

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

CFA Institute

* Sector

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

If other, please specify:

Association of investment professionals

* 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.

CFA Institute welcomes the opportunity to provide comments on this call for evidence on the European Commission mandate regarding the PRIIPs Regulation.

CFA Institute is the global association of investment professionals that sets the standard for professional excellence and credentials. The organization is a champion of ethical behavior in investment markets and a respected source of knowledge in the global financial community. Our aim is to create an environment where investors' interests come first, markets function at their best, and economies grow. There are more than 175,000 CFA® charterholders worldwide in more than 160 markets, and 160 local societies.

Our organisation advances and promotes policies serving investor protection and market integrity. Over the years, CFA Institute has developed and promoted its Global Investment Performance Standards (GIPS®), which are voluntary, ethical standards for calculating and presenting investment performance based on the principles of fair representation and full disclosure. Our GIPS standards enhance transparency of information and investor confidence by facilitate the comparison of information on different financial products provided by different providers. In particular, our Standards could be used to represent past performance in a standardised manner.

We would like to stress the importance of reintroducing past performance information in the Key Information Document (KID) as this is real and objective information, which is essential for retail investors. However, proper guidance should be provided for investors on how to interpret such information. When provided in a standardised way, past performance can also be compared to performance scenarios so as to measure consistency over time and across different products.

We are also pleased to highlight that, in 2019, CFA Institute conducted an EU-wide survey on the impact of product governance rules on the relationship between product manufacturers and distributors, and on our member views on investor information requirements. The survey report can be found here: <https://www.cfainstitute.org/-/media/documents/article/position-paper/cfa-product-governance-web-4pp.pdf> .

CFA Institute also set up a working group on product governance earlier this year. The purpose of the group, composed of CFA Institute European members with expertise on product governance, is to regularly engage and share any case studies of application of product governance rules, and raise any relevant issues. We would like to thank our members of this working group that have helped us prepare our response to this call for evidence.

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?

No, CFA Institution does not have, or is aware of the existence of such data.

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?

CFA Institute is neither a product distributor nor a financial advisor.

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?

CFA Institute is neither a product distributor nor a financial advisor. However, our members underline that the KID is not considered a user-friendly document as it does not help managers compare products for a client. Many financial advisors use other tools to choose and compare products for their clients, such as funds comparison tools or commercial materials from manufacturers.

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?

Our members remark that KIDs are not used much to support the investment process. More emphasis is given to marketing materials and other information that is made available from data vendors.

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 materials seem to be easier to read and understand compared to the information provided in the KID. Marketing materials normally use plain language and focus on the client's concerns. However, they often lack relevant data or have insufficient data.

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?

CFA Institute is neither an investment company or an investor, and does not have a direct experience with these types of products.

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?

Unfortunately, neither CFA Institute nor our members are aware of the existence of such data.

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

CFA Institute does not have a direct experience regarding the sale of these products. Nevertheless, our members suggest that most retail investors do not take into account comprehension alerts.

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

Yes, we are 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?

Our members believe that comprehension alerts are not much useful, and considered more as a nuisance by financial advisers.

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.

The main costs that are incurred to comply with the PRIIPs Regulation are IT Development costs, licensing costs for benchmarks, ongoing operational costs (including middle office, back office, compliance and third-party administrators), translation costs for translating the KID in multiple languages.

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.

No, we do not have data on the average costs.

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?

We do not have data on this.

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?

Unfortunately, we do not have information on how the PRIIPs Regulation is applied across EU member states.

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?

We do not have such data.

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?

CFA Institute is neither a product manufacturer/distributor nor a financial advisor.

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

Retail investors seem to prefer receiving the KID in an electronic-based format as they either could print out or download the document afterwards. Providing the KID in a digital format also would allow investors to make easier by-side comparisons of products by using a spreadsheet or hardcopy. However, CFA Institute argues that clients always should have the possibility to receive such a document in a paper-based format if they wish.

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

Please see our response to question 16.

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

A different design or format should be conceived for the KID provided in a digital format. If the information in a digital KID is shown in a vertical or portrait format, the reader may be discouraged from reading the entire document, and may be incentivised to skim it through. Hence, the PRIIPs Regulation should be amended to introduce a specific design and format for the KID when the document is provided electronically.

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?

