

AMENDMENTS TO THE PRIIPS KID ESA's Joint Consultation Paper AMAFI's answer

Association française des marchés financiers (AMAFI) is the trade organisation working at national, European and international levels to represent financial market participants in France. It mainly acts on behalf of credit institutions, investment firms and trading and post-trade infrastructures, regardless of where they operate or where their clients or counterparties are located. AMAFI has more than 140 members operating for their own account or for clients in equities, fixed-income, structured products and derivatives. Nearly one-third of its members are subsidiaries or branches of non-French institutions.

GENERAL COMMENTS

AMAFI welcomes the opportunity to give feedbacks on ESAs' Joint Committee's (hereafter "ESAs") proposed amendments to the PRIIPs KID. Indeed, AMAFI is particularly attentive to this regulation which has a considerable impact on its members. This is why AMAFI previously provided several feedbacks to the main stakeholders about issues encountered by members since the entry into application of PRIIPs. Taking into account the typology of its members, the developments formulated below by AMAFI only concern structured and derivatives products.

AMAFI is not competent to express an opinion on behalf of the industries of funds or insurance products. On this point, AMAFI wishes to emphasize that the changes contemplated in this Consultation Paper (hereafter "CP") may seem appropriate for the fund industry, it is not the case for structured and derivatives products. Given the wide range of PRIIPs scope, it is unlikely that one single proposal may solve, in the same way, the same issues for all products. Hence, it is difficult to tackle the challenges of this regulation.

Prior to answering to the specific questions raised in the CP, AMAFI would like to draw the ESAs' attention on the following general issues:

1. The implementation of this regulation required significant investments (both in terms of human and IT resources) to be ready by 1st January 2018. Since that date, manufacturers have also deployed significant resources to implement PRIIPs, draft and disseminate all KIDs but also to explain to their distributors and/or customers this new document. It therefore seems essential to AMAFI that the **amendments proposed to correct the actual dysfunctions of PRIIPs are limited to the necessary ones.**
2. Level 3 Q&A do not have legal value, nor can level 3 supersede level 1 or 2 texts. Moreover, there is no date of entry into force for the Q&A so there may be differences in implementation between the different financial institutions which goes against the harmonization and comparability required by PRIIPs. **Therefore, AMAFI wishes that all the proposed amendments being made in level 2**, in the future new delegated regulation (here after "DR") even if, given the tight schedule, there would be only a short consultation or no consultation on the final proposed amendments.

3. The necessary changes within PRIIPs methodologies are, in AMAFI's view, the ones that could mitigate the risk to provide investors misleading or confusing information via KIDs. As AMAFI already outlined in previous feedbacks, our first practical experiences after the PRIIPs implementation in January 2018 have left us concerned that the PRIIPs regulation will not achieve its goal. The results, especially regarding performance scenarios and costs, are not totally satisfactory. **That is why AMAFI very much welcomes ESAs initiative to propose amendments to solve this late issue.**
4. While the ESAs made no mention of this in their consultation paper, AMAFI would like to clarify that **any change made in the DR can only be applicable for the KIDs of PRIIPs issued once the amended DR would entry into force** (that we understood as foreseen to be from 1st January 2020). Indeed, it should not be required from manufacturers to review all of their KIDs already made since 1st January 2018, represents several million KIDs. Thus, from 1st January 2020, two methodologies would need to coexist, the revision of the KIDs of the products issued before 1st January 1 2020 will be based on the old methodology and the KIDs of the products issued from 1st January 2020 will be based on the new methodology.
5. Finally, on the condition that the final amendments will be indeed as minimum as possible, the *"at least 6 months"* period between the publication of the final version of the DR amended and the entry into force of those amendments to implement those changes seem sufficient in our view¹.

To answer the questions below, AMAFI analyzed the proposals made by the ESAs independently of each other.

Summary

AMAFI is strongly against ESAs proposal to add past performance in the KID for derivatives and structured products. Such past performance does not exist for those products.

- (1) Past performance cannot be appropriately simulated for structured and derivatives products
- (2) In any cases, such simulation would be very difficult to explain to retail investors if not providing them misleading information.

