

# 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

Assogestioni

\* 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.**

Assogestioni[1] welcomes this new opportunity to express views about the future of PRIIPs regulation.

We understand that the solutions made by ESAs in the new RTS have alleviated some critical issues, however they were made within the constraints of the existing PRIIPs Regulation. Therefore, we welcome questions that appear to go in the right direction and hope that this can continue with the overall review of the PRIIPs Regulation.

In line with our response to the European consultation on a retail investment strategy for Europe, we reiterate the changes we believe should have been made to the current version of the PRIIPs Regulation and its delegated act (new RTS) along with further reflections on some aspects that are also emerging in the implementation of the new RTS, including MOPs.

The PRIIPs KID is now only applicable to a small number of EU retail investment funds (and Italian based funds) but from the 1st of January 2023 there will be a transition from UCITS KIID to PRIIPs KID.

In line with our long-stated position, we support a review of the approach in the areas of performance and costs to help investors understand the characteristics and comparability between products, even within the same type (undertaking collective investments, UCIs). We advocate

- on the "performance" side, the review of the concept of "appropriate performance scenario and the

assumption made to produce them” stated in the PRIIPs Regulation to have greater flexibility in the illustration of performance (which should then be defined in L2 or L3) and remove the performance scenarios for non-structured open-end funds;

- on the “cost” side to remove the criticalities that inhibit the comparability: i) the review of calculation of transaction costs so that the results can be easily explained and understood by retail investors; ii) the review of the costs to be included in the total aggregate indicator (i.e. the removal of transaction costs and performance fees because of their nature) and their separate representation.

Furthermore, since the interlinkage between UCIs and MOPs implies that a modification of the criteria on the KID for the former also impacts on the latter and vice-versa we try to put some reflections on these aspects as well.

[1] Assogestioni is the trade body for Italian asset management industry and represents the interests of members who manage funds and discretionary mandates around € 2.5 billion (as of October 2021).

## 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?**

**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?**

**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?**

## 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?**

Currently, all Italian AIFs (also available to retail investors - who do not make a UCITS KIID - include a comprehension alert in their KID. However, once the exemption of Article 32 will end (i.e. from January 2023), the comprehension alert should also be given for retail AIFs that currently provide, in line with national regulation, a UCITS KIID.

We believe that the change of pre-contractual document (from UCITS KIID to PRIIPs KID) has no effect on the type of the product offered to the retail investor and, consequently, the provision of the comprehension alert for this type of funds would confuse retail investors.

The occasion is also useful to recall our suggestion to the public consultation on the review of the MiFID II

/MiFIR to revise the criteria for assessing the non-complexity of the products to include products aimed at retail investors that are normatively defined at European or national level (in terms of investment limits, access and redemption methods), such as retail AIFs (regulated at European or national level).

**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?**

The PRIIPs KID is currently only applicable to a small number of EU retail funds, and we have not yet any concrete experience or evidence to draw any conclusions based on a limited number of cases at this stage.

However, we see different approach in collecting information on the PRIIPs KID. In Italy, the NCA has defined the procedure for accessing KID documents and structured data relating to these products. This leads to unavoidable costs for PRIIPs manufacturers depending on the country in which the product is marketed.

## **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?**

Yes, Assogestioni supports a change in PRIIPs Regulation in line with the recent MiFID Quick fix.

Article 14 of PRIIPs Regulation specifies that the use of paper format should be the default option when 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.

The recent MiFID Quick fixes established electronic disclosure by default, allowing investors to request paper disclosure. Assogestioni, as expressed in the response to the Consultation of the EU Commission on the revision of the MiFID II/MiFIR regulatory framework, agrees with this approach and believes that in general, a process aimed at eliminating the information provided on paper must be supported, as well as it must be supported the provision according to which retail investors are allowed to request that the documentation is provided on paper.

**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?**

For PEPP KIDs provided in electronic format, the PEPP Regulation also allows for the layering of information (Article 28(4)) i.e. detailed parts of the information can be presented through pop-ups or through links to accompanying layers. In this case, it shall be possible to print the PEPP KID as one single document.

We are positive with this approach if it may respond to the need of those investors who require more information in an interactive digital format. However, there is still no concrete experience with this document (the PEPP Regulation has not yet been applied and, therefore, the PEPP KID has not yet been used by investors). Therefore, it may be useful to wait sufficient time to make a relevant assessment, along with further analysis to identify the information that is essential to give in the first layer, “at a glance”, from those available in the additional layers in detail.

