

POSITION PAPER

Position Dutch Banking Association (NVB)¹ on European Supervisory Authorities' Discussion Paper on Key Information Documents for Packaged Retail and Insurance-based Investment Products (PRIIPs)

The NVB welcomes the Joint European Supervisory Authorities' discussion paper on Key Information Documents for Packaged Retail and Insurance-based Investment Products (PRIIPs) that addresses several concerns that can arise in the establishment of uniform rules on the contents, presentation and calculation of information to be disclosed in the KID.

The NVB believes that some general remarks should be considered in the preparation of the Regulatory Technical Standards:

Scope of the Regulation

The NVB understands the importance and inherent difficulty in defining the cross-sectorial scope for the wide range of financial products and other (insurance-based) investment products. However, the scope of the Regulation does not yet contain a clear enough definition as to what should be considered as an PRIIP. Obtaining clarity on this definition is vital for market parties with due respect to the rigorous sanctions that may be imposed to product manufacturers. Therefore we strongly encourage the European Supervisory Authorities to ensure that level 2 will create the necessary clarity on the definition of PRIIP. The explanation of 'packaging' in recital 6 of the preamble of the Regulation should serve as a basis for the interpretation of the scope.

Some examples illustrate our serious concerns on the determination of the scope of the Regulation:

- In recital 7 of the preamble of the Regulation it is clearly stated that corporate shares should be excluded from the scope of the Regulation. The same should apply to *certificates of corporate shares*. From an investor perspectives, corporate shares and certificates of corporate shares will be compared with each other and both can be considered as non-complex financial instruments with due regard to the appropriateness assessment to be made pursuant to MiFID.
- In recital 7 of the preamble of the Regulation it is clearly stated that bonds that are not packaged should be excluded from the scope of the Regulation. The same should apply to bonds that are not packaged with an interest rate linked to some form of benchmark. From an investor perspective these *floating rate bonds* will and may be compared to fixed rate bonds and both can be considered as non-complex financial instruments with due regard to the appropriateness assessment to be made pursuant to MiFID.
- Recital 6 of the preamble of the Regulation seems to aim at packaged investment products, but it could be stated that *(OTC-)derivatives* fall out of scope because these are not packaged investment products. The same argument could be made as to *subordinated and perpetual notes* to the extent that these are not packaged investment products.
- Does a *mortgage* whereof the repayment be will made through an insurance-based investment product fall within the scope of the Regulation?

¹ The Nederlandse Vereniging van Banken (NVB) is the representative voice of the Dutch banking community with over 90 member firms, large and small, domestic and international, carrying out business in the Dutch market and overseas. The NVB strives towards a strong, healthy and internationally competitive banking industry in the Netherlands, whilst working towards wider single market aims in Europe.

Revision of the KID

The NVB supports the Regulation's approach to request a periodic review of the KID and a revision of the KID where the review indicates that changes need to be made. This periodic review ensures that all information presented is still current and up-to-date. With regard to this obligation, article 10 paragraph 2 sub d states that the European Supervisory Authorities will develop draft regulatory technical standards to specify the circumstances in which retail investors are to be informed about a revised KID for a PRIIP purchased by them, as well as the means whereby the retail investors are to be informed.

The NVB notes that the intention of the Regulation and the KID is to give the consumer ample relevant information to make an informed decision *before* purchasing an investment product that falls within the scope of the Regulation. With this in mind it is important to avoid a continuous flow of information towards a client who already purchased the PRIIP. Instead, we suggest that the manufacturer publishes, on its website, the up-to-date version of the KID. This regularly reviewed and revised KID would have to be made available by the product manufacturer on its website as long as the investment product is being offered to retail investors.

Transitional provision

As a transitional provision, it should be determined that a KID shall only be required for investment products that are issued after the Regulation becomes effective. Application of the requirement of a KID for investment products that have been issued in the past, would result in a burdensome legacy that could potentially affect the secondary market of existing investment products.

1: Do you have any views on how draft RTS for the KID might be integrated in practice with disclosures pursuant to other provisions?

There are already a number of regulatory disclosure requirements in the existing EU legislation. The NVB therefore believes that combined effects of different regulations need to be taken into account to ensure a clear alignment and consistency with the information to client requirements (e.g. MiFID2, AIFMD, UCITS directive and in the future IMD2 for insurance based investment products). In addition, if a reliance on disclosure requirement set in other regulations will be admissible (e.g. MiFID2 requirements on costs disclosure by investment firms and information on costs in KID and IMD2 for the insurance based investment products), it is important to ensure coordination between the pieces of regulations involved.

It is extremely important to establish which legislation shall be applicable to provide the client with pre-contractual information in order to avoid (1) operational and administrative costs for the entity and (2) excess of documentation for retail clients.