AMAFI fully endorses the ESAs proposal to amend narrative explanations as the proposals are clearer for retail investors.

AMAFI partially supports the amendments proposed by the ESAs on the methodology for calculating performance scenarios.

- (1) **In the long run**, AMAFI supports the proposal to move to risk neutral drift but with adding a risk premium, for which methods of calculation would be fully prescribed by the level 2 text and defined per asset class.
- (2) **In a shorter run**, ESAs should allow manufacturers, where relevant, to remove the historical drift for all the scenarios or just for the unfavourable one.

AMAFI is totally against the proposal made by the ESAs regarding presentation, both on

- (1) **adding a graph** (that is not understandable by retail investors); and
- (2) **removing 2 of the 4 scenarios.**

AMAFI disagree with the proposal made by the ESAs on products with an autocallable features and regarding growth assumption for the reduction in yield (RiY) calculation and proposes alternative solutions.

¹ However, if the amendments should be more important (for example, if the ESAs decide to require past performance to be added or that the performance scenarios should be presented with a graph - to both which the AMAFI is strongly against- it would be necessary to allow a far longer period of time for the implementation (for example, by proposing different entry into force dates according to the modifications).

AMAFI proposes two additional amendments:

- (1) **To reword “total costs” by “impact on return”** within KIDs to be more accurate and less confusing and adding an optional row in the current costs table or an optional annex to present to investors, the raw costs incurred (calculated using the total expense ratio method - TER).
- (2) To add in the future new DR ESAs’ answers for products with very short RHP.

In view of the difficulty of obtaining estimates of the costs of carrying out certain modifications before realizing them, AMAFI summarized for the structured products and derivatives industries, in the table below, the technical feasibility of the amendments proposed by the ESAs, our assessment of the impact of the changes for manufacturers (with the understanding that the more difficult they are to make, the more expensive they would be) and of the impact on the information provided to retail investors.

AMENDMENT	TECHNICAL FEASIBILITY	IMPACT ON MANUFACTURERS	IMPACT ON INVESTORS	CONCLUSION
Information on past performance	No for derivatives and structured products	Very high	Negative	NO
Narrative explanations	Yes	Low	Positive	YES (few suggestions)
Presentation of performance scenario (graph vs. table)	Very difficult	Very high	Negative	NO
Methodology to derive future performance scenario figures	Difficult	High	Positive (addressed also via narratives)	Alternative solution preferred
Suppression of two performance scenarios	Yes	High	Negative	NO
Extend the historical period used to measure performance	Difficult	High	Neutral	NO
Autocallable products	Yes	Moderate	Negative	Alternative solution preferred
Narratives for the SRI	Yes	Low	Neutral	Neutral
Growth assumption for the RIY	Difficult	High	Negative	Alternative solution preferred

AMAFI' S ANSWER

PERFORMANCE SCENARIOS

Information on past performance

Q1. Do you agree that information on past performance should be included in the KID where it is available?

No, AMAFI strongly disagrees with this proposal.

First, as ESAs said in their CP “*actual past performance does not exist for [...] other structured PRIIPs*”, simulating such performance would be, as also explained in the CP, (1) impossible for some products for which the data is not available for the period that covers the maturity of the product and (2) as such performance do not actually exists for structured and derivatives products, we do not understand how that could be relevant information for retail investors. Second, for those products, it would be very difficult for investors to understand the difference between several data as regards the lack of link between future performance and past results.

For AMAFI, giving the possibility and not the obligation to add this information, especially for certain types of products such as funds for which it is available but calls into question the logic of comparability of KIDs. Also, the addition of this new information seems challenging within the requirement that KIDs should be 3 pages only.

In any case, AMAFI thinks that information on past performance should not be included for Categories 1 and 3 of PRIIPs.

Q2. Are there challenges to include past performance information for certain types of PRIIPs?

Yes.

AMAFI believes that there are too many challenges and downsides for investors to include “simulated” past performance information for PRIIPs of Categories 1 and 3 (derivatives and structured products) and MOPs (for instance basket of structured product in unit-linked).

Like outlined above, actual past performance do not exist for those products.

