

# Call for evidence on the European Commission mandate regarding the PRIIPs Regulation

Fields marked with \* are mandatory.

## 1. General Information

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\* Please indicate the desired disclosure level of the comments you are submitting:

- Confidential  
 Public

\* Stakeholder

Austrian Federal Economic Chamber, Division Bank and Insurance

\* Sector

- Investment management  
 Insurance  
 Banking (structured products/ derivative products)  
 Other

\* Contact person (name and surname)

\* Contact person email

Contact person phone number

## 2. Introduction

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In the September 2020 new Capital Markets Union Action Plan, the European Commission (Commission) announced its intention to publish a strategy for retail investments in Europe in the first half of 2022.

In May 2021, as part of its evidence gathering, the Commission launched a three-month public consultation on a wide array of aspects related to retail investor protection. [1] The Commission is also undertaking an extensive study that was launched in 2020, which involves analysis of the PRIIPs Key Information Document (KID), as well as other disclosure regimes for retail investments. This study will involve extensive consumer testing and mystery shopping, with the aim to ensure that any future changes to the rules will be conceived from the perspective of what is useful and necessary for consumers.

On 27 July 2021, the Commission sent to the JC of the ESAs a request for advice asking the ESAs to assist the Commission in the preparation of legislative proposals implementing aspects of the retail investment strategy, and more specifically regarding a review of Regulation (EU) 1286/2014 on packaged retail and insurance-based investment products (PRIIPs) [2]. The deadline for the ESAs to provide their advice is 30 April 2022.

The Commission invited the ESAs to provide advice on the following main areas:

- A general survey on the use of the KID
- A general survey on the operation of the comprehension alert in the KID
- A survey of the practical application of the rules laid down in the PRIIPs Regulation
- An assessment of the effectiveness of the administrative sanctions, measures, and other enforcement actions for infringements of the PRIIPs Regulation
- An assessment of the extent to which the PRIIPs Regulation is adapted to digital media
- An examination of several questions concerning the scope of the PRIIPs Regulation

For most of the areas set out above, additional more specific elements to be addressed were identified in the mandate; for instance for the general survey on the use of the KID there are four sub-elements, including to provide evidence on the extent to which marketing information aligns with the information in the KID.

Notwithstanding the mandate provided by the Commission, the information collected and analysis conducted by the ESAs since 2018 would indicate that changes to the PRIIPs Regulation are needed in other areas, besides those addressed in the mandate, in order to achieve the optimal outcomes for retail investors. Indeed, the ESAs have previously provided their views on the need for changes to the PRIIPs Regulation in a number of areas. [3] Consequently, this call for evidence requests feedback on a range of other issues, where the ESAs are considering the relevance to additionally provide advice to the Commission.

In parallel with sending the call for advice on the PRIIPs Regulation to the ESAs, the Commission also sent separate calls for advice individually to EIOPA [4] and ESMA [5] regarding other aspects of retail investor protection, as part of the work to develop a retail investment strategy. The ESAs are seeking to coordinate the work undertaken for these different mandates.

The ESAs acknowledge that the importance and complexity of the topics set out in the Commission's request for advice call for a thorough involvement of stakeholders to ensure that they can adequately contribute to the formulation of the advice from the beginning of the process. At the same time, the short timeframe available to prepare this advice, places constraints on the type of consultation and time that can

be given for responses. Taking into account these constraints, as well as the nature of the request from the Commission, which seeks various different types of evidence regarding current market practices, the ESAs have decided to launch a call for evidence. The responses provided will be used to shape the technical advice to the Commission. The ESAs also plan to hold a stakeholder event in Q1 2022 before finalising the advice. Further details about this event and how to register will be available via the relevant sections of the ESAs' websites in due course.

Where questions in this call for evidence ask for respondents' "experiences" regarding a certain issue or topic, **please provide information regarding the basis for the views provided**. This might include whether the views are based on actual experiences, such as selling, advising on, or buying PRIIPs, a survey of market participants, academic research undertaken etc. Manufacturers of products, which currently benefit from an exemption to produce a KID, such as fund managers, are not precluded from sharing evidence or experience under this call, but should clarify the context in which they would provide comments.

