

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

Fédération bancaire française (French banking federation)

* 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 French Banking Federation (FBF) welcomes the opportunity to express its views on the PRIIPs regulation.

Formalized communication with customers is indeed an essential issue for their good understanding of the financial products in which they invest.

The KID PRIIPs, the result of numerous exchanges with all stakeholders, meets this objective on all the dimensions necessary for the informed choice of customers: risks, performance, fees, underlying assets, etc.

This result, acquired at the cost of heavy human and IT investments for both producers and distributors to be implemented, must now be amortized thanks to regulatory stability.

This survey, which can be interpreted as a prerequisite for new initiatives on the documentary formalism of investment products, can legitimately be a source of concern for professionals, while the implementation of PRIIPs has not yet fully entered into force for certain categories of products and actors and still requires consistency between the different regulations, in particular with MIFiD II on the presentation of fees.

On the French market, it is important to remember that the PRIIPs format is the 4th format of regulatory documentation in less than 20 years (Information Notice, Full Prospectus, KIID, KID PRIIPs) for UCIs. The hypothesis that a 5th documentary format could be considered by some actors appears to be clearly excessive, a fortiori because a regulatory document will not change by its vocabulary or graphics alone the

behavior of investors in terms of understanding the risk potential or performance of an investment.

In addition, it is important to remember that the regulatory landscape of financial products, which has been very lively over the last decade, will continue to evolve significantly over the next few years with the consideration of sustainable requirements in the products, reporting and advice provided to clients. The successful consideration of these sustainable criteria in the supply of financial investments will require a realistic implementation schedule and the mobilization of all the actors concerned by these subjects within institutions, a mobilization that could suffer from a dispersion on multiple projects such as regulatory documentation while this subject seems to us today largely accomplished (except for some coherence issues raised above).

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?

Producers of financial products should be able to provide these information.

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?

The KID PRIIPs is an integral part of the distributors' advisory process since it is mandatory given to customers before any subscription of a financial product.

The information contained in the KID is included in the information systems of bank distributors to serve as a basis, among other criteria, for the selection of investment products whether for sale with advice or for sale without advice, regardless of the marketing channel.

Among these criteria, the synthetic risk indicator is, for example, a useful tool for distinguishing products from each other.

French banking institutions therefore consider that the KID PRIIPs is a useful document for building a homogeneous basis for comparison between financial products, based on quantitative or editorial data that can be directly exploited in their commercial relations.

The generic and homogeneous basis of the KID PRIIPs should be retained.

However, as part of their responsibility as a distributor of financial products, in particular with regard to the product governance requirements provided for by MiFID II, French banking institutions may use more technical information, specific in particular to financial management, to analyse the positioning of a product. For example, they can take into account more specific statistical elements than the synthetic risk indicator, even if the latter remains a good tool for categorizing products among themselves. These additional analysis criteria are specific to each establishment, and contribute to the specificity of each in the competitive offer of products it offers.

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?

Nothing prevents the use of the KID PRIIPs, the essential information is contained in terms of risk profile and return, fees, nature of the investments made, etc ...

In accordance with Article 1 of the PRIIPs Regulation, the KID PRIIPs is primarily intended for retail investors and not for advisors: "[...] the provision of the key information document to retail investors in order to enable retail investors to understand and compare the key features and risks of the PRIIP".

While the KID PRIIPs is a legitimate basis for information for distributors and financial advisors, it is not intended for them.

The additional information they otherwise use to analyse investment vehicles should not be interpreted as missing from the KID PRIIPs as it is often not adequate for non-professional investors.

It would therefore seem inappropriate to want to supplement the KID PRIIPs with information intended for a different target.

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?

(question for customers)

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?

First of all, it seems necessary to us to recall that the marketing approach, of which communication and commercial documents are one of the components, are intended to distinguish between the offers of distributors.

It is therefore legitimate and logical that distributors always keep commercial documentation by which they seek to enrich the regulatory presentation which constitutes a standard for all actors at European level.

With this in mind, marketing materials for the presentation of investment products are intended to be complementary to, and not to replace, regulatory documentation.

The marketing materials are complementary and likely to promote understanding of the customer. They are an adequate support to clarify the technical specificities of a product in a more accessible language.

They make it possible to adapt the presentation of a product according to its specificities by presenting their content, in addition to essential information from the KID PRIIPs in terms of risk profile and costs, for example:

- Graphical illustration of performance scenarios suitable for placement
- A graphical illustration of the underlying selection method
- A focus on a representative example of an investment
- A narrative around the investment strategy
- Economic data adapted to the investment medium
- A clarification on the tax system of 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?

French banking institutions do not have any data to communicate on the impact of this alert on customers.

