

The Nederlandse Vereniging van Banken (Dutch Banking Association, hereinafter referred to as: NVB) welcomes the opportunity to respond to the ESA's consultation paper on changes to the key information document for PRIIPs as published on October 16th 2019. The NVB would like to raise some general points of concern regarding sub-sections 2 ('Context and approach to the review'), 8 ('Costs') and 9 ('Amendments arising from the end of the exemption in Article 32 of the PRIIPs Regulation').

We would also like to thank the ESA's for clarifying bond scope issues. The joint letter (JC-2019-64) published by the ESA's on application of scope of the PRIIPs Regulation to bonds clarifies to a certain extent which bonds are in PRIIPs scope and which bonds are not.

### **Subsection 2: Context and approach to the review'**

#### **1. Are there provisions in the PRIIPs Regulation or Delegated Regulation that hinder the use of digital solutions for the KID?**

There are provisions in the PRIIPs regulation that hinder the use of digital solutions for the KID. If these issues are to be resolved, this can only be done through a review of level 1. A good example is the provision to physically distribute the PRIIPs KID as default option (according to article 14 par 2 (a) PRIIPs level 1). An electronic distribution (with opt-out possibility) seems a much better default option for most (retail) clients. If professional clients would have to be provided with the KID (which is in contradiction to the underlying purpose of PRIIPs), electronic provision is as well the preferred option for this group.

#### **2. Do you agree that it would be helpful if KIDs were published in a form that would allow for the information to be readily extracted using an IT tool?**

We would like to stress that extraction of the information from the PRIIPs KID is essential for distributors in the light of MiFID II cost transparency. In current practice, most distributors rely on data-vendors to extract transaction cost information from PRIIPs. Manufacturers on their side, distribute transaction cost information through the European MiFID Template ('EMT'). If all relevant information from a PRIIP KID could be extracted to a single database, that would be useful to both distributors, consumers and manufacturers and would reduce overall costs.

#### **3. Do you think that the amendments proposed in the consultation paper should be implemented for existing PRIIPs as soon as possible before the end of 2021, or only at the beginning of 2022?**

We don't believe a graduated approach should be considered. We instead rather prefer a one-step approach in 2022, in order to implement simultaneously all Level 2 together with possible Level 1 regulatory changes. Furthermore, we propose that changes are only considered by the ESA's when they can be part of regular planned (at least yearly) regulatory review and revision of KIDs. It should be avoided that the content of the KID is subject to a continuous process of amendments followed by other amendments. Because there is a planned review of the PRIIPs Level 1 Regulation as well, we propose that moment as a possible momentum for all proposed regulatory changes.

#### **4. Do you think that a graduated approach should be considered, whereby some of the requirements would be applied in a first step, followed by a second step at the beginning of 2022?**

We don't believe a graduated approach should be considered. We instead rather prefer a one-step approach in 2022, in order to implement simultaneously all Level 2 together with possible Level 1 regulatory changes. Furthermore, we propose that changes are only considered by the ESA's when they can be part of regular planned (at least yearly) regulatory review and revision of KIDs. It should be avoided that the content of the KID is subject to a continuous process of amendments followed

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### **Subsection 3: Overview of the Consultation Paper and next steps**

**5. Are there material issues that are not addressed in this consultation paper that you think should be part of this review of the PRIIPs Delegated Regulation? If so, please explain the issue and how it should be addressed.**

What we are missing is the interlinkage between this consultation and the review of the PRIIPs Level 1 Regulation. In addition hereto, we would also expect an initiative of the ESA's in order to avoid a duplication of similar but not equal obligatory pre-contractual information requirements pursuant to UCITS (KII) and PRIIPs (KID).

### **Subsection 8: Costs**

#### ***Summary Cost Indicator***

**39. Do you agree with the ESAs' preferred option 3 to revise the cost tables?**

**40. If not, which option do you prefer, and why?**

**41. In particular, do you think that the proposed changes to the presentation of the impact of costs on the return in percentage terms (i.e. including reduction in return before and after costs) is an improvement on the current presentation?**

**42. Do you have other comments on the proposed changes to the cost tables?**

#### ***Transaction cost methodology***

**43. What are your views on the appropriate levels of these thresholds? Please provide a justification for your response.**

The ESA's ask to receive feedback from stakeholders on whether they consider that; (1) the benefits of a 'type 2' (meaning a more principle-based transaction cost methodology) approach outweigh the drawbacks; and (2) how to best draft the corresponding requirements should this approach ultimately be preferred.

**We favour a 'type 2' approach.** 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 misleading outcome.

The current methodology 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. We therefore welcome the proposal to set the minimum amount of transaction costs within PRIIPs to 0.

