

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

France Invest

* Sector

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

* 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.

Preliminary comments

Traditionally, the venture capital and private equity (VC/PE) industry markets to investors that are either institutional (pension funds, insurers, banks, sovereign wealth funds, fund-of-funds) or experienced (family offices, entrepreneurs). For instance, in 2020, only 8% of investments in funds managed by the members of France Invest were made by individuals directly. This can be explained by structural reasons linked to the functioning of investment in non-listed companies. In order to make long-term and active investments into unlisted businesses that require time to grow and evolve, VC/PE funds structure themselves as closed-ended funds with no redemption rights, which favour illiquid and large commitments from investors in a position to make such investments.

As highlighted in our response to the Commission's consultation on a retail investment strategy for Europe, most investors classified as "retail" under EU law which currently commit capital to VC/PE funds are only qualified as such due to the inadequacies of the current MiFID investor categorisation.

Situations where VC/PE managers market to individuals committing smaller tickets - and which are objectively retail clients - are rather rare. Furthermore, most sales of VC/PE funds to retail investors are intermediated and/or in the form of a packaged product.

Nonetheless, in France, FCPI ("fonds communs de placement dans l'innovation", introduced in 1997) and FIP ("fonds d'investissement de proximité", introduced in 2003) are venture capital funds aiming at retail investors. These funds can provide redemption rights in specific cases of misfortune (death, unemployment, illness...). To compensate the additional risk implied by this asset class, tax incentives (regulated under EU

State Aid regulations) are offered to retail investors. These vehicles belong to a sophisticated and illiquid asset class and are not easy to distribute to retail investors, who are encouraged to invest in these funds mainly by the attached fiscal advantages. These AIFs do not benefit from a retail passport at EU level. In 2020, the total amount collected in these funds reached EUR 330 million from 54,000 subscribers. 25 management companies raised capital in 35 FCPI/FIP. The amount collected corresponds exclusively to subscriptions allocated to the capital of SMEs which entitle subscribers to income tax reductions. It showed the attractiveness of innovation financing, particularly during the Covid-19 pandemic (73% of subscriptions were made in FCPI, and the remaining 27% in FIP).

The attractiveness of the VC/PE asset class and the desire from some investors to commit capital into start-ups and scale-ups is driving an increasing number of VC/PE funds to offer products that are directly available to retail clients.

General comments

- We would like underline that the present contribution to the ESAs' call for advice on the PRIIPs Regulation is consistent with the response France Invest provided to the Commission's consultation on a retail investment strategy for Europe.
- If the KID generally contributed to enhance the level of understanding that retail investors have of investment products, such level of understanding could be further improved. For instance, the KID has too often created some confusion given its standardised features, which were not always appropriate, in particular in the case of VC/PE funds.
- Our members call the Commission to clarify that no KID is required for units/shares of funds which are not marketed and which are not designed to provide investment opportunities to retail investors. In particular, no KID should be required for members of the management team or for entities within the group of the asset management company.
- In any case, any review of the PRIIPs Regulation and a re-opening of the Level 1 text should be weighed against the costs this would imply, considering in particular that the latest Level 2 measures have just been finalised. A preliminary impact assessment would be necessary prior to any modification of the Regulation.
- Financial literacy is an area which has a significant scope for improvement in order to increase the protection of investors.
- We believe that the protection of retail investors should remain in the remit of national authorities which can better take into account the (cultural) specificities of national markets.

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?

In France, all investment funds aiming at retail investors are required under national law to produce a KID setting out in plain language what their most important features and what their risks are. At EU level, ELTIFs which are marketed to retail investors are considered as PRIIPs and subject to the requirement to have a KID.

In our view, any review of the PRIIPs Regulation and a re-opening of the Level 1 text should be weighed against the costs this would imply, considering in particular that the latest Level 2 measures have just been finalised. In any case, a preliminary impact assessment would be necessary prior to any modification of the Regulation.

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?

In France, investors already had to be provided with documentation on products, prior to the introduction of the KID. The KID is provided to investors along with other documentation.

It appears that, regardless of the level of financial literacy, most investors do not easily understand the information shown in the KID. Moreover, some of them might consider it as excessively long: most investors do not feel enticed to reading through such detailed information (it should be noted that an annex will be added to the KID of “article 8” and “article 9” products as per the Sustainable Financial Reporting Directive). For these reasons, some distributors choose to present the products’ key features in shorter leaflets.

