

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

Fields marked with * are mandatory.

1. General Information

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

- Confidential
 Public

* Stakeholder

BETTER FINANCE - European Federation of Investors and Financial Services Users

* Sector

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

If other, please specify:

Representative of consumers (retail) financial services users

* Contact person (name and surname)

* Contact person email

Contact person phone number

2. Introduction

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.

BETTER FINANCE's survey with individual, non-professional investors and member organisations on the experience with the PRIIPs framework showed that, on the key aspects of the KID, the level of satisfaction was very low. Generally, only 31% of respondents felt better informed by the PRIIPs KID, 78% were less than satisfied (score lower than 8 on a scale from 1 to 10) about the information on costs, 86% were less than satisfied about the information on performance and about the risk information.

As BETTER FINANCE highlighted on numerous occasions so far, the PRIIPs initiative meant an important step ahead for EU "retail" investor protection as the purpose was, and still is, to ensure comparability across investment products and enable the client to make an informed decision. However, due to policy choices on the design and content of the KID, this project fell short of reaching its purpose since it created more confusion and did not help non-professional clients better understand investment products.

While the European Commission, together with the ESAs, did attempt on finding amendments to the implementing regulations for the PRIIPs KID, BETTER FINANCE is of the view that the reform must start with the PRIIPs Level 1 Regulation, where key provisions on the content of the document must be amended. The PRIIPs KID must deliver key, simple, fair, clear, and not misleading information on the actual costs and performance of the product.

3. Call for evidence

3.1 General survey on the use of the KID

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?

BETTER FINANCE uses data from national statistical institutes and Eurostat on the financial balance sheets of EU27 households to determine, at a general level, the market share of types of PRIIPs. However, more granular statistics could be published at national level, albeit infrequently.

For instance, in Germany, input from BETTER FINANCE's member organisation defending insurance policy holders (BdV) points to a report of 2019 published by BaFin:

https://www.bafin.de/SharedDocs/Downloads/DE/dl_Umfrageergebnisse_MiFIDII.html

In their experience, the narrow majority of answers approved the new information requirements and representations, about a quarter said the opposite. With regard to IBIPs the results are unfortunately quite opposite: the narrow majority did not see any improvement of information and nearly two thirds had not even read the KID.

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?

Not applicable for BETTER FINANCE.

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?

Not applicable for BETTER FINANCE.

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?

We are not aware of clear evidence of distributors of PRIIPs not delivering or disclosing the KID to clients or potential clients, which would represent a breach of EU law. Input from BdV presumes that the KID is given to the customers by the intermediaries just among many other documents (terms and conditions of the contract, data protection rules, etc.), in consequence the KID cannot fulfill its primordial pre-contractual information task.

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?

Marketing communication materials are designed to emphasise key selling points or advantages of a product and leverage behavioural research to guide the cognitive process of the client into a certain direction, whereas the KID – as a regulatory reporting document – must be objective and present key information neither as an advantage or disadvantage. In terms of language, our research shows that marketing information uses varied terms or expressions, which are not necessarily clearer or simpler than the KID. Most importantly, we believe that the KID delivers better outcomes for individual investors due to the fact that it's a unique document and shorter (compared to the various leaflets, brochures etc) used in marketing information and because it's complete in terms of the information disclosed to the client, in theory allowing the latter to understand and make an informed decision without any further information or reading. For these reasons, we believe that customers are able to discern the differences between marketing information and the KID.

3.2 General survey on the operation of the comprehension alert

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?

Input from the German market reveals that insurance product manufacturers do not make enough use of comprehension alerts. There are two main reasons why comprehension alerts are necessary: IBIPs are per se “complex products”, because they combine risk coverage and long-term savings / investments. Usually it is not clearly disclosed what is the amount of the investment part of the total premium to be invested. Additionally it is usually not disclosed that entry / distribution costs are relatively high during the first five years of the contract duration, in consequence the investment part of the total premium is relatively low just at the beginning of the accumulation phase. It is obvious that in case of early cancellation the detrimental impacts on consumers are particularly high. Comprehension alerts should therefore include this double information.

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?

We do not have data on this topic.

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

We do not have data on this topic.

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

Input from BdV highlights the following:

- In September 2020 Allianz launched a new IBIP (“Allianz Allvest”) offering three types of capital return guarantees (100%, 80% or 60% of minimum return of gross premiums at maturity). In cases of 60% and 80% return guarantee the general KID comprehension alert of “complex product which is difficult to understand” is given, but not in the case of 100% return guarantee. The only difference is that in case of the latter there is no “risk of loss” as Allianz points out in the KID. But this assessment is only true, if there is no early cancellation (cf. our comment on Q7).
- Another example is given by Debeka and its IBIP “Chance Invest Plus”, which is a unit-linked product. If the policyholder chooses a contract duration (RHP) of 12 years, the Summary Risk Indicator is 4, if he chooses a contract duration (RHP) of 20, 30 or 40 years, the SRI is 2. The policyholder is not allowed to choose by himself the UCITs to be taken for the investment part, but it is invested in a fund under the management of the insurer himself. Despite the fact that no capital guarantees are given, Debeka does not include any comprehension alert in the KID (version of 01 January 2021). We consider this as a severe mistake.