## 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.**

We believe that the scope of the PRIIPs regulation should not be extended to certain pensions products (Article 2(2), points (e) and (g)). We still support the current exclusions from the PRIIPs Regulation due to the specific characteristics of the pension products that require a different approach to develop the pre-contractual information.

In order to ensure a high-level product transparency, it is essential that information documents help savers to understand the characteristics of the pension funds through specific representations of risks, returns and with the help of long-term projections. In this respect it is certainly relevant the case of the PEPP KID.

Starting from the provisions of the PRIIPs Regulation, the PEPP KID was developed by adapting the PRIIPs KID to the characteristics of the PEPP as pension product. The PEPP framework includes methodologies that differ from those used for the PRIIPs KID, for example in the risk-reward approach, to reflect the nature and objective of the PEPP as long-term product.

**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?**

**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.**

**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?**

**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<sup>[1]</sup> objective, or where there is not active enrolment<sup>[2]</sup>?**

[1] For example an annuity.

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

The fundamental scope of the PRIIP Regulation is to enable retail investors to understand and compare the key features, risks, “performance” and costs of a wide range of PRIIPs, thus enabling retail investors to make informed investment decisions. Limiting the scope, by introducing other element or criteria, could not be in the investor’s interest and could create unlevel playing field between financial products. This approach can have unintended effects and we recommend caution in its use.

**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 understand that there may be several issues related to the concept of products being “made available to retail investors”.

What it is for us relevant to the matter is the concept of products being “made available to retail investors” that has already been clarified in the Commission communication [2] and mentioned in recital 19 of the PRIIPs Delegated Regulation [3].

We therefore see merit in confirming such meaning also in the PRIIPs Regulation both to strengthen the pre-contractual function of the KID (to provide retail investors key information before an investment decision is made) and to clarify that a KID is not required for PRIIPs no longer markets to retail investors and not available for trading on secondary markets.

[2] Communication from the Commission. Guidelines on the application of Regulation (EU) No 1286/2014 of the European Parliament and of the Council on key information documents for packaged retail and insurance-based investment products (PRIIPs) (2017/C 218/02). Point (12) Offers closed by 31 December 2017. Where a PRIIP is no longer made available to retail investors as of 1 January 2018 and changes to the existing commitments are only subject to the contractual terms and conditions agreed before that date, a KID is not required. Where those contractual terms and conditions allow exiting the PRIIP, but that PRIIP is no longer made available to other retail investors after 1 January 2018, a KID is not required.

[3] Commission Delegated Regulation (EU) 2017/653 of 8 March 2017. Recital (19): “PRIIP manufacturers must prepare key information documents that are accurate, fair, clear and not misleading. The information

contained in the document should be capable of being relied on by a retail investor when making an investment decision, even in the months and years following the initial preparation of the key information document, for those PRIIPs that remain available to retail investors. Standards should therefore be laid down to ensure timely and appropriate review and revision of key information documents, so that those documents remain accurate, fair and clear.”

**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?**

We see some positive elements in developing a PRIIPs taxonomy that can make it easier for retail investors to understand the different types of PRIIPs that may have differentiation in some disclosure, i.e. performance and costs (see our further responses). As regard the scope, please see our response to Q25.

### 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?**

Yes, we understand that the solutions proposed made by ESAs in the new RTS have alleviated some critical issues, however they were made within the constraints of the existing PRIIPs Regulation.

In line with our long-stated position on the review of the PRIIPs Regulation, we support a review of the approach in the areas of performance and costs to help investors understand the characteristics and comparability between products, even within the same type (undertaking collective investments, UCIs). We therefore welcome the questions that seems to go in the right direction and hope that this can continue with the overall revision of the PRIIPs Regulation.

For more details, please refer to our responses to Q33, Q34, Q39.

**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?**

Yes, as indicated in our response to Q28, all the approaches proposed by ESAs seem going in the right direction.

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

With regard to the “performance scenario”, Assogestioni is recommending a more flexible approach that suits better for various PRIIPs under which product grouping or buckets should, in any case, better clarify which type of information is expected. Please see our response to Q34.

On cost disclosure, in general, we tend to be positive with the information requested in the new RTS in table 2 which is already based on product grouping. Further feedback will be available once the switch over from the UCITS KIID to the PRIIPs KID has happened.

## 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?**

As stated previously, most investment funds have not yet provided a PRIIP KID and will only do so from January 1, 2023 with the implementation of new RTS which mostly set out the presentation and the content details as required in Article 8 of the PRIIPs Regulation.

We therefore reiterate the changes that we consider should have been in the current version of the PRIIPs Regulation with reference to Article 8 along with further suggestions based on the current application of

PRIIPs Regulation.