In any case, in France, documentation aimed at retail investors has to be authorized by the French regulator AMF. As a consequence, there is little room for maneuver to adapt such documentation to the specific product or target investors.

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?

The PRIIPs Regulation requires that the KID of VC/PE funds contains the following warning: ‘You are about to purchase a product that is not simple and may be difficult to understand’. It is our understanding that most private equity products will have a comprehension alert as only plain vanilla retail products will not be subject to this requirement.

We understand the objective of raising the attention of retail investors on the specificities of such funds. While private equity is not in itself a complex investment, committing capital to a private equity fund does require careful consideration and a strong liquidity profile from investors. However, we feel that such comprehension alert is not helpful in itself and might be considered as a deterrent.

A “long-term alert”, based on the example of the written alert applicable to ELTIFs, that the product may not be suitable for retail investors that are unable to sustain such a long-term and illiquid commitment, would give more valuable information to the inexperienced retail investor.

Furthermore, some distributors might be enticed to use it in order to protect themselves.

We believe that enhancing retail investors’ financial education and/or distributors’ training - so that they can better explain the specificities of the product to potential investors – would be more efficient than such a warning.

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?

It should be noted that many products which are not UCITS have to comply with this obligation. As a consequence, the impact of such warning might be diminished and make little sense to investors.

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

As explained previously, we feel that such comprehension alert is not helpful in itself and might be considered as a deterrent. Furthermore, some distributors might be enticed to use it in order to protect themselves. We believe that enhancing retail investors' financial education and/or distributors' training - so that they can better explain the specificities of the product to potential investors – would be more efficient than such a warning.

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?

From a general standpoint, we are concerned that the suitability test requirement set out in MiFID might encourage financial advisors to recommend products which are allegedly secure (risk adverse investors might be directed towards less profitable products such as government bonds or savings accounts), to the detriment of products which have a direct impact on the real economy. The comprehension alert on PRIIPs KIDs might further deter advisors from offering these products, to the benefit of products which are supposedly easier to understand.

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 costs relating to compliance, the collection of product data/inputs, the performance of the necessary calculations, the update of IT systems, quality and content checks and outsourcing are the most expensive factors with regards the preparation, maintenance and distribution of KIDs.

In particular, the collection of data and the use of IT tools to store it generate important costs. For instance, many of our members use the data produced by France Invest to establish performance scenarios. Indeed, as their activities are varied, with different histories, it is difficult to personalize them and come up with something more relevant.

The calculations themselves and their verification are the most time consuming and require the most control. Obviously, outsourcing has a cost. It can be integrated in the global cost of accounting service providers (it is difficult, if possible at all, to individualize it). In addition, proofreading by legal advisors is not free.

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.

- Our members evaluate the cost of manufacturing a single PRIIPs KID to EUR 5,000-7,500 per individual product (excluding induced cost of IT tools).

The process of producing a KIID is quite complex. Our members have to collect data which is first processed by a service provider. After this initial processing, they carry out checks and then ask their accounting service providers to make the calculations, which they check. The data is then checked by their compliance and legal departments so that the document can be considered as a final document.

This process takes about 5 man-days, between internal and external interventions, according to different qualification levels and service costs. Adding final verifications by lawyers who transmit the document to the regulator to have it approved, the production of a KIID costs around EUR 5,000 to 7,500 (induced IT cost and VAT non included).

Of course, some data can be reused in case several funds are launched over a short period. If this is not the case, all the calculations have to be remade.

- Our members evaluate the cost of updating a single PRIIPs KID to EUR 4,000 – 6,000 per individual product (excluding induced cost of IT tools).

Updating a KIID is probably slightly lower than producing it, depending on whether or not all or part of the calculations have to be remade. Our members estimate this cost between EUR 4,000 and 6,000 (induced IT cost and VAT non included).

It is therefore important that updates during the subscription period are limited to cases of substantial changes. Furthermore, we believe that the requirement to update PRIIPs KIDs should not apply to closed ended funds which are closed to subscription.

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?

It is difficult to breakdown the costs involved in production a KID and estimate 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?

We are not aware of any inconsistencies or discrepancies in the actual implementation of the PRIIPs Regulation across PRIIPs manufacturers, distributors, and across Member States. At this stage, we do not have sufficient feedback on the implementation of the PRIIPs KID.

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 any specific data on the use of different media, as not many PRIIPs KIDs have been put in place so far (our members have been under the obligation to produce KIIDs).