[1] EU strategy for retail investors (europa.eu)

[2] Call for advice

[3] See for example the Joint ESA Supervisory Statement – application of scope of the PRIIPs Regulation to bonds (JC 2019 64), or the Final Report following consultation on draft regulatory technical standards to amend the PRIIPs KID (JC 2020 66).

[4] Call for advice to EIOPA regarding certain aspects relating to retail investor protection | Eiopa (europa.eu)

[5] Call for advice to the European Securities and Markets Authority (ESMA) regarding certain aspects relating to retail investor protection (europa.eu)

**1. Please provide any general observations or comments that you would like to make on this call for evidence, including any relevant information on you/your organisation and why the topics covered by this call for evidence are relevant for you/your organisation.**

We wish to markup that any fundamental changes of the way the retail distribution of financial products is being governed in the EU, need to be prepared by a holistic analytical evidence-based exercise looking at all existing relevant regulatory mechanisms that potentially are impacted by such change.

The quality of the PRIIPs framework should prevail. Therefore, any review of the PRIIPs framework should not be rushed. Extensive technical and consumer testing in all countries and an adequate timeline for stakeholders' consultation should be pre-requisites set in the legislative texts for any review. To ensure consumers receive high quality information, it is key to allow sufficient time for the implementation of any new provision. Manufacturers need at least 12 months from the publication in the Official Journal of the European Union of all the measures at Level 1 and 2 to implement any required changes, given the significant compliance and operational effort required from the industry. As they are instrumental to a proper implementation, any Level 3 measures also need to be available a year before the framework implementation deadline.

This must include but is likely not limited to probing for detrimental or unwanted correlations new provisions regarding PRIIPs KID content requirements might have with the existing (or any future) rules on client categorization, the target market requirement, and the suitability and appropriateness tests.

# 3. Call for evidence

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## 3.1 General survey on the use of the KID

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Extract from the call for advice

*A general survey on the use of the PRIIPs KID across the Union, including, to the extent feasible, evidence on:*

- *The number and type of products and their market share for which PRIIPs KIDs are produced and distributed.*
- *The recent developments and trends on the market for PRIIPs and other retail investment products.*
- *The extent to which PRIIPs KIDs are used by product distributors and financial advisors to choose the products they offer to their clients.*
- *To the extent feasible, the extent to which marketing information aligns with or differs from the information in the PRIIPs KIDs.*

In terms of this general survey, it can be relevant to clarify that regarding the third bullet point in the mandate above, the ESAs understand that evidence is sought on the extent to which the information in the KID is used by persons advising on, or selling, PRIIPs separate from the obligation to provide the KID to the retail investor. This might include, for example, identifying if a product is suitable for the retail investor. For this topic, the ESAs would like to ask for feedback to the following questions:

**2. Do you have, or are you aware of the existence of, data on the number, type and market share of different types of PRIIPs? If you have such data, would you be in a position to share it with the ESAs?**

**3. In your position as product distributor or financial advisor, to what extent do you make use of KIDs to choose or compare between the products you offer to your clients? In case of trading online, does your platform offer an automatised tool that can help the retail investor in making comparisons among products, for instance using KIDs?**

The KID is given to the customer to make it easier for the customer to decide (for regulatory purposes, but not for a real comparison; it is not actively used by customers). Experience has shown that the KID is not of interest to customers.

**4. If this is the case, what is preventing distributors or financial advisors from using the KID when they choose a product for a client?**

The design is not really appealing.

In addition, the content of the KID might be simplified. An excessive number of figures does not help consumers' understanding on any media. The following simplifications can be envisaged:

The current PRIIPs KID displays around 20 figures on costs, that will increase to up to around 30 different figures under the revised RTS.

The “What is this product?” section of the KID alone includes too many different types of disclosures on costs with regard to insurance benefits which are not easy to understand for potential clients.

The “What are the risks and what could I get in return?” section could also be simplified, with no need to show intermediate time periods.

**5. In your experience, e.g. as a retail investor or association representing retail investors, to what extent are KIDs used by distributors or financial advisors to support the investment process? Is marketing material used instead or given greater emphasis?**

**6. What are your experiences regarding the extent of the differences between marketing information and the information in the KID? What types of differences do you consider to be the most material or relevant in terms of completeness, plain language, accuracy and clarity? What do you think might be the reason(s) for these differences?**

Looking at the KID and its content next to marketing material, we would like to stress that both seem not really comparable with each other. The different kinds of documents used for retail investor information purposes in practice partly have to comply with requirements originating from legal sources other than PRIIPs Regulation, most notably those that form part of the different sectoral legislation (Mifid, IDD, Solvency II, national information requirements, etc.).