But we don't believe that changes to the current methodology solve all the above issues. An – under option 2 - more general derogation from a default methodology, allowing for the use of alternative approaches (e.g. based on third party data) is favoured because it leaves much more flexibility to both distributors (that are forwarded to PRIIPs RTS in the light of MiFID II costs transparency) and manufacturers (that need to prepare a KID). The trade-off might be, that information provided is less consistent or comparable to retail investors. Even under option 1, we believe that the transaction cost figures are not fully consistent and comparable.

### **Subsection 9: UCITS**

**44. (i.) If UCITS would fall in the scope of the PRIIPs Regulation, do you agree that the coexistence of the UCITS KII (provided to professional investors under the UCITS Directive) and the PRIIPs KID (provided to retail investors under the PRIIPs Regulation) would be a negative outcome in terms of overall clarity and understandability of the EU disclosure requirements? (ii.) Are you of the view that the co-legislators should therefore reconsider the need for professional investors to receive a UCITS KII, as the coexistence of a PRIIPs KID together with a UCITS KII (even if not targeted to the same types of investors) would indeed be confusing, given the differences in the way information on costs, risks and performance are presented in the documents? (iii.) Alternatively, are you of the view that professional investors under the UCITS Directive should receive a PRIIPs KID (if UCITS would fall in the scope of the PRIIPs Regulation)? (**

- i. Yes. We agree that the potential use of two different disclosure documents for the same product (*PRIIPs KID and UCITS KII*) will cause severe clarity issues. Besides the different lay-out, the information documents also vary in content, especially the risk-indicator both making use of a scale of 1-7, but where the calculation methods are fundamentally different. We should avoid the situation that a third document is needed to explain the differences between the PRIIPs KID and the UCITS KII. Furthermore, the obligation to provide different disclosure documents to different kind of investors (retail vs professionals) will cause operational risks for the investment firms selling and advising on investment funds.
- ii. Yes. We are of the opinion that the UCITS KII for professionals is of limited use. Professional investors have the knowledge and experience to make their own assessments of the risk of products without the need of extra disclosure documents, such as the UCITS KII or the PRIIPs KID. Therefore, in our opinion any obligation to provide a disclosure document to professionals should be cancelled once the UCITS exemption period expires.
- iii. No, we would like to be consistent with the underlying purpose of the PRIIPs regulation and only make the PRIIPs KID available to retail investors as the regulation is applicable to retail only.

**45. What are your views on the issue mentioned above for regular savings plans and the potential ways to address this issue?**

We believe the PRIIPs KID is primarily focussed on products that involve some component of investment. The definition of a 'saving plan' therefore needs further explanation by ESA's. Besides, even if a retail saving plan might involve investment products, they usually exists of multiple underlying investment products (that need to disclose, if in PRIIPs scope, a KID). No specific (additional) KID requirement therefore is desirable for saving plans.

If there would be any intention to include saving plans, we urge the ESA's to do so only in future planned review of the PRIIPs regulation and delegated acts (see our answer to question 3 and 4).

46. Do you agree that these requirements from Article 4 should be extended to all types of PRIIPs, or would you consider that it should be restricted to Management Company of UCITS or AIFs?

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49. Do you have any comments on the proposed approaches in relation to the analysis and proposals in this Section, and in particular on the extent to which some of the abovementioned requirements should be extended to other types of PRIIPs?

### General remarks

As was described by the ESA's in the introduction; "as things stand, in the absence of legislative changes, from 1 January 2022, UCITS will be required to prepare a PRIIPs KID and UCITS KII. In view of this, the European Commission are expected to table legislative proposals in due course to address the requirements that would apply to UCITS from 1 January 2022 onwards." The main goal of the ESA's thus is to include relevant UCITS provisions within PRIIPs.

Our main points with regards to questions 46-49 are – consistent with our answer to question 44 - based on avoidance of the co-existence of two similar but not equal obligatory pre-contractual information documents. We were of the understanding that there would never be a situation where a PRIIPs KID exists besides a UCITS KII for one and the same financial product (be it for a retail or a professional client). The ESA's need to make sure to avoid that changes lead to a situation where the UCITS KII will be no longer applicable to retail investors (if the case), 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 KII 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 fundamentally 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 risks, in case 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.

### UCITS provisions in PRIIPs regulation

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.

We are concerned that the proposed inclusion of UCITS provisions in PRIIPs might lead to overcomplication. It seems difficult, with the proposed additions, to prepare a PRIIPs KID that consists only of 3 pages. We ask the ESA's to check whether it is still possible, with new provisions added, to prepare a KID that doesn't go beyond 3 pages.

**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 KII English and Dutch versions are both authorised languages, whereas under PRIIPs a KID in the Dutch language is mandatory. With other words, the Netherlands has not used it's 'member state option' under article 7 of the PRIIPs Regulation EU 1286/2014 to allow for other languages.

The ESA's should be aware of the possible differences in implementation between member states and the possible negative side-effects this might entail. If a member state choose not to 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.