



## ESMA Call for Evidence on the PRIIPs Regulation

### French AFPDB position paper

On the occasion of the Call for Evidence on the European Commission mandate regarding the PRIIPs Regulation, the French association of retail structured product manufacturers (AFPDB) would like to share its views with the ESAs.

The AFPDB's contribution to the consultation focuses on questions and topics targeted at experts which get specific importance to the structured products industry:

- General survey on the use of the KID
- General survey on the operation of the comprehension alert
- Survey on the practical application of the rules
- Use of digital media
- Scope of the PRIIPs Regulation
- Differentiation between different types of PRIIPs
- Complexity and readability of the KID
- Performance scenarios and past performance
- PRIIPs offering a range of options for investment (Multi-Option Products ("MOPs"))
- Alignment between the information on costs in the PRIIPs KID and other disclosures

**This AFPDB position paper provides additional information to the online questionnaire.**

Consultation document:

[https://www.esma.europa.eu/sites/default/files/library/jc\\_2021\\_61\\_priips\\_call\\_for\\_evidence.pdf](https://www.esma.europa.eu/sites/default/files/library/jc_2021_61_priips_call_for_evidence.pdf)



## **AFPDB Reply**

**Question 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 organization and why the topics covered by this call for evidence are relevant for you/your organization.**

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

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

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

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

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

### **3.1 – General survey on the use of the KID**

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

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

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

AFPDB:

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

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

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

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

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



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

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

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

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

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

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

The level of standardisation contributes to the comparability among products.

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

### **3.2 – General survey on the operation of the comprehension alert**

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

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

In our view the excessive use of this alert stems from an improper reference to the complexity under MIFID. The alert was originally only meant to determine whether products were eligible to a distribution in an execution only mode.

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

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

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

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

Furthermore, three observations may be made:

- Complexity remains a relative and subjective notion, which is evolutive and difficult to measure precisely. In France, the French AMF has applied a rating system that counts the specific product features ("mechanisms") and sets out a complexity model (based on four criteria among which the maximum of three mechanisms)



defining what is suitable for distribution to retail investors. This regime is periodically updated to account for product evolution;

- Complexity is distinct from intelligibility. A product may encompass a certain level of complexity (e.g. rulebooks of the main equity indices generally comprise dozens of pages, including rules for inclusion within the index and weighting, but also the treatment of exceptional situations such as trading suspensions for the underlying assets) without hampering the overall understanding of investors of their use and their outcomes in key scenarios;
- Complexity may be positive and useful to investors. This is notably the case when it involves protective features such as a capital protection or a risk reduction mechanism. It is also the case in sustainable finance when it involves filters allowing investors to screen the desired underlying assets with conditions linked to their ESG rating.

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

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

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

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

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

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

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

**3.3 – Survey on the practical application of the rules**

**Question 12 - For PRIIP manufacturers or sellers:**

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



Costs must be broken down into:

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

- Legal analysis,
- Participation in the industry standardisation work on technical specifications, notably through fora such as EUSIPA, Findatex, EFAMA, Insurance Europe,
- IT developments, both internally (including tests with Front offices) and externally (sub-contractors and data vendors,
- Translations,
- Update of issuer websites,
- Investment in centralized industry solutions/repositories for publishing the document, and the meta-data feed (e.g. in RegXchange in a european level or ETP Data systems to address specific needs expressed by French distributors ),
- Compliance teams and/or external providers for monitoring quality of KIDs,
- Change management and training (internal staff, distributors...).

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

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

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

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

The AFPDB does not collect this information from its members.

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

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

**Question 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 sold types of PRIIPs? What are the main areas of inconsistencies?**

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

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

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



This work was notably carried out by industry associations and fora such as, respectively, EUSIPA, DDV, AMAFI, AFPDB, and FinDatEx ([www.findatex.eu](http://www.findatex.eu)).

