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WORKING DOCUMENT

From: Presidency

To: Working Party on Financial Services and the Banking Union (Retail Investment)
Financial Services Attachés

Subject: Retail Investment Strategy - Presidency non-paper on the proposal for a Regulation amending the PRIIPS Regulation

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RETAIL INVESTMENT STRATEGY

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

1. Introduction

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

2. Scope of application

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

2.1. Immediate annuities without a redemption phase

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

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

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

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

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

3. Performance scenarios and information on costs

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

Member States are invited to present their views on:

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

4. Intelligibility versus comparability

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

Member States are invited to present their views on:

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

5. The updating of KIDs

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

5.1. Concept of to make available.

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

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

Member States are invited to present their views on:

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

5.2. Coherence between PRIIPs, UCITS and IDD.

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

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

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

6.1. Information to be included.

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

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

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

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

6.3. Pre-contractual information

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

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

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

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

Member States are invited to present their views on:

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

7. Electronic format and interactive tools

7.1. Definition of electronic format

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

Member States are invited to present their views on:

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

7.2. Role of the interactive tools

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

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

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

Member States are invited to present their views on:

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

7.3. Role of the ESAs

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

Member States are invited to present their views on:

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

7.4. Accessibility of the KID

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

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

Member States are invited to present their views on:

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

8. Content of the 'Product at a glance' dashboard

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

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

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

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

Member States are invited to present their views on:

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

9. Deletion of the comprehension alert

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

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

Member States are invited to present their views on:

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

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

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

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

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

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

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

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

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

Member States are invited to express their views on:

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

11. Length of the KID

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

Member States are invited to present their views on:

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

12. Providing the KID: when and by whom

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

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

Member States are invited to present their views on:

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

13. Entry into force and application

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

Member States are invited to present their views on areas:

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