In view of this and considering that the KID (as well as the KIID) must be delivered in any case to retail investors (this is not the case for the prospectus, whose delivery is not mandatory according to Directive 2003/71/EC) it is important to identify solutions useful to make effective the overall information due to retail investors. For execution only products availability on the website of the KID should be sufficient (it's impossible to deliver a KID prior to each execution-only trade).

It appears to be clear from PRIIPs Level 1 (Article 6(2)) that references to e.g. prospectuses would be allowed and that information contained in other documents (other than marketing material) could be relied upon. On the opposite side it should be ensured that the information contained in the KID could be relied upon for the purpose of any other regulatory disclosure requirement.

However, it may not in practice be possible to leverage from information that must be provided under other regulatory requirements. This could have to do with the timing; certain information is provided prior to the investor becoming a customer or prior to commencing using investment services whereas PRIIPs information is provided in connection with the transaction. It could also be constrained by division of duties between an issuer/manufacture and a distributor. Another process related issue is the channel used for distribution of the PRIIP. In connection with that it could be mentioned that different regulatory requirements may allow slightly different methods for providing the information required.

The information provided in the PRIIPs KID should be considered as sufficient information in respect of the financial instrument disclosure perspective (in particular with regard to the costs and associated charges and to the risks) and should be regarded as appropriate for the purposes of providing information to clients under MiFID 1 and 2 and IMD 2 for the insurance based investment products. A distributor should be able to rely on any information provided by the product manufacturer in the KIID or the KID. From an manufacturer perspective it is important that the Prospectus is still the document on which an investor should base its investment decision. The KID cannot contain all the risks but only a short list with a reference to the prospectus.

It is acknowledged that product disclosures already exist in other instruments and that the PRIIPS regulation does not amend or legally substitute for these. However, the overarching principle should be to ensure a high level of co-ordination by the ESAs between the requirements being proposed with PRIIPs and other regulatory disclosure requirements such as pursuant to MiFID II / IMD II. This would be to reduce duplication and multiple 'layers' of documentation for consumers stating the same objectives but in different formats.

We would like to highlight the interaction between the PRIIPs Regulation and local regulatory requirements as a particularly significant concern. European national authorities have, in recent years, established their own differing disclosure regimes that would now be also addressed by the PRIIPs Regulation. In fact, several examples are described in the Discussion Paper (i.e. pages 36-40). These examples reveal that Member States have created risk indicators based on different characteristics and categories (i.e.: five categories of risk ranging from 1 to 5; four categories ranging 1 to 4 and linked to different colours; categories ranged from A to E indicated by coloured arrows, etc.). In addition, these local risk indicators are based on different criteria (risk return and costs; possibility of capital loss; market, credit and currency risk, etc.).

We are concerned about how the PRIIPs Regulation will interact with these national regulations as this is not specifically addressed in the Discussion Paper. We contend that as far as newly issued products are concerned, PRIIPs should supersede and replace any currently existing regulatory regimes that overlap with the disclosure requirements contained in the said Regulation. Otherwise, the spirit of the PRIIPs Regulation (i.e. Recital 3) would be contravened, creating regulatory arbitrage, divergences throughout Europe and introducing barriers to the main purpose of the Regulation: to create a level and homogeneous playing field for both firms and clients.

The aforementioned is particularly important considering the fact that apparently some of these national regulations have been implemented without observing the procedure set forth in Art. 4 of Directive 2006/73 EC implementing MIFID I (currently regulated in Art. 24.12 of MIFID II). Therefore, in addition to the lack of regulatory harmonization resulting from different national regulations, legal uncertainty arises from local regulatory requirements adopted in contravention of the European rule. To this end, the RTS must include a mandatory replacement of any local regulation with similar scope to PRIIPs as far as newly issued products are concerned. Member States that have implemented national requirements overlapping PRIIPs should be instructed to promptly override such national requirements.

2: Do you agree with the description of the consumer's perspective on risk expressed in the Key Questions?

The NVB generally agrees with the description of the consumer's perspective on risk expressed in the Key Questions. The description of risks however should make a clearer distinction between risks that relate to:

- (the issuer of) the underlying
- the issuer of the PRIIP
- the product conditions relating to the PRIIP

Furthermore it is not clear how the question "Is risk and return balanced?" could be answered. Risk is not a fixed value and may differ from time to time. How will the risk on "black swans" be taken into account? Lehman Brothers for instance was investment grade at the moment it went bankrupt.

PRIIPS contains the obligation to indicate the maximum loss. Theoretically, for all products the maximum loss is at least 100%. An exaggerated representation of risk is just as misleading as underrepresenting of risks. To achieve a good understanding in the perception of the investor, it is important that the circumstances under maximum loss may occur, are explained to the customer.

3: Do you agree that market, credit and liquidity risk are the main risks for PRIIPs? Do you agree with the definitions the ESA's propose for these?

The risk determinants (market, credit and liquidity risk) described in the discussion paper are essential risks that need to be addressed, however for specific products other risks should also be taken into account. Think for example of legal and tax risks (in particular, changes in tax laws) and other non-economic risks, such as: operational risks and political risk.