As regards to simulate such past performance, this would be very difficult and for most of it impossible:

- For all Category 3 PRIIPs it would be difficult and misleading: the past performance data of a structured product does not exist before the product is issued (*i.e.* when a structured product is launched, there is no past performance available: it's only once the product is issued that actual “performance” (prices and/or valuations) becomes possible. It would be misleading to do any assumptions on past performance of a security that legally does not exist, and have, at the date of the issuance, no price history.
- For Credit Linked Notes (CLNs), the projections in the past would be meaningless because even if no event has occurred in the past that, it does not mean that it will not occur in the future.

- For CFDs, it would be impossible. There is no past price for the instrument since these are bespoke bilateral contracts. Displaying the past price of the underlying would be misleading because CFDs payoff is different (due to stop-loss or leverage).
- For structured products that go into the definition of MOPs: past performance data cannot be computed because composition of unit linked is to the choice of each investor.

More generally speaking, and like pointed out in the Consultation Paper by the ESAs, simulating past performance would require to provide methodologies to do so whereas no one could identify a relevant one.

On the contemplated solutions by the ESA, the use of historical process of the underlying assets to replicate the pay-off creates the confusion for the investor between the underlying assets' performances and the actual product performances. Likewise, showing the history of the price of the underlying assets raise the issue of availability of such data but again does actually not reflect at all the features of the product. That would just create confusion and misleading information for investors. Thus, neither solution proposed by the ESAs is acceptable.

Q3. Do you agree that it is appropriate for this information on past performance to be based on the approach currently used in the KII? If not, please explain your reasons and if an alternative presentation would be more appropriate and for which types of PRIIPs?

Since funds do not fall under our scope, we do not have a formal answer for these products.

For products other than UCITS, it is not suitable to request past performance because actual past performance do not exist. For all structured products, AMAFI is of the view that no past performance should be displayed, which is consistent with the approach taken by UCITS Regulation which explicitly prohibits the use of past simulated performance for structured UCITS (article 36.1 of Commission Regulation (EU) 583/2010 ("UCITS Regulation"): "*The key investor information document for structured UCITS shall not contain the 'Past performance' section*").

Q4. Do you think that information on simulated past performance should be included in the KID where actual past performance is not available? If not, please explain your reasons.

Absolutely not.

Like provided in our answer Q3, for structured and derivatives products, if there is no actual past performance available, simulated past performance should not be included in the KID.

As developed above in Q3, in many situations (notably for CLNs, CFDs and MOPs with flexible allocation) it would be impossible to make such simulations.

Other complex challenges described in the consultation paper remain: the need for an extensive market data history, the calibration of historical market data to current product terms.

Finally, displaying simulated past performance for some PRIIPs while some other PRIIPs (UCITS notably) display actual past performance will cause confusion, for the retail investor, between what is actual and what is simulated.

Q5. If you think that information on simulated past performance should be included in the KID, what approach do you think should be used to simulate the past performance, and how should this be presented in the KID?

None.

As answered in the previous question, AMAFI is strongly against this proposal and believes that neither methodology proposed by the ESAs would provide investors with reliable and relevant information.

Amendments to the narrative explanations

Q6. Do you consider these amendments to the narrative explanations to be an improvement on the current performance scenario approach?

Yes.

AMAFI considers these proposed amendments to the narrative explanations as an improvement on the current version.

It helps clarifying to investors that historical trend data is taken into account, but that actual future return could be different (even if those amendments do not solve the fundamental issue of too optimistic performance scenarios' results, these narratives can only be used in addition to a modification in the calculation methodology – see below Q7).

AMAFI thinks that those proposed narratives better reflect the reality of the figures presented in the table and are more comprehensible for retail investors.

Nevertheless, we would like to suggest some modifications to be made to these proposals (please see below, with amendments on bold and underlined police):

- First, in the paragraph above the table, we would insist on the impossibility of predicting future performance and the potential non-realization of the performances set out in the table (notably by keeping the current [Element C]).
- Second, to be more accurate, we also propose, on the same paragraph to mention the “results of the performance scenario” rather than the “scenario”, this seems more understandable for a retail investor.

