

## RIS-PRIIPS

### OBSERVATIONS SUR LES DOCUMENTS COMMUNIQUÉS PAR LA PRÉSIDENTE ESPAGNOLE LORS DU *WORKING PARTY* DE SEPTEMBRE 2023

Dans le cadre des discussions en cours sur la *Retail investment strategy* (RIS), les participants à la réunion du *Working Party on Financial Services and the Banking Union*<sup>1</sup> (*Retail Investment*) des 4 et 5 septembre 2023 se sont vu remettre par la présidence espagnole de l'Union européenne deux notes relatives à la révision de PRIIPs :

- une note par laquelle la présidence espagnole synthétisait les commentaires écrits adressés par les différents États membres et interrogeait l'ensemble des États sur leurs positions (annexe 1) et
- une note rédigée par les représentants allemands proposant la mise en place d'un indicateur synthétique de la durabilité des PRIIPs qui serait utilisé pour décrire, dans le KID, les caractéristiques ESG de ces PRIIPs (annexe 2).

La présente note a vocation à répondre à la demande formulée par les représentants de la DGT lors d'un échange intervenu le 7 septembre 2023 avec l'AMAFI, de réagir aux propositions énoncées dans ces papiers.

Elle comporte également en annexe 3 les amendements rédigés en collaboration avec la FBF, sur le règlement PRIIPs, et qui ont été transmis le 17/10/23 aux différentes parties prenantes.

## COMMENTAIRES GÉNÉRAUX

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D'une façon générale, l'AMAFI n'est pas favorable à une modification en profondeur de PRIIPs : ce texte est l'un des plus lourds à implémenter compte tenu des nombreux développements informatiques que nécessite son déploiement. Depuis sa première adoption en 2018, il a connu des évolutions constantes qui ont nécessité autant d'aménagements significatifs des systèmes d'information de nos adhérents, le dernier en date étant l'adoption en juillet 2022 de la version 2 des RTS.

Désormais, les difficultés qu'avait rencontrées l'industrie du fait d'une insuffisante prise en compte des différences fondamentales entre catégories de produits se sont aplanies.

Aussi, même si l'AMAFI reconnaît que certains aménagements sont nécessaires (comme l'ajout d'une rubrique sur les caractéristiques de durabilité), elle est partisane de modifications à minima d'un texte qui, depuis l'adoption de la V2 des textes de niveau 2, s'avère plutôt adapté. Ainsi, pour les produits structurés notamment, le KID fonctionne bien et il est compris des investisseurs, comme en témoigne le nombre de réclamations des clients de détail sur les KID, qui reste extrêmement faible.

S'agissant de la volonté affichée d'aller vers une personnalisation croissante de l'information fournie au client, bien que les modifications présentées puissent être intéressantes du point de vue des clients, ce potentiel devrait être déterminé par une analyse coûts-avantages approfondie et vérifié par des tests

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<sup>1</sup> Il s'agit de l'un des groupes préparatoires aux travaux du Conseil.

consommateurs. Cet intérêt, qui n'est que potentiel et dont l'ampleur n'est pas connue, doit être mis en balance avec les coûts que de tels changements engendreraient pour les producteurs et les distributeurs d'instruments financiers. La question doit être posée des barrières à l'entrée que de telles mesures pourraient créer et, plus généralement, de leur utilité générale pour les marchés européens en termes de vitalité de leurs acteurs et de diversité de l'offre disponible pour les investisseurs. N'est-ce pas le rôle de la concurrence plutôt que de la régulation d'amener certains acteurs à s'emparer des outils numériques pour se démarquer de leurs concurrents ? Est-il nécessaire, dans l'intérêt des investisseurs, d'imposer à chacun un niveau de service dont il n'est pas prouvé qu'il est utile pour le client ? En tout état de cause, si ces mesures étaient adoptées, elles constitueraient un changement radical de philosophie du KID PRIIPs, initialement conçu pour être un document générique, extrêmement normé dans sa forme et son contenu, de façon à assurer un maximum de comparabilité entre produits.

Enfin, l'AMAFI est fortement opposée à l'introduction, dans PRIIPs, d'indicateurs destinés à refléter la durabilité des produits qui seraient propres à PRIIPs. Les concepts utilisés dans l'ensemble des textes sur la finance durable sont d'ores et déjà extrêmement complexes et nombreux de sorte qu'il paraît totalement contreproductif d'en introduire de nouveaux.

## I. COMMENTAIRES SUR LA NOTE DE LA PRÉSIDENTE ESPAGNOLE

Les commentaires formulés ci-après sont présentés selon le plan de la note de la présidente espagnole figurant en annexe 1.

### **Champ d'application**

Le champ d'application de PRIIPs est actuellement défini de telle sorte qu'il peut être considéré comme englobant tous les types d'obligations.

L'exemption nouvellement introduite pour les obligations avec clause de make-whole, bien que constituant une avancée très positive, est loin d'englober toutes les obligations ordinaires (c'est-à-dire autres que les obligations structurées) alors même que l'application de PRIIPs à ces instruments financiers n'est pas pertinente et constitue un obstacle à leur distribution ([voir lettre à la CE et à l'ESMA adressée par plusieurs associations européennes - AMAFI / 23-69](#)), ce qui va à l'encontre des objectifs de la CMU.

La conséquence en est que, pour que leurs titres ne tombent pas dans le champ d'application de PRIIPs, les émetteurs d'obligations ordinaires choisissent d'exclure les investisseurs de détail de la distribution de ces instruments financiers, par le biais d'une clause de restriction de vente et/ou de transfert dans le prospectus, alors que dans de nombreux cas cette exclusion n'est pas justifiée par des caractéristiques particulières de l'instrument financier. Les distributeurs qui souhaitent vendre ces produits à des clients de détail sont donc confrontés à des risques et à des charges administratives supplémentaires, induits par le fait d'étendre le marché cible positif aux clients de détail.

De plus, comme ces instruments financiers peuvent être qualifiés de PRIIPs même s'ils sont ordinaires, l'absence de KID est un obstacle supplémentaire à la distribution aux clients de détail. Par conséquent, ces obligations ne sont généralement pas disponibles pour les investisseurs de détail, ce qui restreint l'accès des particuliers au marché obligataire.

Pour ces raisons, toutes les obligations ordinaires devraient être exclues du champ d'application du règlement PRIIPs<sup>2</sup>.

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<sup>2</sup> Y compris lorsqu'elles sont émises par des entités financières (le projet de rapport de la rapporteur du paquet RIS propose d'exclure du champ de PRIIPs les obligations émises par les seules entités non financière)

### ✚ Intelligibilité vs comparabilité

L'AMAFI ne voit pas d'utilité à afficher la prééminence du principe du caractère compréhensible des informations sur leur comparabilité dans un contexte où les difficultés qu'avait rencontrées l'industrie du fait d'une insuffisante prise en compte des différences fondamentales entre catégories de produits se sont aplanies au fil des clarifications apportées depuis (notamment via les RTS V2 de PRIIPs).