“Marketing material” in practice entails always information of the product of a more “deeper” nature (such as differences to other product types, potential portfolio contexts and market aspects which the product is meant to respond to or tax implications), which are not (and cannot be) provided in a short-form information document with maximum length as the PRIIPs KID.

The before also illustrates why the KID as such cannot be targeted to the prototype of an “average” retail investor, but only to an investor who already has gained a basic understanding of the relevant product type (outside of the KID), an aspect that is covered by the concept of the MIFID target market which has to be considered as one overarching principle for the provision of product information material, including the KID.

More generally, the KID remains a highly formalized document, within which it is not permissible to provide additional relevant information in detail, for example on relevant risks, the market or portfolio context of any investment.

The idea that the KID alone can fulfil all informational needs of retail investors would thus be too simplistic, unless it is allowed to provide a KID without maximum length.

## 3.2 General survey on the operation of the comprehension alert

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Extract from the call for advice:

*A general survey on the operation of the comprehension alert, taking into account any guidance developed by competent authorities in this respect, the survey should gather data on the number and types of*

*products that include a comprehension alert in the PRIIPs KIDs, and to the extent feasible, evidence on whether retail investors and financial advisors consider the comprehension alert in their investment decisions and/or advice.*

For this topic, the ESAs would like to ask for feedback to the following questions:

**7. What are your experiences regarding the types of products that include a comprehension alert?**

We would like to markup that as the products requiring a comprehension alert have been defined by reference to the notion of “complex products” under MiFID, currently most of all KIDs carry this alert. This approach (comprehension alert coupling with MIFID complexity notion) makes it difficult for retail investors take any added value from this information.

As long the approach taken for including this kind of alert does not make it clear for retail investors on which basis they are warned regarding particular products, we are of the opinion that it would make more sense to abolish this alert.

Furthermore, cursory reference is made at this point to the well-known but largely ignored fact that complexity does not equate riskiness. This can already be derived from the observation that complexity of a product often is caused by features being added to the product structure that actually work out to the retail investor’s advantage (such as capital, currency or issuer default protection).

**8. Do you have or are you aware of the existence of data on the number and type of products that include a comprehension alert? If you have such data, would you be in a position to share it with the ESAs?**

**9. What are your experiences regarding the extent to which retail investors take into account the inclusion of the comprehension alert?**

**10. As a retail investor or association representing retail investors, are you aware of the existence of a comprehension alert for some PRIIPs?**

**11. What are your experiences regarding the extent to which financial advisors consider the comprehension alert?**

### 3.3 Survey on the practical application of the rules

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Extract from the call for advice:

*A survey of the practical application of the rules laid down in the PRIIPs Regulation, taking due account of developments in the market for retail investment products, which should include practical evidence on:*

- *To the extent feasible, the amount and nature of costs per PRIIP to various market participants of complying with the requirements of the PRIIPs Regulation, including the costs of manufacturing, reviewing, revising, and publishing PRIIPs KIDs, including as a proportion of total PRIIP costs.*
- *To the extent feasible, the extent to which the PRIIPs Regulation is applied in a consistent manner across the EU for the most commonly sold types of PRIIPs.*
- *The supervision of the PRIIPs KID, including the percentage of cases where inaccurate PRIIPs KIDs were identified by NCAs.*
- *The number of relevant mis-selling events before and after the introduction of the PRIIPs KID, including through data on the number of complaints received, number of sanctions imposed, and other relevant data.*

Concerning this topic, the ESAs would like to ask for feedback to the following questions:

**12. For PRIIP manufactures or sellers:**

**12. a) Please describe the different types of costs incurred to comply with the PRIIPs Regulation.**

**12. b) Can you provide an estimate of the average costs per PRIIP of complying with the requirements of the PRIIPs Regulation? Where possible, please provide a breakdown between the main types of costs, e.g. manufacturing, reviewing, publishing, etc.**

**12. c) Can you provide an estimate of what proportion of the total costs for the product are represented by the costs of complying with the PRIIPs Regulation?**

**13. What are your experiences regarding the extent to which the PRIIPs Regulation is applied in a consistent manner across the EU for the most commonly sold types of PRIIPs? What are the main areas of inconsistencies?**

Basically, we see a great level of consistency in the implementation of the EU PRIIPs Regulation from the manufacturers' perspective.  
Still, in some markets the practical implementation by NCAs is partly diverging to a lesser or larger extent.

