

Call for evidence on the European Commission mandate regarding the PRIIPs Regulation

Fields marked with * are mandatory.

1. General Information

* Please indicate the desired disclosure level of the comments you are submitting:

- Confidential
 Public

* Stakeholder

BNP PARIBAS S.A.

* Sector

- Investment management
 Insurance
 Banking (structured products/ derivative products)
 Other

If other, please specify:

distributor and financial advisors

* Contact person (name and surname)

* Contact person email

Contact person phone number

2. Introduction

In the September 2020 new Capital Markets Union Action Plan, the European Commission (Commission) announced its intention to publish a strategy for retail investments in Europe in the first half of 2022.

In May 2021, as part of its evidence gathering, the Commission launched a three-month public consultation on a wide array of aspects related to retail investor protection. [1] The Commission is also undertaking an extensive study that was launched in 2020, which involves analysis of the PRIIPs Key Information Document (KID), as well as other disclosure regimes for retail investments. This study will involve extensive consumer testing and mystery shopping, with the aim to ensure that any future changes to the rules will be conceived from the perspective of what is useful and necessary for consumers.

On 27 July 2021, the Commission sent to the JC of the ESAs a request for advice asking the ESAs to assist the Commission in the preparation of legislative proposals implementing aspects of the retail investment strategy, and more specifically regarding a review of Regulation (EU) 1286/2014 on packaged retail and insurance-based investment products (PRIIPs) [2]. The deadline for the ESAs to provide their advice is 30 April 2022.

The Commission invited the ESAs to provide advice on the following main areas:

- A general survey on the use of the KID
- A general survey on the operation of the comprehension alert in the KID
- A survey of the practical application of the rules laid down in the PRIIPs Regulation
- An assessment of the effectiveness of the administrative sanctions, measures, and other enforcement actions for infringements of the PRIIPs Regulation
- An assessment of the extent to which the PRIIPs Regulation is adapted to digital media
- An examination of several questions concerning the scope of the PRIIPs Regulation

For most of the areas set out above, additional more specific elements to be addressed were identified in the mandate; for instance for the general survey on the use of the KID there are four sub-elements, including to provide evidence on the extent to which marketing information aligns with the information in the KID.

Notwithstanding the mandate provided by the Commission, the information collected and analysis conducted by the ESAs since 2018 would indicate that changes to the PRIIPs Regulation are needed in other areas, besides those addressed in the mandate, in order to achieve the optimal outcomes for retail investors. Indeed, the ESAs have previously provided their views on the need for changes to the PRIIPs Regulation in a number of areas. [3] Consequently, this call for evidence requests feedback on a range of other issues, where the ESAs are considering the relevance to additionally provide advice to the Commission.

In parallel with sending the call for advice on the PRIIPs Regulation to the ESAs, the Commission also sent separate calls for advice individually to EIOPA [4] and ESMA [5] regarding other aspects of retail investor protection, as part of the work to develop a retail investment strategy. The ESAs are seeking to coordinate the work undertaken for these different mandates.

The ESAs acknowledge that the importance and complexity of the topics set out in the Commission's

request for advice call for a thorough involvement of stakeholders to ensure that they can adequately contribute to the formulation of the advice from the beginning of the process. At the same time, the short timeframe available to prepare this advice, places constraints on the type of consultation and time that can be given for responses. Taking into account these constraints, as well as the nature of the request from the Commission, which seeks various different types of evidence regarding current market practices, the ESAs have decided to launch a call for evidence. The responses provided will be used to shape the technical advice to the Commission. The ESAs also plan to hold a stakeholder event in Q1 2022 before finalising the advice. Further details about this event and how to register will be available via the relevant sections of the ESAs' websites in due course.

Where questions in this call for evidence ask for respondents' "experiences" regarding a certain issue or topic, **please provide information regarding the basis for the views provided.** This might include whether the views are based on actual experiences, such as selling, advising on, or buying PRIIPs, a survey of market participants, academic research undertaken etc. Manufacturers of products, which currently benefit from an exemption to produce a KID, such as fund managers, are not precluded from sharing evidence or experience under this call, but should clarify the context in which they would provide comments.

[1] EU strategy for retail investors (europa.eu)

[2] Call for advice

[3] See for example the Joint ESA Supervisory Statement – application of scope of the PRIIPs Regulation to bonds (JC 2019 64), or the Final Report following consultation on draft regulatory technical standards to amend the PRIIPs KID (JC 2020 66).

[4] Call for advice to EIOPA regarding certain aspects relating to retail investor protection | Eiopa (europa.eu)

[5] Call for advice to the European Securities and Markets Authority (ESMA) regarding certain aspects relating to retail investor protection (europa.eu)

1. Please provide any general observations or comments that you would like to make on this call for evidence, including any relevant information on you/your organisation and why the topics covered by this call for evidence are relevant for you/your organisation.

BNP Paribas Group is the European leader in banking and financial services, with a significant and growing presence in the EU.

BNP Paribas CIB's Global Markers ("BNPP GM") European footprint in structured products

BNPP GM is one of the largest structured products ("SP") issuers in Europe. It is particularly attentive to PRIIPs regulation, which has a considerable impact on its activities and its clients, because our SPs are distributed with a KID in 18 European Union countries, Norway, the UK, and Switzerland, as of 2021, which gives BNPP a pan-European view of requirements. Accounting for all this, BNPP GM issues around

- 3000 to 4000 structured products per year subject to KID
- 400,000 exchange traded SPs per year subject to KID mainly on exchanges in Germany, Italy, and France
- in 21 countries where KID must be produced

BNPP distributes SP in its domestic distribution network and wealth management arms in France, Luxembourg, Belgium, Italy, Spain, Switzerland and Poland.

BNPP Cardif distributes insurance based investment products ("IBIPs"), such as hybrid multi-option products in various EU countries. Just for the French market, we manage more than €125 billion in assets. Since 1.1.2018, we produced nearly 200 generic KIDs and more than 1,000 specific information documents for our investment options.