À l'inverse, l'Association ne voit pas de difficulté à ce que ce principe du caractère compréhensible des informations soit affirmé au niveau 1, notamment dans la mesure où cela pourrait permettre de sécuriser l'adoption d'approches différentes pour des catégories de produits ayant des caractéristiques différentes.

### ✚ La mise à jour des KIDs

La Commission a déjà clarifié, dans un FAQ, que l'exigence de réexamen ne devrait pas s'appliquer aux PRIIPs qui ne sont plus commercialisés, ainsi que la signification des termes « *n'est plus commercialisé* ». Nous ne voyons pas de raison de modifier cette interprétation en adoptant une nouvelle, par exemple au niveau 1, alors que celle donnée dans le FAQ de la Commission est proportionnée et satisfaisante. Outre que cela serait une perte de temps alors que de nombreuses autres questions doivent être examinées, cela risquerait de rouvrir des discussions pouvant aboutir à modifier le champ d'application du règlement PRIIPs avec des conséquences opérationnelles importantes. En tout état de cause, s'il est jugé nécessaire de rouvrir cette question, cela doit être fait au niveau 1 du fait de l'ampleur potentielle des conséquences de cette révision, plutôt qu'être laissé à la charge des ESAs au niveau 2.

### ✚ Les MOPs

Le projet RIS prévoit de nouvelles obligations faites aux initiateurs de MOPs pour pouvoir bénéficier de la dérogation, prévue à l'article 6.3 de PRIIPs, à la règle exigeant de fournir dans le KID du MOP l'ensemble des informations significatives, cette dérogation leur permettant ainsi de s'appuyer sur les KIDs des options sous-jacentes<sup>3</sup>.

L'AMAFI souhaite formuler les commentaires suivants sur ces nouvelles obligations, qui se substituerait à celles prévues actuellement :

- L'obligation faite à l'initiateur d'un MOP de fournir un outil permettant de rechercher et de comparer les KID des options d'investissement sous-jacentes soulève un certain nombre de difficultés, en matière :
  - de faisabilité en raison de l'univers extrêmement vaste des options sous-jacentes, impliquant potentiellement de nombreux fabricants différents, avec lesquels des processus devraient être développés pour accéder à des informations constamment mises à jour ;
  - de responsabilité liées à de telles situations : qui, des fabricants de l'emballage ou de l'option sous-jacente, sera responsable si les informations fournies sont inexactes ou erronées ?

Nous proposons donc de supprimer le paragraphe prévoyant la fourniture d'un outil de comparaison des options sous-jacentes des MOPs.

- Nous proposons également la suppression du paragraphe exigeant que le fabricant de l'enveloppe fournisse des informations complètes sur les coûts avant la souscription d'une option d'investissement, pour les raisons suivantes :
  - le niveau 2 exige déjà des fabricants qu'ils fournissent aux clients une fourchette de coûts pour les différentes options disponibles dans le contrat ;
  - compte tenu du très grand nombre d'options généralement proposées, l'obtention d'informations actualisées et fiables sur les coûts auprès d'un nombre potentiellement élevé

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<sup>3</sup> Dans les textes actuels (article 6.3), pour pouvoir bénéficier de cette exemption, les émetteurs de MOPs doivent fournir dans le KID du MOP une description générique des options d'investissement sous-jacentes et indiquer où et comment les clients peuvent trouver des informations complémentaires sur les sous-jacents.

de fabricants de PRIIPs pose d'importantes difficultés opérationnelles et soulève à nouveau des questions en termes de responsabilité.

### **Personnalisation de l'information, *layering* et outils interactifs**

Une analyse coûts-avantages approfondie de la possibilité pour les clients d'accéder à l'information d'une manière plus personnalisée doit être réalisée et vérifiée par des tests auprès des consommateurs afin de s'assurer que les avantages escomptés sont proportionnels aux coûts supplémentaires engendrés.

Quoi qu'il en soit, un certain nombre de problèmes doivent être résolus avant l'adoption de tels amendements :

- Il n'existe actuellement aucune solution technologique permettant de calculer instantanément, par exemple, les performances ou les coûts des produits structurés de manière personnalisée. Pour ces produits, la détermination des performances attendues nécessite des calculs probabilistes basés sur de très nombreux scénarios<sup>4</sup>, qui peuvent difficilement être menés instantanément ;
- Si des solutions étaient développées, elles seraient inévitablement très coûteuses, ce qui constituerait une barrière pour les petits producteurs et/ou distributeurs ;
- Si les clients étaient autorisés à simuler différentes périodes de détention, les informations qui en résulteraient pourraient les induire en erreur : par exemple, dans le cas des produits *autocall*, sortir avant la date du *call* exposerait les clients à des coûts inconnus qui ne seraient pas nécessairement dans leur intérêt.
- Donner aux clients l'accès à un tel outil de simulation soulèverait d'importantes questions de responsabilité entre les distributeurs et les producteurs, qu'il conviendrait d'examiner plus avant : qui serait responsable des informations personnalisées ?

Le *layering* prévu au paragraphe (4) semble consister à réordonner les différentes sections du KID, ce qui ne semble pas avoir beaucoup de sens pour un document de 3 pages qui est suffisamment court pour être lu. Cela nécessiterait de plus une technologie dont le développement pourrait être très coûteux, sans que l'on puisse en attendre un bénéfice clair pour les clients finaux, puisqu'il n'y a pas eu d'analyse coût-bénéfice sur cette question.

### **Section « *product at a glance* »**

L'AMAFI s'interroge sur la faisabilité de résumer toutes les informations importantes sur le produit dans une seule section (qui serait intitulée " *product at a glance* "). L'expérience montre que la concentration des informations importantes sur un produit spécifique dans un document de trois pages a déjà été un défi majeur du règlement PRIIPs. Rassembler toutes les informations importantes dans un espace encore plus restreint sans induire les clients en erreur en raison de la simplification nécessaire semble être un objectif irréalisable. Par conséquent, cette exigence devrait être supprimée.

De plus, une modification aussi importante de PRIIPs ne devrait pas être proposée sans une analyse coût-bénéfice et des tests auprès des consommateurs. Au contraire, l'analyse d'impact de la Commission européenne ne montre pas que le format actuel soit considéré comme inadéquat par les clients et n'inclut pas d'évaluation du changement proposé.

### **Ajout d'une section sur la durabilité des PRIIPs**

Il n'est pas acceptable que les critères ESG à mentionner dans le KID ne soient pas identiques à ceux qui doivent être évalués dans le cadre des exigences d'adéquation de MiFID. Cette incohérence entre les exigences réglementaires peut amener les investisseurs de détail à mal comprendre les informations qui leur sont fournies et peut créer des difficultés et de la complexité dans le processus de distribution. Par conséquent, nous suggérons d'utiliser les termes des lignes directrices de l'ESMA sur la gouvernance des produits MiFIDII pour définir le contenu de la section ESG du KID. Cela garantira un processus de distribution fluide et cohérent.

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<sup>4</sup> Habituellement 10.000 pour un produit structuré classique selon nos adhérents fabriquant ce type de produits.

De plus, le champ d'application de PRIIPs est plus large que celui de SFDR : l'AMAFI considère que tous les PRIIPs présentant des caractéristiques ESG, qu'ils relèvent ou non de SFDR, devraient être soumis aux obligations d'information, et pas seulement ceux qui relèvent de SFDR.