“Market developments in the future cannot be accurately predicted. These **results of these performance scenarios are only an indication of the range of possible returns. **Actual return may be different. Investors should not base their investment decision exclusively on these performance scenarios. What you get will vary depending on how the market performs and how long you keep the product.**”**

 **Other potential options**

Q7. Do you have any comments on the analysis set out in this Section of other possible options to improve the future performance scenarios?

FUTURE PERFORMANCE SCENARIOS ANCHORED IN THE RISK-FREE RATE OF RETURN

AMAFI agrees with the fact that there is an issue with the methodology for calculating performance scenarios. We already stressed that out several times before and after the entry into force of PRIIPs. Therefore, the proposal made by ESAs to improve the future performance scenarios is welcome.

Nevertheless, and if the methodology proposed by the ESAs is a good starting point it does not seem to be sufficient to solve the issue. Indeed, the risk free rate is not always an adequate measure for actual investments, because economic theory shows that asset classes have risk premia (more volatility and risk means higher expected return). For some products, notably equity linked ones, using a risk neutral distribution would not reflect the perspective of investors who rationally invest in this asset class because they believe that equity carry a risk premium. Such risk premium would thus have to be incorporated in the model.

For AMAFI, all the results of the performance scenarios should be calculated using the risk-free rate of return to which would be added a risk premium, established by asset class. The methodology to determine those risk premia shall be **explicitly prescribed by level 2 texts** (e.g. for equities the risk premium should probably be between 4% and 7% p.a.). This would ensure comparability as all manufacturers would use the same equity risk premium and would be easier to implement.

Nevertheless, considering that there are currently no commonly agreed assumptions as to how to calculate it and it will take some time for all stakeholders (ESAs, manufacturers, retail investors representatives and distributors) to find a consensus, this methodology can only be implemented in a timeframe longer than 1st January 2020.

In the meantime, AMAFI proposes that the ESAs publish a question-answer allowing the manufacturers, where relevant, to adjust the historical drift for all or for the unfavourable scenario(s), and make sure that results of the stress scenario are capped at the ones of the unfavourable scenario, the results of unfavourable scenario are capped at the ones of the moderate's one, in order to always present to investors performance scenarios results that remain consistent.

AMAFI is aware of the significant impacts that would imply the implementation of the short term and long term solutions. Nonetheless, we consider this change necessary.

AMENDED APPROACH AND PRESENTATION FOR FUTURE PERFORMANCE SCENARIOS TO HIGHLIGHT THE RANGE OF OUTCOMES

AMAFI disagrees with this proposal to change the presentation for future performance scenarios with a graph.

Firstly, the current presentation of the performance scenario results table is clear and from our experience, does not raise any question from retail investors. If they did express concerns on the results themselves (*as developed in Q7*), they did not challenge the presentation with table. In our view, performance is easier to understand with the table where as it is too complex with a graph. According to AMAFI, adding and changing narrative(s) accompanying the table is a better way to highlight the range of outcomes (*as developed in Q6*).

AMAFI therefore disagrees with the proposal to replace the actual table by a graph to present future performance scenario.

As exposed in the study done prior the RTS drafting, retail investors better understand table and narrative than graph. Moreover, such amendment would be extremely costly for negative benefits.

Secondly, AMAFI does not support the approach to remove half of the scenarios.

As outlined in our general comment, as any amendment would have significant impacts, it has to be carefully assessed in a “costs vs. benefits” analysis. As regards to this question, we do not believe that having 4 scenarios is actually a problem. Such approach is now fully implemented by manufacturers and understood by clients. In addition, disclosing all scenarios is necessary for investors to have a view of the whole return distribution of the 10,000 scenarios and therefore understand the return and risk profile of a PRIIP.

Also, we would like to outline that the moderate performance scenario result is used to calculate the reduction in yield displayed in the KID. It does not seem appropriate to “hide” the investor data that is also used to calculate other information provided to him.

EXTEND THE HISTORICAL PERIOD USED TO MEASURE PERFORMANCE

AMAFI does not fully endorse the ESAs proposal to extend the historical period used to measure performance from 5 years to 10 years. Some trends in broad equity indices will not be greatly affected, and, it will lead to more cases of insufficient market data. Yet, if the ESAs retain this solution, we assume **the minimal required period specified in the current RTS (e.g. 2-year daily data) should not change.**

Q8. Do you have any views on how the presentation of the performance scenarios could otherwise be improved?

