

15 December 2021

EBF REONSE TO THE JOINT CALL FOR EVIDENCE ON THE EUROPEAN COMMISSION MANDATE REGARDING THE PRIIPS REGULATION

EBF POSITION

The EBF welcomes the opportunity to respond to the ESAs Call for evidence regarding PRIIPs and would like to make the following general comments:

✓ **Regarding scope:**

The EBF thinks that the scope of the PRIIPs regulation **should not be extended to any of the products referred to in Article 2(2), points (d), (e) and (g)**. Rather than extending the current scope of the regulation, it should be clarified, if anything leading to narrowing it, since there is still confusion and outstanding issues relating to it, e.g. as regards certain corporate bonds. Here, the EBF welcomes the ESA statement from 24 October 2019 regarding the PRIIPs scope for bonds but would welcome further clarification as to the intended scope on Level 1.

As regards Article 2(2) of the PRIIPs regulation, point (d), EBF would like to comment in more detail. Firstly, the reference to Directive 2003/71/EC is being made to a Directive that is no longer in force. Secondly, the EBF does not understand the reference to 'bostadsobligationer' issued repeatedly by credit institutions in Sweden. Irrespective if the intention is in fact to focus on Swedish bostadsobligationer, or covered bonds in general, EBF is of the opinion that such bonds must be considered to be out of scope as the purpose of issuing a covered bond is to seek funding for the issuer, not to issue a packaged product. Thirdly, the intention is not to create a financial instrument subject to fluctuations because of exposure to reference values or to the performance of one or more assets which are not directly purchased by the retail investor, but rather an instrument with collateral.

Derivatives which are used for mitigating risk (hedging) should be excluded from the PRIIPs scope as these are not "investments". Besides, for derivatives there should be an alignment between PRIIPs and MiFID II so that derivatives that are exempted from MiFID II, based on the fact that they are means of payments rather than financial instruments, are also exempted from PRIIPs. Of course, all relevant information as required by MiFIR/MiFID II must still be presented also for derivatives in order to safeguard investor protection. If a change in PRIIPs scope

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cannot be achieved, it should be possible to adjust the KID in order to ensure that the information is relevant and not misleading for clients.

Currently few adaptions are provided for OTC derivatives KID, but they are not adequate for the following reasons:

- they are only provided by the Q&As released by Joint Committee of ESAs instead of being regulated by Delegated Regulation. Consequently, they are available only in English, and not in other official EU languages;
- they use different terminology to refer to same concept: e.g. "notional amount" and "nominal amount";
- they do not take into account the real nature of the following transactions: i) in case of OTC Derivatives with physical delivery the client is exposed to performance of assets that are directly purchased by client or is not exposed to any fluctuations. For instance: in a forex forward deal client buys a certain amount of a currency in exchange of a certain amount in another currency. In this deal there are no fluctuations of the amounts to be paid and received by client, in the respective currencies, as the amounts are pre-defined at inception and there is no impact on the market fluctuations; ii) in case of OTC Derivatives with hedging purpose, the client is exposed to performance of an asset to which the client is already exposed, and the deal is executed to reduce the risk of their exposure.

✓ **Regarding the creation of a taxonomy in PRIIPS**

First and foremost, the wording of question 27 does not help to make clearer what this taxonomy should look like. Namely, it is far from being unequivocal which level of granularity the proposed taxonomy intends to achieve e.g. i) "macro-cluster" of products (e.g. certificates, derivatives etc.) or ii) product-by-product classification.

Above and beyond point 1, at least in theory, the proposal for a "taxonomy" of products in terms of "macro-categories" could make sense and have some merit, particularly from an investor protection standpoint i.e. shielding investors from discretionary choices eventually made by PRIIPs manufacturers.

However, and when trying to put this proposal into practice, the risk exists that, for example, a specific new product does not properly fit the prescribed categories thereby, and may i) generate confusion for manufacturers as well as ii) prevent them from offering products in the market at all.

More in general, this proposal risks bringing about many and relevant unintended effects: i) "market freeze" ii) misalignment across different national jurisdictions iii) uncertainty as to the adequate classification of a specific product by manufacturers. The persisting uncertainty surrounding the status, for example, of bonds with make-whole-clause does not represent an encouraging precedent in this respect.

✓ **Regarding format:**

Though the aim of comparability of the PRIIP KID documents is admirable – the comparability should only be a priority for de-facto comparable products, and it should be possible to adjust the KID accordingly. For instance, investors do not compare OTC derivatives with investment funds and comparability at the cost of precision and adequate information should therefore not be the result. Having similar documents also sends a message that the products are comparable and could trigger confusion rather than clarity for investors.

✓ **Regarding MOP:**

The EBF would like to underline that the market structure in Member States differ e.g. depending on the tax legislation, pension and insurance systems and cultural behaviour. It is important not to make changes that could harm well-functioning local markets. For this reason, the EBF strongly objects to the proposed amendments regarding MOP (article 10). The EBF would support a broad review of MOPs at a European level.

✓ **Regarding costs:**

Retail investors in general are not interested in receiving granular information on costs and calculation methodologies but are mostly interested in price and total costs. In EBF members' experience, retail investors find the reduction in yield (RIY) concept too difficult to understand. If the RYI concept is kept in PRIIPs it is important to include also cost information expressed as total (raw) costs comparable to MiFID II.

The EBF supports a closer alignment between MiFID II and PRIIPs e.g. as regards the calculation methodology for product costs. It is confusing for clients to receive different cost information for the same instrument depending on if MiFID II or PRIIPs is applied. In particular, the commission should look into:

- Transaction costs ("market value" vs "arrival price")
- Inducements (product cost rather than service cost)
- The redundancy related to showing cost components which are zero

Even if some of the practical implications of these differences have been solved in ESMA Q & A on level 3, it is important that the problems are addressed in a forthcoming review of level 1 and 2 in order to avoid legal uncertainty.

Please also note that the prospectus rules have a different regime which effectively creates a third layer of information requirements.

About EBF

The European Banking Federation is the voice of the European banking sector, bringing together national banking associations from across Europe. The federation is committed to a thriving European economy that is underpinned by a stable, secure, and inclusive financial ecosystem, and to a flourishing society where financing is available to fund the dreams of citizens, businesses and innovators everywhere.

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