It is important to remember that distributors have set up, in accordance with MiFID II and IDD, advisory courses for investors in order to select with them the products adapted to a whole series of criteria and, in particular, to their knowledge and skills in terms of financial investments.

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?

Producers of financial products should be able to provide these information.

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

This mention seems to us quite relevant and adapted in its formulation to attract the attention of customers.

Therefore, it should be kept in its current format.

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

(question for customers)

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

(question for customers)

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.

The implementation of the PRIIPs regulation required the mobilization of a large part of the management usually made up of banking groups, in conjunction with their asset management, securities and insurance subsidiaries:

- Legal department for the analysis of texts and the exegesis of obligations + the drafting of the KID

- Compliance Department for Validation
- Fund managers where appropriate to describe management processes
- Marketing department for the identification of the operational impacts of these new documents
- Sales department for marketing and the evolution of commercial processes
- IT department and projects to take charge of the operational impacts of these new documents and to develop tools to support the production and dissemination of them
- HRD and management for the appropriation and training of the teams concerned
- Sales teams in agency or remotely at each appointment to comply with the formal requirements induced by the PRIIPS regulation
- Etc...

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.

According to one estimate, taking into account the costs of implementation and then monitoring, over the period from 2016 to 2021, each KID PRIIPS accumulated an average cost of more than 900 euros.

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?

#N/A

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?

As regards the French market, the PRIIPs Regulation has been implemented by all players in the distribution of investment products subject to the PRIIPs Regulation.

Banking institutions do not have an analysis allowing them to express themselves on the good implementation in other markets.

In our view, this is a regulation which, in the hierarchy of European standards, must apply in the same way throughout the Union.

Moreover, we are not aware of any specific complaints or comments from consumer associations or national supervisory authorities on this subject.

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?

Within French banking institutions, the main channel for subscribing to financial investments remains the subscription in agency on advice.

This method of subscription represents about 90% of the volume of orders and investments.

According to a study conducted by the French Banking Federation in February 2021, "the use (of the website or the application of their banking institution) for investments remains overall still at a very low level (about 10% for monitoring the evolution of their investments)

In declaration, regarding the subscription of financial products, the retail network branches remain privileged by retail clients in France (45% per a survey in June 2021 by "Banque/Cap Gemini invent") because a lot of them still need comfort of speaking to their relationship manager/ advisor and they find it in branches.

However the interest and use of digital media is accelerating and was fast forwarded by the pandemic (from 21% beginning 2020 to 26% in June 2021 per "In Banque/ Cap Gemini invent" survey).

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?

Regarding the delivery of the KID PRIIPs, it was until recently mainly made in paper format. The entry into force of the MiFID II Quick Fix announced since June 2021 provides that the default regime for the delivery of all the documents necessary for the subscription of a product will now be in electronic format, but that the possibility must systematically be offered to the customer to receive these documents in paper format. The impact on consumer behaviour of this development cannot yet be assessed.

However, the format of the KID PRIIPs appears to be adapted to the different communication channels, and French banking institutions are not aware of any complaints related to this issue. In short, it is perfectly adapted to digital tools and can easily be integrated into online business journeys.

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

(Question for savers)

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

(Question for savers)

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

The standard format of the KID PRIIPs does not present any difficulty to be communicated electronically. The various headings are indeed adapted to a presentation in electronic format.

Therefore, it is not appropriate to consider a different format for the regulatory documentation of financial products depending on the distribution channel.

Such an eventuality would have a disproportionate implementation cost for a low marginal impact since the current document is quite suitable for all channels.

Overall, the KID PRIIPs is a relevant document, to be kept in its current form and background, because it represents a good compromise between the need for good consumer information and ease of access, on a subject with very technical aspects.

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?

As mentioned in the previous question, the current format of the KID PRIIPs is perfectly suited to all distribution channels.

French banking institutions are committed to maintaining the consistency of the current document, which leaves no ambiguity about its drafting methods.

Any initiative to regulate the KID PRIIPs or to set up more or less detailed drafting levels will necessarily lead to questions of interpretation that will obviously harm the integrity and homogeneity of the document according to the actors, products and markets.

Therefore, it does not seem appropriate to duplicate to all financial products the room for maneuver offered by Regulation 2019/1238 for the PEPP.

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.

The scope of the PRIIPS Regulation should not be extended.
The scope currently defined meets the challenges of communication and transparency on packaged

products for retail investors. It is not appropriate to wish to extend it to products which do not fall within this objective.

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?

French banking institutions have no suggestions to make to extend the scope of PRIIPS to products that would be absent from it.

However, they are vigilant that the same product is not subject to different regulatory documentation depending on the plan or tax system in which it is subscribed.

In addition, a clarification must be made on bond securities, a subject that we develop in question 24.

Regulatory stability should be prioritised over the PRIIPS regulation.