### **Longueur du KID**

Compte tenu de l'ajout prévu dans le KID d'un certain nombre d'informations dont celles sur la durabilité des produits, l'AMAFI considère que la règle actuelle de limitation à 3 pages de la longueur du KID ne pourra être maintenue et propose d'ores et déjà d'étendre cette limite. Néanmoins, l'AMAFI attire également l'attention sur l'importance de garder au KID un format compact, afin de garantir que le KID des PRIIPs soit effectivement lu par les clients de détail, qui se plaignent déjà du volume des informations qui leur sont transmises.

### **Entrée en application**

La date d'application proposée est de 18 mois après la date d'entrée en vigueur du règlement. Nous estimons que la date de déclenchement du délai de mise en œuvre de 18 mois devrait être celle de l'adoption des textes de niveau 2, compte tenu de l'importance des détails à définir à ce niveau et des changements structurels très complexes qu'ils entraîneraient.

## **II. COMMENTAIRES SUR LA PROPOSITION ALLEMANDE DE MISE EN PLACE D'UN INDICATEUR UNIQUE DE DURABILITÉ DES PRIIPs**

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L'AMAFI est fortement opposée à l'introduction, dans PRIIPs, de nouveaux indicateurs destinés à refléter la durabilité des produits.

Les concepts utilisés dans l'ensemble des textes sur la finance durable sont d'ores et déjà extrêmement complexes et nombreux de sorte qu'il paraît totalement contreproductif d'en introduire de nouveaux, qui plus est dans un texte dédié au format de l'information sur les instruments financiers, ce qui n'aurait pas de sens.

L'AMAFI serait également très opposée à l'idée de proposer des modifications au règlement SFDR via le chantier RIS, qui est déjà extrêmement lourd et alors même que l'ESMA vient de consulter sur de possibles amendements aux actes délégués de ce texte et que la Commission consulte en ce moment sur la révision du texte en adoptant une approche très ouverte sur les modifications structurelles éventuelles à y apporter.





Council of the European Union  
General Secretariat

**Brussels, 29 August 2023**

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**Interinstitutional files:**  
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**WORKING DOCUMENT**

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| From:    | Presidency  |
| To:      | Working Party on Financial Services and the Banking Union (Retail Investment)<br>Financial Services Attachés      |
| Subject: | Retail Investment Strategy - Presidency non-paper on the proposal for a Regulation amending the PRIIPS Regulation |

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## RETAIL INVESTMENT STRATEGY

### Presidency non-paper on the proposal for a Regulation amending the PRIIPS Regulation

#### 1. Introduction

This paper is based on Member States' written comments. It is intended to guide the discussions about the Commission's proposal for amendments to the Regulation No 1286/2014 on key information documents for packaged retail and insurance-based investment products (PRIIPs).

#### 2. Scope of application

A pivotal aspect of the Commission's proposal is the clarification of the Regulation's scope through amendments to Article 2(2).

##### 2.1. Immediate annuities without a redemption phase

Concerns have emerged regarding the clarity of the term "*immediate annuities without a redemption phase*". Some delegations have asked the Commission to provide a justification for the exclusion of these annuities in a recital. The Presidency suggest using the word "accumulation" instead of "redemption", in alignment with the ESAs recommendation.

##### 2.2. Exclusion of non-equity securities issued by non-financial companies.

The Commission's proposal excludes certain types of corporate bonds with make-whole clauses. A few delegations have proposed to enlarge the scope of exclusions. One delegation has argued that, when it comes to non-equity securities issuances by corporations to finance themselves, the administrative burden of producing a KID might discourage distributors to offer non-equity instruments to retail investors, thereby depriving European investors of investment options, a key objective of the Capital Markets Union.

Member States are invited to present their opinions on areas emphasized by the Presidency and on any other issues they deem appropriate:

- a) Whether they support the Commission's proposal with respect to the scope of application.
- b) Whether (and why) they would propose to clarify/adjust the scope.

#### 3. Performance scenarios and information on costs

Under the current rules, past performances may only be provided in a separate document, outside of the KID, for investment funds. The Commission's proposal does not incorporate any amendments on performance scenarios given that the content of the scenarios and the presentation of the KIDs for PRIIPs have been recently amended. However, a few Member States have claimed that manufacturers should provide information on performance that is best suited to the type of product concerned and that this information should be provided in the KID and not in a separate document.

Member States are invited to present their views on:

- a) Whether they support the Commission's proposal not to adjust the current approach to performance scenarios.
- b) Whether they would propose to adjust the rules on performance scenarios.

#### 4. Intelligibility versus comparability

A few delegations have expressed support to allow the ESAs to take better into account different types of PRIIPs when drafting RTS. One suggestion was to adapt the ESA's level 2 mandate to include that intelligibility should prevail over comparability to remove the rigidities of the existing Regulation, which would prevent the ESAs from adopting more tailored and specific level 2 methodological approaches for certain families of products. This approach would enhance the usefulness and legibility of KIDs and enable retail investors to better understand the nature of any given financial product and make a better-informed decision.

Member States are invited to present their views on:

- a) Whether they support the Commission's approach.
- b) Whether they would propose to adjust the proposal with a view to prioritising intelligibility over comparability by mandating the ESAs to take into account the different categories of financial products when developing RTS.

#### 5. The updating of KIDs

The Commission's proposal establishes that the ESAs shall distinguish between PRIIPs that are still made available to retail investors and PRIIPs that are no longer made available when developing RTS specifying the conditions under which manufacturers shall review the information contained in the KID. Several Member States have argued that updating certain information could generate confusion and higher administrative burden for certain types of products.

##### 5.1. Concept of to make available.

Some Member States have expressed their concerns regarding the term "made available". One delegation has highlighted that '*made available to retail investors*' has created many interpretative issues for manufacturers and distributors in its implementation, raising the question of how it relates to definitions used in other EU legal acts (e.g., "sold", "marketed", "offered to retail investors"). Furthermore, another delegation has urged to include extra guidance on the terms '*still made available*' and '*no longer made available*' included in recital 7 of the proposal, asking whether their interpretation of '*no longer made available by the manufacturer*' is consistent across PRIIPs other than investment funds.

Moreover, a few Member States have suggested including a level 1 provision (instead of level 2 measures) to exempt the updating of the KID for certain PRIIPs such as those which are no longer open to new subscriptions and no longer traded on the secondary market.

Member States are invited to present their views on:

- a) Whether they support the Commission's approach.
- b) Whether they would propose to further clarify the concept of "made available".
- c) Whether they support the Commission's approach with respect to updating KIDs of PRIIPs that are no longer made available.
- d) Whether they would propose to adjust the proposal with a view to providing certain exemptions or clarifications.



## 5.2. Coherence between PRIIPs, UCITS and IDD.

Some delegations have warned about the need to ensure consistency and coherence between these three different pieces of legislation.

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| Member States are invited to present their views on: |
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| <ul style="list-style-type: none"><li>a) Whether they support the Commission's approach aimed at ensuring consistency</li><li>b) Whether they would propose to adjust the proposal.</li></ul> |
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## 6. Multi-option products (MOPs)

The Commission's proposal introduces several requirements for manufacturers offering a range of options for investments when all information with regard to each investment option cannot be provided within a single, concise stand-alone document.