We agree that, similarly to the approach taken for the distribution of the PEPP KID, electronic distribution of the PRIIPs KID should be the default approach. Nevertheless, customers can always request to receive the document in a paper copy, or in another format, free of charge.

The use of the layering approach also could be applied for presentation of the information included in the PRIIPs KID, provided in an electronic format. However, it is essential to manage the structure of the layering in a way that makes sure that all key information is delivered in a full, fair and consistent manner when being viewed online. We believe that, if the titles of all the key information sections are in the top layer, and each section can be accessed by passing to the next layer, all sections would be presented with equal prominence, and the layering approach would ensure a fair representation of all information included in the KID.

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.

CFA Institute believes that EU policymakers should try to extend the scope of application as much as possible in order to adopt a common approach to relevant information provided to clients for a variety of products.

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 opinion.

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.

No opinion.

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?

As the ESA Supervisory Statement on the application of the PRIIPs Regulation suggests, EU legislators should clearly specify what products fall within the scope of the Regulation and, if there are specific product

groups that do not require being regulated under this legislative framework, make sure that those are noted as exceptions.

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

Please our response to question 23. However, CFA Institute does not have a direct experience 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[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 opinion.

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, CFA Institute believes that this concept should be clarified. This can be done by proposing a similar guidance to that suggested by the UK Financial Conduct Authority in this consultation paper: <https://www.fca.org.uk/publication/consultation/cp21-23.pdf> .

The FCA proposed three sensible and proportionate conditions under which a PRIIP can be considered being “made available to retail investors”. These conditions are:

- a. the marketing materials for the financial instrument (including the prospectus, if there is one) make it clear that it is being offered only to investors eligible for categorisation as professional clients or eligible counterparties and that it is not intended for retail investors
- b. the marketing and distribution strategy for the PRIIP is in fact targeted at professional and eligible counterparty clients and not retail clients; and
- c. the financial instrument is issued at a minimum denomination value of £100,000 or under (or equivalent sum in foreign currency).

However, we would like to highlight that our members from CFA Society UK (please find their response to the FCA consultation here: <https://www.cfauk.org/-/media/files/pdf/pdf/5-professionalism/2-advocacy/responses/cp21-23-priip-proposed-scope-rules.pdf>) argue that even bonds with minimum denominations of £100,000 (especially contingent capital notes and contingent extendable capital notes) can trade in secondary markets at deeply discounted prices and, therefore, become affordable for ‘pure’ retail investors at times of corporate distress.

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 opinion.

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?

The current degree of standardization of the KID does not allow a proper understanding and comparison of different products. CFA Institute conducted an EU-wide survey on product governance practices and the impact of current regulation. The majority of our members stressed that information consistency has improved with the introduction of the PRIIPs Regulation and the KID. However, they highlighted that the quality of information provided in the KID is still uneven across providers. 43% of our members also implied that this situation prevents the Regulation from improving investor protection as the information included in the KID is too complicated to understand, and therefore not useful for investors.

This research paper is available here:

<https://www.cfainstitute.org/advocacy/policy-positions/the-brave-new-world-of-product-governance-in-the-eu-asset-management-industry>

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?

The proposed approach for additional differentiation on how the rules would apply to different types of products has merit. In particular, the application of the measure described in the third bullet point (on the possibility to grant exemptions or waivers) must be applied in a consistent and comparable manner across the supervisory authorities.

The approach proposed in the second bullet point (reduced degree of standardization in the KID template)

could be beneficial in terms of better understanding of the information provided in the KID because it would help PRIIPs manufacturers better present the key information of individual product groupings.

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

No opinion.

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?

No opinion.

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

No opinion.

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?

CFA Institute agrees with the reasoning in the section 4.6.1. of the JC 2020 66, and particularly with this statement "past performance is key information for retail investors and consequently that the best approach is to include this information in the KID. This is because it can illustrate the actual behaviour of a product in given market circumstances and help retail investors to appreciate the volatility of the returns of the product, as well as indicate the ability of the investment manager".

In order for the retail investor to appreciate the volatility of the returns of the product, we argue that there would need to be a table of returns or some measure of the volatility of the returns such as a standard deviation of the underlying returns for the period or periods presented. In addition to helping retail investors understand the difference of returns produced through time of the product, the same return information needs to clarify that it represents that market. This provides an understanding of how the market itself was performing, how the product was performing, and the difference between these two could give an indication of the manager's ability during that market environment to maximise the return while controlling the volatility based on the objective of the product.