Its implementation has not yet been completed and an important development will take place with the entry into the scope of UCITS. All the actors who contributed to its definition and/or its entry into application must therefore first capitalize on the efforts made and then rely on a sustainable in situ analysis to gauge the characteristics of the regulation to be amended.

The hindsight needed to finalize this analysis is not at all sufficient today.

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 current method of explicit exclusion of certain products seems to us to be the most effective in its implementation.

It is therefore not necessary to specify exclusion criteria that will often be subject to interpretation, but rather to continue to include legal categories of products that are in principle excluded from the scope of PRIIPS.

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?

Regulatory stability should be prioritised over the PRIIPS regulation.

Its implementation has not yet been completed and an important development will take place with the entry into the scope of UCITS. All the actors who contributed to its definition and/or its entry into application must therefore first capitalise on the efforts made and then rely on a sustainable in situ analysis to gauge the characteristics of the regulation to be amended.

The hindsight needed to finalize this analysis is not at all sufficient today.

The scope of application is now defined by an exclusion method that consists in referencing products that do not have to produce KID PRIIPS.

This method must be maintained and supplemented, as it is more operational in its implementation than a positive definition that would seek to determine precise criteria applied to a set of products, some of which would necessarily be at the border, which would generate questions of interpretation.

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

Yes, this method of exclusion by principle of categories of products from the scope of application PRIIPS seems to us the most relevant.

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 do not think this initiative is appropriate.

Regulatory stability should be prioritised over the PRIIPS regulation.

Its implementation has not yet been completed and all the actors who contributed to its definition and/or entry into application must first capitalise on the efforts made and then rely on a sustainable in situ analysis to gauge the characteristics of the regulation to be amended.

The hindsight needed to finalize this analysis is not at all sufficient today.

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?

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

(i) structured products/ closed funds which are not actively marketed by a distributor after their subscription period should be deemed "not made available".

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

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

The scope of application is now defined by an exclusion method that consists in referencing products that do not have to produce KID PRIIPS.

This method must be maintained and supplemented, as it is more operational in its implementation than a positive definition that would seek to determine precise criteria applied to a set of products, some of which would necessarily be at the border, which would generate questions of interpretation.

In addition, this method is risky because it will apply characteristics subject to a hazard given the financial innovation that will make it regularly obsolete and therefore to be adapted.

This method could be very expensive to implement, without necessarily added value for customers and in a period when resources must be concentrated primarily on the implementation of Sustainability regulations.

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?

The KID PRIIPS has made it possible to find a good balance between standardization and customization on the one hand, and completeness and lightness on the other.

The appropriation of the document by the distribution teams is good and no negative reports in relation to its use have been expressed, unlike other documents, especially national ones, which have been the subject of reproaches.

The operation with this communication format is good, it must be maintained.

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?

French banking institutions support the consistency of the KID PRIIPS, which must remain homogeneous throughout the EU to promote understanding among customers and so that they are not misled according to the legal form of a product and the State in which it would be marketed.

Differentiation may be possible if it is relevant to the functioning of the product and its asset class, and if the format of the KID PRIIPS is inappropriate to the characteristics of the product.

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

The four existing categories in the PRIIPs Regulation seem to us to be sufficient.

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 KID PRIIPs, the result of numerous exchanges with all stakeholders, meets this objective on all the dimensions necessary for the informed choice of customers: risks, performance, fees, underlying, etc.

For example, French banking institutions also welcome the consideration of several requests in the context of the RTS published in September 2021.

This hard-won result must now be amortized through regulatory stability.

It is important to remember that the drafting of PRIIPS relies heavily on information systems. Therefore, any amendment, even a minor one, to the PRIIPS Regulation involves costly developments that must be considered to justify new initiatives in the coming years.

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

Considering a change in the structure, format or presentation of the KID is now unacceptable for French banking institutions.

Indeed, for the sake of process optimization, all the production of KID PRIIPS has been industrialized. This mode of operation is mandatory for many players, who on certain product categories will automatically generate several hundred thousand ISINs per year.

Therefore, any possibility of initiating a modification of the PRIIPS documents, even though these documents today give satisfaction, both to advisors and customers (no customer complaints on this subject), that they have yet to be optimized, without us having the hindsight to analyze the results of this optimization, arouses today very strong reluctance.

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?

The systematic indication of past performance is not suitable for all PRIIP's products (e.g. structured products and insurance contracts); and should remain specific to the products concerned, mainly funds with a track record of 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?

This issue is addressed in the RTS published in September 2021, so professionals must first apply and note the operational and commercial reality of the mode of operation before having an opinion on the need for a new version.

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.

According to our interpretation, investment options, understood in particular for the underlying assets that are investment support for life insurance contracts, must already have KID PRIIPS, and this is in any case the application that producers, insurers and distributors make of it on the French market.