We recommend to indicate risks with existing parameters, such as credit ratings for credit risks (credit rating agencies do have recovery tables). Market risk could be indicated via volatility and/or duration.

4: Do you have a view on the most appropriate measure(s) or combinations of these to be used to evaluate each type of risk? Do you consider some risk measures not appropriate in the PRIIPs context? Why? Please take into account access to data

The NVB believes that the (combination of) proposed measures will be too complicated. Some criteria, such as credit rating, volatility and duration, may give a better view on risks. The other proposed quantitative measures (mostly based on real forecasts or probability distributions) are probably not that easy to explain to retail investors. Methodologies like Value-at-Risk (VaR), Expected Loss for a given Value-at-Risk (ELVaR), Expected Shortfall for a given Value-at-Risk (ESVaR), are: (1) short-term measures (typically 1 day, 1 week); (2) too complicated to compute and, (3) unknown for retail investors.

5: How do you think market, credit and liquidity risk could be integrated? If you believe they cannot be integrated, what should be shown on each in the KID?

The NVB believes that it will be hard to integrate market, credit and liquidity risk and still keep the risks clear to understand. The NVB believes that market, credit and liquidity risk should be shown separately.

6: Do you think that performance scenarios should include or be based on probabilistic modelling, or instead show possible outcomes relevant for the pay-outs feasible under the PRIIP but without any implications as to their likelihood?

The NVB believes that performance scenario's should not include or be based upon probabilistic modelling. Performance scenario's should show a range of results, from a pessimistic to optimistic scenario's (but not too optimistic).

7: How would you ensure a consistent approach across both firms and products were a modelling approach to be adopted?

The premise of the PRIIP regulation is that the KIID makes the different types of PRIIPS comparable. This requires a consistent unified approach. This presupposes standardization and the same calculation methods for each PRIIP. For every PRIIP the same formula should apply.

8: What time frames do you think would be appropriate for the performance scenarios?

For closed end PRIIPS the maturity date. For open ended PRIIPS a fixed term should apply (for instance a certain holding period).

9: Do you think that performance scenarios should include absolute figures, monetary amounts or percentages or a combination of these?

The NVB suggests monetary amounts and/or percentages. In the NVB's views, percentages are easier to compare (annual percentages facilitate comparison among products with different time frames and holding periods) because they have no units; which means less assumptions (amount invested, investment currency, etc.).

10: Are you aware of any practical issues that might arise with performance scenarios presented net of costs?

Given that costs change over time, costs may depend on the amount invested and on the investor's decisions. Presenting performance scenarios net of costs would require making assumptions (not related to the PRIIP) obscuring the analysis.

Furthermore, PRIIPS are structured in different way leading to a different cost structure, making comparison very difficult. A distinction in showing costs should be made based on the type of PRIIPS, meaning a different approach should be foreseen for e.g. an insurance-based investment products (2 levels, but more personalized and often including additional covers) and another for packaged retail investment products.

In particular indirect costs such as inflation, tax, dividends and costs embedded in the price of the PRIIP are problematic. It is unclear which costs should be included in the definition of indirect costs and whether all costs can be explained to retail customers. In the NVB's view the information should be simple, engaging and understandable and the section covering costs should be balanced compared to other sections in the KID.

Furthermore, the presentation may combine too many hypotheticals and end up misleading consumers. NVB is in favour of presenting costs separately and to not include them in the performance scenarios.

11: Do you have any preferences in terms of the number or range of scenarios presented? Please explain.

The NVB is of the opinion that it depends on what is most appropriate for the PRIIP in question i.e. according to the PRIIPs characteristics. The range of scenarios should capture the possible features feasible for the PRIIP and there should be a balance between positive and negative scenarios. It could be reasonable to present at least three scenarios, favourable, medium or slightly unfavourable and a negative one (similar to the "crash scenario" in the UK). With these options, the client can have a clear picture about risks and benefits to compare with others.

12: Do you have any views, positive or negative, on the different examples for presentation of a summary risk indicator? Please outline advantages and disadvantages, and provide any other examples that you are aware of that you think would be useful.

NVB is against the introduction of a risk indicator. However, assuming that a risk indicator will be introduced, this will in any case have to be an uniform indicator that is designed for the different products. An appropriate disclaimer is required.

The Italian model (page 39 Discussion Paper) seems OK. Mentioning risks separately makes an indicator easier to understand. The question is if an overall risk indicator must be used and, if so, how it should be derived from the individual risk factors.

13: Do you have any views, positive or negative, on the different examples for presentation of performance scenarios? Please outline advantages and disadvantages, and provide any other examples that you are aware of that you think would be useful.

The NVB is in favour of a table showing how a product reacts in case of a realistic hypothetical development of an underlying, rather than the use of a histogram. These scenario's should show the risks of a PRIIP. The criteria for the calculation of the scenario's should be uniform. Data will need to be provided for on a European level.

