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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

The Association for Financial Markets in Europe (AFME)

* Sector

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

If other, please specify:

Trade Association

* 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.

> We note that it would be very rare to see a KID being produced in relation to a mainstream bond and therefore AFME members working on mainstream bond issuances are primarily responding in relation to questions surrounding scope rather than in relation to content and distribution of a KID.

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 response.

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?

No response.

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?

According to feedback from distributors used by some AFME members, nothing prevents them from using the KID to compare between products when they discuss products with investors.

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?

According to feedback from distributors used by AFME members, marketing materials and other documentation are given greater emphasis in the distribution process compared to KIDs. Some of the information included in KIDs (e.g. SRI, performance scenarios and costs) are used by distributors for comparative purposes.

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 our opinion, the information contained in marketing material for an offering and the information in a PRIIPs KID are provided for different purposes and therefore should not be compared to each other. While the PRIIPs KID is shorter and more technical, marketing material is generally a more detailed document that is simpler and easier for the investor to read and understand.

Marketing materials includes information that could not be included in the KID because of the 3-page KID limit, and also because marketing materials are intended to provide more broad and detailed information than the information included in a KID. These materials are subject to other legal, regulatory and market practices, and as long as that material meets those requirements it is not really relevant whether there are any differences between the information contained therein and information in any related KID (other than, of course, general rules about disclosure and consistency of information). The KID is only one part of the set of information investors use to make decisions and should not be seen as comparable or equivalent to any marketing or other permitted information that is provided to investors.

The KID alone is not, and cannot be, intended to provide all relevant information that an investor needs to make an informed investment decision, and therefore is intended for an investor that has already obtained, through other means, a basic knowledge about the product type and relevant risks. Such information would have come from discussions with financial intermediaries, marketing materials and other information, as well as from the investors' own financial training or other information that the investor has already obtained.

While the KID should not be expected to provide investors with all of the relevant information needed to make an informed investment decision, we note that the KID is an important tool and must be read by the relevant retail investors before making certain investments. The KID is intended to be a concise document, and this conciseness is a makes it easier and digest. We would suggest that any guidance relating to marketing material disclosures should be at the discretion of the firms and their distribution strategy, rather than as a mandated change required of all distributors.

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?

Because the products that require a comprehension alert are defined by the concept of “complex products” under MiFID, the vast majority of KIDs include the comprehension alert. As far as we know, KIDs relating to OTC derivatives and certificates and structured investment products (e.g. certificates, covered warrants, and structured bonds) include such comprehension alert. In our opinion, this relatively ubiquitous approach makes it difficult for investors to gain any real value from the comprehension alert.

We also note that complexity does not necessarily mean more risk. A feature that is perceived to add complexity may have been added for protection of the investor or otherwise be to the investor’s advantage. Examples include capital, currency or issuer default protection measures.

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?

Members that have responded note that, in their view, a majority of PRIIPs KIDs include the comprehension alert, and that all KIDs for structured products include the alert.

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

We note that, by the time an investor sees the comprehension alert, he or she would, presumably, have already received sufficient information to have a meaningful understanding of the product type and the risks involved. Such information would have come from discussions with financial intermediaries, marketing materials and other information, as well as from the investors’ own financial training or other information that the investor has already obtained.

If investors have questions on the product features, or anything that is difficult to understand, they usually seek help from their advisors. For this reason, we believe that the comprehension alert brings little to no value.

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

N/A

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

In our view, the application of the comprehension alert is overly broad and provides little protection or additional information to potential investors. For example, the language makes sole reference to the notion of "complex products" under MiFID, which means that many products that are not necessarily relevant will be caught. These products include every structured security or deposit (even the most simple products such as principal protected notes which have been in the market for many years and whose payout mechanisms are generally well understood.) The rather large number of products that would cover this alert may negatively affect its meaningfulness and utility for investors.