No.

From AMAFI’s point of view, the current presentation of the performance scenario results table is good enough and now well understood from advisors and retail investors who are now used to this presentation. The amendments on the narratives as proposed (*see above Q6*) makes it possible to better understand the table.

AMAFI believes that the content of performance scenarios can be improved by adapting the methodology (*as developed in Q7*) – **while the table presentation should not be changed.**

ONGOING WORK BY THE ESAS TO ASSESS MARKET PRACTICES RELATED TO PERFORMANCE SCENARIOS

AMAFI questions itself on the ESAs’ proposition to add Q&A on narratives added by market participants to warn the investor about the too optimistic results of some performance scenario results. These clarifications provided by the ESAs could only be relevant to the industry if they remain general (given that they must be implemented quickly) and prescribe the exact wording of the narrative to be added as well as their translations.

OTHER SPECIFIC AMENDMENTS

Q9. Do you agree with the proposals described in this section?

AMAFI disagrees with the statement that “to make very minor amendments to the PRIIPs Delegated Regulation and to supplement these changes with a level 3 measure, such as a Q&A”.

Like stressed out before in our general comments, AMAFI thinks that changes have to be made within the DR. Indeed, level 3 measures, such as a Q&A, do not have legal value, nor can level 3 supersede level 1 or 2 texts. Only level 1 and 2 can provide sufficient legal certainty and security.

That is why, amendments to be made to solve major issues of PRIIPs implementation cannot be done through a Q&A. On the other hand, it seems important that level 3 be used to clarify some requirements prescribed by level 1 or 2 texts.

MARKET RISK MEASURE (MRM) CALCULATION FOR REGULAR INVESTMENT OR PREMIUM PRIIPS

AMAFI does not have any comment on this proposal.

PRODUCTS WITH AN AUTOCALLABLE FEATURE

AMAFI is totally opposed to the proposition of the ESAs to leave some blanks' unfilled and not showing to the investor performance until the RHP as long as the product is called or cancelled before². This lack of information would reduce the comparability of KIDs between products and would lead to many questions from retail investors. Moreover, it would imply not to disclose (*i.e.* to hide to the investor) the result you use to compute the RiY.

To address the issue of “autocallable products”, AMAFI proposes the following solutions:

- (1) not accruing time values of auto-call payments³ (including coupons) and follow Recommendation 4 from the Sept. 2018 recommendations document published by EUSIPA; and/or
- (2) optionally, add a symbol, for example an asterisk, in the boxes for which the product would be called before the end of the calculation period and adding a short narrative below the table explaining the results;
- (3) in any cases, show the results being sorted independently of each other.

NARRATIVES FOR THE SUMMARY RISK INDICATOR

AMAFI generally agrees with that since it could be useful in some cases.

² In a 5 year product autocallable annually with 5% exit rate each year, the 1 year favourable scenario is 105%, but the 3 year favourable scenario can be higher than 105%, it could be 110% or 115% (more advantageous for the investor). Similarly, the 5 year favourable scenario should be the 90% best path considering all the 10,000 paths, including those which are autocalled at year 4 or year 5. By leaving the RHP scenario values “blank”, the ESA are neglecting the possibility of autocallability between the IHP and RHP.

³ Indeed, it should not be assumed that the investor reinvests the auto-call payment for the remainder of the term of the product.

NARRATIVE FOR PERFORMANCE FEES – COMPOSITION OF COSTS TABLE

Not applicable for AMAFI.

GROWTH ASSUMPTION FOR THE REDUCTION IN YIELD (RIY) CALCULATION

AMAFI thanks the ESAs for taking into account the issue of calculating costs for products when the moderate scenario shows a total loss of capital invested or more (i.e. is less than or zero) for the moderate performance scenario, but considers that the answer provided does not solve the problem. Indeed, it creates a sudden threshold effect with product delivering very low returns and significantly undermines the comparability between products. This threshold effect is detrimental and difficult to justify to investing retail clients.

Also, applying the 3% growth assumption to all PRIIPs regardless of the moderate scenario results (as it seems suggested by the CP?) would bring confusion and misunderstandings as the whole KID would lack consistency, not to mention that such rough assumption would be very hard to explain to retail investors.