This being said, we would like to share with the ESAs the example of the “Bpifrance Entreprises 1” fund , which was set up by Bpifrance. This fund can be subscribed into through a fully digital process, integrating both AML-FT and KYC procedures. This digital process was developed with the support of a software provider for wealth management industry whose solutions allow their clients to digitise their investment process, from client onboarding to due diligence and online subscription. The KIID of this fund is available online on BPI’s website.

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?

Pre-contractual disclosure documents should be made available to retail investors on a durable medium, for instance on paper, by means of a website or on the cloud, according to their preference, and ideally in the official language of the place of distribution.

We do not have any specific data on the preferences of retail investors in this respect.

One of our members reported that it no longer publishes paper KIDs and favours all-digital solutions. It makes all materials available to its distributors, which can provide them to their customers electronically or give them a paper version. As it understands it, the electronic way is the preferred way.

In any case, making PRIIPs KIDs available on manufacturer and distributor website should be left up to their discretion (for instance, KIDs could be made available in a “reserved access” section).

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?

We do not have any specific data on the preferences of product distributors and financial advisors in this respect.

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

In our opinion, similar rules should apply as far as possible to information disclosed via digital means and to information disclosed otherwise. We do not believe it is necessary to have different formats for paper, digital or other media. Investors should have a single document that they can read on screen or on paper and that has the same format, thus avoiding any confusion on the part of the reader. Most importantly, cybersecurity and protection of access to data (in particular to personal data, as per the GDPR) should be ensured at all times.

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

3.5 Scope of the PRIIPs Regulation

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.

In our view, the scope of the Regulation is already quite broad, and it would be ambitious to extend it further.

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

We believe that the scope of the PRIIPs Regulation should be reconsidered to ensure the KID only has to be offered to individuals who really require it. In particular, no KID should be required for units/shares of funds which are not marketed, and which are not designed to provide investment opportunities to retail investors. For instance, we call for clarification from the Commission that:

- PRIIPs KIDs are not required for shares of carried interest, as these shares fall outside the definition of PRIIPs;
- PRIIPs KIDs do not need to be provided to members of the management team when they invest into the funds they manage, as these managers have sufficient knowledge on the funds. This may take place in the context of the remuneration policy. Members of the management team which invest in the funds they manage become co-investors in the fund, which contributes to aligning their interests with other investors;
- Co-investment arrangements and entities in the group of the AIFM - such as linked companies which provide services to the AIFM - are not required to produce a PRIIPs KID, as the investors concerned have sufficient knowledge on the funds.

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.

In our view, there is no need to make any changes to specify more precisely the scope of the Regulation. It is important to ensure the stability of the rules (changes to the KID imply costs for product manufacturers).

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?

We would like to note here that packaged or wrapped product manufacturers rely on information provided by underlying product manufacturers. For instance, insurance companies which include VC/PE funds in their contracts require data from management companies.

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[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

From a general standpoint, we believe that the PRIIPs Regulation should better take into account the specificities of closed-ended products such as VC/PE funds.

For instance, the obligations applicable to these products in relation to updating the KID should accommodate their specific characteristics. In particular, if a PRIIP is a long-term product, its KID should not necessarily have to be updated every year. Furthermore, we would welcome a clarification that closed-ended funds which are no longer open for business after an initial subscription period are not required to update their PRIIPs KIDs.

Indeed, KID updates might be misleading, as investors might interpret them as allowing them opportunities which actually do not exist. In addition, KID updates imply costs for our members, which might prove heavy to bear, especially at the end of the life of VC/PE funds.

As explained previously, PRIIPs KIDs should not be required for funds which are not marketed. In particular, it should not be required to provide KIDs to members of the management team when they invest into the funds they manage. In the same way, no KID should be required for carried interest and co-investment arrangements. Indeed, these arrangements are not “packaged” and are not designed to provide investment opportunities to retail investors. In addition, the investors concerned (management/senior executives) have sufficient knowledge on the funds and do not need to receive the KID.

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 believe that granting retail investors access to past version of PRIIPs KIDs would confuse them; retail investors only need relevant, up-to-date data and should not be overloaded with information.

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?

As explained above, we believe that the PRIIPs Regulation should better take into account the specificities of closed-ended products such as VC/PE funds.

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?

In our opinion, KIDs do not enable retail investors to compare different investment products offered by different financial entities or to compare different investment products in different asset classes - and should probably not aim at doing so.