Also, by the time an investor sees the comprehension alert, he or she would, presumably, have already received sufficient information to have a meaningful understanding of the product and the risks involved. Such information would have come from financial intermediaries, marketing materials and other information, as well as from the investors' own financial training or other information that the investor has already obtained.

There is also a danger that the investor is bombarded with risk warnings and becomes less likely to listen to them, especially if it's unclear as to the basis under which the warning is being made. Any such confusion might negatively affect the investor's view of the reliability and utility of the information. Therefore, we do not believe that the comprehension alert really adds much to the understanding or protection of investors and would support removing this requirement.

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.

Parties that regularly produce KIDs generally incur similar types of costs when complying with the PRIIPs Regulation. These costs, which can be substantial, will likely include:

- IT staff to develop necessary IT/infrastructure,
- Third party costs -including software
- Front office to build and maintain framework,
- Legal and regulatory analysis,
- Compliance (initial and ongoing),
- Client support,
- Data analysis and publication,
- Regulatory Notification Fees,
- Translation costs (if any),
- Maintenance, and
- Other training and preparation.

Once the required frameworks are in place, the cost of future compliance should be consistent. Issuers that do not regularly produce KIDs, but happen to be caught by the PRIIPs Regulation, will generally outsource the production of the document and incur a one off as well as a periodic cost, rather than heavily invest in the infrastructure necessary to produce a KID. The model adopted by the specific intermediary for producing PRIIPs documents – i.e. which activities are carried out internally or carried out by a third-party supplier, and to what extent – will determine the cost faced by the issuer.

We note that some PRIIPs products require the KID to be updated more frequently than others due to their nature, which may imply a higher cost. The monitoring required to consider whether a KID update may be required may put off issuers, who sometimes decide to make products unavailable to retail rather than incur these risks and costs.

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.

With respect to producing a KID (or calculating the average cost per PRIIP), it would be difficult to calculate and provide specific information about the cost of manufacturing or otherwise because this depends on various factors, including (A) the model adopted by the specific intermediary for manufacturing PRIIPs documents (e.g. which activities are carried out internally/carried out by a third-party supplier, and to what extent) and (B) the nature of the products (e.g. some products require the KID to be updated more frequently than other products.

In any case, and as noted in our response to Question 12(a) above, in order to produce the KID and otherwise comply with the PRIIPs Regulation, parties must construct and implement an adequate infrastructure to create a KID and to keep it up to date. The cost of maintaining these systems can be substantial.

There are also costs associated with having two or more sets of wording about the same financial instrument (e.g. PRIIPs wording vs. US regulatory disclosure for instruments distributed into the US). This relates to legal risk, as PRIIPs manufacturers are subject to the rules governing the offering of securities to the public, and the timing and content of disclosures to investors in offering documents are strictly regulated. Some PRIIPs manufacturers rely on third parties to prepare the offering documents and need to sign off that a 3-page KID is consistent with an offering document that often exceeds hundreds of pages.

We have seen regulatory estimates of costs related to PRIIPs compliance that have been greatly underestimated and note that the total costs of such compliance will be very substantial for market participants. These costs should be weighed against the relative benefit of any final rules or any changes to the current rules.

With respect to structured products, any such calculation would be especially difficult as in this case the costs of producing the KID are not passed onto the investor. The breakdown of costs listed above in question 12(a) are merely borne by the distributer as a general cost of doing business.

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?

No Answer.

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

The ability of different national competent authorities to interpret and determine the scope of the PRIIPs Regulation has caused uncertainty and inconsistencies in application and has also, in some cases, restricted the availability of certain products to retail investors. Any such diverse interpretations may also create barriers to certainty and consistency across Europe.

As an example, permitted optionality with respect to the requirement (if requested) to notify the competent authority in advance about a PRIIPs KID (Article 5(2)) that is being marketed in such jurisdiction has created, and will likely create in the future, inconsistencies in the way that the PRIIPs Regulation is implemented and has in some cases restricted the availability of certain products to retail investors.