### 6.1. Information to be included.

One delegation has pointed out that regardless of the type of KID, the KID should provide the same information. Another delegation has suggested adding the inclusion of information on performances and on the costs of the PRIIP (those relating to the wrapper) that do not relate to its investment options, in order to have a comprehensive view of the total costs. Another delegation has expressed the need to develop draft RTS on this provision.

### 6.2. Provision of tools to facilitate comparison among the different options.

One delegation has expressed doubts about the scope of this tool (whether it should contain only products that PRIIPs manufacturer's/distributor offer; or a much broader category of insurance products, such as all the products in the market).

Moreover, several Member States have commented that it is not clear whether a financial advisor would assist the investor in the use of the tool or would only intervene after the pre-selection of investment options has been made), and who would be liable for the correctness of the information covered by that tool and the tailored KID.

### 6.3. Pre-contractual information

Several delegations have flagged that the reference to the "pre-contractual information documentation relating to the investment products backing the underlying investment options" has been maintained, although the ESAs advice highlighted that this reference contained in Article 6(3) would not oblige, per se, to disclose the costs of the insurance contract in the specific information document. For this reason, they would rather incorporate the ESAs drafting proposal, to ensure that the costs of the insurance contract are included only in the specific information document under Article 10 PRIIPs Delegated Regulation.

Additionally, one delegation has asked for clarification on which 'information documentation' the provision refers to (they understand that the investor should receive tailored KIDs based on the investment options she or he has pre-selected via the tool).

## 6.4. Provision of information upon their request and in good time

A few Member States have expressed their disagreement about providing the complete information on the costs of the PRIIP relating to the investment option upon request of the investor.

Member States are invited to present their views on:

- a) Whether they support the Commission's approach with respect to MOPs.
- b) Whether they would propose an alternative approach with a view to clarifying the rules for the presentation of MOPs as well as ensuring consistent application.

## 7. Electronic format and interactive tools

### 7.1. Definition of electronic format

The Commission's proposal aims to adapt the disclosures of the KID to the digital environment and to the evolving needs of retail investors. The proposal introduces a definition of *'electronic format'* as *'any durable medium other than paper'*. One delegation has sent drafting suggestions to ensure that the PDF format is valid, and that the information must be readable by electronic devices only.

Member States are invited to present their views on:

- a) Whether they would propose any modification to the definition of *'electronic format'*.

### 7.2. Role of the interactive tools

A few delegations have expressed their concerns on the amendment to allow the electronic format of the KID to be provided by means of an interactive tool (article 14(2)). One delegation has pointed out that the interactive tool may be difficult to implement and will require clear and detailed guidance. One delegation has suggested that the proposal should include a proper definition of "interactive tool".

The Commission's proposal requires the interactive tool to fulfil four-set of requirements for displaying the key information in a personalised manner. A few Member States have expressed their concerns against focusing too much on the cost characteristics of the PRIIP when using digital tools because it may not give a fair view of such products. Another delegation has suggested to put those four requirements as an Annex to the KID to ensure that firms can properly lay out all the required information within the three-page limit.

Some Member States have expressed their concerns about the simulation of costs, as well. In relation to the condition under article 14(2)(d), according to which the interactive tool shall allow investors to simulate costs over the recommended holding period (RHP), some Member States have shown their concerns and need for clarification. One delegation has expressed that personalizing the summary risk indicator based on a holding period that deviates from the recommended one might prove challenging. Another delegation has pointed out that the wording *'simulate costs'* seems to imply that the simulated costs would be different from the costs presented in the KID and, if this is not the case, that the wording should be revised to avoid any confusion. There is also one delegation that considers that this level 1 Regulation or even the corresponding level 2, should further specify the criteria for simulation of the costs tool, to ensure that clients are provided with realistic scenarios. One delegation has also asked how this condition relates to the new one under article 14(3)(a) and they request for clarification on whether that condition states that costs can be simulated over a holding period that is different from the RHP. One delegation is of the view that the amendment should clarify the purpose of the cost simulator.

Member States are invited to present their views on:

- a) the rules on how to generate personalised information when using interactive tools and the convenience of all those provisions

### 7.3. Role of the ESAs

Amendments to Article 14(3) of the Regulation contain a mandate by which the ESAs shall develop draft RTS specifying the modalities for personalising the information and the conditions for adapting the information to a layered format. One delegation has pointed out that the additional requirements of accessibility of the information for people with disabilities and the possibility of simulating costs over holding periods other than the recommended holding period shall be included under paragraph 2. Therefore, this delegation has not expressed support for developing further RTS.

Member States are invited to present their views on:

- a) the provisions for the layered format and the role of the ESAs

### 7.4. Accessibility of the KID

The new version of Article 14(6) requires that the KID shall remain accessible on the website of the person advising or selling the PRIIPS and in a format and way that it can be downloaded and stored in a durable medium by the investors as long as they might need to consult it. Where the PRIIP manufacturer has revised the KID, it shall provide the retail investors with previous versions upon request. One delegation has commented that the provision *“for such period of time as the retail investor may need to consult it”* (already under existing Article 14.5.(d)) is too vague and should be clarified. Another delegation also considers the provision *“... shall remain capable of being downloaded and stored in a durable medium, for such period of time as the retail investor may need to consult it.”* too broad and open-ended.

One delegation has suggested specifically mentioning that the previous versions of the KID shall remain on the website. However, one delegation has pointed that stipulations regarding the availability of all versions of a KID on the website of the person advising on or selling PRIIPs would be difficult to implement due to the large number of documents potentially involved.

Member States are invited to present their views on:

- a) The convenience of the provision for the availability of all versions of a KID on the website of the person advising or selling the PRIIPs.

## 8. Content of the ‘Product at a glance’ dashboard

The Commission’s proposal creates a new section called ‘Product at a glance’. On the one hand, several Member States have given support to this idea, but they think that some information is missing such as summarised information about performance scenario or ESG features. On the other hand, quite a few delegations have stated that the benefits for the retail investors might not outweigh the costs of using additional space.

Furthermore, one delegation wonders whether the mandate for the ESAs to develop draft RTS specifying how information can be layered should be made more explicit in the level 1 text. Another delegation has pointed out that, as the sections ‘How can I complain?’ and ‘What happens if the manufacturer is unable to pay out?’ are not included in the dashboard, it should be clarified that the first layer could contain more titles than those provided in the dashboard. Also, there is another delegation asking who would be liable in the case of hidden information or in the case that additional

information needs to be provided. They explain that the person who layers the information is the one advising on or selling the PRIIP so that, the liability of the PRIIP manufacturer seems questionable.

As the information to be included in the dashboard should be concise and short, one delegation has also asked for further clarification on the meaning of ‘*summarised information*’ when it regards to (i) the type of PRIIP and (iii) the total costs of the PRIIP.

Member States are invited to present their views on:

- a) Whether they support the Commission’s approach for a summary dashboard (‘Product at a glance’).
- b) Whether they would propose to clarify/adjust the proposed dashboard approach.