Regulatory stability concerns

The PRIIPs Regulation has changed too frequently, as soon as mid-2019, less than 1.5 years after it came into force, the ESAs were already discussing changes to the RTS. These changes should have been limited to UCITS funds only, but had far more reaching repercussions on IBIPs, MOPs, and SPs, for which the RTS have been modified as well.

As far as SPs are concerned, BNPP GM's experience is that the currently applicable RTS of 2017 have met their objectives and are overall functioning well. BNPP view is that the changes to the 2017 RTS for Structured products in the area of KID scenario, autocallables products, and Category 2 (linear SP KID) were unjustified, unnecessary, and will lead to worse outcomes for all parties.

For MOPs, the revised RTS will entail significant implementation and training costs without benefit for the client compared to the previous version (in particular changes in the "composition of costs" table).

Overall, BNPP is very concerned by the too frequent regulatory changes of the PRIIPs regime (every 3 to 4 years) which will play against the credibility of the document. For instance in the funds space, the UCITS IV Directive regime required the funds KIID since 1 July 2012, and these KIID have never been materially changed since, i.e. for more than 9 years, bringing a better stability, credibility and understanding of the regime.

Concerns on future Level 1 changes

In light of the too frequent changes of the PRIIPs RTS, BNPP would recommend that once the revised RTS dated 7 September 2021 become applicable to both funds, IBIPs, and SPs, no further material modification to this regime is made for at least 6 to 7 years to guarantee sufficient stability and a consistent treatment of all products in scope.

An observation period of 6 to 7 years seems necessary to study conclusions of the new framework before make a relevant analysis considering changes of the PRIIPs Regulation Level1.

Any future changes in the PRIIPs Regulation Level1 should be treated as adjustments to the existing framework, be carefully studied and not rushed in the form of quick fixes. In this context, this should include, at minima

- (i) an assessment to ensure consistency with the MIFID target market, MIFID cost disclosures, and the MIFID suitability tests
- (ii) robust consumer testing based on real samples of KIDs rather than hypothetical questions
- (iii) a more pro-active listening of technical experts from manufacturers who have implemented the requirements and faced questions from distributors and investors, i.e. experts from SPs and insurers since 2018, and in the near future expert for funds.
- (iv) more consideration given to the implementation timeline, to build specifications, undertake necessary IT developments, test them, and train the distributors to the new formats of KID.

3. Call for evidence

3.1 General survey on the use of the KID

Extract from the call for advice

A general survey on the use of the PRIIPs KID across the Union, including, to the extent feasible, evidence on:

- *The number and type of products and their market share for which PRIIPs KIDs are produced and distributed.*
- *The recent developments and trends on the market for PRIIPs and other retail investment products.*
- *The extent to which PRIIPs KIDs are used by product distributors and financial advisors to choose the products they offer to their clients.*
- *To the extent feasible, the extent to which marketing information aligns with or differs from the information in the PRIIPs KIDs.*

In terms of this general survey, it can be relevant to clarify that regarding the third bullet point in the mandate above, the ESAs understand that evidence is sought on the extent to which the information in the KID is used by persons advising on, or selling, PRIIPs separate from the obligation to provide the KID to the retail investor. This might include, for example, identifying if a product is suitable for the retail investor. For this topic, the ESAs would like to ask for feedback to the following questions:

2. Do you have, or are you aware of the existence of, data on the number, type and market share of different types of PRIIPs? If you have such data, would you be in a position to share it with the ESAs?

For SP, yes, a reliable source of market volume is structuredretailproducts.com, which ESMA already has access too.

For funds, we have limited experience because UCITS and a large number of AIFs are currently exempted from producing a PRIIP KID.

3. In your position as product distributor or financial advisor, to what extent do you make use of KIDs to choose or compare between the products you offer to your clients? In case of trading online, does your platform offer an automatised tool that can help the retail investor in making comparisons among products, for instance using KIDs?

From a distributor point of view, the selection of products (i.e. PRIIPs) to be offered to retail clients relies on a various elements of information to assess product relevance, whatever the media/ format, and among which the KID may be one element.

From a client perspective, the KID is not always used to compare between products, it depends on the type of product.

Regarding MOPs, notably option-specific information can be used to compare the eligible options and select the ones that best meet the needs of the customer.

Regarding structured products, when they are tailor-made and designed to meet specific needs, the KID is mainly used before the point of sale to summarize the key features. In addition, in an advisory process, we also use the risk indicator displayed in the KID when checking the suitability.

Regarding trading online, BNPP SPs website for exchange traded products offers access to the KIDs of all products in just 2 clicks from the product selection page. These can be easily compared by the retail investor.

France: <https://www.produitsdebourse.bnpparibas.fr/>

Germany : <https://derivate.bnpparibas.com/>

Italy: <https://investimenti.bnpparibas.it/>

4. If this is the case, what is preventing distributors or financial advisors from using the KID when they choose a product for a client?

According to feedback from our distributors, nothing prevents them from using the KID to compare between products when they discuss products with investors.

5. In your experience, e.g. as a retail investor or association representing retail investors, to what extent are KIDs used by distributors or financial advisors to support the investment process? Is marketing material used instead or given greater emphasis?

BNPP's view is that the KID serves a very different purpose to a marketing material or brochure.

The KID is a regulatory document which aim is to compare product within one category (e.g. funds, structured product, IBIPs) using one unique set of metrics such as Risk indicator, scenarios analysis, and cost table calculation. The KID is not, and should not be used to replace marketing brochures of structured products, neither factsheet of funds.

"Marketing material / brochure" serve to give information on the detailed aspects that are not (and cannot) be covered in a KID, such as the pros/cons on the product, the operational information on how to subscribe , further simulations , pie-charts explaining the index compositions , explanations on the underlying (e.g. index rules , basket composition, multi-asset underlyings) , market aspects which the product is meant to respond to , or tax implications.

6. What are your experiences regarding the extent of the differences between marketing information and the information in the KID? What types of differences do you consider to be the most material or relevant in terms of completeness, plain language, accuracy and clarity? What do you think might be the reason(s) for these differences?

Looking at the KID and its content next to marketing material, BNPP stresses that both are not, and should not, be comparable with each other.

