

**Finance Watch response to the
Joint Consultation Paper on PRIIPs Key Information Documents**

Brussels, 29 January 2016

Finance Watch is an independent, non-profit public interest association dedicated to making finance work for society. It was created in June 2011 to be a citizen's counterweight to the lobbying of the financial industry and conducts technical and policy advocacy in favour of financial regulations that will make finance serve society.

Its 70+ civil society members from around Europe include consumer groups, trade unions, housing associations, financial experts, foundations, think tanks, environmental and other NGOs. To see a full list of members, please visit www.finance-watch.org.

Finance Watch was founded on the following principles: finance is essential for society and should serve the economy, it should not be conducted to the detriment of society, capital should be brought to productive use, the transfer of credit risk to society is unacceptable, and markets should be fair and transparent.

Finance Watch is independently funded by grants from charitable foundations and the EU, public donations and membership fees. Finance Watch has received funding from the European Union to implement its work programmes. There is no implied endorsement by the EU or the European Commission of Finance Watch's work, which remains the sole responsibility of Finance Watch. Finance Watch does not accept funding from the financial industry or from political parties. All funding is unconditional, vetted for conflicts of interest and disclosed online and in our annual reports. Finance Watch AISBL is registered in the EU Joint Transparency Register under registration no. 37943526882-24.

Only the questions that are relevant to Finance Watch are reproduced here.
We agree to the publication of this response.

Question 1: Would you see merit in the ESAs clarifying further the criteria set out in Recital 18 mentioned above by way of guidelines?

Yes we do see merit in the ESAs developing a common approach on the use of the comprehension alert before the deadline for the Commission review.

As mentioned in the consultation paper, this would indeed reduce the risk of divergence in national approaches and improve comparability.

The Level 1 text lists three criteria that *"in particular"* should be taken into account to qualify a product as not simple and as difficult to understand. Given the fact that the original list of criteria as proposed by the Parliament listed six features and the use of the wording *"in particular"*, we believe that the list should be interpreted as non-exhaustive.

The above means that national supervisors will have discretion to extend the list of criteria that require the publication of the comprehension alert. As we share the ESAs' concern that this may lead to a lack of harmonised application of the comprehension alert in different member states, we recommend considering further (Level 3) guidance from the ESAs in this area.

It is worth mentioning that some of the three criteria are already in use in some Member States. This might facilitate elaborating guidance and assessing their effectiveness.

The first criteria, *"a product should be regarded as not being simple and as being difficult to understand in particular if it invests in underlying assets in which retail investors do not commonly invest"*, is similar to the criteria developed by French supervisor AMF, *"Retail clients' lack of familiarity with the financial instrument because of the underlying assets used."*¹

Similarly the second criteria, *"if the product uses a number of different mechanisms to calculate the final return of the investment"*, is similar to the AMF criteria *"the risk that clients will not understand the financial instrument being offered, linked to the number of mechanisms in the formula for calculating the financial instrument's payoff"*.² The Belgian supervisor FSMA also developed a principle that seems to have a similar intent in its voluntary moratorium on the distribution of complex products: *"Is the calculation formula overly complex?"*³

Guidance on the third criteria, *"if the investment's pay-off takes advantage of retail investor's behavioural biases, such as a teaser rate followed by a much higher floating conditional rate, or an iterative formula"*, could likewise take inspiration from the UK FCA's

¹ See AMF Position No 2010-05 - 15 October 2010 Marketing of complex financial instruments

http://www.isda.org/c_and_a/pdf/AMFPaper.pdf

² See AMF *ibid*.

³ Communication FSMA 2011_02 of 20/06/2011

http://www.fsma.be/en/Article/nipic/~media/Files/fsmafiles/press/2011/nipic/en/fsma_2011_02.ashx

indicators of problematic product features and examples of products exploiting demand-side weaknesses⁴, such as *"products where the customer is attracted by a teaser rate and then tied in", "features (..) designed to exploit consumers' focus on the headline price or other near-term features, as opposed to outcomes in the long term", "product features outside the core range (e.g. 'bells and whistles' or 'gimmicks' of little use to most customers or at significantly higher margin)", "products (..) designed to frame consumer choice in a potentially misleading way"*.