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

We do not have data/information on this topic.

3.3 Survey on the practical application of the rules

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.

Not applicable for BETTER FINANCE.

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.

Not applicable for BETTER FINANCE.

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?

Not applicable for BETTER FINANCE.

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?

We do not have sufficient information or research to aggregate an analysis on this topic.

3.4 Use of digital media

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?

Input from the German market helps clarifying this topic. To begin with, it is difficult to find “neutral” data on this issue. For instance, the Association of German Insurers (GDV) publishes annual statistics on distribution channels (“Vertriebswegestatistik”: brokers, tied agents, bancassurance, etc.), but they are not differentiated with regard to online or classical face-to-face channels (GDV-Website:<https://www.gdv.de/de/themen/news/vermittler-sind-wichtige-saeule-fuer-die-verbreitung-der-riester-rente-61548>).

They are many additional studies published on online distribution channels for insurances, but more or less they aim at incentivizing distribution activities of brokers or other intermediaries like these ones (in German):

- Bewegung im Onlinevertrieb: Wie Versicherer den Anschluss finden
<https://versicherungswirtschaft-heute.de/schlaglicht/2020-10-06/bewegung-im-onlinevertrieb-wie-versicherer-den-anschluss-finden/>
- Mythen über digitale Kunden von Versicherungen
<https://www.dasinvestment.com/online-vertrieb-4-mythen-ueber-digitale-kunden-von-versicherungen/>
- Versicherung 2030: Vertrieb ist digital
<https://www.versicherungsmagazin.de/rubriken/branche/versicherung-2030-vertrieb-ist-digital-2668015.html>
- Neue Ordnung: Wie Corona den Versicherungsvertrieb verändert.
<https://versicherungswirtschaft-heute.de/unternehmen-und-management/2021-01-14/neue-ordnung-wie-corona-den-versicherungsvertrieb-veraendert/>
- Versicherungsvertrieb: Der Digitalisierungsturbo mischt die Karten neu.
<https://www.cash-online.de/digitalisierung/2021/versicherungsvertrieb-der-digitalisierungsturbo-mischt-die-karten-neu/572876>
- Die Digitalisierung des Versicherungsvertriebs – Modelle der Zukunft
<https://www.grandega.de/die-digitalisierung-des-versicherungsvertriebs-modelle-der-zukunft/>
- Accenture Studie zum Vertriebs- und Agenturmanagement. Versicherungsvertrieb neu gedacht. Accenture-

But there are studies as well which clearly criticize this “hype” on online distribution channels for insurances: Versicherungen: Warum das Internet den Berater nicht ersetzen kann. Oliver Lang, Chef des Digitalversicherers One, erklärt, warum im Zeitalter von Insurtechs Makler auch künftig ihre Daseinsberechtigung behalten.

<https://www.handelsblatt.com/finanzen/vorsorge/versicherung/versicherungen-warum-das-internet-den-berater-nicht-ersetzen-kann/26048160.html?ticket=ST-70217-OZ2FVF4fSV2et39eu2Xv-cas01.example.org>

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?

Not applicable to BETTER FINANCE.

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

Both digital and paper-based dissemination should be allowed. However, digital tools can bring several benefits for those who can access them, such as layering of information, nudging, explanations etc.

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

We do not have sufficient data on this topic.

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

The ESAs should consult on different digital formats that would allow a better accessibility and engagement with the KID, but the flow of information and actual content must remain the same regardless of the support.

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?

Yes, we agree: the PEPP KID was designed to accommodate both digital and paper-based distribution, and we believe that the result takes into account many findings and the experience with the other key information documents (UCITS, PRIIPs).

3.5 Scope of the PRIIPs Regulation

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.

Yes, particularly since pension products should not be approached as “extraordinary” to mandate a different regulatory framework, more particularly since many products in the scope of the PRIIPs Regulation are used for retirement purposes. For example, in Germany the same pension product of a life insurer may be offered as a regular personal pension product (IBIP), as a Riester product, as a Rürup product, as an occupational pension or as a forthcoming PEPP (following to EU/2019/1238). Currently, for each of these pension offers a different KID (based on European as well as on national regulations) has to be prepared for the potential customers. It is obvious that any comparison of performance scenarios or of calculated costs is not possible for the average customer, and this accrued variety of KIDs hinders understandability due to the complexity of texts and figures.

Of course product design differences and their legal background must not be omitted, but at least design and major categories like summary risk indicator, performance scenarios, costs over time and composition of costs should be aligned as much as possible.

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?

No, besides what was mentioned for Q20.

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.

