

The **Nederlandse Vereniging van Banken** (Dutch Banking Association, hereinafter referred to as: NVB) is disappointed that the proposed changes do not entail solutions regarding shortcomings with regard to the methodology for the calculation of performance scenarios.

#### **Q7.**

We welcome the opportunity to respond to the ESA's consultation paper as published on 8 November 2018. In this part of the response the NVB would like to raise some general points of concern regarding sub-sections 4.1.5 and 4.1.7 of the ESA's consultation paper.

We understand that the proposed changes are part of a quick fix. But we are disappointed that they do not entail any changes to the current methodology to generate future performance scenarios. In practice it means a status quo until 2020. In the meantime, too positive and maybe even potential misleading returns still have to be shown to retail investors. PRIIP manufacturers might also try to solve the flaws in methodology by providing supplements to the KID. Both of the above mentioned consequences are in our opinion undesirable. In sub-section 4.1.7. it is proposed that more guidance and views will be published by the ESA's for the period prior to 2020. In this regard we have the following observations:

- In our opinion there is no legal basis for amending the content of the KID or requiring a supplement to the KID prior to 2020, unless there will be provided a clear basis in the amended Commission Delegated Regulation EU 2017/653 that has entered into force;
- Any possible supplement to the KID will have an impact and pose a burden on both the manufacturer (who will need to draw it up and publish it) and the distributor (who will need to provide it to retail investors in addition to the existing KID). This may also cause operational risk. In addition to the applicable regulatory review and revision requirements, it should be avoided that the content of the KID is subject to a continuous process of amendments;
- The ESA's consider whether it is appropriate to address further guidance in separate communication or in a final report. On the basis of the consultation paper it is not very clear what amendments can be expected. Therefore, we are in favour of a further public consultation on the possible future changes to a KID, as this may have significant impact on both manufacturers and distributors.

#### **Q9.**

We welcome the opportunity to respond to the ESA's consultation paper as published on 8 November 2018. In this part of the response the NVB would like to raise some points of concern regarding section 4.2 of the ESA's consultation paper.

We cannot state we either fully agree or disagree with section 4.2 because we believe a more fundamental change must be conducted before the proposed quick fix may be implemented. Unfortunately, for example, the proposed changes in this part of the consultation paper do not entail fundamental changes to the highly criticized transactions costs methodology as described in the Annex VI (art. 12-23) to regulation 1286/2014. Before any quick fixes are made as outlined in section 4.2, we urge policy makers to revise the transaction costs methodology as currently proposed under PRIIPs.

The current transaction cost methodology is based on partially unsuitable assumptions that can ultimately result in misleading information to retail investors. The current methodology systematically ensures that market movements (so called slippages) are included in the calculation of transaction costs, something that has received a lot of criticism from the industry. The inclusion of these market movements means that transaction costs that will be disclosed to retail investors are in many cases overestimated or underestimated. Retail investors therefore get a confusing and potentially



The methodology described above for calculating transaction costs thus yields confusing and unreliable figures: transaction costs are either over- or underestimated on a constant basis. In some cases this can result in negative transaction costs that are presented to retail investors. This would mean that investors would be rewarded in gross performance for the 'negative costs' that a fund manager makes for its portfolio management. Although this is theoretically possible through the efficient conduct of a fund manager, it will generally be necessary to pay for the portfolio management tasks of a fund manager (buying and selling securities). Negative costs for the above services are therefore not easy to explain to retail investors.

#### **Q10.**

We welcome the opportunity to respond to the ESA's consultation paper as published on 8 November 2018. In this part of the response, the NVB would like to state comments regarding section 4.3 of the ESA's consultation paper.

#### **Avoid the co-existence of two similar information documents**

We were of the understanding that there would never be a situation where a PRIIPs KID exists besides a UCITS KIID for one and the same financial product. However the proposed changes lead to a situation where the UCITS KIID will be no longer applicable to retail investors, but will remain applicable to professional investors. As a consequence, manufacturers of UCITS with a broad potential target market identification (i.e. both professional and retail investors) will still have to produce two different information documents (UCITS KIID and PRIIPs KID) besides each other. The two documents differ with regard to the underlying methodologies and calculations, for example:

- **Transaction costs within the fund.** For UCITS, transactions costs within the fund (so called implicit costs) are not included whereas in PRIIPs they are. Because of this inconsistency, retail investors might be confused when two information documents exist beside each other.;
- **Risk indicator.** Although they appear to be very similar (i.e. a scale of 1-7), risk indicators within UCITS SRRI and the PRIIPs SRI differ fundamental on a methodology level. The PRIIPs regulation risk indicator can be seen as a 'step up' from the UCITS' SRRI. The SRI (PRIIPs) includes inter alia credit risk and assesses market risk (with a more complex Cornish Fisher methodology).

For both distributors and manufacturers all the above leads to operational impact and risk, now that two documents need to be produced and provided to separate client groups (i.e. professional and retail investors). But above all, it threatens to confuse (retail) investors while the EC's intention is to promote confidence (and investments) by retail investors in the European Capital Markets.

#### **Cross-references**

The proposed changes cause concern to the NVB that the legal framework will get even more complicated instead of simplified if cross-references will be made between PRIIPs and UCITS laws and regulations. This is not in line with the EC's own stated ambitions of better EU Regulation for EU citizens.

#### **Member state option**

We also want to bring the 'member state option' under the ESA's attention. The authorised languages for the information documents can differ under PRIIPs and UCITS in members states. For example, in the Netherlands a situation exists where for the UCITS KIID English and Dutch versions are both authorised languages, whereas under PRIIPs a KID in the Dutch language is mandatory. With other words, the Dutch NCA has not used it's 'member state option' under article 7 of the PRIIPs Regulation EU 1286/2014 to allow other languages.



The ESA's and NCA's should be aware of the possible differences in implementation between member states and the possible negative side-effects this might entail. If NCA's choose to not use the member state option, this might be a barrier to the freedom of capital movement in general and a shrinking range of investment options for retail investors more in particular.

#### **UCITS exemption in the light of MiFID2 cost transparency obligations**

A possible further extension of the UCITS exemption might lead to a further delay of a PRIIPS KID obligation for UCITS funds. The NVB wants to highlight any negative side effects that such a possible extension of the UCITS exemption might have on retail investors.

Distributors are obliged by MiFID2 to make the transaction costs incurred by investment funds transparent to end consumers. Distributors receive the transaction costs from asset managers through the EMT on a voluntary basis. Because of the flawed methodology (as outlined in our answer to question 9) distributors are confronted with multi-interpretable fields in the EMT (for example empty fields, negative costs or highly overestimated costs). Asset managers are reluctant to distribute cost information via the EMT that in their eyes, because of the flawed methodology, is not correct and possibly misleading.

But to adhere to the MiFID2 cost transparency requirements distributors need, as soon as possible, reliable and consistent transaction cost information from asset managers (who are not yet forced by law to do so). A possible solution for this problem would be that a further extension of the UCITS exemption is made subject to the condition that UCITS manufacturers would be required by PRIIPs to disclose the transactions costs incurred within the fund (although we still argue that fundamental changes should be made to methodology of calculating these transactions as referred to in our answer to question 9 of the consultation).

However, if an extension of the UCITS exemption regarding PRIIPs without an obligation to disclose the transaction costs incurred within the fund is being considered the NVB wants to highlight that both policy makers and regulators should take into account that distributors may not be able to give full cost transparency disclosure during the (extended) exemption period because they lack essential costs figures.