In line with the Assogestioni's response to the European Consultation on a retail investment strategy for Europe, we advocate

- on the "performance" side, the review of the concept of "appropriate performance scenario and the assumption made to produce them" stated in the PRIIPs Regulation to have greater flexibility in the illustration of performance (which should then be defined in L2 or L3) and remove the performance scenarios for non-structured open-end funds (see our responses to Q33 and Q34);
- on the "cost" side to remove the criticalities that inhibit the comparability: i) the review of calculation of transaction costs (see our response to Q39) so that the results can be easily explained and understood by retail investors; ii) the review of the costs to be included in the total aggregate indicator (i.e. the removal of transaction costs and performance fees because of their nature) and their separate representation.

As regard the further suggestion based on the current application of PRIIPs Regulation, we would like to highlight the following: the text description under Article 8, paragraph 2, point (e): "under a section titled 'What happens if [the name of the PRIIP manufacturer] is unable to pay out?', a brief description of whether the related loss is covered by an investor compensation or guarantee scheme and if so, which scheme it is, the name of the guarantor and which risks are covered by the scheme and which are not" seems too prescriptive as it requires an explanation only if the PRIIP manufacturer is unable to pay out. The text should be amended to explicitly recognize what is already done currently in the PRIIPs KID as this description is not appropriate in the case of UCIs management, especially if the UCI has a contractual form. Currently, in addition to the information on investor compensation or guarantee scheme, further information is provided on the separation between the fund and the assets of the PRIIP manufacturer and/or on the existence of depositary arrangements, including safe-keeping.

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

A layering of information can meet the need of those investors who require interactive digital formats; however, it would be essential knowing what type of information will be useful to such investors. As noted before in our response to Q19, further experience and analysis is needed before making any changes.

## 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?**

We agree with the ESAs assessment for the part recommending that past performance information be included in the PRIIPs KID for certain types of investment funds. In addition, we share ESAs' views in the call of evidence which confirms the challenge of the past years to provide a unique and appropriate performance scenario for the different types of products included in the scope of the PRIIPs regulation.

Considering the above, we strongly recommend in the future review of the PRIIPs Regulation a more flexible approach to performance information which should lead to the illustration in the KID on unstructured open-end funds only past performance information (with due disclaimers) without any performance scenario. The positive experience with the UCITS KIID provides very strong evidence that retail investors understand the value of such information.

For further details, please refer to our response to Q34.

### **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, Assogestioni strongly supports a review of the concept of "appropriate performance scenario" referred to in Article 8, paragraph 3, letter d), point iii) of the PRIIPs Regulation and, consequently, the revision of the indicator to be used as growth rate for the RIY calculation for the cost section, which is determined by the outcome of the moderate scenario (new RTS, Annex VI, point 71).

A more flexible provision in L1, such as "information on performance" would allow more flexibility in the information to be presented in the KID while retaining relevant information on the cost of the PRIIPs.

The proposal implies further guidance on what kind of "information on performance" should be disclosed in

the KID which can be defined in L2 or L3 as the inclusion of only past results for non-structured open-end funds (and other similar PRIIPs) accordingly to the UCITS KIID rules (already fully compliant with the MiFID provisions), as well as a different type of information, such as a “what if scenario” for structured fund, graphs and/or explanations for other types of PRIIPs.

The proposal suits better also for closed-end funds where it is missing flexibility. The new RTS provisions maintain the presentation of the performance scenario over several unreal time horizons (1 year and ½ RHP, where applicable). Such illustration misleads investors if there is no redemption possibility.

The proposal would also reduce the unintended and indirect consequences to provide information to the MOPs manufacturer to produce their KID. For further reflections please see our responses to Q38.

If the scenarios are removed, the growth rate assumption for the RIY calculation that can avoid interconnectedness and a cascade effect, even in the case of MOP, should be identified.

We support a net growth rate of zero for all time periods and not just for the 1 year holding period, as stated in the new RTS. This provides the most comparable cost presentation because it is free from the effect of different assumptions being used by different manufacturer and enable an alignment between PRIIPs and MiFID II. However, as it is known that this assumption may not be appropriate for longer investment horizons given that it is likely to underestimate the monetary cost amounts, we wonder whether for a longer RHP this flaw can be appropriately addressed with a warning disclosure, which may also refer to the possible impact of inflation on the value of the PRIIP. Of course, additional options may be available (the PRIIP manufacturer itself defines a reasonable growth rate based on robust assumptions and methodology and declares it in the KID or the growth rate is specified and updated by the ESAs), but each of them has its pro and cons.