The financial literacy of investors may not be sufficiently developed to make comparisons on such broad scale. Most importantly, the choice of a product depends on their specific profile and objectives. Besides, by trying to create a “one-size-fits-all”, the KID may create false expectations – especially on products such as VC/PE funds where the ultimate success of the fund will depend less on past performance or market indexes than on the manager’s ability to grow real businesses.

In our view, the primary goal of the KID should be to offer investors information on the key characteristics of the product itself (for example, in a private equity context: the lack of redemption rights, the importance of the managers’ skills in driving a return or the impact of carried interest) allowing them to make investment decisions on a specific product, compared to another product of the same type - and not to compare all financial products.

Each type of product has specific objectives and risks; as a consequence, it would not make sense, for example, to compare a real estate product, to a debt product or to a private equity product... In addition, the financial literacy of investors may not be sufficiently developed to appropriately compare products in different asset classes.

More specifically, in the case of VC/PE funds, which are closed ended, investors should be made well aware that, when they choose to invest in these products, they are expected to invest over the long term (even though these funds may provide redemption rights in specific cases of misfortune such as death, unemployment or illness). In addition, retail investors should be provided with information on the taxation applicable to the investment and capital gains (this is particularly true in the case of VC/PE funds, whereby fiscal incentives may contribute to compensate for the additional risk attached to this asset class).

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?

As explained previously, while trying to give investors information in a too simplified and too standardised manner, the KID may end up confusing them about the basic nature of some of the products offered. We believe that the PRIIPs Regulation should better accommodate the specificities of VC/PE funds.

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

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?

The information provided to retail investors in the KID is not understandable so as to help them take informed investment decisions. Most retail investors do not understand the content of this document properly and are overloaded with information. Investors should only be provided with information that is relevant to them and should not be overloaded with information.

More specifically, the KID could probably be refined in order to better take into account the specificities of VC /PE funds.

In particular, certain typical private equity features, such as the use of carried interest as a pay-out mechanism, should not be presented in a standardised way. In our view, a clear differentiation should be made between a performance fee and a carried interest; these two items should be treated in separate rows of the KID.

- Article 8 paragraph 3 (b) on a comprehension alert

Such comprehension alert is not helpful in itself and might be considered as a deterrent.

We believe that enhancing retail investors' financial education and/or distributors' training - so that they can better explain the specificities of the product to potential investors – would be more efficient than such a warning.

- Article 8 paragraph 3 (c) (iii) on the investment horizon

It would be more appropriate to give VC/PE fund managers the opportunity to only present a holding period that corresponds to the full life of the fund. This would allow investors to have a more appropriate idea of the length of time they will have to hold their fund and avoid giving them the impression that there is an opportunity for them to dispose of their investments at some point before the end of the fund's stated

lifespan. More generally, we feel that investors in VC/PE funds will be better informed of the limited liquidity of these products through a clear disclaimer that there is no opportunity to redeem their commitment before the end of the life of the fund.

In particular, disclosing performance and cost scenarios over different periods for products with no redemption rights may confuse investors and give them the false impression that selling before the end of the fund term's is more of an option than it is.

- Article 8 paragraph 3 (d) (iii) on past performance scenarios

In the case of VC/PE funds, the three separate performance scenarios are not helpful, (i) first of all because calendar references (one year and five years) are totally disconnected from the products, which are closed-end funds with a life of 10 years (generally), (ii) but also because most players have to rely on data provided by professional associations, which means that readers cannot make meaningful comparisons. Performance scenarios should therefore be more consistent with the investment horizon of the relevant products.

More specifically, as VC/PE funds are closed-end and generally have a 10-year duration, performances over one year and five-year periods, which are moreover degraded by the fees in the first few years (J-curve), are not meaningful.

- Article 8 paragraph 3 (f) on costs

Some elements shown in the KID are not fully relevant to retail investors and the level of detail on fees should be adapted. Retail investors are mostly interested in the total cost of their investment, not necessarily in the breakdown of the different cost items – in the same way as consumers are not necessarily interested in knowing how much money goes to the supermarket when they purchase yoghurts).

The presentation of the costs is not clear. In most cases, investors are charged the full amount of their subscriptions at the time of their subscription and do not understand that fees are charged during the life of the fund. They wrongly assume that they are an additional deduction.