Finance Watch also developed some suggestions and examples linked to these three criteria (from six studied in detail) in its policy paper "Product rules for packaged retail products: why, when, how?"⁵

Question 2

(i) Would you agree with the assumptions used for the proposed default amounts? Are you of the opinion that these prescribed amounts should be amended? If yes, how and why?
(ii) Would you favour an approach in which the prescribed standardised amount is the default option, unless the PRIIP has a known required investment amount and price which can be used instead?

(i) We agree but believe that for comparability purposes the amount should be similar for all products.

(ii) Yes we would favour such an approach, as we know the key importance of the default option. We realise however that having the prescribed amount as the default option might be difficult to combine with having one common proposed default amount. We believe that comparability is the most important factor here and should this be an issue, we would favour having one proposed default amount over having the prescribed amount as the default option.

Question 5: Are you of the view that the existence of a compensation or guarantee scheme should be taken into account in the credit risk assessment of a PRIIP? And if you agree, how would you propose to do so?

The existence of compensation or guarantee schemes at national level could indeed be taken into account in the credit risk assessment of a PRIIP. This could be done in a manner comparable to that used for principal protection, and taking into consideration the limitations and risk of the guarantee provided.

⁴ See pages 10, 11 "Product rules for packaged retail products: why, when, how?", Finance Watch 2013 <http://www.finance-watch.org/our-work/publications/627>

⁵ See pages 16, 17 <http://www.finance-watch.org/our-work/publications/627>

Question 6: Would you favour PRIIP manufacturers having the option to voluntarily increase the disclosed SRI? In which circumstances? Would such an approach entail unintended consequences?

We do not favour allowing PRIIPs manufacturers to voluntarily increase the disclosed SRI for certain products.

While in theory they could do this, perhaps on the grounds that the existing methodology fails to capture the major risks of a particular product, allowing it could entail unintended consequences and create additional monitoring costs that outweigh the potential benefits.

One possible unintended consequence could be to reduce comparability and enable manufacturers to unfairly promote other products in their product offering that are more profitable for them.

Question 9: Are you of the opinion that for PRIIPs that offer a capital protection during their whole lifespan and can be redeemed against their initial investment at any time over the life of the PRIIP a qualitatively assessment and automatic allocation to MRM class 1 should be permitted?

Are you of the opinion that the criteria of the 5 year tenor is relevant, irrespective of the redemption characteristics?

As a rule, we believe that principal protection should be included in the assessment of the risk, whatever the tenor of the product. We believe however that all products with a tenor above five years, irrespective of whether they enjoy principal protection, should be benchmarked against the risk free rate plus inflation.

We are also not in favour of permitting a qualitative assessment and automatic allocation to any category irrespective of the maturity, since principal protection never offers perfect protection (in case the protection provider defaults among others) and therefore a quantitative assessment should be performed for all products.

Question 12: Do you think the risk indicator should take into account currency risk when there is a difference between the currency of the PRIIP and the national currency of the investor targeted by the PRIIP manufacturer, even though this risk is not intrinsic to the PRIIP itself, but relates to the typical situation of the targeted investor?

We do think that the risk indicator should take into account currency risk where there is a difference between the currency of the PRIIP and the national currency of the investor targeted.

While we appreciate the additional cost and complexity, there have been enough cases of investors taking such currency risks without fully realising it to justify such a measure.

The examples of Swiss franc denominated mortgages sold in a number of Member States show that retail investors are more greedy than fearful when it comes to getting an extra return at the cost of future currency risks and are not equipped to assess such risks.

Question 13: Are you of the opinion that the current Consultation Paper sufficiently addresses this issue? Do you it is made sufficiently clear that the value of a PRIIP could be significantly less compared to the guaranteed value during the life of the PRIIP? Several alternatives are analysed in the Impact Assessment under policy option 5: do you see any additional analysis for these assessment?

We believe that this is an important issue and that a warning may not be sufficient to convey it. A simple warning may also not help investors assess the extent of the additional risk and losses they are facing in case they choose to exit early.