Yes, in BETTER FINANCE’s view, annuities should fall within the scope of the PRIIPs regulation, even the so-called “immediate annuities” (offering only the payout-phase based on a lump sum one-off contribution). Even if the contribution phase is not included in these “immediate annuities” (like in Germany “Sofortrente”), the decumulation or payout phase is calculated exactly in the same way as for PPP-IBIPs (ongoing administration costs, use of mortality tables, profit sharing mechanisms, etc.). Additionally high entry or distribution fees are deducted (from the original lump sum) in the same way as for PPP-IBIPs (at the start of the contribution phase). These additional entry fees considerably reduce the lump sum which will be used for the calculation of the life-long pay-outs.

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?

BETTER FINANCE does not have evidence from different markets suggesting that certain products that should be captured by the PRIIPs scope are not.

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

Yes, we agree.

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

No, we do not think these amendments are necessary.

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?

Yes, the wording of the PRIIPs Regulation should be aligned with the wording of article 20 of IDD. From the perspective of the product providers and distributors the objective is “sale”. The sale can be executed with or without advice. In consequence the wording should be: “products sold with or without advice to the investors /policyholders”.

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?

No, we do not think that this standardised classification would bring additional clarification. Very probably strong discussions would emerge about the categories of this classification for already existing products and even more for any product innovations (cf. our comment on Q 28). Instead of this additional classification we urge for “intensified supervision” by NCAs and EIOPA by using the already existing rather powerful means (product testing and monitoring by POG, intervention powers etc.).

3.6 Differentiation between different types of PRIIPs

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?

No, in line with the general comment provided, the aim should be to even further extend the PRIIPs scope and standardise the key pre-contractual disclosure

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?

No, we do not believe the differentiation is needed.

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

No, we do not believe the differentiation is needed.

3.7 Complexity and readability of the KID

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?

We refer to the PEPP KID, which comprises several presentation layout elements and icons (visual representations) that significantly improve the readability of the KID. However, the main issue of the PRIIPs KID is not necessarily the design and format, is the actual content: if the information disclosed is not simple, clear, and not misleading, the beneficiary will still struggle to understand it.

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

Same as answer for Q31.

3.8 Performance scenarios and past performance

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?

The proposal of the ESAs to include a cross-reference to past performance is the best solution given the limited possibilities available at a regulatory level. While this “quick fix” would alleviate certain concerns, there is a need for a Level 1 (PRIIPs Regulation) reform in terms of past performance presentation.

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?

Yes, in line with BETTER FINANCE’s long-standing requests and answers to public consultations, Art. 8(3)(d)(iii) of the PRIIPs Regulation should be amended to replace “performance scenarios”, which cannot be interpreted otherwise than return estimations, with “disclosure of the product’s past performance over the last 10 years, or the maximum available, in comparison with the market index benchmark”.

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

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.

Yes, we agree – we refer to the previous answers to PRIIPs public consultations on the topic.

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?

No, we believe that segregating the information would certainly not help non-professional investors and would deviate the KID from its purpose. The key pre-contractual information must be found in a single format and easily accessible for the client, rather than having to aggregate different documents. Indeed, the cost of the wrapper or insurance contract should be disclosed separately in the breakdown of costs table in the KID, the same for the underlying investment options, and then calculated as a total.

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?

Not applicable.

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?

No further comments.

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

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?

Yes, there are still inconsistencies and overlaps between the MiFID II and IDD-warranted ex-ante and ex-post performance and cost disclosures – see the comments provided for Q40 in terms of the inconsistency of the ex-ante cost disclosure.

3.11 Other issues

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

BETTER FINANCE highlights that there are still significant concerns for the KIDs of unit-linked contracts as they are themselves very complex and difficult to understand by retail investors. First of all, due to the lack of clarity of the regulatory requirements in terms of updating the KIDs and making them available to potential clients via websites. BETTER FINANCE's research shows some products have not updated their KIDs for several years.

Second, there is also the issue of performance scenarios, which we reiterate to be "pseudo-science" and which had nothing to do with the actual performances. For instance, in the French UL market, a product (investing in a market for which most specialised publications foresaw an interest rate half of that forecasted (net return) at the intermediate holding period (4 years).

Third, the four performance scenarios are not probability weighted between themselves, although the moderate scenario is the one used (and not disclosed) for the calculation of the summary cost indicator (the incomprehensible “Reduction-in-Yield”).

At the same time, due to methodological issues, the stress scenario indicates (in one of the examples found by BETTER FINANCE) that the investor can recover the entire net investment (after deduction of costs) whereas the capital guarantee does not cover the wrapper (insurance contract) costs. At the same time, these costs are difficult to discern in the KID and have differences of calculation to the national law (ongoing costs are much smaller than what is disclosed according to the implementing measures of MiFID II). For Multi-Option Products, very large brackets of costs are presented (the minimum and maximum costs based on the possible combinations of the supporting investments) and it is very difficult to discern whether the cheapest product (lowest costs) corresponds to which type of supporting (underlying) investment.

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