

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

Crédit Agricole Group

* Sector

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

* 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.

As the purpose of this call for evidence is to prepare a review of the Level 1 of PRIIPs regulation, we would like to take the opportunity to alert ESMA to the dangers in terms of regulatory stability that such a review would entail.

Indeed, the assessment of the impact of a regulation must be based on a sufficiently long period in order to draw conclusions on the effectiveness of its provisions. Despite the applicability of PRIIPs since 31 December 2016, clients have mainly been exposed to UCITS KIIDs due to the ongoing UCITS exemption. In addition, many stakeholders, such as asset managers, have not yet implemented the regulation.

It should be added that the European Commission decided to modify several aspects of the KID via a review of the PRIIPs RTS (published last September). Companies are already working on implementing those new provisions, which, we hope, will fix couple of issues. In this context, we would be keen on having regulatory stability and not re-opening the regulation.

Finally, regulatory stability is also needed for products already under the scope of PRIIPs, notably for structured products and insurance products. While there would still be needs for adjustments (Total Expense Ratio instead of Reduction in Yield – correct issues for autocallables products in new RTS and settling some scope issues), it would be highly detrimental to manufacturers, distributors and clients to change again the presentation and the content of the 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?

In our opinion, the PRIIPs regulation is too recent to have the above mentioned information. Indeed, our clients have only been exposed to UCITS KIIDs because of the current UCITS exemption. In addition, many stakeholders, such as asset managers, have not yet implemented the regulation. It is therefore very complicated to answer this question at the moment.

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?

Product distributors or financial advisors do not use KIDs at first to compare products as they benefit from a specific tool made to accompany clients. KIDs can be used in a second step to have an in-depth look at the content of a product rather than for comparison.

In case of online trading, Credit Agricole displays a series of products offers with their respective KIDs. There is no comparison tool online, but clients benefit from well-rounded financial advisors who help them to make their own investment decisions.

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?

Product distributors or financial advisors do not use KIDs for choosing products as they benefit from a specific tool designed to accompany Credit Agricole clients.

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?

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?

Marketing information are a translation of legal and financial provisions into a more accessible language for clients. KIDs are probably less accessible but complement marketing materials if clients would want to have more details about a product.

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?

Comprehension alerts are included into all products developed and/or distributed by Credit Agricole. There is no specific experience to report at this stage.

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?

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

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

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

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.

Complying with the PRIIPs regulation leads to important operational costs for companies. For instance, the current RTS review and the end of the UCITS exemption will require Crédit Agricole Group to develop several tens of thousands KIDs in replacement of the current key investors' information documents introduced by the fourth UCITS directive. This represents more than 1200 man-days for the company.

If developed internally, KIDs would entail the following costs:

- Data collection and processing – The development of new KIDs requires:
 - o To identify, source and backtest a large amount of data especially for the new calculation method of performance scenarios. This new method, while rightly structured, implies an important work in terms of data collection.
 - o To build a new IT system able to process those data and issue new KIDs. At the moment, many stakeholders (especially those concerned by the UCITS exemption) have not IT systems able to generate a

large amount of KIDs. CACEIS estimates that implementing level 1 and 2 regulations will multiply by 5 the number of KIDs to issue.

- Structural dialogue:

o Between insurers and producers – Funds are routinely used as building blocks for life insurance products. This requires a long structural dialogue between insurers and asset managers in order to agree on the practicalities of data exchanges.

o With distribution networks – Methodologies from the new RTS lead to very different results from the current KIID and KID. This would require (1) important discussions with distributors to explain the new document and (2) training for advisers.

If developed externally, KIDs require:

- To set up a project defining how and to what extent the KID production will be externalised.

- Licensing costs for being allowed to use the external tool of the third party provider in charge of developing the precontractual documentation.

- Important IT developments: the company externalising the KID production needs to develop APIs able to facilitate the communication between internal and external tools in charge of generating KIDs.

From a general point of view, complying with the PRIIPs regulation requires very important human resources in order to develop new precontractual documents and to ensure the maintenance of the production system.

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.

It is difficult to provide a global estimate of the average costs per PRIIP as the UCITS exemption is still running. Credit Agricole is currently preparing for its end in January 2023 as well as the implementation of the new RTS the same year. However, first estimates show that implementation costs have reached, at this stage, more than 9 M€ for Crédit Agricole Group. They do not include running costs that should be added in order to have a general view of PRIIPs costs.

From the asset management side which is currently preparing for the end of the UCITS exemptions, upfront costs related to the implementation of PRIIPs would be more than 3 M€. For existing PRIIPs KIDs related to structured products, the implementation of the regulation has been costly in terms of both IT developments (including externalisation of calculations) and training as they have been evaluated around 2.6 M€ and annual running costs around 1.1 M€ for 2020. Implementation costs for insurance products have proven to be similar (around 2 M€). Those figures will be added to future implementation costs expected to occur via the application of the new RTS.