## 9. Deletion of the comprehension alert

The Commission’s proposal removes the ‘*comprehension alert*’ it has arguably not been sufficiently effective in warning retail investors against particularly complex products and could have also unintentionally discouraged them from purchasing less complex investment products. One delegation has expressed that they would support such removal but under the inclusion of warnings flagging the risk of investing in specific PRIIPs and the recommendation of seeking for professional advice before undertaking an investment.

On the contrary, another delegation has claimed that the alert should be retained because it is important for investors. Another Member State suggests maintaining this warning when it is relevant only. Finally, one delegation suggests clarifying how the risk warning proposed under Article 29 (5) IDD for IBIPs will differ from the ‘*comprehension alert*’.

Member States are invited to present their views on:

- a) Whether they support the Commission’s proposal to delete the comprehension alert.
- b) Whether they would propose to keep the comprehension alert.

## 10. New section ‘*How environmentally sustainable is this product?*’

The Commission’s proposal removes from the KID the reference to environmental and social objectives pursued by the investment product in the section ‘*What is this product?*’, replacing it by a new section dedicated to sustainability titled ‘*How environmentally sustainable is this product?*’.

Several delegations have expressed their disagreement in introducing this new section. One delegation has pointed out that it would be appropriate to include a reference to where the product manufacturer has published information under Regulation (EU) 2019/2088, Regulation (EU) 2020/852, as well as the delegated acts implementing those Regulations. In addition, such delegation has mentioned the need to bear in mind that when the PRIIP is a UCITS or an AIF unit, there will be some information duplicated as a consequence of Article 2(7) of Delegated Regulation (EU) 2017/653, that requires to include information of the investment strategy and eligible financial assets in the KID’s section ‘*What is this product?*’. Further, this delegation has remarked that the new section will lead to an additional administrative burden for business and supervision, insofar as the information to be disclosed for the ‘*How environmentally sustainable is this product?*’ are already included in other pre-contractual documents. Finally, another delegation has emphasized the need to increase consistency with SFDR, thereby, waiting until its forthcoming review.

When it comes to the content of the proposal, a few delegations have commented that the disclosure should not rely only on one metric (the greenhouse gas emissions) but rather adopt a flexible approach

whereby the manufacturer could select one indicator that would be relevant considering the product's features. Further, the expected GHG emissions intensity may not be available for all funds. Moreover, there is one delegation that has suggested referring to '*carbon footprint*' pursuant to Delegated Regulation 2022/1288 instead of GHG because the formula for GHG emissions measures the amount of GHG emission and the formula for carbon footprint measures the amount of GHG normalized with the value of all investments. They have also claimed that this would improve comparison of different PRIIPs, and the carbon footprint measure would be better aligned with the calculations for EU climate benchmark and the on-going work with proposal to change SFDR level 2 measures.

Some Member States have also sent additional comments about the information on sustainable matters that currently have to be disclosed in other pre-contractual documents. One Member State has proposed that the KID should include clear guidance to investors on how to identify elements of the information on sustainable topics already set out in detail in such pre-contractual documents. In the same way, another delegation has expressed that it would be beneficial for investors to explicitly mention that this information is only a part of the information that must be disclosed based on SFDR so that, a cross-reference to the full information based on SFDR might be provided for.

Three Member States have pointed out that the sustainability information could be included in the existing '*What is this product?*' section - Article 8(3)-point c)- as the sustainability factors are an integral part of the investment process and an essential feature of the product. One of those delegations proposes to combine those two sections or set them out consecutively, one after the other.

Moreover, a few delegations have expressed their support to incorporating social and governance considerations, anticipating the possible future extension of the Taxonomy Regulation. In particular, one delegation has proposed introducing an ESG indicator comparable to the summary risk indicator which would include: ESG factors in general and not only two special ecological factors and, the MiFID and IDD sustainability preferences. This way, the cross-sectoral comparability among PRIIPs would be enhanced, avoiding unjustified divergences in PRIIPs according to the SFDR scope. As an example, they proposed a colour based ESG scale, easy to understand and which details will have to be provided for in the RTS.

Member States are invited to express their views on:

- a) The convenience of creating this section
- b) The inclusion of any adjustments to this section.

## 11. Length of the KID

Under the current rules (not amended by the proposal), the KID has a 3-page limit. Several Member States have commented that the new dashboard '*Product at a glance*' would not bring additional benefits to the investor but duplicate content from other sections, leading to new challenges for the issuers to respect the length of the KID. Another delegation has also expressed that the inclusion of this dashboard, in addition to the new sustainability section (as well as other elements such as information on past performance if supported by most delegations), will probably lead to new challenges for the issuers with respect the 3-page limit. One of those countries also has expressed that such dashboard should be only optional for the new layered KID format.

Member States are invited to present their views on:

- a) The feasibility of the KID's 3-page limit and its compatibility with the new sections included in Article 1(5)(c) of the Commission's proposal.
- b) Specific suggestions to improve this provision as well as to ensure its consistent application.

## 12. Providing the KID: when and by whom

Before a PRIIP is made available to retail investors, the PRIIP manufacturer shall draw up and publish the document on its website. One delegation suggests that, as in practice it appears that not all PRIIP manufacturers have their own website, Article 5(1) should be amended so that the website where the PRIIPs KID must be made available could also be the website of the manufacturer's group.

Article 13(1) of the PRIIPs Regulation establishes that a person advising on, or selling, a PRIIP shall provide retail investors with the KID in good time before those retail investors are bound by any contract or offer relating to that PRIIP. One delegation considers that, as mystery shopping campaigns have shown, the KID is often handed to the client at a later stage in the commercial process compared to marketing materials consisting of paper documents or electronic format documents. This is why such delegation proposes a new amendment to the PRIIPs Regulation in order to clearly stipulate that the KID should be given to retail investors at the same time as any other market material provided on paper or electronic format. In addition, the person advising on or selling the PRIIPs should have the obligation to explain to the client that the KID is of a different nature than marketing materials.

Member States are invited to present their views on:

- a) Whether they support the Commission's proposal (i.e. no amendment on this point).
- b) Whether they would propose to clarify/adjust the existing text.

## 13. Entry into force and application

According to the Commission's proposal, the amending Regulation shall enter into force on the twentieth day following that of its publication in the Official Journal of the European Union and it shall apply 18 months after the date of its entry into force. There are several delegations asking for an extended timeframe. One Member State suggests that the amended Regulation should only begin to apply one year after the publication of the corresponding provisions on level 2. A few Member States call for a longer and more realistic application period, which will allow both ESAs and NCAs to prepare adequately for the tasks, proposing it to be 36 months. One additional delegation supports a 24-month timeframe for entry into force to allow sufficient time to have in place the necessary IT infrastructure. There is one Member State that proposes a timeline of 24 months after the publication of the Regulation or 12 months after the publication of the level 2 rules. Finally, there is also one delegation that refers to their comments on the need to prolong the timeline because of the implementation of the Omnibus Directive.

Member States are invited to present their views on areas:

- a) Whether they support the Commission's proposed timeline.
- b) Whether they would propose to extend the envisaged timeline for the application of the amendment Regulation.