14: Do you have any views on possible combinations of a summary risk indicator with performance scenarios?

NVB does not believe that combining a summary risk indicator with performance scenarios would simplify retail investor's ability of understanding. In any case this should be kept as simple as possible, and the risk elements should be kept to a single element.

15: Do you agree with the description of the consumer's perspective on costs expressed in the Key Questions?

The NVB thinks that an aggregated cost disclosure is the most appropriate way of being transparent and understood by the client. In the end the client wants to know the total amount of the investment. Moreover, giving too much and too detailed kind of information will lead to an overload of information.

Detailed third party costs or other costs to which manufacturers do not have access to (e.g. broker costs, as these are different for each broker) should not form part of the calculation of how much of my initial investment remains after cost deduction.

NVB agrees that all questions are relevant with the exception of questions 5, 6 and 8:

- Question 5: "How much of my initial investment remains after cost deduction? E.g. how much of my investment is really invested?"

For structured products as one example where costs are embedded in the purchase price, two possible approaches for disclosures are presented in section 4.4.1.2. In the consultation paper (page 55). The NVB favours the first approach: "Introduce a distinction between the investment's price and the margin/fees that have been incorporated in the price".

For example, if a manufacturer sells a structured Euro Medium Term Note (EMTN) at 1,000€, he should disclose in the KID that 3% (30€) of the purchase price is a sales commission and 2% (20€) of the acquisition price will be absorbed upfront to recompense the manufacturer for the costs the manufacturer incurs when structuring the note. The result is that 95% (950€) of the acquisition price will be invested in the note: there are 5% costs.

- Question 6: “How much am I paying for my capital protection in relation to my overall investment?”

In our view it might be difficult to calculate the size of the “insurance premium” for enhancing capital protection. There is no standard method.

- Question 8 “How do these costs compare to other products?”

The cost section in the KID should make it possible for retail investor to compare costs between different PRIIPs. To conduct this comparison the customer needs to look at the KID for each of the different PRIIP and then do the comparison on his/her own. In the NVB’s view it would be difficult to put as a requisite that each KID should contain cost information for all different PRIIPs.

Indeed, as a rule of thumb, the retail investor should be aware of all the costs that he/she faces directly and that might impact his decision (e.g. entry and exit fees, management fees, performance fees and so on). Costs like transaction costs incurred by a fund on managing the portfolio, for instance, are irrelevant to the investor’s decision and are difficult (if not impossible) to estimate beforehand. Too much information about costs can mislead the importance of some of them.

16: What are the main challenges you see in achieving a level-playing field in cost disclosures, and how would you address them?

The presentation of the costs in the PRIIPs KID should be aligned with MiFID 2 and IMD 2 for insurance based investment products. To compare the costs an agreed break down of relevant direct- and indirect costs is needed. NVB suggests including only costs that affect the investor’s decision (e.g. entry and exit fees, management fees, performance fees, etc.) and redirect the investor to a more comprehensive/ specific documents.

Furthermore, it will be important to ensure that all manufacturers disclose the same types of costs using the same methodology (for example, currently methodologies used in relation to funds vary considerably to those used for structured products and methodologies also vary as between manufacturers).

Also, it is critical to ensure that manufacturers are not required to disclose costs information in the KID which relates to third party costs or other costs to which they do not have access (e.g. broker commissions, stamp duties, transaction taxes, foreign exchange costs, advice fees, distribution fees from third parties among others).

17: Do you agree with the outline of the main features of the cost structures for insurance-based investment products, structured products, CfDs and derivatives? Please describe any other costs or charges that should be included

As previously indicated, as the KID is a manufacturer document it is key that manufacturers are only required to disclose costs within their knowledge and under their control (as the manufacturer is responsible for the accuracy of the KID). Costs not known by the manufacturer cannot be disclosed in the KID including, for example, advice fees and certain brokerage/distribution costs.

Licence fees and brokerage costs paid by the manufacturer should not be disclosable as it is difficult to assess the cost per product and these are usually part of an overall pricing package. The same is often true for listing fees. Moreover, these fees will be paid by the manufacturer out of the structuring fee and will not be directly charged to the investor, for that reason there is no reason to disclose these fees separately.

18: Do you have any views on how implicit costs, for instance costs embedded within the price of a structured product, might be best estimated or calculated?

Implicit costs embedded within the price of structured products are difficult to estimate beforehand, because the hedge is typically done once the subscription proceeds are known and implicit costs also vary as market conditions change. Risk/performance measures should already reflect implicit costs. For example, if a product has higher embedded implicit costs, the payoff parameters and the risk/performance measures will be less favourable.

The separate cost elements should be estimated and one should not attempt to calculate the costs of the basis of a theoretic 'fair value' cost.

Any further break-down of embedded costs beyond manufacturing costs is impossible.

The costs vary depending on the manufacturer's business model, ability to handle risk, competence, efficiency and other factors.