This requirement, when applicable, encompasses a burdensome and time-consuming process, which sometimes requires not only the information available in a KID, but also additional information (and often with a very tight deadline). Some of this additional information does not appear to be suitable, straightforward or easy to implement.

Optionality in this respect has certain negative effects, as different approaches may undermine the purposes of the European single market and the proposed Capital Markets Union. It may also have a negative effect on competition, as parties may gravitate towards those jurisdictions that do not require such notification. In addition, any such requirement may increase costs for issuers in those jurisdictions that impose more requirements, as well as creating other barriers to entry (i.e. reduced investor choice) for investors, if those jurisdictions are avoided or offerings are otherwise restricted.

These requirements may have negative implications for both PRIIPs manufacturers in the jurisdiction that imposes such requirements, and on foreign manufacturers that take such requirements into account when deciding where and how to offer a PRIIPs product. Therefore, for the reasons above, we believe that the rules granting optionality to each Member State should be re-assessed in the context of the upcoming review of the PRIIPs Regulation to provide flexibility for manufacturers to choose whether or not to notify the competent authority of their KID. This could potentially decrease the supervisory burden on competent authorities, while also making the entire process more efficient, less costly and less time-consuming. Any such re-assessment would also be consistent with the goal of promoting more uniform implementation of the PRIIPs regulatory framework within each EU Member State.

We are also seeing instances where an NCA (i.e. FSMA) refuses to accept an EU standard for disclosure and other information in a PRIIPs KID. This results in situations where an NCA requires additional disclosure or other information for a PRIIPs KID that was issued in another European jurisdiction. It is often the case that comments received by such NCAs aim at amending disclosure in respect of which no other NCAs had any issue. A few members of AFME have also reported that different comments have been raised across different manufacturers. This inconsistency could erode confidence in the process, as well as trust and certainty generally. Furthermore, national differences in the interpretation of the disclosure standards can cause significant adverse impact to the strategy for compliance with the PRIIPs rules of some manufacturers. In fact, when manufacturers rely on automated solutions for PRIIPs compliance, they need to have confidence that the templatised KIDs meet the European requirements. Accommodating changes to the templates to satisfy “interpretative” differences between national competent authorities, combined with the unpredictability of such interpretations, makes any effort to design an automated solution almost impossible.

Unfortunately, the automatization of a PRIIPs solution is essential for those manufacturers that are regular issuers of KIDs and therefore we have to emphasize the urgency of re-establishing a harmonised approach to the PRIIPs rules interpretation.

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?

No Answer.

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?

Our members did not report any challenges for retail investors to receive the KID in their preferred media.

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

N/A

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

Some members who manufacture KIDs reported a preference for the weblink, which has the benefit of showing an up-to-date KID for products made available on markets (e.g. exchange traded products), whilst sending it by email or by paper hard copy do not have this benefit. As we note in our response to Question 18 however, we believe that retaining the ability to provide documents in paper format if a client so requests will be important to ensure appropriate client information and engagement.

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

We expect that most documents will be distributed in electronic format. However, retaining the ability to provide documents in paper format if a client so requests will be important to ensure appropriate client information, for example for the significant proportion of retail investors who prefer to consider complex information on paper, as well as the smaller minority who do not have access to electronic devices, therefore we believe that Level 1 text is sufficiently clear and effective in this respect.

In addition, the practical experience of our members is that, in some cases, even existing and new clients do not wish to receive electronic communication (e.g. they do not provide the firm with an email address and/or have not switched on the functionality that would allow them to receive electronic communications). It is therefore important that firms can continue to provide paper documents to clients, so that clients who have proactively elected to receive paper documents as well as clients who have not switched on the option for receiving electronic communications or have not provided the firm necessary information, such as an email address, can continue to receive appropriate information about financial services and instruments provided to them.

We believe that the proposed approach could strike the right balance between the need to recognize the existence of increasing consumer demand for and use of online services on the one hand, and the need to recognize that not all investors have access to digital devices (or indeed want to receive electronic disclosures) on the other.