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?

See Q12b

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 existing structured products, some areas of inconsistencies in the actual implementation across Member States have been identified

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

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?

Credit Agricole is providing KIDs mostly under digital format, while keeping the possibility to provide a paper version on demand. KIDs are also easily accessible via the online platform of the bank. In time of pandemic, digitalisation has proven to be key to properly convey information to clients. Despite the rising costs of digital storage (sometimes higher than physical storage costs), Credit Agricole believes in digital media as a way to improve the clients accessibility to information and products.

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?

We do not have specific figures that highlight the preferred media of our retail clients. That being said, there is no specific challenge to send a KID under the format requested by a client.

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

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

Credit Agricole does not have specific experience regarding the preferred media for product distributors and financial advisors when using the KID. We believe that both paper and digital media should remain available to clients depending on their needs and uses. When it comes to digital media, Crédit Agricole believes that any change related to its format (layering, better interactivity) should be 1) technology neutral and 2) based on an impact assessment.

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

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?

It is difficult to draw relevant conclusion on the PEPP regulation approach and its potential introduction into the PRIIPs regulation as the regulation has not entered into force yet (March 2022).

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.

We consider that extending PRIIPs regulation to new products should not be a priority of the future PRIIPs review.

- Due to the late publication/adoption of the latest RTS (1 January 2023) and the extension of the UCITS exemption, companies are now working on the implementation of these new obligations. Therefore, the priority for the industry is to have the most stable regulatory environment possible.
- The PRIIPs KID is not adapted to domestic pension funds as those products have very specific characteristics. The performance scenario, risks, and the Reduction in Yield would not fit with the features of such long-term products. The recommended holding period of those products is very personalized as it depends on each client, which then does not match with a KID structure. In the case of employee savings schemes, the communication is largely a responsibility of the employer, which decides on its content. National labor laws also impose specific rules.

Should PRIIPs be reviewed, Credit Agricole would rather be in favour of excluding certain products from the

scope of the regulation:

- Funeral products are a type of insurance intended to cover funeral expenses. Some funeral products fall into the scope of PRIIPs regulation even if they are not bought as investment products. The application of the PRIIPs KID to such products is misleading: for example, showing performance scenarios could lead customers to expect a return on investment that doesn't exist in this kind of products.
- Most OTC derivatives contracted with corporate clients classified as retail clients should not be considered as a PRIIP for the following reasons:
 - o There is no distribution as such to retail investors, only a bilaterally negotiated contract;
 - o There is no "investment opportunities" as such, the aim is risk hedging (rate or change);
 - o There is no repayable amount to the retail investor, as stated in the definition of a PRIIP.
 - o Since the contract is different from the others, those OTC derivatives are not standard products ready for mass distribution to retail investors.

The KID is disproportionate considering the lack of added value for the corporate clients concerned.

- Corporate vanilla bonds / convertible bonds - In line with the 24 October Joint ESA Supervisory Statement (JC-2019-54) and for a better legal certainty, level 1 text should be amended to expressly exclude vanilla bonds from the scope of the PRIIPs Regulation.
- Moreover, equity linked products (i.e. convertible bonds), even if they match with the definition of packaged product, are not suitable for the scope and objective of PRIIPs Regulation. Convertible bonds are financing financial instruments that are not retail investment products even though some might consider that once being admitted to trading, it can be made available to everyone.

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?

We consider that extending the PRIIPs regulation to new products should not be a priority of a future PRIIPs review. Such extension should be based on a sufficiently long period to assess its relevance, which is not the case due to the current exemption and the relative recent implementation of the regulation. In addition, due to the late publication/adoption of the latest RTS and the extension of the UCITS exemption, companies are now working on the implementation of these new obligations. Therefore, the priority for the industry is to have the most stable regulatory environment possible and to avoid, as much as possible, the extension of the PRIIPs' scope in the near future. Should PRIIPs be reviewed, Crédit Agricole would rather be in favour of excluding certain products from the scope of the regulation such as funeral products, OTC derivatives for hedging purposes and bonds issued by corporates (see Q20)

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.

Crédit Agricole Group believes that the scope of the PRIIPs regulation is sufficiently clear for investment products.

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?

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

We do agree and from that conclusion, for the sake of better legal certainty, bonds issued by corporate clients should be excluded from the scope of PRIIPs.

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

We consider that changing definitions in the PRIIPs regulation on the basis of such elements or criteria that are quite complex would lead to regulatory instability for the industry at a time when it is actively trying to implement the latest change to the regulation.

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?

As already explained before, Credit Agricole would be in favour of not reviewing the regulation, considering that many stakeholders have not yet implemented the regulation and for reasons of regulatory stability. However, should the regulation be reviewed, we believe that the notion of “made available to retail investors” could be clarified and, if possible, be aligned with MiFID concept. Moreover, the definition of “made available” varies significantly across EU jurisdictions especially when the product is available on the secondary market: some jurisdictions consider this does not constitute availability per se, and availability can be considered effective only once the product is indeed subscribed by at least one retail investor

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?