19: Do you agree with the costs and charges to be disclosed to investors as listed in table 12?

The NVB believes that there is too much irrelevant information. The investor should be aware of the costs that affect his decision (e.g. entry and exit fees, management fees, performance fees, etc.). The overall cost structure combined with the performance/risk information are sufficient to compare different products.

The listed cost parameters could have an impact on the return of the product. The information should be simple and understandable, and the cost section should be balanced compared to the other sections of the KID. If all the costs listed in table 12 are to be addressed separately then this objective will be difficult to fulfil.

The NVB is in the opinion that implicit costs, dividends, costs embedded in pricing parameters, bid-ask spread and market impact costs should in any case not be disclosed.

All separate direct costs should be bundled and labelled into direct costs and all implicit costs bundled and labelled as indirect costs.

20: Do you agree that a RIY or similar calculation method might be used for preparing 'total aggregate cost' figures?

The NVB does not agree that RIY or a similar calculation method could be used to prepare a "total aggregate cost" figures for a PRIIP for reasons including the following:

- Such a calculation method may work for products where principal is not at risk but not for structured products.
- Trying to compare costs to a potential yield is not helpful as fees do not necessarily map to yield.
- RIY is difficult to compute and is likely to be difficult for retail investors to understand.

For defined return products, the key is the defined return. It is unclear why embedded costs built into the pay-off are relevant for the purposes of key information as these will not reduce the amount received by investors.

21: Are you aware of any other calculation methodologies for costs that should be considered by the ESAs?

Any calculation methodology should be in line with MiFID II.

22: Do you agree that implicit or explicit growth rates should be assumed for the purpose of estimating 'total aggregate costs'? How might these be set, and should these assumptions be adjusted so as to be consistent with information included on the performance scenarios?

The NVB does not agree that implicit or explicit growth rates should be assumed for the purpose of estimating 'total aggregate costs' because these growth rates will differ per type of PRIIP and therefore the comparability of the PRIIPS will not be achieved. In fact may become misleading:

- in the context of structured products, in general, costs are not dependent on growth rates, unlike, for example, open ended products with variable fees which are affected by the length of time the product is held;
- it may be misleading to show upfront costs in such a way. If, for example, the market rises by 10% per year, the fee will look low;
- it would be necessary to include various assumptions which would be inappropriate for a 3 page KID.

23: How do you think implicit portfolio transaction costs should be taken into account, bearing in mind also possible methods for assessing implicit costs for structured products?

Regarding structured products: the NVB believes that implicit costs should not be taken into account explicitly because they are already considered in the payoff parameters (please see answer to Question 18).

24: Do you have any views on possible assumptions that should be made, and how these might be calibrated or set?

The NVB is concerned that there is a risk that any assumptions could potentially be misleading for investors. As such it is imperative that assumptions are kept to a minimum and relate only to matters that retail investors are easily able to understand.

25: What do you think are the key challenges in standardising the format of cost information across different PRIIPs, e.g. funds, derivatives, life insurance contracts?

Please see answer to question 16.

26: Do you have a marked preference or any objection for any of the presentational examples? If so, why? Please provide any alternative examples which you believe could be useful.

The NVB considers that too many assumptions make the calculations useless and would lead to overload of information to the vast majority of the retail investors. These raise the following question: How will each of them convert the presented values to his/her particular situation?

For structured products the specification of the costs should be presented clear and easy, only a percentage of the nominal and what the impact is on the return. The examples are in most cases too difficult and will not provide a clear overview for the investor.

27: In terms of a possible breakdown of costs, are you aware of cost structures for which a split between entry or exit costs, ongoing costs, and costs only paid in specific situations or under specific conditions, would not work?

It depends how these categories are defined (in more detail). The breakdown should in any event be consistent with MIFID II.

28: How do you think contingent costs should be addressed when showing total aggregated costs?

This question makes clear that it is not possible to define a definite absolute figure as total aggregate cost. The KID should make clear that future (currently unknown) costs may apply.

The NVB doubts as to whether it is appropriate to disclose this level of detail in relation to costs in a 3 page document KID. Another disadvantage will be that this will trigger a highly frequent review, revision and republication of the KID.

29: How do you think should cumulative costs be shown?

Cumulative costs should be shown as both as a percentage and as an amount of the nominal amount invested.

30: Do you have any views on the identity information that should be included?

We agree that standardisation would be helpful. In respect of the manufacturer we believe that a website link would be the most efficient presentation method and should be sufficient.

We agree that the name of the competent authority should be provided and that manufacturers should have the option to include ISINs or similar identifiers where these are available at the date of publication of the KID.

31: Do you consider that the criteria set out in recital 18 are sufficiently clear, or would you see some merit in ESAs clarifying them further?

We are of the opinion that it is rather arbitrary whether the KID should contain a comprehension alert or not. We prefer that the ESA's publish a limited list with product categories which require the comprehension alert.