In case there is a material difference between the risk during the life of the product and at maturity, as is typically the case for products with a principal protection at maturity, we believe that the SRI grade corresponding to an early exit should also be disclosed. This grade should be calculated using the interim period corresponding to the highest risk.

This additional SRI grade could either be disclosed under the main one with a label "in case of early exit", or alternatively be disclosed in the warning.

Providing this additional information would be very valuable for retail investors, as it would give them an indication of the additional risk that they are facing in case of early exit.

Question 14: Do you agree to use the performance fee, as prescribed in the cost section, as a basis for the calculations in the performance section (i.e. calculate the return of the benchmark for the moderate scenario in such a way that the return generates the performance fee as prescribed in the cost section)? Do you agree the same benchmark return should be used for calculating performance fees for the unfavourable and favourable scenarios, or would you propose another approach, for instance automatically setting the performance fees to zero for the unfavourable scenario? Please justify your proposal.

We agree that the performance fee should be taken into account in the performance scenarios, as these should be net of all costs. We believe however that the choice of the scenarios should not be influenced by the desire to display the performance fee. Instead the performance scenarios should be probabilistically determined and identical for all products, and the performance fee only should be included if it would be triggered by such a scenario.

Consequently we do not believe that the same benchmark return should be used for calculating performance fees for all scenarios, nor that the performance fee should automatically be set to zero in the unfavourable scenario.

Question 15: Given the number of tables displayed in the KID and the to a degree mixed consumer testing results on whether presentation of performance scenarios as a table or a graph would be most effective, do you think a presentation of the performance scenarios in the form of a graph should be preferred, or both a table and a graph?

Given the mixed consumer testing results and the number of tables displayed, we believe that a presentation of the performance scenarios in the form of a graph should be preferred.

Displaying both a table and a graph would make the document longer and duplicate information, whereas the attention span of retail investors is limited and the amount of essential information to be conveyed is significant.

Question 18: Do you agree that the monetary values indicated in the first table are a sum of costs over the respective holding periods? Or should the values reflect annualized amounts? If you prefer annualized amounts, which method for annualisation should be used (e.g. arithmetic average or methods that consider discounting effects)?

We do agree that the monetary values indicated in the first table are a sum of costs over the respective holding periods. Using annualised amounts might be misleading as the headings mention specific periods and retail investors might assume that the costs displayed are the total costs for these periods.

Question 21: Given evidence as to the difficulties consumers may have using percentage figures, would you prefer an alternative presentation of the second table, solely using monetary values instead? As with the first table, please also explain what difficulties you think might arise from calculating monetary values, and whether this should be on an annualized basis, and if so, how?

One issue with displaying monetary values without any reference to a holding period is knowing which period to use for the calculation.

For this reason, we prefer annualised percentage figures, but in order to take into account consumer difficulties, the table could also display annualised monetary values in an additional column.

Question 22: Given the number of tables shown in the KID, do you think a more graphic presentation of the breakout table should be preferred?

As the consumer testing survey showed that a simple breakdown graphic plus a table produced better results than other approaches, we would favour this approach.

Question 23: The example presented above includes a possible way of showing the variability of performance fees, by showing the level for all three performance scenarios in the KID, highlighting the ‘moderate’ scenario, which would be used for the calculation of the total costs. Do you believe that this additional information should be included in the KID?

We would like to see this additional information included.

Question 24: To reduce the volume of information, should the first and the second table of Annex VII be combined in one table? Should this be supplemented with a breakdown of costs as suggested in the graphic above?

We would favour combining both tables into one table and supplementing it with a breakdown of costs as suggested in the graphic above question 24.

Question 26: Regarding the first table of the cost section presented in Annex VII, would you favour a detailed presentation of the different types of costs, as suggested in the Annex, including a split between one-off, recurring and incidental costs? Alternatively, would you favour a shorter presentation of costs showing only the total costs and the RIY?

As mentioned earlier, we believe that the breakdown of costs is important information for investors. It should be displayed through a breakdown graphic as shown on page 12 of the consultation document, complemented by the table shown in figure 3 of the consumer testing executive summary.