For these reasons, AMAFI feels that it should be possible to apply alternative solutions in such cases. For example, a cost floor could be determined that would replace or that would be added to zero values where a product generates a zero or negative return.

OTHER MINOR AMENDMENTS

AMAFI does not have any comment on this proposal.

ADDITIONAL AMENDMENTS

AMAFI would like to address two other issues that are not mentioned in the CP.

(1) RiY is a complex notion that is wrongly labelled “total costs” within KIDs

The first one, particularly problematic, concerns the confusion and misunderstanding caused by the concept of costs as expressed in the KIDs. The "costs" presented in the KIDs are **not** the costs of the product as commonly understood but actually the Reduction In Yield (RIY), which shows the annual impact of those costs on the return expected based on the moderate performance scenario which is very non-intuitive and unintelligible when it comes to computing a cash figure. Confusion is added with the disclosure of costs and charges provided in compliance with MiFID II which should “also” represent a total of raw costs of the product costs.

Accordingly, AMAFI requests:

- (1) to reword the terminology used in Cost over time table or the calculation methodology as “impact on return” to be more accurate and less confusing;
- (2) to add an optional raw in the current costs table or an optional annex to present to investors, the total of raw costs (in line with MiFID II requirements) , and therefore calculated using the Total Expense Ratio (TER) method .

Rewording

Investment EUR 10 000	If you cash in after 1 year	If you cash in after 3 years	If you cash in at maturity
Total costs	EUR X	EUR X	EUR X
<u>Impact on return in EUR</u>			
Impact on return (RIY) per year	x%	x%	x%
<u>Optionally, total costs in EUR</u>	EUR Y	EUR Y	EUR Y

Optional table to be added in annex to the KID to show the “MIFID costs”:

Investment EUR 10 000	If you cash in after 1 year	If you cash in after 3 years	If you cash in at RHP
Total costs	EUR Y	EUR Y	EUR Y
Total Expense Ratio (TER) expressed in % per annum	y%	y%	y%

(2) ESAs answers in level Q&A 3 on products with very short RHP should be included in the future new DR

The second one is raised by PRIIPs (notably derivatives) with a RHP of less than one year. AMAFI fully approves the solution provided by the ESAs in the last update of their Q&A document. Nevertheless, this solution does not comply with the requirement as provided in the DR. Therefore, AMAFI proposes to amend the DR accordingly.

On this point, to ensure the comparability of KIDs and to facilitate their reading, it would seem preferable that the narratives to be added be prescribed in order to avoid national distortions. AMAFI proposed to prescribe the following narrative: *“However, since the reference period of the product you are considering purchasing is very short, the estimated returns and costs are presented on a non-annualised basis. As they stand, these figures are not comparable with those obtained for products with a recommended holding period of at least one year, for which data would be calculated on an annualised basis”.*

AMAFI would also like to note that the ESAs seemed to forget to allow manufacturers:

- (1) to delete, in those situations, the inaccurate sentence “*You can compare them [the illustrations on how your investment could perform] with the scenarios of other products*”, below the table presenting performance scenarios results; and
- (2) to amend accordingly the sentence above the cost tables: “The amounts shown here are the cumulative costs of the product itself, for **one holding period / two different holding periods / three different holding periods**]. They include potential early exit penalties. The figures assume you invest [EUR 10 000 (OR EUR 1 000 each year for regular premium PRIIPs)]. The figures are estimates and may change in the future”.

AMENDMENTS ARISING FROM THE POSSIBLE END OF THE EXEMPTION IN ARTICLE 32 OF THE PRIIPS REGULATION

Q10. Do you have any comments on the proposed approaches in relation to the analysis and proposals in this section?

Not applicable for AMAFI.

PRELIMINARY ASSESSMENT OF COSTS AND BENEFITS

Q11. Do you have any comments on the preliminary assessment of costs of benefits?

See table above.

Q12. Are you able to provide information on the costs of including information on past performance for different types of PRIIPs?

See table above.

Q13. Are there significant benefits or costs you are aware of that have not been addressed?

See table above.