Council of the European Union  
General Secretariat

**Brussels, 31 August 2023**

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**Interinstitutional files:  
2023/0166 (COD)**

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**WK 10802/2023 INIT**

**LIMITE**

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**WORKING DOCUMENT**

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|---------------|--|
| From:         | Germany  |
| To:           | Working Party on Financial Services and the Banking Union (Retail Investment)<br>Financial Services Attachés |
| N° Cion doc.: | ST 9669 2023 INIT  |
| Subject:      | German Non-paper on improving the ESG information for retail investors in the PRIIPs KID                     |

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WK 10802/2023 INIT

**LIMITE**

**EN**

## German Non-paper on improving the ESG information for retail investors in the PRIIPs KID

**Summary:** *We welcome the Commission's efforts to integrate comparable and easily available information about the environmental sustainability of a product in the PRIIPs KID. We suggest to introduce an ESG indicator comparable to the existing summary risk indicator (risk-return profile). The German Sustainable Finance Advisory Committee has developed a possible design for the ESG indicator: The ESG scale, with categories ranging from "strong consideration of sustainability preferences" (A) to "non-ESG product" (F). According to the concept of this committee, each category of such an ESG scale should be based on the allocation of sustainable investments according to SFDR and/or Taxonomy definitions.*

In its proposal for a Regulation amending Regulation (EU) No 1286/2014 as regards the modernisation of the key information document, the European Commission proposed to amend a paragraph in Article 8 about a new section in the KID titled "How environmentally sustainable is this product?". In this section PRIIPs manufacturers which fall under the scope of the SFDR shall provide information about the taxonomy-alignment and expected greenhouse gas emissions intensity of the PRIIP.

We welcome the Commission's efforts to integrate comparable information about the environmental sustainability of a product in the PRIIPs KID and acknowledge the intention of the Commission to achieve this on basis of information which can easily be inserted, because the PRIIPs manufacturer has them at his disposal anyway. However, we believe that the Commission's choice of information will only prove useful to a very limited number of retail investors.

Thus, we suggest introducing instead an **ESG indicator** comparable to the summary risk indicator already included in the PRIIPs KID. An ESG indicator following such a logic and providing an easily comprehensible range of sustainability characteristics provides several advantages:

- It could **refer to the MiFID and IDD sustainability preferences**, which would **integrate** the PRIIPs KID better **in the advisory or distribution process**, respectively. Thus, and in contrast to the Commission's proposal, the legislator would **avoid adding new data** which are not already included in those processes. The already very complex requirements for ESG disclosures and ESG advice would not be further complicated.
- Data is available to the PRIIPs manufacturers, **low additional burden**.
- It includes all PRIIPs and thus **secures cross-sectoral comparability**, not creating differences in PRIIPs according to the SFDR scope.
- It includes a broader and more general **range of ESG factors** and not only two special environmental factors.
- As an example, a colour-based ESG scale is easy to understand, as initial consumer testing showed.

Therefore, we propose to amend the following point (ga) in Art. 8(3) instead of the Commission's proposal:



**“(ga) under a section titled ‘How sustainable is this product?’, an ESG indicator which shows to the retail investor at a glance how his or her sustainability preferences in line with the requirements according to Article 54(5) of the Commission Delegated Regulation (EU) 2017/565 and point a of Article 9(2) of the Commission Delegated Regulation (EU) 2017/2359 are met;”**

Details have to be provided for in the PRIIPs RTS.

The German Sustainable Finance Advisory Committee, an independent advisory body consisting of high-level representatives from the financial sector, real economy, civil society and research, already has developed a possible design for the ESG indicator: the ESG scale. This **ESG scale would build on existing regulations and integrate the information from the SFDR and the Taxonomy Regulation with the requirements of MIFID II/IDD**. This approach makes it easier for investors to select a product in line with their preferred degree of sustainability (for more **details see Annex** below).

The German Sustainable Finance Advisory Committee conducted initial pilot surveys with investment advisors and retail clients. The **surveys showed** that on both sides – advisors and retail clients - there is an **interest in a workable and meaningful ESG scale**. The majority of the **retail clients perceived the scale as understandable and helpful**. The majority also said they would use the scale when making investment decisions.

If the Taxonomy is further amended or if the SFDR is revised, the categories of the ESG scale should be reviewed accordingly.

## Annex

Description of the ESG scale developed by the German Sustainable Finance Advisory Committee as an example for an ESG indicator:



Each category should be based on the allocation of sustainable investments according to SFDR and/or Taxonomy definitions and range on a scale from “strong consideration of sustainability preferences” (A) to “non-ESG product” (F).

Products of categories A – D consider sustainable investments and reflect sustainability preferences according to MiFID II/IDD:

- A** **High proportion** of environmentally sustainable investments according to the Taxonomy Regulation and/or “sustainable investments” according to the SFDR and consideration of principal adverse impacts.
- B** **Medium proportion** of environmentally sustainable investments according to the Taxonomy Regulation and/or “sustainable investments” according to the SFDR and consideration of principal adverse impacts.
- C** **Low proportion** of environmentally sustainable investments according to the Taxonomy Regulation and/or “sustainable investments” according to the SFDR.
- D** Products that **consider principal adverse impacts** of investment decisions on sustainability factors.

Products that cannot reflect sustainability preferences according to MiFID II/IDD should be included in categories E and F:

- E** Product follows an **ESG strategy and/or ensures transparency on sustainability risks**, yet does not comply with ESG target market under MiFID/IDD.
- F** **Non-ESG product:** No data or product is categorised as “not sustainable”.

Finally, in coherence with the taxonomy and the SFDR, it should be indicated separately whether the product includes investments in nuclear power or natural gas. Scientific field tests have shown that customers demand this information.

*(source: German Sustainable Finance Advisory Committee)*



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## **Retail Investment Strategy (RIS)**

**AMAFI and FBF amendments to  
Directive (EU) 2014/65/EU and Regulation (EU) 1286/2014**

*October 2023*

**EN**

Classification: Internal

## ***AMAFI and FBF amendments to PRIIPs***

*Some of the PRIIPs' amendments concern the provision of additional information to clients. Although they may be interesting from a consumer point of view, this would need to be ascertained by a thorough cost-benefit analysis and verified through consumer testing. These potential benefits must also be considered against the costs that such amendments would generate for manufacturers and distributors of financial products. The question needs to be asked about the barriers to entry that such measures create and, more generally, about their general usefulness for European markets in terms of the vitality of their players and the diversity of the offering available to investors. Is it not the role of competition rather than regulation to lead certain players to seize digital tools in order to stand out from their competitors? Is it necessary, in the interests of investors, to impose on everyone a level of service that is not proven to be vitally necessary for the client?*

### **Amendment 48 – Scope of the PRIIPS Regulation**

#### **Modification to Article 2 of PRIIPS**

##### *Current PRIIPs*

This Regulation shall not apply to the following products:

(a) non-life insurance products as listed in Annex I to Directive 2009/138/EC;

(...)

(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.

##### *AMAFI and FBF Amendment*

This Regulation shall not apply to the following products:

(a) non-life insurance products as listed in Annex I to Directive 2009/138/EC;

(...)