32: Do you agree that principles on how a PRIIP might be assigned a 'type' will be needed, and do you have views on how these might be set?

We refer again to our general concern that it is yet not adequately clear which investment products are considered as a PRIIP. Obtaining clarity on the definition of a PRIIP is pivotal. Therefore we strongly encourage to ensure that level 2 will create the required clarity on the definition of a PRIIP and this will not be postponed till level 3 guidance. We agree that there should be a general standard, for structured products we suggest to use the EUSIPA product classification.

33: Are you aware of classifications other than by legal type that you think should be considered?

We refer again to our general concern that it is yet not adequately clear which investment products are considered as a PRIIP. Obtaining clarity on the definition of a PRIIP is pivotal. Therefore we strongly encourage to ensure that level 2 will create the required clarity on the definition of a PRIIP and this will not be postponed till level 3 guidance. For structured products we suggest to use the EUSIPA product classification.

34: Do you agree that general principles and as necessary prescribed statements might be needed for completing this section of the KID

NVB agrees that general principles and as necessary prescribed statements might be needed for completing this section of the KID.

35: Are you aware of other measures that might be taken to improve the quality of the section from the perspective of the retail investor?

We believe that a fundamental aim should be to keep the description of the objective as short and simple as possible.

36: Do you have views on the information PRIIPs manufacturers should provide on consumer types?

Further discussion is needed on this point. Our concern is that a labeling for consumer type restricts the distributor to advise this product to his clients. For instance, what if the distributor deviates from the label? Ideal would be to create some standard client classifications (3 or 4) which are used by all manufacturers this will create a level playing field. Additionally, it must be made clear that a purchase decision by the investor in case of an execution-only service remains his own responsibility. Consumer types for the purposes of the PRIIPs Regulation should be identified in the same way as the manufacturer should identify its target market under MiFID II rules with regard to product governance.

37: What is the key information that needs to be given to the retail investor on insurance benefits, and how should this be presented?

No comments.

38: Are you aware of PRIIPs where the term may not be readily described, or where there are other issues?

In our view the term PRIIP should only apply to products that have a packaged character, i.e. not to options, futures, swaps and certificates of shares.

39: Are you aware of specific challenges arising for specific PRIIPs in completing this section?

In our opinion it is essential that the information requirements are consistent with those that have regard to investor compensation or depositor guarantee schemes (to the extent applicable on the PRIIP).

40: Are you aware of specific challenges arising for specific PRIIPs in completing this section?

The NVB is not aware of any specific challenges arising for specific PRIIPs in completing this section.

41: Are you aware of specific challenges arising for specific PRIIPs in completing this section?

For PRIIPs where the manufacturer is different from distributors it should be clarified that complaints related to the product or the KID involve the PRIIP manufacturer while those related to the selling involve distributors. In any case the information within KID should be generic information and include a reference to where further information can be found is allowed.

The only way the 'how do I complain' information can work is if the KID states that the consumer should refer to the Distributor / Adviser in the first instance.

A manufacturer may have their product distributed via a number of organisations or channels (e.g. platforms) and therefore could not be specific on the complaint route.

We prefer in the KID only the website of the manufacturer for further information.

42: Do you agree that this section should link to a webpage of the manufacturer?

The NVB agrees that this section should link to a webpage of the manufacturer.

43: Do you agree with the assessment of when PRIIPs might be concerned by article 6(3)?

We are of the opinion that the ESA's are overly restrictive in their interpretation of article 6(3), inter alia by shifting the burden of proof to justify that a single stand-alone KID cannot be provided to retail investors to the PRIIP manufacturer and by stating that KIDs for each variant of the product should be provided. As a consequence hereof, the exemption of article 6(3) is made meaningless.

44: In your market, taking into account the list of criteria in the above section, what products would be concerned by article 6(2a)? What market share do these represent?

Unit-linked life insurance contracts and hybrid life insurance contracts would be specifically concerned.

45: Please provide sufficient information about these products to illustrate why they would be concerned?

Unit-linked life insurance contracts and hybrid life insurance contracts would be specifically concerned.

46: Do you have views on how you think the KID should be adapted for article 6(3) products, taking into account the options outlined by the ESAs?

There should only be one KID per identifiable product strategy, rather than a multitude of KIDs for one product, but we like to reiterate that Exchange Traded Derivatives (futures, options, swaps) should not be classified as a PRIIP and therefore they do not need a KID.

47: How do you consider that the product manufacturer should meet the requirements to describe and detail the investment options available?

Cross references to other products documentation should be foreseen i.e. a KID pertaining to each investment option.

48: Are you aware of further challenges that should be taken into account?