"Marketing material" in practice entails always information of a detailed nature, as explained in question 5, which cannot be provided in a maximum of 3 page in the KID. Also, marketing material have to comply with requirements originating from different sources, other than PRIIPs Regulation, for instance most notably suitability factors under MiFID, or National competent authority requirements, as it is the case for public offers of products in France with the AMF or the ACPR.

More generally, the KID remains a formalised document, within which it is not permissible to provide additional detailed information. The KID alone cannot (and should not) fulfil all informational needs of investors.

BNPP view is that the current concise 3-page format of the KID should remain in place, with the content and order of section unchanged, because it is overall working properly. Conciseness is key to ensure the document is read.

3.2 General survey on the operation of the comprehension alert

Extract from the call for advice:

A general survey on the operation of the comprehension alert, taking into account any guidance developed by competent authorities in this respect, the survey should gather data on the number and types of products that include a comprehension alert in the PRIIPs KIDs, and to the extent feasible, evidence on whether retail investors and financial advisors consider the comprehension alert in their investment decisions and/or advice.

For this topic, the ESAs would like to ask for feedback to the following questions:

7. What are your experiences regarding the types of products that include a comprehension alert?

It is difficult for investors to take any added value from this alert, since too many products have it – see answer to question 8. below.

In addition, all retail Alternative Investment Funds will also carry this alert.

Therefore BNPP recommends to abolish this comprehension alert, because it is not really useful to investors.

However, if the comprehension alert is kept, we wish to keep the current rules and format to display it.

8. Do you have or are you aware of the existence of data on the number and type of products that include a comprehension alert? If you have such data, would you be in a position to share it with the ESAs?

For BNP GM, about 3000 structured products KID , and 400 000 exchange traded product KID carry the comprehension alert.

For insurance products, all of them have to carry the comprehension alert on the basis of IDD rules

9. What are your experiences regarding the extent to which retail investors take into account the inclusion of the comprehension alert?

Generally, investors will focus on product risks (SRI) , costs table, and scenarios , and the issuer credit rating. If investors have questions on the product features, or anything that is difficult to understand, they usually seek help from their relationship manager/ advisor. That is why the comprehension alert brings little to no value.

10. As a retail investor or association representing retail investors, are you aware of the existence of a comprehension alert for some PRIIPs?

Not applicable to BNPP.

11. What are your experiences regarding the extent to which financial advisors consider the comprehension alert?

Advisors will primarily focus on the appropriateness test requirements under MIFID more than the wording of the comprehension alert. However, if the comprehension is kept, we wish to keep the current rules and format to display it.

3.3 Survey on the practical application of the rules

Extract from the call for advice:

A survey of the practical application of the rules laid down in the PRIIPs Regulation, taking due account of developments in the market for retail investment products, which should include practical evidence on:

- *To the extent feasible, the amount and nature of costs per PRIIP to various market participants of complying with the requirements of the PRIIPs Regulation, including the costs of manufacturing, reviewing, revising, and publishing PRIIPs KIDs, including as a proportion of total PRIIP costs.*
- *To the extent feasible, the extent to which the PRIIPs Regulation is applied in a consistent manner across the EU for the most commonly sold types of PRIIPs.*
- *The supervision of the PRIIPs KID, including the percentage of cases where inaccurate PRIIPs KIDs were identified by NCAs.*
- *The number of relevant mis-selling events before and after the introduction of the PRIIPs KID, including through data on the number of complaints received, number of sanctions imposed, and other relevant data.*

Concerning this topic, the ESAs would like to ask for feedback to the following questions:

12. For PRIIP manufactures or sellers:

12. a) Please describe the different types of costs incurred to comply with the PRIIPs Regulation.

Type of manufacturing costs are:

Project costs (incurred at each change of rules/RTS)

1-front office staff to build industry specifications (Structurers, Sales , Quants) and attend industry forum such as EUSIPA, Findatex, EFAMA, Insurance Europe.

2-IT staff to undertake necessary IT developments

3-contractors and front office staff to test KID developments

4-training the distributors to the new format of KID

5-Legal analysis

6-Translations

7-update of issuer website

8-investment in centralized industry solutions/repositories for publishing the document, and the meta-data feed (e.g. in RegXchange)

9-compliance teams for monitoring quality of KIDs

Running costs (incurred as long as the regime in place)

10-front office and legal staff to follow changes to RTS and reply to consultations

11-operations team to maintain the production tools

12-potentially cost charged by external providers (on a per KID basis)

13-client support team to answer question from investors

For distributors, costs cover notably KIDs retrieval, storage and integration in client journey processes.

12. b) Can you provide an estimate of the average costs per PRIIP of complying with the requirements of the PRIIPs Regulation? Where possible, please provide a breakdown between the main types of costs, e.g. manufacturing, reviewing, publishing, etc.

See below our reply to the EU Commission RIS consultation

A single PRIIPs KID for Structured Product

A significant one off investment was made by BNPP GM in Quantitative systems, IT, Legal and translations, of several millions (potentially dozens of millions) although it is difficult to quantify exactly due to the high number of teams and external providers involved.

Once a KID production tool is setup, a rough estimate from various industry participants is that the single KID cost ranges from 30 EUR up to 10 000 EUR depending on their languages, level of complexity, IT systems. However this is difficult to quantify because BNPP has internalized this technology for structured products.

A single Insurance Product (generic KID and specific information documents of all the investment options available on the product)

For Cardif, in addition to project costs which are substantial (several millions), we have recurring costs of more than 3,000 euros for each insurance product.

12. c) Can you provide an estimate of what proportion of the total costs for the product are represented by the costs of complying with the PRIIPs Regulation?

For BNPP structured products, and for insurance products (IBIPs/MOPs) , we cannot quantify this, because the cost of producing the KID are not passed on to the investor, the above list of cost in question 12(a) is fully borne by the issuer of the product (i.e. Global Markets for SP, the Insurer for IBIPs/MOPs) as a general “cost of doing business”. However, it should be noted that if too frequent changes to PRIIPs regulation continue, this may actually push some manufacturers to indirectly pass on some of the costs of producing the KID as a cost to the investor, although this is not the primary intention at this stage.