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

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

- (i) the Belgian FSMA requires manufacturers from other Member States to draft KIDs data specifically adopted for the distribution in Belgium (see 2021.06.17 - Communication FSMA\_2021\_13: "Feedback Statement containing the conclusions of a qualitative examination of PRIIPs KID, p. 3-4),
- (ii) the Spanish CNMV applies a specific methodology for autocallable products,
- (iii) the German BaFIN requires weblinks to be included in the KID itself,
- (iv) the Italian CONSOB requires the transmission of the KID underlying data through an API.

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

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

### **3.4 – Use of digital media**

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

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

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

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

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

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

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

**No. The AFPDB does not support a layering of the KID information to be presented via pop ups or via multiple link accompanying layers.**



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

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

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

The choice of a paper or electronic format should be left to the manufacturer, together with the distributor, depending on what is most suitable for the chosen distribution channel.

### **3.4 – Scope of the PRIIPs Regulation**

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

No. In the AFPDB view, the scope of PRIIPs should be strictly limited to “packaged” products, as originally intended.

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

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

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

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

The AFPDB would support an exemption of the following products :

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

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



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

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

The AFPDB agrees with the statement.

**Question 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<sup>11</sup> objective, or where there is not active enrolment?**

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

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

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

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

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

No. The AFPDB does not recommend the development of a taxonomy of the “type of PRIIP”. Due to the fast evolving features typology, taxonomy standardization would be best addressed by industry initiatives.

Also, from a retail investor perspective, a prescribed PRIIPS product taxonomy would have limited value. It should remain the manufacturer's responsibility to adequately describe the legal wrapper and features of the product in the “what is this product section”.

**3.6 – Differentiation between different types of PRIIPs**

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



No. The AFPDB does not believe that the current standardisation negatively affects the understanding and their comparison.

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

**Question 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 favor, or do you have alternative suggestions?**

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

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

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

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

See our reply to Q28

**3.7 – Complexity and readability of the KID**

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

No. The AFPDB considers that the article 8 provides the necessary clarity.

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

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

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

**3.8 – Performance scenarios and past performance**

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

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

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

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

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

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

No. The AFPDB recommends to keep the Article 8 (3) (d) iii unchanged in Level1 , and rather address details of the assumptions to be made for performance scenarios in a later Level2 review.

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

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

**Question 35 - Would you be in favor 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<sup>17</sup>? What issues or challenges might result from this approach?**

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

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

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

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

**What issues or challenges might result from these approaches?**

The AFPDB preference goes to the second option.



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

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

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

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

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

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

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

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

No further points.

While we support maintaining the overall framework unchanged, we would nevertheless suggest the following amendments:

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

### **About the AFPDB**

The AFPDB (French association of the structured and listed retail investment products) represents the interests of the main issuers of structured products that distributed in France. Their product range includes both exchange traded securitised derivative products, such as warrants, turbos and certificates, and structured products (e.g. EMTN) distributed through public offering or private placements.

The main goals of the association are:

- o Promoting and contributing to the development of this industry on the French and European markets;
- o Representing and advocating for the industry's interests, notably with the public authorities and regulators, the regulated markets and other trading venues and the other industry associations, as the AMAFI and the FBF;
- o Promoting the use of common industry standards, notably as regards product typology, in cooperation with other European associations;
- o Collecting, producing and keeping up-to-date statistics and studies on the French structured product market.

The AFPDB members commit to comply with the AFPDB Code of conduct and to implement the product to polity as laid out by the AFPDB (European Structured Investment Products Association) to which the AFPDB is affiliated.

The AFPDB Legal and Regulatory Committee actively contributes to the marketplace reflections on work-streams concerning the showing and distribution of structured products.

Industry workshops involving both manufacturers and distributors are periodically organized by the AFPDB. They contribute actively to industry proposals in areas such as the implementation of the main regulations, the investor education programs, the disclosure and communication of key product information to, respectively, distributors and final clients.

Information, news and publications: [www.afpdb.org](http://www.afpdb.org)

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