Finally, should the review of the concept of “appropriate performance scenario” not been made in the desired direction, some further aspects should be assessed as well: i) the possible outcome of the stress scenario; ii) an inconsistency between scenarios and risk information; iii) the value for retail investors on the monthly publication of the performance scenario calculations foreseen in the new RTS.

Regarding stress scenario, there is a risk that retail investors are provided with inappropriate expectations about the possible returns they may receive. The simulation made by some members highlights that when the recent market impact of the Covid-19 pandemic is included in the 5-year period, the stress scenario, unchanged in the new RTS, can frequently show a potential return close to zero, due highly volatility in short periods and procyclicality effects. Investors may not understand this effect, which affects their ability to make an informed decision.

On the risk side, accordingly to the new RTS all no stress scenarios will be reflect a longer period (at least 10 years) while the MRM indicator will continue to be calculated on a shorter (up to 5 years). For the latter, a longer period could be assessed both for consistency and more stable estimate in the case of highly volatility markets.

With reference to the information made available to investors, the new RTS (Article 8, last paragraph) provides for the monthly publication of the calculations of the previous performance scenarios for some PRIIPs, including non-structured open-end fund. The section titled “Other relevant information” of the KID shall state where those calculations can be found. This new provision has raised several issues because the need for such information has never emerged in the consultations and PRIIPs Regulation deals only with the updating of the KID (once a year, except the identified case). Therefore, it should be assessed if such information will improve the level of understanding or create more confusion.



### 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.

MOPs require information on the underlying investment options to produce their key information document (their generic KID (new RTS art. 10b), part of an MOP KID (new RTS, art. 10 a) or SID (new RTS art 10b)).

The interlinkage between UCIs and MOPs implies that a change in the criteria of the latter also indirect impacts the former and vice-versa. Consequently, the exchanges of information between the two will be affected, especially if the MOP manufacturer cannot or will not rely on the information published by the manufacturer of the underlying option in their PRIIPs KID or used to produce that PRIIPs KID.

When the RHP of the MOP (for example 15 years) is different from the RHP of the UCI (for example 7 years), with the new RTS, there are several issues on which the market players are currently working on and the effects of which are currently not fully clear. We therefore invite the ESAs to explore further solutions. Please see also our response to Q38.

**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?**

Yes. As stated in other responses, the interlinkage between UCIs and MOPs implies that a change in the criteria of the latter also indirect impacts the former and vice-versa. Consequently, the exchanges of information between the two will be affected, especially if the MOP manufacturer cannot or will not rely on the information published by the manufacturer of the underlying option in their PRIIPs KID or used to produce that PRIIPs KID.

With a more flexible solution on the “information of performance” and the removal of the obligation to provide performance scenarios (see our response to Q34) it may be possible to evaluate additional suggestions that

will avoid, as far as possible, MOPs manufacturer from manipulating data provided by the fund manufacturer, resulting in increased risks and liabilities.

In our understanding, the main points concern to the presentation of “performance” and “costs”.

With regard “performance”, with a possible review of Article 8(3)(d)(iii) of the PRIIPs Regulation:

- Article 10(a) PRIIPs new RTS: MOPs should not present information on “performance scenarios” which may require a very long historical return on underlying options, UCIs, (up to 15 years, in the new RTS) , depending on the RHP of the MOP (which may be different from the RHP of the underlying option);
- Article 10(b) PRIIPs new RTS: no changes, the generic KID already requests for “a brief description on how the performance of the PRIIP as a whole depends on the underlying investment options”;
- Article 14 PRIIPs new RTS – SID: the possibility to use the PRIIPs KID of the underlying option should be clearly stated. An additional disclaimer may be added to the PRIIPs KID of the underlying option explaining the difference between the MOP KID and the KID of the underlying options.

As regard costs, the results of the moderate performance scenarios are also used as the growth rate for the calculation of the reduction in yield (new RTS, Annex VI, point 71). To avoid interlinkage and a cascade effect (i.e. a performance moderate scenario should be calculated by UCI's manufacturer only to provide the outcome needed to produce the MOPs KID) we advocate a net growth rate of zero for all time periods (not just for the one-year time-horizon). Please also see our response to Q34.