13. What are your experiences regarding the extent to which the PRIIPs Regulation is applied in a consistent manner across the EU for the most commonly sold types of PRIIPs? What are the main areas of inconsistencies?

For SPs, overall we see a great level of consistency in the implementation of the EU PRIIPs Regulation from the manufacturers’ perspective, thanks to the considerable work of industry trade bodies as EUSIPA, DDV and AMAFI/AFPDB and platforms such as FinDatEx (www.findatex.eu) to successfully align interpretation of the unclear area of RTS, and the issuance of recommendations and the drafting of templates

(i) Length of the document. It is critical that the exact same approach be applied in all Member States meaning that this maximum length must be strictly applied in all Members States without any derogations.

(ii) FSMA requires KIDs to be not longer than three pages with specific wording requirements and local interpretations (see 2021.06.17 - Communication FSMA_2021_13: “Feedback Statement containing the conclusions of a qualitative examination of PRIIPs KID, p. 3-4). Besides, FSMA requires manufacturers from other Member States to draft specific KIDs for the distribution of their products on the Belgian territory.

(iii) BaFIN has specific interpretation of weblinks where the PRIIPs KIDs are made available to investors (i.e. they must be available on the document).

(iv) CNMV follows a specific treatment of autocallable products that is not shared with other NCAs.

(v) CONSOB requires to be notified of raw data of KIDs by the development of an API for meta data feed of securities (i.e. notes/warrants/certificates) KID sold in Italy, which goes beyond the Level 1 text requirement. Such additional national requirements represent obstacles to the cross-border commercialisation of products and generate important additional costs for manufacturers.

3.4 Use of digital media

Extract from the call for advice

An assessment of the extent to which the PRIIPs Regulation is adapted to digital media. This survey shall include an evidence-based assessment of:

- *To the extent feasible, the actual use of various types of physical and digital media for delivering or displaying the PRIIPs KID to retail investors.*
- *To the extent feasible, the preferred digital or physical media for retail investors to access and read PRIIPs KIDs, and the appropriateness of the PRIIPs Regulation for allowing access to and readability of PRIIPs KID on such platforms.*
- *The appropriateness of the approach taken in the PEPP Regulation 2019/1238 for displaying the PEPP KID on digital media for the PRIIPs KID.*

Article 14 of the PRIIPs Regulation lays down rules regarding the types of media that can be used to provide the KID to the retail investor. It is specified that the use of paper format should be the default option where a PRIIP is offered on a face-to-face basis, but that it is also possible to provide the KID using a durable medium other than paper or by means of a website, if certain conditions are met. These conditions include, for example, that the retail investor has been given the choice between paper and the use of another durable medium or website.

The PEPP Regulation^[1] provides rules regarding the distribution of the PEPP KID either electronically or via another durable medium in Article 24. For the PEPP KID, electronic distribution can be seen as the “default” approach, but customers need to be informed about their right to request a copy on another durable medium, including paper, free of charge.

For PEPP KIDs provided in electronic format, the PEPP Regulation also allows for the layering of information (Article 28(4)). This means that detailed parts of the information can be presented through pop-ups or through links to accompanying layers. In general terms, layering allows the structure of the information to be presented in different layers of relevance: for example from the information “at a glance” that is essential for all audiences, to more detailed information being readily available in a subsequent layer for those interested, and so forth.

Concerning this topic, the ESAs would like to ask for feedback to the following questions:

[1] REGULATION (EU) 2019/1238 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 20 June 2019 on a pan-European Personal Pension Product (PEPP) (OJ L 198, 25.7.2019, p. 1)

14. Do you have or are you aware of the existence of data on the use of different media? If you have such data, would you be in a position to share it with the ESAs?

Regarding the subscription of financial products, the retail network branches of BNPP remain privileged by retail clients in France because a lot of them still need comfort of speaking to their relationship manager/ advisor and they find it in branches.

In a survey published in June 2021 on expectations from Banks in France (“Les Français et leur banque en 2021- Usages & Attentes”), In Banque/ Cap Gemini estimated the increase in the interest for the digital subscription of financial products from 21% beginning 2020 to 26% in June 2021 compared to a decrease from 58% to 45% for the subscription in physical networks.

15. What are your experiences as a product manufacturer or product distributor or financial advisor regarding the preferred media for retail investors to access or read the KID? Are there challenges for retail investors to receive the KID in their preferred media, such as due to a certain medium not being offered by the distributor?

As manufacturer, BNPP has not observed any challenges for retail investors to receive the KID in their preferred media. For SPs, BNPP GM provides a KID weblinks via 2 medium, on this page <https://kid.bnpparibas.com/> searchable by ISIN , and also on the RegXchange platform , a centralized KID repository where more than 20 SP issuers publish their KID in Europe.

Our experience is that most distributors show the KID on their weblink , or either send it by email (and as the KID itself contains the weblink , the investor can access the most up to date KID).

16. How do you as a retail investor, or association representing retail investors, prefer to receive or view the KID?

Not applicable.

17. What are your experiences regarding the preferred media for product distributors and financial advisors when using the KID?

As manufacturer, BNPP observes a preference for the weblink, which has the benefit of showing an up to date KID for products made available on markets (e.g. exchange traded products), while sending it by email or by paper hard copy do not have this benefit.

18. Should changes be made to the PRIIPs Regulation so that the KID is better adapted to use on different types of media?

No. BNPP view is that Level 1 text is sufficiently clear in this respect.

19. Do you think it would be appropriate to apply the approach taken in the PEPP Regulation 2019 /1238 (highlighted above) to the PRIIPs KID?

No. BNPP does not support a layering of the KID information to be presented via pop ups or via multiple link accompanying layers because it conflicts with the objective that the document should be read as a whole , to ensure the retail investor has understood the main feature, the risk indicator, the scenario and the costs table , all of which are actually dependant on each other , and can therefore compare as a whole , and not just parts of the document.
The choice of a paper or electronic format should be left to the producer, depending on what is best for a given distribution channel.