## **3.4 Use of digital media**

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Extract from the call for advice

*An assessment of the extent to which the PRIIPs Regulation is adapted to digital media. This survey shall include an evidence-based assessment of:*

- *To the extent feasible, the actual use of various types of physical and digital media for delivering or displaying the PRIIPs KID to retail investors.*
- *To the extent feasible, the preferred digital or physical media for retail investors to access and read PRIIPs KIDs, and the appropriateness of the PRIIPs Regulation for allowing access to and readability of PRIIPs KID on such platforms.*
- *The appropriateness of the approach taken in the PEPP Regulation 2019/1238 for displaying the PEPP KID on digital media for the PRIIPs KID.*

Article 14 of the PRIIPs Regulation lays down rules regarding the types of media that can be used to provide the KID to the retail investor. It is specified that the use of paper format should be the default option where a PRIIP is offered on a face-to-face basis, but that it is also possible to provide the KID using a durable medium other than paper or by means of a website, if certain conditions are met. These conditions include, for example, that the retail investor has been given the choice between paper and the use of another durable medium or website.

The PEPP Regulation[1] provides rules regarding the distribution of the PEPP KID either electronically or via another durable medium in Article 24. For the PEPP KID, electronic distribution can be seen as the “default” approach, but customers need to be informed about their right to request a copy on another durable medium, including paper, free of charge.

For PEPP KIDs provided in electronic format, the PEPP Regulation also allows for the layering of information (Article 28(4)). This means that detailed parts of the information can be presented through pop-ups or through links to accompanying layers. In general terms, layering allows the structure of the information to be presented in different layers of relevance: for example from the information “at a glance” that is essential for all audiences, to more detailed information being readily available in a subsequent layer for those interested, and so forth.

Concerning this topic, the ESAs would like to ask for feedback to the following questions:

[1] REGULATION (EU) 2019/1238 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 20 June 2019 on a pan-European Personal Pension Product (PEPP) (OJ L 198, 25.7.2019, p. 1)

**14. Do you have or are you aware of the existence of data on the use of different media? If you have such data, would you be in a position to share it with the ESAs?**

**15. What are your experiences as a product manufacturer or product distributor or financial advisor regarding the preferred media for retail investors to access or read the KID? Are there challenges for retail investors to receive the KID in their preferred media, such as due to a certain medium not being offered by the distributor?**



**16. How do you as a retail investor, or association representing retail investors, prefer to receive or view the KID?**

**17. What are your experiences regarding the preferred media for product distributors and financial advisors when using the KID?**

**18. Should changes be made to the PRIIPs Regulation so that the KID is better adapted to use on different types of media?**

We are of the opinion that on a general basis, the KID content should be the same in different formats (or “media”) with any future rules not discriminating between types of investors that have a preference of one format about another.

Beside ensuring legal certainty, the framework for the technical implementation of an electronic format should be as flexible as to allow providers to provide the KID in an electronic format that corresponds to their digital strategy, their needs and possibilities for the customer journey.

**19. Do you think it would be appropriate to apply the approach taken in the PEPP Regulation 2019 /1238 (highlighted above) to the PRIIPs KID?**

## 3.5 Scope of the PRIIPs Regulation

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Extract from the call for advice:

*An examination of the following questions concerning the scope of the PRIIPs Regulation:*

- *whether the exemption of the products referred to in Article 2(2) points (d), (e), and (g) of the PRIIPs Regulation from the scope of PRIIPs should be maintained, in view of sound standards for consumer protection, including comparisons between financial products.*
- *whether the scope of the PRIIPs Regulation should be extended to additional financial products.*

The points referred to Article (2) of the PRIIPs Regulation concern:

*(d) securities as referred to in points (b) to (g), (i) and (j) of Article 1(2) of Directive 2003/71/EC;*  
*(e) pension products which, under national law, are recognised as having the primary purpose of providing the investor with an income in retirement and which entitle the investor to certain benefits;*  
*(g) individual pension products for which a financial contribution from the employer is required by national law and where the employer or the employee has no choice as to the pension product or provider.*