(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;

***(h) any bond, irrespective of its structure, issued for the sole purpose of funding its issuer.***

#### *Justification*

*The scope of PRIIPs is currently defined so that it can be considered as encompassing all types of bonds.*

*The newly proposed exemption for bonds with make-whole clause, while being a very positive step forward, is far from encompassing all ordinary bonds (i.e. other than structured bonds) for which applying PRIIPs is not relevant and constitute an obstacle to their distribution, which runs contrary to the CMU objectives.*

*As a result, in order not to fall within the scope of PRIIPs, issuers of ordinary bonds choose to exclude retail investors from the distribution of these financial instruments via a selling or/and transfer restriction clause in the prospectus, while in many cases there is no particular feature related to the financial instrument justifying the exclusion.*

*Distributors wishing to sell these products to retail clients hence face extra risks and administrative burdens, as these clients may fall outside of the positive target market or in the negative target market. In addition, as these financial instruments may be qualified as PRIIPs even if they are ordinary, the absence of a KID is a further obstacle to the distribution to retail clients.*

*As a result, these bonds are generally not available to retail investors thereby restricting retail access to the bond market.*

*For these reasons, all ordinary bonds (including those issued by financial issuers for funding purposes) should be excluded from the scope of the PRIIPs Regulation.*

## **Amendment 49 – Multi Options Products**

### **Proposal for a regulation**

#### **Article 1 (4) of omnibus regulation modifying Article 6 (3) of PRIIPs**

Text proposed by the Commission

AMAFI and FBF Amendment

3. By way of derogation from paragraph 2, where a PRIIP offers the retail investor a range of options for investments, such that all information required in Article 8(3) with regard to each investment option cannot be provided within a single, concise stand-alone document, the key information document shall provide a generic description of the underlying investment options, and the costs of the PRIIP other than the costs for the investment option, provided that:

***a) PRIIPs manufacturers provide investors with tools adapted to retail investors that facilitate research and comparison among the different investment options, including on costs;***

***b) Retail investors have easy access to the pre-contractual information documentation relating to the investment products backing the underlying investment options***

***c) PRIIPs manufacturers provide investors, upon their request and in good time before retail investors are bound by any contract or offer to invest in a given investment option,***

3. By way of derogation from paragraph 2, where a PRIIP offers the retail investor a range of options for investments, such that all information required in Article 8(3) with regard to each investment option cannot be provided within a single, concise stand-alone document, the key information document shall provide a generic description of the underlying investment options, and the costs of the PRIIP other than the costs for the investment option, provided that retail investors have easy access to the pre-contractual information documentation relating to the investment products backing the underlying investment options.

***the complete costs of the PRIIP relating to this investment option***

Justification

The requirement for the MOP manufacturer to provide a tool to search and compare the KIDs of the underlying investment options raises several issues:

- Feasibility issues, due to the extremely wide universe of underlying options, potentially with many different manufacturers, with whom processes will have to be developed to access constantly updated information;
- Liability issues associated with such situations: who, from the wrapper's or the underlying option's manufacturers will be liable in case the information provided is inaccurate or erroneous?

Therefore, we propose to delete paragraph a).

We also propose to delete paragraph c), which requires the manufacturer of the wrapper to provide full information on costs before the subscription of an investment option, for the following reasons:

- the Level 2 already requires manufacturers to provide clients with a range of costs for the different options available in the contract;
- considering the very large number of options usually proposed, obtaining up to date and reliable information on costs from potentially many PRIIPs manufacturers appears very challenging and again raises issues in terms of liabilities.

**Amendment 50 – New section “Product at a glance”**

**Proposal for a regulation**

**Article 1(5) (a) of omnibus regulation adding new (aa) to Article 8 (3) of PRIIPs regulation**

*Text proposed by the Commission*

*AMAFI and FBF Amendment*

***(aa) under a section titled ‘Product at a glance’ a dashboard with summarised information about all of the following: (i) the type of the PRIIP, as referred to in point (c)(i); (ii) the summary risk indicator referred to in point (d)(i); (iii) the total costs of the PRIIP; (iv) the recommended holding period referred to in point (g)(ii); (v) whether the PRIIP offers the insurance benefits referred to in point (c) (iv);*** Deleted.

### Justification

*AMAFI and FBF are concerned about the feasibility of summarising all important information on the product in a single section (which would be named ‘Product at a glance’). Experience shows that concentrating important information on a specific product in a three-page document has already been a major challenge of the PRIIPS Regulation. Gathering all important information in such a tight space without misleading clients due to the simplification needed seems an unachievable goal. Therefore, this requirement should be deleted.*

*Moreover, such a major change to PRIIPs should not be put forward without any proper cost-benefit analysis and consumer testing. On the contrary, the European Commission’s impact assessment does not show that the current format is considered inadequate by clients and does not include an assessment of the change proposed.*

### **Amendment 51 – ESG disclosures**

#### **Proposal for a regulation – New sustainability disclosures in the KID Article 1(5) (d) of omnibus regulation adding new (ga) to Article 8 (3) to PRIIPs regulation**

##### *Text proposed by the Commission*

(ga) for PRIIPs on which financial market participants are to disclose pre-contractual information pursuant to Regulation (EU) 2019/2088 of the European Parliament and of the Council and Commission Delegated Regulation 2022/1288, under a section titled ‘How **environmentally** sustainable is this product?’, the following information:

(i) the minimum proportion of the **investment of the PRIIP** that is **associated with economic activities that qualify as environmentally sustainable in accordance with Articles 5 and 6** of Regulation (EU) 2020/852 of the European Parliament and of the Council;

(ii) **the expected greenhouse gas emissions intensity associated with the PRIIP pursuant to Delegated Regulation 2022/1288;**

##### *AMAFI and FBF Amendment*

(ga) for PRIIPs on which financial market participants are to disclose pre-contractual information pursuant to Regulation (EU) 2019/2088 of the European Parliament and of the Council and Commission Delegated Regulation 2022/1288, **or which are marketed with sustainability characteristics**, under a section titled ‘How sustainable is this product?’, the following information:

(i) The minimum proportion of the **PRIIP that is invested in** environmentally sustainable **investments as defined in Article 2 (1)** of Regulation (EU) 2020/85230 of the European Parliament and of the Council;

(ii) **The minimum proportion of the PRIIP that is invested in sustainable investments as defined in Article 2 (17) of Regulation (EU) 2019/208831;**

(iii) **Which principal adverse impacts (PAI) on sustainability factors are considered by the PRIIP, including quantitative or**

*qualitative criteria demonstrating that consideration;*

*(iv) Whether, where relevant, the PRIIP has a focus on either environmental, social or governance criteria or a combination of them.*

*(gb) Multi-Option Products (MOPs) which offer a range of options for investments, should not contain the section “How sustainable is this product?”*

#### Justification

*It is not acceptable that the ESG criteria to be mentioned in the KID are not identical to the ones to be assessed under the MiFID suitability requirements. This inconsistency between regulatory requirements may cause retail investors to misunderstand the information they are provided with and may create difficulty and complexity in the distribution process. Therefore, we suggest using the terms of the ESMA’s guidelines on MiFID II product governance to define the content of the ESG section of the KID. This will guarantee a smooth and consistent distribution process.*