An evolution of the PRIIPS Regulation on this point is therefore not necessary.

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?

French banking institutions are reserved with regard to the opportunity to split the information into different documents, in particular because it is in contradiction with a regular request from customers to have in a single document all the information necessary to understand their product.
Considering splitting essential information between different documents is likely to fuel a future debate on the need to bring it together...

We therefore consider that among the two solutions proposed that of an autonomous and complete document should be retained, provided that the idea of a single tariff figure is discarded, which is simply not feasible given the functioning of the products and will trigger endless debates because no solution exists to harmonize fees with frequencies, different conditions, calculations and methods of deductions.

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?

First of all, the definition of standard allowances does not seem to us to be the responsibility of the producer (legally responsible for the KID).

In addition, the production of KID PRIIPS specific to investor profiles also appears unnecessary and counterproductive:

- This is unnecessary because the existence of KIDs specific to each investment medium makes it possible to present to clients the characteristics of investment vehicles eligible for the counterproductive insurance contract because the standard allocations would risk influencing clients and distributors in investment allocations that would not necessarily meet the needs/objectives of the clients concerned.

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?

The KID PRIIPs, the result of numerous exchanges with all stakeholders, meets this objective on all the dimensions necessary for the informed choice of customers: risks, performance, fees, underlying, etc.

For example, French banking institutions also welcome the consideration of several requests in the context of the RTS published in September 2021.

This hard-won result must now be amortized through regulatory stability.

It is important to remember that the drafting of PRIIPS relies heavily on information systems. Therefore, any modification, even minor, of the PRIIPS regulation implies costly developments that must be considered to justify new initiatives in the coming years, even though the PRIIPs documents today give satisfaction, both to advisors and clients. Substantial changes would therefore appear to be unproportional.

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 path towards convergence and coherence has already largely begun with regard to MiFID regulations, particularly with regard to the presentation of fees.

As such, it is therefore not necessary to undertake new work on the theme of costs.

It is also, and above all, necessary to recall that as distributors, French banking institutions do not see any particular demand from customers related to the misunderstanding of the costs of products subject to PRIIPS regulations.

However, the purpose of the PRIIPS regulation is first and foremost to be at the service of individual

customers, a vocation that seems to be fulfilled since they do not manifest complaints on this subject.

However, FBF considers that the methodology used to present costs in the PRIIPs KID should be changed to a Total Expense Ratio (TER) approach, which then enables the addition of services costs.

Indeed, the current PRIIPs KID methodology, which looks at the impact on yield (Reduction in Yield or RiY method) leads to inconsistencies, toughly understandable for retail investors, in the figures disclosed to investors in PRIIPs 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.

The notion of "cumulative effect on yield" used in the PRIIPs KID is difficult for investors to understand. This method does not make it possible to communicate consistent figures between those of the KID PRIIPs and those due under MiFID II, in particular the reduction in yield vs the total costs on investment.

However, we consider that the RTS (Delegated Regulation (EU) 2017/653) as amended will allow better harmonisation between the PRIIPs regime of costs presentation and the MiFID's one and thus will make it simpler and more understandable for retail investors.

3.11 Other issues

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

The French Banking Federation (FBF) welcomes the opportunity to express its views on the PRIIPs regulation.

Formalized communication with customers is indeed an essential issue for their good understanding of the financial products in which they invest.

The KID PRIIPs, the result of numerous exchanges with all stakeholders, meets this objective on all the dimensions necessary for the informed choice of customers: risks, performance, fees, underlying, etc.

This hard-won result must now be amortized through regulatory stability.

This survey, which can be interpreted as a prerequisite for new initiatives on the documentary formalism of investment products, can legitimately be a source of concern for professionals, while the implementation of PRIIPs has not yet fully entered into force for certain categories of products and actors.

On the French market, it is important to remember that the PRIIPs format is the 4th format of regulatory documentation in less than 20 years (Information Notice, Full Prospectus, DICI, DIC PRIIPs) for UCIs. The hypothesis that a 5th documentary format can be considered by some actors appears to be clearly excessive, a fortiori because a regulatory document will not change by its vocabulary or graphics alone the behavior of investors in terms of understanding the risk potential or performance of an investment.

In addition, it is important to remember that the regulatory landscape of financial products, which has been very lively over the past decade, will continue to evolve significantly in the coming years with the consideration of sustainable requirements in products, reporting and investment advice.

The successful consideration of these sustainable criteria in the supply of financial investments will require a realistic implementation schedule and the mobilization of all the actors concerned by these subjects within

institutions, a mobilization that could suffer from a dispersion on multiple projects such as regulatory documentation while this subject seems to us today largely complete.

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