In 2019 the ESAs published a Supervisory Statement on the application of the scope of the PRIIPs Regulation to bonds (JC 2019 64). In this statement it was stated that:

*Ultimately, in order to fully address the risk of divergent applications by NCAs, the ESAs recommend that during the upcoming review of the PRIIPs Regulation, the co-legislators introduce amendments to the Regulation in order to specify more precisely which financial instruments fall within the scope of the Regulation. We would also recommend to reflect more expressly the stated intention of the PRIIPs Regulation[1] to address packaged or wrapped products rather than assets which are held directly, to avoid any legal uncertainty on this point.*

Taking this Statement into account, the ESAs are interested in feedback on a number of additional issues besides those specified in the mandate from the Commission. Thus, concerning the topic of scope, the ESAs would like to ask the following questions:

[1] This is stated in recitals 6 and 7.

**20. Do you think that the scope of the PRIIPs Regulation should be extended to any of the products referred to in Article 2(2), points (d), (e) and (g)? Please explain your reasoning.**

**21. Do you think that the scope of the PRIIPs Regulation should be changed with respect to other specific types of products and if so, how?**

We are of the opinion that numerous requirements in the PRIIPs Regulation are not tailored to the special features of OTC derivatives. The requirements are tailored to investment products. OTC derivatives are not classical investment products in which retail investors initially invest a certain amount and expect a return at the end of the recommended holding period. OTC derivatives are used for hedging purposes.

It would be appreciated if the PRIIPs Regulation only applies to investment products and not products used for hedging purposes so that OTC derivatives would not fall within the scope of the PRIIPs Regulation.

**22. Do you think changes should be made to specify more precisely which types of financial instruments fall within the scope of the PRIIPs Regulation? Please specify the amendments that you think are necessary to the Regulation.**

Based on the currently underlying approach, floating rate notes should be generally exempted, as should subordinated bonds, and all bonds with a make-whole clause.

**23. Do you have specific suggestions regarding how to ensure that the scope of the PRIIPs Regulation captures packaged or wrapped products that provide an indirect exposure to assets or reference values, rather than assets which are held directly?**

**24. Do you agree with the ESA Supervisory Statement relating to bonds and what are your experiences regarding the application of the Statement?**

We agree with the statement. The aim should be that there is a common understanding for which type of bonds it is necessary to draw up a KID. The statement helps to achieve a consistent level of regulation and to reduce legal uncertainty.

**25. Do you think that the definitions in the PRIIPs Regulation relating to the scope should take into account other elements or criteria, e.g. relating to the maturity of the product, or relating to a product only having a decumulation[1] objective, or where there is not active enrolment[2]?**

[1] For example an annuity.

[2] This might include, for example, employment based incentive schemes

**26. Do you think that the concept of products being “made available to retail investors” (Article 5(1) of the PRIIPs Regulation) should be clarified, and if so, how?**

We would welcome this aspect to be clarified by regulatory guidance. The concept could be based on the question whether the manufacturer has, in a discernible/readable/visible manner excluded retail investors.

**27. Do you think it would be beneficial to develop a taxonomy of PRIIPs, that is, a standardised classification of types of PRIIPs to facilitate understanding of the scope and that could also be used as a basis for the information on the “type of the PRIIP” in the ‘What is this product?’ section of the KID (Article 8(3)(c)(i) of the PRIIPs Regulation)? If yes, do you have suggestions for how this could be done?**

In the EU structured products industry, a taxonomy is already used in the retail manufacturing and distribution business lines for a technically correct pay-off classification of a structured product in terms of capturing distinguishing features and grouping according to the risk level.

In the insurance sector a standardization of types of IBIPs would not be useful. Since IBIPs can be designed and structured in many different ways from country to country, a standardised classification could even be confusing or misleading for consumers.