3.5 Scope of the PRIIPs Regulation

Extract from the call for advice:

An examination of the following questions concerning the scope of the PRIIPs Regulation:

- *whether the exemption of the products referred to in Article 2(2) points (d), (e), and (g) of the PRIIPs Regulation from the scope of PRIIPs should be maintained, in view of sound standards for consumer protection, including comparisons between financial products.*
- *whether the scope of the PRIIPs Regulation should be extended to additional financial products.*

The points referred to Article (2) of the PRIIPs Regulation concern:

(d) securities as referred to in points (b) to (g), (i) and (j) of Article 1(2) of Directive 2003/71/EC;
(e) pension products which, under national law, are recognised as having the primary purpose of providing the investor with an income in retirement and which entitle the investor to certain benefits;
(g) individual pension products for which a financial contribution from the employer is required by national law and where the employer or the employee has no choice as to the pension product or provider.

In 2019 the ESAs published a Supervisory Statement on the application of the scope of the PRIIPs Regulation to bonds (JC 2019 64). In this statement it was stated that:

Ultimately, in order to fully address the risk of divergent applications by NCAs, the ESAs recommend that during the upcoming review of the PRIIPs Regulation, the co-legislators introduce amendments to the Regulation in order to specify more precisely which financial instruments fall within the scope of the Regulation. We would also recommend to reflect more expressly the stated intention of the PRIIPs Regulation[1] to address packaged or wrapped products rather than assets which are held directly, to avoid any legal uncertainty on this point.

Taking this Statement into account, the ESAs are interested in feedback on a number of additional issues besides those specified in the mandate from the Commission. Thus, concerning the topic of scope, the ESAs would like to ask the following questions:

[1] This is stated in recitals 6 and 7.

20. Do you think that the scope of the PRIIPs Regulation should be extended to any of the products referred to in Article 2(2), points (d), (e) and (g)? Please explain your reasoning.

No. BNPP does not support including these products under PRIIPs for the following reasons.

No to Article (2) (2) (d) securities as referred to in points (b) to (g) because none of these are packaged securities, unless the amount repayable depends on the reference value of an underlying
Directive 2003/71/CE Article (2) (2) (d) points (b) to (g)

- (b) non-equity securities issued by a Member State or by one of a Member State's regional or local authorities, by public international bodies
- (c) shares in the capital of central banks of the Member States;
- (d) securities unconditionally and irrevocably guaranteed by a Member State or by one of a Member State's regional or local authorities;
- (e) securities issued by associations with legal status or non-profit-making bodies,
- (f) non-equity securities issued in a continuous or repeated manner by credit institutions provided that these securities: (i) are not subordinated, convertible or exchangeable; (ii) do not give a right to subscribe to or acquire other types of securities and that they are not linked to a derivative instrument; (iii) materialise reception of repayable deposits; (iv) are covered by a deposit guarantee scheme
- (g) non-fungible shares of capital whose main purpose is to provide the holder with a right to occupy an apartment, or other form of immovable property

No for pension products of Article 2 (2) (e) and (g) for several reasons (i) the pension regulation are very specific to member states, (ii) the KID is not adapted to pension products (there is no provision for information on benefit options upon retirement), and (iii) pension product do not have a Recommended holding period but depends on the particular retirement date of each individual.

Directive 2003/71/CE Article (2) (2)

- (e) pension products which, under national law, are recognised as having the primary purpose of providing the investor with an income in retirement and which entitle the investor to certain benefits,
- (g) individual pension products for which a financial contribution from the employer is required by national law and where the employer or the employee has no choice as to the pension product or provider.

21. Do you think that the scope of the PRIIPs Regulation should be changed with respect to other specific types of products and if so, how?

BNPP Cardiff supports to remove funeral insurance contracts because these are not investment products as such, given there are no underlying investment options. In addition, the format of the KID is not adapted to these lifetime contracts.

22. Do you think changes should be made to specify more precisely which types of financial instruments fall within the scope of the PRIIPs Regulation? Please specify the amendments that you think are necessary to the Regulation.

BNPP is of the opinion that based on the current rules, the following products should be excluded:

- floating rate notes or deposit in general
- subordinated bonds which have fixed coupons not dependant on a reference underlying rate, FX, or equity
- all bonds with a make-whole clause
- all FX forwards because the amount repayable is fixed in advance and not dependant on underlying rates
- all OTC derivatives when used for hedging purposes and not as investment and which are facing corporates entities classified as Retail under MIFID, who are legal person and not natural persons , where the corporate is able to confirm in writing that the OTC is used for hedging purposes.

23. Do you have specific suggestions regarding how to ensure that the scope of the PRIIPs Regulation captures packaged or wrapped products that provide an indirect exposure to assets or reference values, rather than assets which are held directly?

As explained in question 21, BNPP is not supportive of including pension products in PRIIPs. On the other end, we support to broaden the exclusion of some product which are not packaged as per the list in question 22.

24. Do you agree with the ESA Supervisory Statement relating to bonds and what are your experiences regarding the application of the Statement?

BNPP agrees with the statement. However further clarifications on bonds with make-whole clauses (MWC) are needed:

(i) In the mifid quick fix measures regarding product governance and exemption for bonds with make-whole clauses (MWC), it was stated that “The aim of this exemption, which would need to be complemented by a clear rule that a make-whole clause does not of itself make these instruments a packaged retail and insurance-based investment product (PRIIP), is to make more plain vanilla corporate bonds available to retail investors.”

(ii) The ESA proposes the following statement regarding MWC : “The inclusion of a clause that allows the issuer to pay off the remaining debt early using a reference rate to determine the net present value of future coupon payments that will not be paid (i.e. make whole) is expected to mean that the amount repayable to the retail investor is subject to fluctuations because of exposure to reference values. However, where the mechanism to calculate the discount rate is known in advance to the retail investor, this could be considered as a separate case, which does not satisfy the criteria in Article 4(1).”

We would favor a stronger wording making sure that a make-whole clause (MWC) does not of itself make these instruments a packaged retail and insurance-based investment product (PRIIP), and not leaving the door open to further interpretations.

Our experience (as distributors/Wealth Managers) is that many bond issuers do not apply the statement, and keep restrictive selling clauses limiting distribution to Professional Clients (due to lack of PRIIPs regulations clarity), preventing EEA Retail investors to access the bond markets.