We consider that the development of a new tool (e.g. a PRIIPs taxonomy) that would classify the different types of PRIIPs is premature as the industry is still very much engaged in the implementation of the latest regulatory change and now needs time and regulatory stability to comply with all these new obligations. We also believe that such initiative could introduce new layers of complexity for both clients, advisors and producers. Finally, creating subcategories of products could also be in contradiction with the objective of comparability embedded in the regulation.

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?

It should be noted first that due to the current UCITS exemption, clients have mostly been exposed to UCITS KIIDs. In addition, the PRIIPs KID will change starting from January 2023. In this context, Credit Agricole believes that it is difficult to draw conclusions on the potential detrimental aspects of the KID standardisation.

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?

In addition to the need to let the regulation being implemented before modifying its content, we would like to point out that greater differentiation could have an impact on the principle of comparability embedded in the regulation.

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

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?

The PRIIPs KID will change starting from January 2023. In this context, Credit Agricole believes that it is very premature to suggest changes of its content. Manufacturers might sometimes need room to better explain some of the elements of the KID and should be allowed to do so, while complying with the requirements that ensure comparability between products.

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

The PRIIPs KID will change starting from January 2023. In this context, Credit Agricole believes that it is very premature to suggest changes of its content. For existing KIDs, and for the sake of legal and regulatory stability, it could be considered as sufficiently satisfactory.

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?

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, we consider that changes to the requirement in Article 8(3)(d)(iii) of the PRIIPs Regulation regarding information on potential future performance should not be a priority at a time when the industry is actively trying to implement the latest amendment to the Regulation. The industry is currently seeking regulatory stability and time to comply with its obligations as effectively as possible.

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.

We are not in favour of such initiative since, as we mentioned in our answer to the public consultation to the retail investment strategy for Europe, it would lead to the deletion of the article 10(b) option which offers to the consumer a very large number of investment options to choose from.

The consumer selects the underlying investment options and the amount to invest in each option. Therefore, there is an almost endless number of combinations of MOPs and underlying investment options in these insurance markets. This great diversity is possible thanks to the current Article 10(b) which enables the PRIIPs manufacturer to produce a generic KID combined with the document produced by the underlying investment option.

In our experience, the possibility to choose from a large number of underlying investment options is appreciated and requested by consumers. Removing the Article 10(b) option comes with the risk of insurance companies having to drastically reduce their number of underlying investment options which would lead to a less diversified market to the detriment of the consumer.

Providing a single, tailor-made KID would also require manufacturers and distributors to build completely new IT system that can generate KIDs for each combination of options. This IT system would have to be able to manage all distribution channels including advised and digital sales. This would be too complex and costly to implement and to maintain from a compliance point of view, especially for smaller companies.

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 are in favour of maintaining the current options 10 (a) and 10 (b). We do not want to make any changes as described, as it would be a material change without a clear benefit identified for the consumers.

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?

The creation of investment profiles could be a good idea if the rules were precise enough to determine the different profiles, without the risk for the producer of being criticized on his choice of profiles. Nevertheless, the danger is in the confusion between a profile and a recommendation. Indeed, the recommendation made and the consumer's choices would most of the time be different from the different profiles. In addition, if the regulations put in place investment profiles, it would only be acceptable if the information were given instead of any other document. Otherwise, it would be burdensome and the consumer would have too much information, which would lead to confusion.

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?

If all issues identified in the Q37 were fixed, it could be a way to simplify the information given to the consumers and a good way to compare the different MOPs.

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?

We believe it is still critical to reach a perfect alignment with MiFID II cost disclosures. Revised RTS is a good step forward and should allow for a better harmonisation between the PRIIPs regime of costs presentation and the MiFID's one (KID costs table achieves this objective showing both raw cost in EUR and impact on annual return in % terms).

However, for a better and stricter alignment with MiFID II, we consider that the methodology used to present costs in KIDs should be changed to a Total Expense Ratio (TER) approach, which then enables the addition of service costs. Indeed, the current PRIIPs KID methodology, which looks at the impact on yield (Reduction in Yield or RiY method) leads to inconsistencies in the figures disclosed to investors in KIDs and the required disclosures under MiFID II. Accordingly, we believe that the methodology of calculating product costs using the RiY method is overly complex for retail investors.

Lastly, it should be pointed out that the revised RTS raises very important issues for structured products and related autocallable products. Indeed, a specific costs presentation for autocallable products 1) contradicts the principle of comparability and non-annualisation of costs impact below 1 year and 2) leads to inconsistencies regarding MiFID II regime.

3.11 Other issues

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

We believe that KIDs should include information related to non-financial performance and ESG characteristics of the PRIIP, in a consistent way with MiFID II enhanced ESG requirements.

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