### 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?**

Yes, we believe the following aspects should be addressed:

- o Information on transaction costs should be easily explained and understandable for retail investors. A

substantial revision of the calculation on transaction costs is hoped to replace the currently too detailed RTS provisions, at the most with a series of principles which the manufacturers of PRIIPs are expected to operate with. The detailed rules, welcomed in principle, have increased the complexity, the risk of non-compliance as well as the cost of producing this information without likely producing results that are truly comparable between PRIIPs manufacturers and, therefore, be of benefits for the retail investors. Therefore, we advocate a review of the calculation of transaction costs, and in particular indirect costs as implicit transaction costs, in line with MiFID II, where no detailed criteria are foreseen.

o Should the substantial revision of transaction costs not been made, we believe that transaction costs calculation should in any case be consistent with MiFID II and the impact on the market should not be considered as a cost even in the PRIIPs context. The PRIIPs Regulation states that the costs to be represented are direct and indirect costs (Article 8(3)(f)). Among indirect costs, implicit transaction costs, by definition, do not involve a specific payment (unlike explicit transaction costs and other PRIIPs costs) and must therefore be estimated. Unlike the provisions of MiFID II, the PRIIPs Regulation does not exclude from the calculation of costs those “caused by the occurrence of the underlying market risk” (Article 24, paragraph 4, second sub-paragraph of MiFID II) and the transaction costs calculation identified in the new RTS with the arrival price method (Actual transaction costs) captures the movements of the underlying market after the negotiation decision has been made. It is therefore essential to overcome this flaw and to amend Article 8, paragraph 3, letter f) of PRIIPs Regulation in line with article 24, paragraph 4, second sub-paragraph of MiFID II.

o There are criticalities that inhibit the comparability among UCIs, other than other PRIIPs, with the real risk of introducing distortions in the decision-making process of investors. We strongly support the principle of transparency of all costs, however we wonder about the level of understanding of the summary cost indicator and its use in comparing PRIIPs, as it aggregates costs of different nature such as transaction costs and performance fees. The predictability of performance fees may be poor as their amount depends on the future performance of the fund. Transaction costs, on the other hand, may not reflect only the discretionary choice of the managers but also the cost of obtaining exposure to the market of the choices made by investors (subscriptions and/or redemptions). We believe that this type of costs must (always) be presented in the KID but not included in the aggregate cost indicator. A separate indication of this type of costs would have the advantage of making these costs clearly identifiable by investors without affecting the goodness of the single aggregate indicator that it is used to compare different PRIIPs. Therefore, we advocate a revision of information on costs included in the summary cost indicator stated in Article 8, paragraph 3, letter f) and, for coherence, in the ex-ante transparency of MiFID II.

### 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.

Yes, beyond performance and cost information, other pieces of the regulatory framework should be addressed:

- Delivery of the KID. In order to facilitate investment in capital markets through regular investments, the provision on the delivery of the KID should be revised (see Article 13, paragraph 4 of the Regulation). We support the following revision already suggested by the ESAs in the final report containing the draft modification of the Delegated Regulation: “Art. 13 (4). Where successive transactions regarding the same PRIIP are carried out on behalf of a retail investor in accordance with instructions given by that retail investor to the person selling the PRIIP prior to the first transaction, the obligation to provide a key information

document under paragraph 1 shall apply only to the first transaction and to provide a detailed description where the revised key information document in accordance with Article 10 can be found. Additionally, prior to an additional subscription, the latest revised version of the key information document shall be provided to the retail investor upon request”. We support the removal of the following part included “ that remove the last part of Article 13(4) (i.e. “and to the first transaction after the key information document has been revised in accordance with Article 10.”).

- Update of the market risk indicator. As regards the method for updating the market risk indicator, aimed at better identifying the risk class of those products that vary their risk class during the monitoring period, we believe that a revision of the L2 should be done. In the PRIIPs KID, the MRM update seems to be guided when most of the evidence of the last four months are in a different risk class, regardless of their time sequence, while in the UCITS KIID it is necessary that for all the evidence (always in the previous four months) the risk class has changed. We therefore propose the following amendment to par. 53 of Annex II of new RTS: “The PRIIP manufacturer shall monitor market data relevant to the calculation of the MRM class and, if the MRM class changes to a different MRM class, the PRIIP manufacturer shall attribute the corresponding MRM class to the MRM class which the PRIIP has matched on each for the majority of the reference points over the preceding four months”.
- ESG information: The current PRIIP KID is prescriptive in each of the elements to be disclosed, it is missing a specific part where disclose the ESG information (soon to be needed).
- Number of pages. For PRIIPs that involve both single and regular investments the indication of costs and performance scenarios, while maintaining clarity in the way information is presented, would be extremely challenging within the three-page length limit of the PRIIPs KID. In that case, an additional page should be allowed.

## Contact

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