25. Do you think that the definitions in the PRIIPs Regulation relating to the scope should take into account other elements or criteria, e.g. relating to the maturity of the product, or relating to a product only having a decumulation[1] objective, or where there is not active enrolment[2]?

[1] For example an annuity.

[2] This might include, for example, employment based incentive schemes

BNPP is not supportive of including pension products , or decumulation products into the scope of PRIIPs, because these product are better governed by national law rather and a one size fits all approach which has already proven to be extremely difficult to manage between funds, structured products and IBIPs.

BNPP is not supportive of including products where the retail investor signs no active enrolment.

26. Do you think that the concept of products being “made available to retail investors” (Article 5(1) of the PRIIPs Regulation) should be clarified, and if so, how?

BNPP would welcome this aspect to be clarified by regulatory guidance as follows:

(i) structured products which are not actively marketed by a distributor after their subscription period should be deemed “not made available”.

(ii) for any product, if the manufacturer has showed a visible way to exclude Retail investors (such as statement in the Prospectus or the Final Terms) these should be deemed “not made available” , even if a retail investor could always access the information of the prospectus of the product on passive platforms (such as referencing website for fund , IBIPs, or structured products)

27. Do you think it would be beneficial to develop a taxonomy of PRIIPs, that is, a standardised classification of types of PRIIPs to facilitate understanding of the scope and that could also be used as a basis for the information on the “type of the PRIIP” in the ‘What is this product?’ section of the KID (Article 8(3)(c)(i) of the PRIIPs Regulation)? If yes, do you have suggestions for how this could be done?

No. BNPP GM does not recommend the development of a taxonomy of the “type of PRIIP” for these reasons:

- As far as SP are concerned, the evolution of structured product “taxonomies” or any product type standardisation efforts, should be left to market participants given that product types constantly evolve.
- it requires constant and frequent update (i.e. when new wrappers or products are created)
- it may lead to disagreement between countries
- it could lead to misclassification of products given the very wide ranging scope of PRIIPs and the various needs of counterparties
- it may lead to mismatches with CFI codes under MIFID (for instance we have seen different clearing systems having different CFI code for the same debt instrument)

Overall a PRIIPS product taxonomy would bring no value to retail investor. It should remain the manufacturer responsibility to adequately describe the legal wrapper and features of the product in the “what is this product section”.

3.6 Differentiation between different types of PRIIPs

Following a targeted consultation on PRIIPs towards the end of 2018, the ESAs’ Final Report published in February 2019 (JC 2019 6.2), which proceeded further work on a review of the PRIIPs Delegated Regulation, stated (page 14):

- Differentiation between different types of PRIIPs: *taking into account information regarding challenges to apply the KID to specific product types, for example very short-term products or specific types of insurance or pension products, it is intended to analyse if it is appropriate to introduce some additional differentiation in how the rules apply to different types of products, while still adhering to the overarching aim of comparability between substitutable products.*

This aspect was considered during the review of the PRIIPs Delegated Regulation initiated in 2019, but this work was conducted within the constraints of the existing PRIIPs Regulation. In the context of reviewing the PRIIPs Regulation, consideration could be given to the following types of approaches:

- The development of broad product groupings or buckets of similar products. A more tailored approach could be taken for each of these groupings, with the aim to ensure the meaningfulness of the information and prioritising comparability within these groupings. This might also ease the comparability between the PRIIPs Regulation and sectoral legislation (such as MiFID, IDD) on certain disclosure requirements;
- A reduced degree of standardisation in the KID template;
- Provisions that would allow for supervisory authorities to grant exemptions or waivers from the requirements in duly justified cases.

28. Do you think that the current degree of standardisation of the KID is detrimental to the proper understanding and comparison of certain types of PRIIPs? If so, which products are concerned?

No. BNPP think that current standardisation degree is actually beneficial to a proper understanding and comparison of products.

Comparability is an advantage of a PRIIPs KID, and to keep comparability to a sufficiently high level, we recommend that the number and order of the KID sections, the format of the risk indicator, the scenario table, and cost table must remain unchanged across all products, to preserve a look and feel comparability. This would also allow a disruption to the existing regime, which is now overall well understood by distributor and investors as far as structured products are concerned.

However, for insurance products (IBIPs and MOPs), the overly standardised KID raises issues of understanding, because some of the KID prescribed sections are not consistent with the terms and concepts used in the general conditions of insurance products, which generates misunderstandings at the level of distributors and customers, notably in France. More worrying, the absence in the KID of a section dedicated to guarantees offered by insurance contracts does not allow a “fair” comparability of products.

29. Do you think that greater differentiation based on the approaches highlighted above, is needed within the PRIIPs Regulation? If so what type of approach would you favour or do you have alternative suggestions?

We support standardisation in Q28, especially when it comes to the quantitative parts of the KID i.e. risk indicator, scenario table format, and cost tables. In this regard we feel it is unfortunate that IBIPs composition of cost table remain in Annualized reduction in yield in % , while other products (e.g. funds and SP) will need to show numbers in Euros for 1 year.

However in light of the different wrappers, and different regulations applying to them, it could make sense to allow some flexibility of the wordings used within the various sections of the KID but not change the number of section, neither their format nor their order at level1 text.

Some flexible wording within the section depending on the type of bucket (i.e. wrapper) could help, which could be done at Level2 rather than Level1 text, without a full revamp the amended RTS dated 7 September 2021.

However the buckets should not be overly granular, be limited to some broad categories and consider the articulation with the other regulation to which each wrapper is already subject to:

- funds , which are also subject to AIFMD or UCITS directive
- IBIPs, which are also subject to IDD
- a bespoke format for IBIPs that are MOPs (multi option insurance products)
- Structured securities and structured deposits , which are also subject to MIFID
- OTC derivatives , which are also subject to MIFID

To some extent the amended RTS dated 7 September 2021 already provide for different wordings to be used for the scenario costs tables, depending if the product is a fund, securities and OTCs. This overall is sufficient, without going for level 1 changes, nor a taxonomy.