### 3.6 Differentiation between different types of PRIIPs

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Following a targeted consultation on PRIIPs towards the end of 2018, the ESAs’ Final Report published in February 2019 (JC 2019 6.2), which proceeded further work on a review of the PRIIPs Delegated Regulation, stated (page 14):

- Differentiation between different types of PRIIPs: *taking into account information regarding challenges to apply the KID to specific product types, for example very short-term products or specific types of insurance or pension products, it is intended to analyse if it is appropriate to introduce some additional differentiation in how the rules apply to different types of products, while still adhering to the overarching aim of comparability between substitutable products.*

This aspect was considered during the review of the PRIIPs Delegated Regulation initiated in 2019, but this

work was conducted within the constraints of the existing PRIIPs Regulation. In the context of reviewing the PRIIPs Regulation, consideration could be given to the following types of approaches:

- The development of broad product groupings or buckets of similar products. A more tailored approach could be taken for each of these groupings, with the aim to ensure the meaningfulness of the information and prioritising comparability within these groupings. This might also ease the comparability between the PRIIPs Regulation and sectoral legislation (such as MiFID, IDD) on certain disclosure requirements;
- A reduced degree of standardisation in the KID template;
- Provisions that would allow for supervisory authorities to grant exemptions or waivers from the requirements in duly justified cases.

**28. Do you think that the current degree of standardisation of the KID is detrimental to the proper understanding and comparison of certain types of PRIIPs? If so, which products are concerned?**

We would not support the notion of the current standardization degree being detrimental to a proper understanding and comparison of products.

However, we would like to underline, that in light of the different roles products captured by the PRIIPs Regulation could play in the retail investor portfolio context (arising from the manifold variations in terms of legal wrapper, specific payoff modalities, maturity, underlying's market exposure and issuer risk) and considering that important investor issues may not be covered by the KID information, "comparability" should not be treated as a stand-alone feature of a KID in a sense that every KID allows to fully compare the product to any other (product with a KID).

Comparability should rather be seen as a common, albeit not guaranteed, advantage of a PRIIPs KID in a way that specific parts of product information provided in one KID, upon a case-by-case verification, could indeed be comparable with equivalent information in another KID and thus allow for a comparative conclusion on these aspects between two products.

To illustrate the before by way of an example – while full comparability exists between the issuer risk levels for manufacturers of a leverage product and of an insurance product, due to the clear rating indication, both products have totally different roles in a retail investment context

**29. Do you think that greater differentiation based on the approaches highlighted above, is needed within the PRIIPs Regulation? If so what type of approach would you favour or do you have alternative suggestions?**

**30. Do you have suggestions for how a product grouping or product buckets could be defined?**

### 3.7 Complexity and readability of the KID

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Taking into account the views previously expressed by some stakeholders that the information in the KID is overly complex and contributes towards an information overload for the retail investor, the ESAs would like to ask for suggestions on how the KID could be improved in this respect.

There can also be a link between this issue and the use of techniques such as layering as referred to above in the context of the digital KID (see Section 3.4), as well as other design techniques, such as the inclusion of visual icons or dashboards at the top of documents[1].

[1] Dashboards can include the most essential information at the top of the document. This is the approach taken, for example, for the PEPP KID - “PEPP at a glance” in Annex I of PEPP Delegated Regulation 2021/473 point 4 and the template in part II.

**31. Would you suggest specific changes to Article 8 of the PRIIPs Regulation in order to improve the comprehensibility or readability of the KID?**

Rather than probing the rules set out in Article 8, we would suggest verifying the highly formalized and number-based approach underlying the RTS on whether it is delivering a satisfactory level of understandability.

**32. How could the structure, format or presentation of the KID be improved e.g. through the use of visual icons or dashboards?**

We would for the same reason as mentioned in the answer to the previous question, argue that before trying to change the layout, there should firstly be clarity if the information presented is sufficiently understandable.

## 3.8 Performance scenarios and past performance

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In the ESAs’ draft regulatory technical standards (RTS) to amend the PRIIPs Delegated Regulation submitted to the Commission in February 2021[1] (and adopted by the Commission on 7 September 2021 [2]), the ESAs included a proposed new requirement for certain types of investment funds and insurance-based investment products to publish information on the past performance of the product and refer to this within the KID. This approach was taken so that the availability of this information would be known, and the information would be published in a standardised and comparable format.

