevant players in the retail investment market, product manufacturers, persons selling and investors.

Experience suggests that for the information on a given product to be made of standardised data so that investors can compare different investment products it is essential to implement directly applicable provisions which do not require Member States to take any additional implementing measures. If requirements on the content and the form of disclosure diverged from one Member State to another as a result of the transposition of a Directive, it would create an unlevel playing field for market participants and an uneven level of investor protection. It is important that this regulation impose direct obligations on private parties as regards the preparation or the provision of the disclosure and the scope of these obligations should not depend on national implementing measures. It is therefore necessary for this proposal to take the form of a regulation, so that this initiative can serve its purpose.

5.- According to the principle of subsidiarity laid down in Article 5(3) of the TEU, action on the EU level should be taken only when the aims envisaged cannot be achieved sufficiently by Member States alone and can therefore, by reason of the scale or effects of the proposed action, be better achieved by the EU.

The aims of this proposal, to ensure a level playing field across the EU among different product manufacturers and persons selling investment products and to establish a uniform level of investor protection by laying down harmonised rules on transparency cannot be achieved by action taken at Member State level. National approaches may have a beneficial impact with respect to investor protection within the Member States in question. But national approaches are by definition restricted to the relevant national territory. Furthermore, there is the risk of divergent approaches to investor disclosures. They cannot create a Union wide level playing field for investment product manufacturers and persons selling and an even level of investor protection in relation to investor disclosures across the EU. Therefore, action on the European level is needed.

In accordance with the principle of proportionality (Article 5(4) TEU), it is necessary and appropriate for the achievement of the objectives of this initiative to lay down principles relating to the content and form of the disclosure for retail investment products, as well as rules on drawing up and provision of these disclosures to retail investors.

CONCLUSION

For the aforementioned reasons, the Joint Committee for EU Affairs, considers that the Proposal for a Regulation of the European Parliament and of the Council on Key Information Documents for Investment Products, complies with the subsidiarity principle laid down in the Treaty on the European Union.