The NVB understands the importance and inherent difficulty in defining the cross-sectorial scope for the wide range of financial products and other (insurance-based) investment products. However, the scope of the Regulation does not yet contain a clear enough definition as to what should be considered as an PRIIP. Obtaining clarity on this definition is vital for market parties with due respect to the rigorous sanctions that may be imposed to product manufacturers. Therefore we strongly encourage ESMA to ensure that level 2 will create the necessary clarity on the definition of PRIIP. The explanation of 'packaging' in recital 6 of the preamble of the Regulation should serve as a basis for the interpretation of the scope. PRIIP should only apply to products that have a packaged character.

Some examples illustrate our serious concerns on the determination of the scope of the Regulation:

- In recital 7 of the preamble of the Regulation it is clearly stated that corporate shares should be excluded from the scope of the Regulation. The same should apply to *certificates of corporate shares*. From an investor perspectives, corporate shares and certificates of corporate shares will be compared with each other and both can be considered as non-complex financial instruments with due regard to the appropriateness assessment to be made pursuant to MiFID.
- In recital 7 of the preamble of the Regulation it is clearly stated that bonds that are not packaged should be excluded from the scope of the Regulation. The same should apply to bonds that are not packaged with an interest rate linked to some form of benchmark. From an investor perspective these *floating rate bonds* will and may be compared to fixed rate bonds and both can be considered as non-complex financial instruments with due regard to the appropriateness assessment to be made pursuant to MiFID.
- Recital 6 of the preamble of the Regulation seems to aim at packaged investment products, but it could be stated that (*OTC*-)derivatives (options, futures, swaps) fall out of scope because

these are not packaged investment products. The same argument could be made as to *subordinated and perpetual notes* to the extent that these are not packaged investment products.

- Does a *mortgage* whereof the repayment will be made through an insurance-based investment product fall within the scope of the Regulation?

49: Do you agree with the measures outlined for periodic review, revision and republication of the KID where 'material' changes are found?

It is key that the obligation to review/revise the KID is aligned with MiFID II obligations to ensure information provided to retail investors is "up-to-date" and to provide updated costs information.

The requirement to review, revise and update the KID places a significant and costly regulatory burden on manufacturers. Experience with short form disclosure documents in other jurisdictions (e.g. Italy and Germany) demonstrates that it is key that the requirement to update the KID therefore contains reasonable limits.

As the KID is a pre-contractual document prepared by the manufacturer, it should not substitute the duties of the advisor/distributor to provide information to investors throughout the life of the product. NVB members are of the view that the KID should not be used to inform investors of any changes occurring after the product has been sold. The KID should only be updated to reflect changes likely to significantly impact investment decisions relating to future primary market sales.

For products with an open offer period, an annual review of the information contained in the KID seems adequate (any higher frequency would be impracticable) but it should not be necessary to actually update the KID unless there have been material changes to the risk/reward profile of the PRIIP. What constitutes a material change to the risk/reward profile of the PRIIP should be precisely defined as follows: a material change which impacts any of the following sections of the KID: (i) What is this product? (ii) What are the costs? and (iii) How long can I hold it and can I take my money out? Also it should only be necessary to update those sections of the KID which have materially changed. Otherwise, manufacturers are likely to find the volume of KIDs that require updating and the amount of work involved in updating each such KID, overwhelming.

50: Where a PRIIP is being sold or traded on a secondary market, do you foresee particular challenges in keeping the KID up-to-date?

Where products are not actively marketed/there is no open offer period/liquid secondary market, requiring a manufacturer to review and update the KID would be disproportionate and inappropriate. Most structured products, closed funds would fall into this category.

Requiring a manufacturer to update a KID where it facilitates a secondary market (e.g. to allow a single investor to exit a product) may be counterproductive in that the costs involved in updating the KID may deter the manufacturer from facilitating such sales.

For Prospectus Directive PRIIPs, the requirements of the Prospectus Directive and the Transparency Directive should already provide sufficient protection to investors for the purposes of making them aware of updated financial information in relation to the manufacturer and significant new factors, material mistakes or inaccuracies in relation to the information included in the prospectus which is capable of affecting the assessment of the securities.

Unless clear and reasonable limits are set in relation to (i) when the KID must be reviewed and updated; and (ii) what aspects of the KID must be updated, it will be very challenging (or, indeed, impossible) to keep the KID up-to-date. Some products, for example any leveraged product, may be very volatile and may have substantial intra-day price fluctuations which could lead to a change in the

risk indicator on a daily basis. In the absence of clear and reasonable limits in relation to updates, there is a risk that the KID will never be fully up-to-date as the risk profile may change constantly.

As previously indicated, it is important that only costs that are within the knowledge and control of the manufacturer are included in the KID. It would not be appropriate to include also distributors/advisors/third party costs.

51: Where a PRIIP is offering a wide range of investment options, do you foresee any particular challenges in keeping the KID up-to-date?

We foresee difficulties with keeping the scenario analyses up to date.

52: Are there circumstances where an active communication model should be provided?