The second-best approach presented in the section 4.6.1, which consists in requiring PRIIPs manufacturers to publish past performance information separate from the KID, and refer to this disclosure within the "Other relevant information" section of the KID, would not be our preferred approach, but would need an amendment to level 1 legislation.

We also believe that the impact of the packaging and / or the wrapper associated with the underlying assets can impact the return associated with the underlying assets. In some circumstances a money-weighted rate of return, or internal rate of return would be a better representation of the performance of those products than a time-weighted rate of return, and the money weighted rate would be measured from the inception of the product to the end of the last calendar year. Money-weighted rates would typically be applied to products where the control of the assets being invested in the product lies with the asset manager (control of the flows) and, typically, these are less liquid, less readily valued assets and products, and comparison would be

against products of equivalent vintage year rather than a year to year comparison.

Time weighted rates of return are applied to products where the flow of assets is not controlled by the asset manager, because time weighted rates are generated for each period for which the asset base is consistent, when a flow occurs then a new rate of return is calculated for the period that the new asset base is in place, and so it continues. Ultimately, as happens with most mutual funds, a valuation is struck each day as there is an assumption that the asset base changes daily and a daily return is generated from that. The periodic returns are then geometrically compounded to produce longer-term returns, and these annual returns are what are required for UCITS reporting.

Some of the concerns raised around relevance of track record to certain types of funds in the section 4.6.2 of the JC 2020 66 may be addressed by making sure that a relevant return is used as described above.

Significant guidance concerning different returns, their application and their calculation can be found in section 2 of our GIPS Standards Handbook for firms, which you can find at this link: <https://www.gipsstandards.org/standards/gips-standards-for-firms/gips-standards-handbook-for-firms/#2.B.+Input+Data+and+Calculation+Methodology+-+Recommendations>

Regarding section 4.6.3 “Approach to presentation of past performance (annual or average)”, including a table of annual performance as described above would be beneficial, with the acknowledgement that an inception internal rate of return to the end of the most recent calendar year may be the appropriate return for some products, but not necessarily for those that are longer-term. We support the ESAs proposal of drawing on the existing approach in the UCITS KIID and only make specific adjustments where necessary in a PRIIPs context.

Concerning the section 4.6.4, we support the ESAs recommendation of including past performance information within the main contents of the KID. CFA Institute also agree with the consideration that if past performance were included in the KID, an additional change to the PRIIPs Regulation would be needed to allow the three-page limit to be exceeded given that past performance information can take up to half a page based on the current UCITS approach. The inclusion of past performance should not be diluted down or truncated in order to meet a certain page limit.

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?

CFA Institute advocates for the reintroduction of past performance information in the KID, and for a clear separation of past performance, which is real and historical data, and future performance scenarios, which is based on estimates, in the document. Information on potential future performance also should include an explanation of the underlying assumptions that have been used to calculate the estimates.

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.

No opinion.

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 opinion.

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?

No opinion.

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 opinion.

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?

No opinion.

3.11 Other issues

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

The data requirements for performance scenario calculations are huge and difficult to source. One of our members provided this example: considering a new ESG product which is in existence for 1 or 2 years, but has a recommended holding period of 7 years. This would mean that 7+5 = 12 years of performance time series would be needed. This is obviously not available for a relatively new fund. In this case, we would look to use the benchmark. However, the problem with ESG benchmarks is that they are fairly new, and often customised by the index provider, and do not have enough history. Using another proxy also would be possible, but increases the complexity in terms of disclosures and additional load on the internal processes. We believe that there should be a simpler approach for the calculation of future performance, using data which is easily available/accessible.

CFA Institute also suggests that the ESAs review and consider the issues raised in the FCA consultation paper CP21-23 on PRIIPs - Proposed scope rules and amendments to Regulatory Technical Standards (this is the link: <https://www.fca.org.uk/publication/consultation/cp21-23.pdf>). It would be beneficial to EU PRIIPs manufacturers marketing to the UK to see an alignment of the EU PRIIPS requirements with the FCA requirements for PRIIPs.

Contact

timothy.walters@eiopa.europa.eu