However, the ESAs also stated in the Final Report[3] accompanying the RTS that (on page 4):

*the ESAs would still recommend, as a preferred approach, to include past performance information within the main contents of the KID on the basis that it is key information to inform retail investors about the risk-reward profile of certain types of PRIIPs. Since it has been argued that the intention of the co-legislators was for performance scenarios to be shown instead of past performance, it is understood that a targeted amendment to Article 8 of the PRIIPs Regulation would be needed to allow for this. A consequential amendment is also considered necessary in this case to allow the 3 page limit (in Article 6(4)) to be exceeded to 4 pages where past performance information would be included in the KID;*

Besides the issue of past performance, the ESAs’ work under the empowerment in Article 8(5) regarding the methodology underpinning the performance scenarios has raised significant challenges. Since the ESAs first started to develop these methodologies from 2014 onwards, it has proved very difficult to design appropriate performance scenarios for the different types of products included within the scope of the PRIIPs Regulation that would allow for appropriate comparisons between products, avoid the risk of generating unrealistic expectations amongst retail investors and be understandable to the average retail investor. In particular, no academic consensus has been reached on how to develop common performance

scenarios that would be equally appropriate for all types of PRIIPs, proving the inherent difficulty of such an approach.

In this context, the ESAs would like to ask for feedback on:

[1] EIOPA's Board of Supervisors agrees on changes to the PRIIPs key information document | Eiopa (europa.eu).

[2] Implementing and delegated acts | European Commission (europa.eu)

[3] JC 2020 66 (30 June 2020)

**33. Do you agree with the ESAs' assessment in the Final Report (JC 2020 66) regarding the treatment of past performance?**

Yes, we generally agree with the assessment to include past performance information. E.g. it is also the existing approach to present past performance for the UCITS KIID.

**34. Would you suggest changes to the requirement in Article 8(3)(d)(iii) of the PRIIPs Regulation concerning the information on potential future performance, and if so what would you specifically change in the Regulation?**

## 3.9 PRIIPs offering a range of options for investment (Multi-Option Products (“MOPs”))

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In the ESA Consultation Paper of October 2019 on proposed amendments to the PRIIPs KID (JC 2019 63), the ESAs stated that their analysis of the implementation of the rules for MOPs indicated some significant challenges regarding the clarity and usefulness of the information provided to retail investors. In particular, it was stated that (page 51):

*Where a generic KID is used (in accordance with Article 10(b) of the PRIIPs Delegated Regulation), it is difficult for the investor to identify the total costs related to a particular investment option. This arises because the generic KID shows a range of costs, but does not always identify which costs are specific to an investment option and which costs relate to the insurance contract. At the same time, it is understood that the information on the underlying investment option (in accordance with Article 14 of the PRIIPs Delegated Regulation), does not usually include the total costs of investing in that option. Therefore, it is often not possible for the investor to identify from the generic KID the costs that may apply in addition to those shown in the option-specific information.*

One of the proposals in the Consultation Paper was to introduce a differentiated treatment for the ‘most commonly selected investment options’ (page 52). In the final draft RTS following the consultation, the proposals relating to the most commonly selected investment options were not included taking into account various implementation challenges raised by respondents to the public consultation.

However, the ESAs introduced some specific changes to the approach for MOPs, for example to require the separate disclosure in certain cases of the costs of the insurance contract or wrapper. It was considered that these changes would result in material improvements to the current KID. At the same time,

despite these proposed changes, there are still considered to be material issues that were not possible to address within the constraints of the review of the PRIIPs Delegated Regulation.

In the Final Report (JC 2020 66), the ESAs also stated at that stage that they consider the optimal way to address the challenges for MOPs is to use digital solutions, but that this would require changes to the PRIIPs Regulation.

As part of the May 2021 consultation from the Commission on the Retail Investment Strategy, feedback was also requested on the approach for MOPs to require a single, tailor-made KID, reflecting the preferred underlying investment options of each investor, to be provided.

In this context, the ESAs would like to ask for feedback on the following questions regarding potential alternative approaches for MOPs that might require a change of the PRIIPs Regulation:

**35. Would you be in favour of requiring a KID to be prepared for each investment option (in accordance with 10(a) of the PRIIPs Delegated Regulation) in all cases, i.e. for all products and for all investment options[1]? What issues or challenges might result from this approach?**

[1] This approach assumes complete investment in a single investment option and requires the KID to include all costs.

**36. Would you be in favour of requiring an approach involving a general product information document (along the lines of a generic KID) and a separate specific information document for each investment option, but which avoids the use of cost ranges, such as either:**

- A specific information document is provided on each investment option, which would include inter alia all the costs of the product, and a generic KID focusing more on the functioning of the product and which does not include inter alia specific information on costs?; or
- The costs of the insurance contract or wrapper would be provided in a generic KID (as a single figure) and the costs of the underlying investment option (as a single figure) would be provided in the specific information document?