30. Do you have suggestions for how a product grouping or product buckets could be defined?

See our reply to Q28

3.7 Complexity and readability of the KID

Taking into account the views previously expressed by some stakeholders that the information in the KID is overly complex and contributes towards an information overload for the retail investor, the ESAs would like to ask for suggestions on how the KID could be improved in this respect.

There can also be a link between this issue and the use of techniques such as layering as referred to above in the context of the digital KID (see Section 3.4), as well as other design techniques, such as the inclusion of visual icons or dashboards at the top of documents[1].

[1] Dashboards can include the most essential information at the top of the document. This is the approach taken, for example, for the PEPP KID - "PEPP at a glance" in Annex I of PEPP Delegated Regulation 2021 /473 point 4 and the template in part II.

31. Would you suggest specific changes to Article 8 of the PRIIPs Regulation in order to improve the comprehensibility or readability of the KID?

No. BNPP deems the Article 8 sufficiently clear. Rather than rushing Level1 changes, BNPP recommends to let a sufficiently long application period once the RTS V2 dated 7 September 2021 becomes applicable (of 8 years like in the UCITS IV KIID regulation), and take more careful necessary steps to assess whether the changes brought in the KID (mainly regarding scenarios of funds , and new cost tables without the reduction in yield) are delivering a sufficiently good level of understandability.

We do not believe that a change in Level 1 text regarding the templating and layout of sections will bring any value to investors.

32. How could the structure, format or presentation of the KID be improved e.g. through the use of visual icons or dashboards?

BNPP's view is that the current structure, format, order of the sections and presentation of the KID is satisfactory and has met its objective. We strongly recommends to refrain from changes the layout of the KID by modifying the Level1 text.

Visual icons which can look too friendly are not appropriate for a regulatory disclosure document. We would recommend that any visual icon from a marketing nature remain in the marketing brochure which serve a fundamentally different purpose than the KID.

3.8 Performance scenarios and past performance

In the ESAs' draft regulatory technical standards (RTS) to amend the PRIIPs Delegated Regulation submitted to the Commission in February 2021[1] (and adopted by the Commission on 7 September 2021 [2]), the ESAs included a proposed new requirement for certain types of investment funds and insurance-based investment products to publish information on the past performance of the product and refer to this within the KID. This approach was taken so that the availability of this information would be known, and the information would be published in a standardised and comparable format.

However, the ESAs also stated in the Final Report[3] accompanying the RTS that (on page 4):

the ESAs would still recommend, as a preferred approach, to include past performance information within the main contents of the KID on the basis that it is key information to inform retail investors about the risk-reward profile of certain types of PRIIPs. Since it has been argued that the intention of the co-legislators was for performance scenarios to be shown instead of past performance, it is understood that a targeted amendment to Article 8 of the PRIIPs Regulation would be needed to allow for this. A consequential amendment is also considered necessary in this case to allow the 3 page limit (in Article 6(4)) to be exceeded to 4 pages where past performance information would be included in the KID;

Besides the issue of past performance, the ESAs' work under the empowerment in Article 8(5) regarding the methodology underpinning the performance scenarios has raised significant challenges. Since the ESAs first started to develop these methodologies from 2014 onwards, it has proved very difficult to design appropriate performance scenarios for the different types of products included within the scope of the PRIIPs Regulation that would allow for appropriate comparisons between products, avoid the risk of generating unrealistic expectations amongst retail investors and be understandable to the average retail investor. In particular, no academic consensus has been reached on how to develop common performance scenarios that would be equally appropriate for all types of PRIIPs, proving the inherent difficulty of such an approach.

In this context, the ESAs would like to ask for feedback on:

[1] EIOPA's Board of Supervisors agrees on changes to the PRIIPs key information document | Eiopa (europa.eu).

[2] Implementing and delegated acts | European Commission (europa.eu)

[3] JC 2020 66 (30 June 2020)

33. Do you agree with the ESAs' assessment in the Final Report (JC 2020 66) regarding the treatment of past performance?

Regarding structured products which do not have historical NAV , no past performance should be showed.

BNPP would argue that known doubts about the usefulness of past performance information as such persist, in particular in terms of the danger of biased decisions of retail investors assuming past performance is the key indicator for future value evolution. This is widely seen as a misleading notion and under MiFID is recognised as such, which supports our view not to allow for past performance for products like SP which do not have historical NAV.

However, regarding funds, BNPP Asset Management agrees with the ESAs assessment that allows for the inclusion of past performance in the section of the KID "What are the risks and what could I get in return" , but this only makes sense for funds which have sufficient historical NAV track record, and BNPP AM does not support past performance for structured funds.

Regarding MOPs, performance depends on investment options. Within the generic KID, the principles of:

- a statement indicating that return of the investment varies on the basis of the underlying investment option,
- an indication where the performance information on each underlying investment option can to be found (past performance or performance scenarios depending on the nature of the option) should be retained.

34. Would you suggest changes to the requirement in Article 8(3)(d)(iii) of the PRIIPs Regulation concerning the information on potential future performance, and if so what would you specifically change in the Regulation?

No. BNPP's view is that Article 8 (3) (d) (iii) should be left unchanged in Level1 , and rather address details of the assumptions to be made for performance scenario in a later Level2 review, depending on the product scope.

BNPP GM recommends to keep forward-looking probabilistic performance scenarios for structured products because the EU Commission consumer testing has showed that for SPs , retail investor made more optimal investment decisions using probabilistic scenario than other forms of scenarios.

3.9 PRIIPs offering a range of options for investment (Multi-Option Products (“MOPs”))

In the ESA Consultation Paper of October 2019 on proposed amendments to the PRIIPs KID (JC 2019 63), the ESAs stated that their analysis of the implementation of the rules for MOPs indicated some significant challenges regarding the clarity and usefulness of the information provided to retail investors. In particular, it was stated that (page 51):

Where a generic KID is used (in accordance with Article 10(b) of the PRIIPs Delegated Regulation), it is difficult for the investor to identify the total costs related to a particular investment option. This arises because the generic KID shows a range of costs, but does not always identify which costs are specific to an investment option and which costs relate to the insurance contract. At the same time, it is understood that the information on the underlying investment option (in accordance with Article 14 of the PRIIPs Delegated Regulation), does not usually include the total costs of investing in that option. Therefore, it is often not possible for the investor to identify from the generic KID the costs that may apply in addition to those shown in the option-specific information.