*The scope of PRIIPs is wider than the one of SFDR: AMAFI and FBF consider that all PRIIPs with ESG characteristics, either falling under SFDR or not, should be subject to the disclosure requirements, not only those that are in scope of SFDR.*

*Moreover, it should be anticipated that the 3-page limit for the KID’s format will have to be softened as a consequence of this new requirement.*

*For MOPs, because the sustainable characteristics may vary completely depending on the rebalancing of the portfolio on the various investment options, the sustainability section in the KID should not be required.*

### **Amendment 52 – KID review**

#### **Proposal for a regulation**

#### **Article 1 (6) of omnibus regulation modifying Article 10 (2) of PRIIPs**

Text proposed by the Commission

*AMAFI and FBF Amendment*

2. In order to ensure consistent application of this Article, the ESAs shall, through the Joint Committee, develop draft regulatory technical standards specifying:

(a) the conditions for reviewing the information contained in the key information document;

2. In order to ensure consistent application of this Article, the ESAs shall, through the Joint Committee, develop draft regulatory technical standards specifying:

(a) the conditions for reviewing the information contained in the key information document;



(b) the conditions under which the key information document must be revised, ***distinguishing between PRIIPs that are still made available to retail investors and PRIIPs that are no longer made available***  
[...]

(b) the conditions under which the key information document must be revised,  
[...]

(e) ***The ESAs shall take into account situations where a PRIIP is no longer made available to retail investors.*** The ESAs shall submit those draft regulatory technical standards to the Commission by [one year after date of entry into force of this amending Regulation].

(e) The ESAs shall submit those draft regulatory technical standards to the Commission by [one year after date of entry into force of this amending Regulation].

#### Justification

*The Commission has already clarified in a Q&A that the review requirement should not apply to KIDs that are no longer marketed, as well as the meaning of the terms “no longer marketed”. Therefore, we see no reason to change this interpretation, which the industry considers satisfactory. It would be a waste of time whereas many other issues need to be tackled. Moreover, and more importantly, if this interpretation was to be changed, its impact on the scope of the PRIIPS Regulation could be significant, warranting that this issue should be addressed at Level 1 rather than at Level 2 by the ESAs.*

### **Amendment 53 – Digitalisation of KIDs, layering, and personalised information Proposal for a regulation**

**Article 1(7) of omnibus regulation replacing Article 14 of PRIIPs  
Article 14 (2), (3) and (4) of PRIIPs are modified as follows:**

Text proposed by the Commission

*AMAFI and FBF Amendment*

(2)  
The electronic format of the key information document may be provided by means of an interactive tool that enables the retail investor to ***generate personalised key information based on the information in the key information document or the information underlying it.***

That tool shall respect the following conditions:  
(a) the interactive tool, or its use, shall not alter the understanding of the key information document; (b) all key information shall be presented; (c) the key information document shall be easily accessible through a link next to the interactive tool, and the link shall be accompanied by the following message "It is

(2)  
The electronic format of the key information document may be provided by means of an interactive tool that enables the retail investor to ***access intelligent customisable searching functionalities on the PRIIPs KID.***

That tool shall respect the following conditions: (a) the interactive tool, or its use, shall not alter the understanding of the key information document; (b) all key information shall be presented; (c) the key information document shall be easily accessible through a link next to the interactive tool, and the link shall be accompanied by the following

recommended to download and store the key information document”; *(d) the interactive tool shall allow investors to simulate costs over the recommended holding period.* Where the key information document is provided in accordance with the first subparagraph, its format may be adapted compared to the presentation of the key information document referred to in Article 8.

message “It is recommended to download and store the key information document”.

*Such tool should be considered as a service quality enhancement for the purpose of Article 24(9) of Directive EU /2014/65/EU.*

Where the key information document is provided in accordance with the first subparagraph, its format may be adapted compared to the presentation of the key information document referred to in Article 8.

*(3) The ESAs shall develop draft regulatory technical standards specifying the modalities for personalising the information as referred to in the first subparagraph of paragraph 2, and the conditions for adapting the formatting of the information, as referred to in the second subparagraph of paragraph 2.*

*Deleted.*

*In addition to the modalities referred to in the first subparagraph, the regulatory technical standards shall include the conditions for personalising the key investor information in the following manners:*

- *the conditions for personalising the information to allow investors to simulate costs over a holding period that is different from the recommended holding period;*
- *the conditions for personalising the information to allow investors to compare different PRIIPs;*
- *the conditions for personalising the information to make it accessible to persons with disabilities.*

*(4) The key information document may be presented in a layered format. In that case, the dashboard referred to in Article 8(3)(a’) shall appear in the first layer.*

*Deleted.*

#### Justification

*A thorough cost-benefit analysis of the possibility for clients to access information in a more personalised manner needs to be carried out and verified through consumer testing to ensure that the expected benefits are commensurate with the additional costs involved.*

*Anyhow there are a number of issues that should be solved before such amendments could be successful:*

- *There is currently no technological solution that allows instant calculation of, for example, performance or costs for structured products. For these products, determining expected*

*performances requires probabilistic calculations based on a very large number of scenarios;*

- *If some solutions were developed, they would inevitably be very costly, which would be a barrier for smaller distributors;*
- *If clients were allowed to simulate different holding periods, the resulting information could be misleading to them: for example, in the case of autocall products, exiting before the call date would expose customers to unknown costs which would not necessarily be in their interests.*
- *Giving clients access to such a simulation tool would raise important liability issues between distributors and manufacturers that should be explored further: who would be responsible for the personalised information?*
- *The layering in paragraph (4) seems to consist of reordering the different sections of the KID, which does not seem to make much sense for a 3-page document that is sufficiently short to be read and requires a technology could be very costly to develop, without any expected clear benefit to the end clients, as there has been no cost-benefit analysis of this issue.*

*Therefore, FBF and AMAFI propose to delete paragraph (3) and (4) of Article 14. It is also suggested to amend paragraph (2) by limiting the functionalities available to clients under new interactive tools to access intelligent customisable searching functionalities on the PRIIPs KID. It is also proposed to clarify that the provision of such tools should be viewed as enhancing the quality of service provided to clients.*

## **Amendment 54 – Entry into force**

### **Proposal for a regulation**

#### **Article 2 of omnibus regulation is modified as follows:**

##### *Text proposed by the Commission*

*This Regulation shall enter into force on the twentieth day following that of its publication in the Official Journal of the European Union. It shall apply from [PO please insert the date = 18 months after the date of entry into force of this amending Regulation]*

##### *AMAFI and FBF Amendment*

*This Regulation shall enter into force on the twentieth day following that of its publication in the Official Journal of the European Union. It shall apply from [PO please insert the date = 18 months after the date of entry into force of the delegated acts required under this Regulation.]*

##### *Justification*

*The proposed application date is 18 months after the date of entry into force of the regulation. We consider that the trigger date for the 18 months implementation delay should be the adoption of Level 2 given the importance of the details to be defined at this level and the highly complex and structural changes that they would trigger.*