

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

AFPDB - Association Française des Produits d'investissement de Détail et de Bourse

* 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.

The AFPDB represents the issuers of structured investment products to retail customers in France. All of the products issued by the AFPDB's members are subject to the PRIIPs KID requirements. This represents over 1 million of product KIDs issued annually.

In the AFPDB view, the current PRIIPs RTS - as adopted in 2017 - operated rather well. The new RTS which should enter into force in July 2022, if not further delayed, will involve a substantial methodological and IT update with its related change management costs impacting both, manufacturers and distributors.

In light of the recent experience of EU rule making affecting PRIIPs, the AFPDB regrets the lack of thorough impact assessments, consumer testing (based on actual KID and not mere theoretical models) and effective industry experts' consultation prior to the adoption of such rules.

In the case of the last revised RTS for structured products, the AFPDB deeply regrets that industry feedback was not duly taken into consideration.

As a consequence, the proposed approach for Performance scenarios for autocallables and category 2 KID remains a cause for concern for consumers and manufacturers.

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 its market statistics and annual performance reviews the AFPDB regularly cooperates with SRP.

SRP: <https://www.structuredretailproducts.com/reports>

AFPDB: <https://afpdb.org/conference-srp-sur-les-performances-2019-2020-produits-structures-france/>

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?

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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?

The AFPDB considers that the KID and the marketing material serve different purpose. The main regulatory objective of a KID is to permit product comparability.

The purpose of marketing materials is to provide detailed information on the product which may not be covered in a KID. This is notably included the product pros and cons:

- the additional simulations,
- the indexed underlying information,
- and other practical information such as the subscription information and the tax regime.

This is also worth noting that this marketing documentation are generally submitted to a very prescribed set of rules enforced by the NCAs.

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?

In the view of the AFPDB the kids and the marketing material serve different information purposes.

As set out by the PRIIPs regulation, the kids' content is strictly prescribed and the room for discretion is consequently extremely limited.

The level of standardisation contributes to the comparability among products.

While the comparison among very distinct asset classes may remain the challenge, the introduction of the KID has certainly improved the comparability of products with the same pay-off.

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?

Currently, the comprehension alerts tend to be used very extensively.

In our view the excessive use of this alert stems from an improper reference to the complexity under MIFID.

The alert was originally only meant to determine whether products were eligible to a distribution in an execution only mode.

This excessively crude approach of the product complexity is that not easily translated into a satisfactory product tiring according to the actual intelligibility.

As an example an hybrid UCITS fund with a master-feeder structure and different classes of shares may be sometimes more complex to understand than an index-based certificate.

In light of the above, the AFPDB is of the view that the comprehension alert is no longer pertinent and should be abolished all together, because the SRI and the product description section serve the same purpose.

If the comprehension alert is kept, it would make sense to keep it applied to at least the same perimeter of product, and potentially extend its application to some linear products.

Furthermore, three observations may be made:

(i) Complexity remains a relative and subjective notion, which is evolutive and difficult to measure precisely. In France, the French AMF has applied a rating system that counts the specific product features (“mechanisms”) and sets out a complexity model (based on four criteria among which the maximum of three mechanisms) defining what is suitable for distribution to retail investors. This regime is periodically updated to account for product evolution;

(ii) Complexity is distinct from intelligibility. A product may encompass a certain level of complexity (e.g. rulebooks of the main equity indices generally comprise dozens of pages, including rules for inclusion within the index and weighting, but also the treatment of exceptional situations such as trading suspensions for the underlying assets) without hampering the overall understanding of investors of their use and their outcomes in key scenarios;

(iii) Complexity may be positive and useful to investors. This is notably the case when it involves protective features such as a capital protection or a risk reduction mechanism. It is also the case in sustainable finance when it involves filters allowing investors to screen the desired underlying assets with conditions linked to their ESG rating.

Finally complexity shall not be correlated with the risks of a product. A product may be complex but not risky from an investor standpoint depending on its features, these are two different concepts.

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?

Feedback from our members tends to indicate that the comprehension alerts are systematically applied to those structured investment solutions (structured notes) and exchange traded securitized securities (e.g warrants, turbos...). It represents more than 3,000 structured products and 600,000 exchange traded products issued each year on the French market. For insurance products, the same generalisation of the comprehension alert has to be observed.

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

We observe when investors have difficulty to understand a product they tend to rely on their advisor. The comprehension alert does not change this situation. As a rule retail clients prioritize information on performance scenarios, costs and risks (SRI), and in a certain case the issuer credit rating.