One of the proposals in the Consultation Paper was to introduce a differentiated treatment for the ‘most commonly selected investment options’ (page 52). In the final draft RTS following the consultation, the proposals relating to the most commonly selected investment options were not included taking into account various implementation challenges raised by respondents to the public consultation.

However, the ESAs introduced some specific changes to the approach for MOPs, for example to require the separate disclosure in certain cases of the costs of the insurance contract or wrapper. It was considered that these changes would result in material improvements to the current KID. At the same time, despite these proposed changes, there are still considered to be material issues that were not possible to address within the constraints of the review of the PRIIPs Delegated Regulation.

In the Final Report (JC 2020 66), the ESAs also stated at that stage that they consider the optimal way to address the challenges for MOPs is to use digital solutions, but that this would require changes to the PRIIPs Regulation.

As part of the May 2021 consultation from the Commission on the Retail Investment Strategy, feedback was also requested on the approach for MOPs to require a single, tailor-made KID, reflecting the preferred underlying investment options of each investor, to be provided.

In this context, the ESAs would like to ask for feedback on the following questions regarding potential alternative approaches for MOPs that might require a change of the PRIIPs Regulation:

35. Would you be in favour of requiring a KID to be prepared for each investment option (in accordance with 10(a) of the PRIIPs Delegated Regulation) in all cases, i.e. for all products and for all investment options[1]? What issues or challenges might result from this approach?

[1] This approach assumes complete investment in a single investment option and requires the KID to include all costs.

BNPP does not support the idea of a KID to be prepared for each investment option in the MOP, because this would result in several thousands of MOP KID to produce. Several issues would arise:

- An overload of information for investors (too high number of KIDs investment options to look at)
- MOPs for each investment option that are not representative of the individual investor portfolio composition
- MOPs for each investment option that cannot cater for a change in allocation between various underlying over time

Rather, BNPP suggest to rely on the a generic KID of the insurance contract (in accordance with Article 10 (b)) to be still produced, with a clear disclosure of the cost of the MOP, in addition to the range of total costs, the later depends ultimately on the various ISINs placed in the MOP. This would allow the investor to see the split between MOP cost, and the cost of underlying investment options.

36. Would you be in favour of requiring an approach involving a general product information document (along the lines of a generic KID) and a separate specific information document for each investment option, but which avoids the use of cost ranges, such as either:

- **A specific information document is provided on each investment option, which would include inter alia all the costs of the product, and a generic KID focusing more on the functioning of the product and which does not include inter alia specific information on costs?; or**
- **The costs of the insurance contract or wrapper would be provided in a generic KID (as a single figure) and the costs of the underlying investment option (as a single figure) would be provided in the specific information document?**

What issues or challenges might result from these approaches?

We prefer the second bullet point, with insurance wrapper to be provided in a generic KID (as a single figure), because it will ensure an easier understanding for investor and it is also a implementable solution. The fact that the costs of the underlying investment option (as a single figure) would be provided at an ISIN level in the specific KID of this investment product, and not at insurance contract level, makes more sense.

We do not support the first bullet point (adding to wrapper cost to each of the KID of each possible investment option) due to the challenges explained in our answer to Q35.

37. Do you see benefits in an approach where KIDs are prepared for certain investment profiles or standard allocations between different investment options, or for the most commonly selected

options? In this case, what type of information could be provided regarding other investment options?

BNPP sees benefits in adding within the current generic KID some examples with certain investment allocations to illustrate how the contract works (risk indicator and costs).
We do not support the idea of the most commonly selected option: implementation seems complex (the options will vary over time) and it could be misleading for the clients (could be seen as an investment recommendation).

38. Do you have any other comments on the preferred approach for MOPs and or suggestions for changes to the requirements for MOPs in the PRIIPs Regulation?

No suggestion at this time

3.10 Alignment between the information on costs in the PRIIPs KID and other disclosures

In the final draft RTS amending the PRIIPs Delegated Regulation submitted to the Commission in February 2021 (and adopted by the Commission on 7 September 2021), the ESAs sought to introduce changes to the way that cost information is presented in the KID, in particular for non-insurance packaged retail investment products (PRIIPs)[1]. One of the aims of these changes is to achieve a better alignment with disclosure requirements in MiFID and IDD.

At the same time, the ESAs have received representations from stakeholders that there might still be inconsistencies or misalignment between the PRIIPs KID and disclosure requirements in other legislative frameworks. This issue is also related to the issue of appropriate differentiation between different types of PRIIPs (see Section 3.7).

Since the issue of consistency between different disclosure requirements for retail investment products is also addressed in the calls for advice to ESMA and EIOPA, the ESAs will, in particular, coordinate the work on this aspect, and consider the appropriate mandate within which to address any issues that arise.

[1] As defined in point (1) of Article 4 of the PRIIPs Regulation

39. Taking into account the proposals in the ESAs' final draft RTS, do you consider that there are still other inconsistencies that need to be addressed regarding the information on costs in the KID and information disclosed according to other retail investor protection frameworks?

For SPs, BNPP recommends that cost Tables should be strictly aligned, even identical to the information provided under the MiFID cost disclosure (i.e. EMTs). The new RTS adopted by the EC on 7 September 2021 are going in the right direction, i.e. we have almost reached the alignment with MiFID, except for the Cost Table 2, where exit cost for SP with RHP of 1 year or less, need to be showed at RHP, which will be zero, this is misleading and should still be the ½ bid-ask prior to RHP, to be consistent with SPs which have and RHP of more than 1 year, for which the new RTS requires to show the exit cost prior to RHP, i.e. usually ½ bid-ask.

3.11 Other issues

40. Do you think that other changes should be made to the PRIIPs Regulation? Please justify your response.

No. Our view is that once the revised RTS apply the framework should be left unchanged, but some adjustments would be good such as modifying the autocallable scenario table back to previous market standard of the 2017 RTS, which was more reader friendly and less misleading.

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