Moreover, some cost disclosure requirements are not adapted to the specificities of VC/PE funds:

For instance, the average annual fee rate is calculated on the basis of an assumption of fund raising (although there is no commitment on the part of distributors to raise funds). As a result, the percentages displayed may be far from reality if the fundraising is higher than the base scenario. Conversely, if inflows are lower than expected, there is a risk that the management company will ultimately have to bear costs.

Also, a clear distinction should be made in the breakdown of costs between carried interest and performance fees.

Furthermore, the presentation of costs set out in the PRIIPs Regulation may follow a different layout and concordance tables will be required.

We would like to highlight that, overall, AIFMs and distributors receive a lot of queries about fees.

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

We would like to take this opportunity to highlight the fact that the KID may not always be a paper document but may be an internet page on a website. This should be taken into account when designing the format of the KID. Further, we note that the sustainable disclosure templates provided by the ESAs include icons which aim at making the information more attractive to readers. Such items could potentially be integrated in the KID.

Conversely, the cost of complying with new requirements should be taken into account and producers should be allowed some time and discretion to implement any new changes to the format of the KID.

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?

Yes. We support ESAs' clarification that past performance should not be given for closed-ended funds where such performance effectively does not exist. Indeed, past performance is a more relevant factor for open-ended funds which continue to operate for many years under similar parameters.

More specifically, as VC/PE funds are closed-end and generally have a 10-year duration, performances over one year and five-year periods, which are moreover degraded by the fees in the first few years (J-curve), are not meaningful. Comparison with other products is therefore not relevant, and it is quite difficult for distributors to get into the funds' mechanics with investors. Overall, it seems that investors understand the document as part of the documentation presented to them by distributors, without really understanding the true meaning of these figures for closed-ended funds.

We believe that using past performance to project future returns can lead to fundamentally misleading

results when the product is not exposed to volatility risk. The more the ability of the fund manager depends on factors that are not related to such performance, the higher the chance past performance would not give the investor a proper estimation of the risk he or she faces.

In a VC/PE context, past performance would for example not take into consideration the fact that the underlying businesses invested in by the previous funds managed by the same fund manager will be different from the investments that will be invested in by the fund currently being raised: the nature of private equity funds is that companies are invested in by the fund, held for a number of years while the fund manager assists the company management team in taking the business through a particular period of growth or redevelopment, then exits the investment, either through a sale of the business to another private buyer or trade buyer, or it is floated on the stock market. When the next fund is raised, it is typically unlikely that there would be an opportunity, or a reason, to seek to invest in these companies again. In the case in the fast-evolving arena of venture investing opportunities to create businesses in sectors often arise because of technological developments that make it possible to invest in areas that even a short time ago would not have existed and where, by definition, no track record exists.

None of these factors appears in the KID, despite playing an important role in determining the risk features of a manager's new fund compared to the previous one. It is also the case that the very long time between one fund being raised and the next means that other factors impacting the performance of previous funds could have changed during that time (e.g. market environment, stage in the economic cycle, evolution of the fund management team). Relying too heavily on past performance information also carries the danger of over-emphasizing temporary depressed market conditions previous private equity funds have been exposed to at one stage of their lifetime, as well as being too optimistic during periods of market booms that are no longer indicative of a later exit environment.

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?

It seems of utmost importance to us that future performance scenarios are tailored to the relevant type of funds. As explained previously, closed-ended funds cannot be treated in the same way as open-ended funds.

Moreover, taxation is a key factor implying significant issues. As such, it should be taken into account in the KID, as far as possible.

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.

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

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

What issues or challenges might result from these approaches?

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

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

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

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?

In France, any documentation provided to retail investors (internet website, marketing documents, etc.) is reviewed by the AMF and should be approved by the Authority. As a consequence, there should not be any significant inconsistencies between the information on costs in the KID and information disclosed elsewhere.

3.11 Other issues

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

We do not call for any further changes to the PRIIPs Regulation.

In France, investors already had to be provided with documentation on products, prior to the introduction of the KID. The KID is indeed provided to investors on top of other documentation (fund documentation, subscription form, etc.).

In the end, it appears that most investors do not feel enticed to reading through such detailed information (it should be noted that an annex will be added to the KID of “article 8” and “article 9” products as per the Sustainable Financial Reporting Directive).

Not mentioning that, when they consider investing in a fund, retail investors are also provided with/asked for further information in relation to topics such as client categorization, taxation (for CRS - Common Reporting Standards - purposes) and the fight against money laundering and the financing of terrorism.

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