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

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

Feedback from financial advisors tends to indicate that the comprehension is a very marginal value for advisors. Their product review is essentially based on the MIFIDII sustainability requirements.

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.

Costs must be broken down into:

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

- Legal analysis,
- Participation in the industry standardisation work on technical specifications, notably through fora such as

EUSIPA, Findatex, EFAMA, Insurance Europe,

- IT developments, both internally (including tests with Front offices) and externally (sub-contractors and data vendors,
- Translations,
- Update of issuer websites,
- Investment in centralized industry solutions/repositories for publishing the document, and the meta-data feed (e.g. in RegXchange in a European level or ETP Data systems to address specific needs expressed by French distributors),
- Compliance teams and/or external providers for monitoring quality of KIDs,
- Change management and training (internal staff, distributors...).

B/ Running costs (incurred as long as the regime is in place):

- Operations team to maintain the production tools,
- Potentially cost charged by external providers (on a per KID basis),
- Client support team to answer questions from investors,
- Front office and legal teams required to follow RTS changes and reply to consultations,

It must be observed that the above costs may be significantly increased for manufacturers and distributors operating in several European markets as they must adapt their systems to the various additional local requirements issued by NCAs.

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.

The AFPDB does not collect this information from its members.

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?

It is difficult for the AFPDB to assess such a proportion as most issuers have tended not to reflect those costs in the product prices. Such costs were often treated as regulatory overheads that were not passed on to retail clients. However the viability of this approach could be put in question should the frequency of regulatory changes increase excessively.

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?

Generally the AFPDB has observed a rather harmonious implementation of the PRIIPs Regulation by the industry.

It is important however to note that the implementation of PRIIPs has required a considerable work of the industry to organise and standardise the flow of product information between manufacturers and distributors.

This work sometimes also extended to the harmonisation of some unclear provisions of RTS through the drafting of industry associations' recommendations or templates.

This work was notably carried out by industry associations and fora such as, respectively, EUSIPA, DDV,

AMAFI, AFPDB, and FinDatEx (www.findatex.eu).

In contrast to this harmonisation efforts deployed by the industry, several NCAs have adopted diverging interpretations leading to practical inconsistencies.

A non-exhaustive lists of national PRIIPs requirements includes for example:

- (i) the Belgian FSMA requires manufacturers from other Member States to draft KIDs data specifically adopted for the distribution in Belgium (see 2021.06.17 - Communication FSMA_2021_13: “Feedback Statement containing the conclusions of a qualitative examination of PRIIPs KID, p. 3-4),
- (ii) the Spanish CNMV applies a specific methodology for autocallable products,
- (iii) the German BaFIN requires weblinks to be included in the KID itself,
- (iv) the Italian CONSOB requires the transmission of the KID underlying data through an API.

Other examples of mandatory KID filling with the local supervisory authorities, prior to the distribution of the relevant jurisdiction, include Croatia, Finland, Portugal.

These additional national requirements represent strong obstacles to cross-border commercialisation.

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?

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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?

The feedback we received from distributors did not point to any challenge to receive the KID in their preferred media. The online transmission tends to be the preferred channel for communication with the exception of some product recommendations and/or sales that are still made physically within local branches or by financial advisors.

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

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

The AFPDB manufacturers note a preference for online communication which has the benefit of showing an up-to-date KID for products made available on markets (e.g. exchange traded products).

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

No, the current regulation is sufficiently clear on this aspect.

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. The AFPDB does not support a layering of the KID information to be presented via pop ups or via multiple link accompanying layers.

Such an approach would be problematic as it does not allow the key product information to be read as a whole. It runs the risk of having investors compare products based on partial information.

It also could generate very disharmonious situations where different manufacturers and distributors would highlight different product features and/or risks for the same product classes.

Finally it would also pose considerable technical challenges for the audit trail of such communication.

The choice of a paper or electronic format should be left to the manufacturer, together with the distributor, depending on what is most suitable for the chosen 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. In the AFPDB view, the scope of PRIIPs should be strictly limited to “packaged” products, as originally intended.

We would therefore argue for a reduction of scope - by way of a clarification of the applicable defining criteria - rather than for an extension (see also reply to question 22).

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?

The AFPDB notes that while some areas such as OTC hedging derivatives - mainly involving corporate and highly experienced investors - could be usefully taken out the scope of PRIIPs, others such as crypto-assets remain largely unregulated and their related risks often poorly understood by retail investors.

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.

The AFPDB would support an exemption of the following products :

- all floating-rate notes or (non structured) deposits,
- all plain vanilla fixed coupon subordinated bonds,
- all plain vanilla bonds with a make-whole clause,
- all OTC hedging derivatives (e.g. with corporate retail clients),
- all forex forwards excluding crypto currencies.