**What issues or challenges might result from these approaches?**

**37. Do you see benefits in an approach where KIDs are prepared for certain investment profiles or standard allocations between different investment options, or for the most commonly selected options? In this case, what type of information could be provided regarding other investment options?**

**38. Do you have any other comments on the preferred approach for MOPs and or suggestions for changes to the requirements for MOPs in the PRIIPs Regulation?**

## 3.10 Alignment between the information on costs in the PRIIPs KID and other disclosures

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In the final draft RTS amending the PRIIPs Delegated Regulation submitted to the Commission in February 2021 (and adopted by the Commission on 7 September 2021), the ESAs sought to introduce changes to the way that cost information is presented in the KID, in particular for non-insurance packaged retail investment products (PRIIPs)[1]. One of the aims of these changes is to achieve a better alignment with disclosure requirements in MiFID and IDD.

At the same time, the ESAs have received representations from stakeholders that there might still be inconsistencies or misalignment between the PRIIPs KID and disclosure requirements in other legislative frameworks. This issue is also related to the issue of appropriate differentiation between different types of PRIIPs (see Section 3.7).

Since the issue of consistency between different disclosure requirements for retail investment products is also addressed in the calls for advice to ESMA and EIOPA, the ESAs will, in particular, coordinate the work on this aspect, and consider the appropriate mandate within which to address any issues that arise.

[1] As defined in point (1) of Article 4 of the PRIIPs Regulation

**39. Taking into account the proposals in the ESAs' final draft RTS, do you consider that there are still other inconsistencies that need to be addressed regarding the information on costs in the KID and information disclosed according to other retail investor protection frameworks?**

We stress again that cost information should be strictly aligned with existing sectoral legislation. Annex VI point 80 mentions taxes ("Without prejudice to point 77 of this Annex, the costs shall be assessed on an 'all taxes included' basis"). We see the need to clarify that taxes that depend on individual tax rates cannot be included in cost calculations. We would like to point out that it is better to inform the retail investors in narrative form than to assume average tax rates.

## 3.11 Other issues

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**40. Do you think that other changes should be made to the PRIIPs Regulation? Please justify your response.**

Clarity on the fixed information that has to be provided in the KID is important, but some flexibility in the wording of the narratives should be allowed to better adapt to product specificities or other needs, also in terms of length and clarity of the translations in the different languages. This would also be helpful to ensure a more consistent terminology in the information provided to customers.

We would like to markup that keeping the limitation to 3 pages is challenging under the light of the new RTS.



We also see the need for clarification of Annex IV Point 7a and 7b (e.g. by means of an explanatory text or some examples).

Point 7c (ii) needs clarification regarding applicable costs. E.g. the treatment of distribution fees acc. to Annex VI Point 3 (a) can lead to low comparability. When we compare a PRIIP with a maximum distribution fee of 4% mentioned in its prospectus with a PRIIP that has a 5% distribution fee at the level of the advisor or distributor, the performance scenarios will look different. The 5% fee PRIIP has better performance scenarios and just has to display Element A test in Annex V Part 2.

Point 7c (iii) is in contradiction to Point 42: on one hand it is necessary to calculate the performance scenario with a reinvestment assumption, but on the other hand it is not allowed to print the corresponding result. This can lead to misunderstandings when comparing values of distributing and accumulating share classes, especially in jurisdictions that oblige UCITS companies and AIFMs to present fund performance on a reinvesting basis.

Point 7c (iv) contains the term “linear transformation”. We would appreciate to avoid mentioning a linear transformation in favor of using the performance of the sub-interval as if this performance would have been achieved in the recommended

Since the translated PRIIP KID used in another member state (than the home member state) “shall faithfully and accurately reflect the content of the original key information document” it is not permitted to draw up different PRIIP KIDs for different countries. Austrian investors might therefore receive information which would be accurate, fair, clear and not misleading for – e.g. – French investors (if the maximum of known distribution costs are charged by a French distributor), but not for Austrian investors.

Transaction costs: The calculation method for transaction costs might lead to misleading results. Some products even display negative costs. However, disclosing negative costs in the PRIIP KID does not meet the requirements of an accurate, fair, clear and not misleading KID.

## Contact

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