The NVB notes that the intention of the Regulation and the KID is to give the consumer ample relevant information to make an informed decision *before* purchasing an investment product that falls within the scope of the Regulation. With this in mind it is important to avoid a continuous flow of information towards a client who already purchased the PRIIP. Instead, we suggest that it will suffice that the manufacturer publishes, on its website, the up-to-date version of the KID. This regularly reviewed and revised KID would have to be made available by the product manufacturer on its website as long as the investment product is being offered to retail investors.

Furthermore, it would not be reasonable/practicable to require manufacturers to actively inform investors of changes to the KID as they typically have no direct relations with the end investor. Even the distributor may not have a continuing relationship with the end investor after the initial sale of the product. Provided the initial KID states where updates to the KID will be published (e.g. on a specified website) this should be sufficient.

An active communication model is not required for updates to the UCITS KIID. It should not be required for updates to the KID.

53: Do you agree that Recital 83 of the MiFID II might be used as a model for technical standards on the timing of the delivery of the KID?

From a practical perspective it is important to note that requirements on timing of delivery of the KID must take into account the fact that it must be consistent with legally binding pre-contractual and contractual documents and the information required by Article 8 of the Regulation, hence it is unlikely that it can be finalised much in advance of any Prospectus, particularly taking into account the fact that it must include, for example, information on costs which may not be available much in advance of the issue of the product (if at all).

The criteria for determining the meaning of “in good time” in Recital 83 of MiFID appear to be a useful model provided that the practical constraints on timing of delivery of a KID will be consistent with UCITS and the content of the Prospectus and containing information on, for example, costs, are taken into account as well.

54: Are you aware of any other criteria or details that might be taken into account?

We foresee difficulties with providing the KID when the order is handled via the telephone. Besides, we are of the opinion that there should be no discrepancy between the interpretation of the requirement to provide a KID ‘in good time’ and similar requirement under UCITS.

Furthermore it should be clear that a KID shall only be required for investment products that are issued after the Regulation becomes effective. Application of the requirement of a KID for investment products

that have been issued in the past, would result in a burdensome legacy that could potentially affect the secondary market of existing investment products.

55: Do you think that the ESAs should aim to develop one or more overall templates for the KID?

The NVB would welcome ESAs initiatives to develop one or more overall templates for the KID. It would allow investors to have a recognizable and homogeneous overview in order to compare products. It would make sure that everyone uses exactly the same approach and would therefore minimise the potential discrepancies.

There are many obligations that are still very open and theoretical even in the DP (i.e. non-technical language) and may be implemented in different ways by firms and interpreted in many various manners by supervisors and courts. In our opinion accurate and complete templates/examples would be the only way to be able to (i) improve the quality and comparability of information provided to retail investor regarding to PRIIPs; (ii) improve legal certainty for firms.

However, some flexibility should be allowed/considered to accommodate special cases.

If templates are to be used, this should only act as guidance for what needs to be included on a section by section basis in order to introduce a consistent overall format for consumers, and allow for flexibility for manufacturers.

56: Do you think the KID should be adjusted to reflect the impact of regular payment options (on costs, performance, risk) where these are offered? If so, how

We are inclined to prefer to follow the UCITS approach and not to address regular payment structures in the KID itself.

57: Are there other cost or benefit drivers that you are aware of that have not been mentioned? Please consider both one-off and ongoing costs?

The use of standardised templates may be beneficial to a reduction of the costs of the production of a KID, apart from its positive effect to compare different products. A relevant cost driver may be, that (for example due to ongoing changes in costs) it is necessary to revise the KID on a daily basis or at least very frequently.

58: Do you have any evidence on the specific costs or benefits that might be linked to the options already explored earlier in this Discussion Paper? Please provide specific information or references broken down by the specific options on which you wish to comment.

No comments.

59: Are you aware of situations in which costs might be disproportionate for particular options, for instance borne by a specific group of manufacturers to a far greater degree in terms relative to the turnover of that group of manufacturers, compared to other manufacturers?

If complicated risk measures such as VaR, ELVaR, Expected Shortfall VaR, Credit value at risk become mandatory, the implementation costs will be considerable even if the manufacturer already uses such measures in its internal risk measurement and assessment. Infrequent / small volume issuers would most likely be driven off the market.

We believe that the cost of production of a KID would be disproportionate for OTC trades, and that they should be ruled out of scope. Distributors will need to be able to demonstrate compliance with their

obligations under MiFID to ensure understanding; the bespoke nature of OTC trades makes the KID an unwieldy way of approaching this. We also note that FX Forwards, ruled as derivatives for EMIR purposes, would also fall into scope – and do not believe that a KID would be an appropriate form of pre-trade disclosure.

The NVB also believes that the cost and practicalities of delivering a KID would be disproportionate for Exchange-traded Derivatives. These are simple, standardised products readily capable of being understood without the disclosures of a KID. MiFID obligations on distributors in this respect would still apply. We note that the leveraged nature of option trades would make frequent updates of the KID necessary, and that the cost and complexity of achieving this for the full range of exchange-traded contracts would be likely to outweigh the benefit.