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?

The growth of unregulated cryptocurrency platform, raises the question of whether an account referencing a crypto currency is a PRIIPs or not, to the extent the account referencing a value can be seen a packaging the access to a cryptocurrency which supply and demand and money creation “mining” is generally misunderstood by retail investors.

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

The AFPDB agrees with the statement.

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

No. The AFPDB is not supportive of adding criteria to define the scope of PRIIPs such as maturity of the product , or decumulation objective.

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?

The AFPDB would welcome this aspect to be clarified by regulatory guidance. Ultimately the concept could be based on these principles:

- (i) products which are not actively marketed by a distributor after their subscription period should be deemed “not made available”;
- (ii) products with a minimum investment of EUR 100,000 (denomination or min subscription) which are therefore outside the scope of Prospectus Regulation 3, and targeting less than 150 high net worth individuals rather than basic retail , should be deemed not “made widely available” and should be exempted of the KID. This is supported by empirical evidence that the KID is not useful for investment decisions taken by HNWI with a sufficient degree of understanding of the products. This would also bring consistency with the existing exemption of KID for product bought by discretionary portfolio managers classified as Professional Client under MIFID.

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. The AFPDB does not recommend the development of a taxonomy of the “type of PRIIP”. Due to the fast evolving features typology, taxonomy standardization would be best addressed by industry initiatives.

Also, from a retail investor perspective, a prescribed PRIIPS product taxonomy would have limited value. It should remain the manufacturer's 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. The AFPDB does not believe that the current standardisation negatively affects the understanding and their comparison.

The current PRIIPs KID do contribute a reasonable level of product comparability. Therefore we prefer to keep the overall KID architecture (sections, risk indicator, performance scenario and costs table).

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?

As expressed in our reply to Q28, the AFPDB supports standardisation especially for the quantitative aspect of the KID (risk indicator, performance scenario and cost table).

We acknowledge however that some flexibility could be usefully introduced in the narrative of the various sections of the KID.

We will nevertheless keep unchanged the sections of the KID themselves (i.e. no change to the number, format or order).

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. The AFPDB considers that the article 8 provides the necessary clarity.

In light of the upcoming amended RTS (RTS V2) implementation, we believe that regulatory stability is required at this stage.

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

As expressed earlier the AFPDB favors stability in the KID structure and presentation. We do not believe that layout changes would fundamentally change the intelligibility of the KID sections by retail investors.

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?

For the structured product industry which the AFPDB represents, it is important to note that a significant share of those products does not allow the computation of past performance.

More generally, product performance's communication based on past information runs the risk of prompting biased perception and decision by retail investors.

Concerning MOPs and their related KID, the current approach should be maintained. This consists of :

- a reminder that the product return depends on the chosen underlying investment option,
- a mention of where to consult the relevant information on the performance of the underlings.

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. The AFPDB recommends to keep the Article 8 (3) (d) iii unchanged in Level1 , and rather address details of the assumptions to be made for performance scenarios in a later Level2 review.

We are strongly supportive of keeping forward-looking probabilistic performance scenarios for structured products, as the consumer testing carried by the EU Commission has shown their superiority over other types of scenarios as far as retail investor understanding of SPs is concerned.

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.

The AFPDB is not supportive of the suggestion to issue a full individual KID for each investment and/or underlying options.

We recommend to keep relying on a generic KID at the insurance contract level with the proper information including, notably, a clear disclosure between the cost of the MOP contract itself and the cost of the different 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?

The AFPDB preference goes to the second option.

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 AFPDB has some reservations regarding a generic communication that would rely on the most common selected options. The actual determination of what precisely constitutes this most common selection could leave much room for discussion.

Furthermore retail investors could be misled in their actual choice should diverge significantly from this common reference.

We therefore prefer the suggestion of generic allocation examples as an illustration of the concept functioning.

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?

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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?

The AFPDB favors an alignment of cost information between PRIIPs and MIFID 2. The amended PRIIPs RTS permit such alignment with the exception of the Cost Table 2. The presentation of exit costs of structured products with a recommended holding period of 1 year or less is misleading.

3.11 Other issues

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

No further points.
While we support maintaining the overall framework unchanged, we would nevertheless suggest the following amendments:

- or category 2 products eliminate discretion and new calculation rules and use adapted calculation method relying on bootstrap growth rate for categories 1 to 3 ;
- modify autocall presentation requirements to the previous market standard.

Contact

timothy.walters@eiopa.europa.eu