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?

In addition to our response to Question 18, we believe that the choice of a paper or electronic format should be left to the distributor, depending on what is best for a given distribution channel. Each distributor will be aware of the parties to whom they are distributing the product and will be in a position to determine the best approach for doing so.

We also do not think that support information should be presented via pop ups or via multiple link accompanying layers because such information should be contained within the main document, which should be sufficient for the investor to understand the product, risks, costs and other relevant information.

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.

AFME considers that the use of KIDS should not be expanded beyond the current product scope and that current disclosures are adequate in terms of breadth of information provided.

The PRIIPs Regulation was designed with packaged retail product types in mind. The scope of the Regulation should continue to be limited to these product types as the PRIIPs KID is inappropriate for other financial instruments for which the Regulation was not designed, such as OTC derivatives. An expansion of the application of KIDS beyond packaged retail products would be inappropriate given the different nature, purpose and use of other financial instruments. In addition, some of these areas are already subject to different and sometimes varying national laws and rules and reconciling those for these purposes would, we believe, overly complicate matters with little benefit.

More specifically, we do not see compelling reasons for amending Article 2, paragraph 2, letters (d), (e) and (g) of the PRIIPs Regulation, and in particular, for including within the scope of the Regulation pension products which, under national law, are recognized as having the primary purpose of providing the investor with an income in retirement and which entitle the investor to certain benefits, these products do not have a recommended holding period but depends on the particular retirement date of each individual.

In our view, these products have peculiarities and objectives which do not make the PRIIPs Regulation the best legislative mechanism for ensuring appropriate disclosure. Namely, these products are characterized by different features vis-à-vis the products falling within the scope of the PRIIPs Regulation e.g. time-horizon, conditions to access them, options available to participants.

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?

In our view, the PRIIPs Regulation should not include plain vanilla bonds, corporate bonds, FX Forwards, or OTC derivatives.

Although the ESA's guidance of 2019 on the application of the PRIIPs regulation to corporate bonds has been extremely helpful, we agree with the ESA's advice at the time that when the Level 1 text is reviewed, it should "specify more precisely which financial instruments fall within the scope of the Regulation." We further agree with the ESAs that the text should "reflect more expressly the stated intention of the PRIIPs Regulation to address packaged or wrapped products rather than assets which are held directly". Clarity on these issues would avoid any remaining legal uncertainty on the issue, with great advantage to all.

FX Forwards

The FX market is the world's largest financial market and forms the basis of the global payments system.

The term FX forward means a transaction that solely involves the exchange of 2 different currencies on a specific future date at a fixed rate agreed upon on the inception of the contract covering the exchange. FX spot transactions generally settle within 2 days of the trade date. An FX forward has exactly the same financial characteristics as a FX spot trade but will generally settle greater than 2 days from trade date. In this respect, FX forwards share the same financial certainty as an FX spot or a deposit, in that there is no fluctuation in the notional amount exchanged on the Settlement Date versus that agreed upon the Trade Date.

We note that some regulators have previously indicated that in their view PRIIPs should encompass derivatives if offered to retail investors, and that this includes FX forwards3. While FX forwards may meet the definition of derivatives for the purposes of some regulatory requirements (for instance under MiFID), in our view this should not automatically mean that they are deemed either to meet the definition of a PRIIP, or considered suitable products for application of the PRIIPs regime, as the amount repayable to the retail investor is known at the outset and not subject to fluctuations.

Including FX forwards in the scope of the PRIIPs regulation can also lead to confusion for the end-user. Due to the certainty of outcome, KIDs produced for FX forwards are not providing information on the same basis as that for other financial instruments.

Key information that the KID has been designed to address for investors, such as potential returns, recommended holding times and early redemption, are not deemed relevant for FX forwards. We do not believe that extension of the current PRIIPs requirements to FX forward KIDs provide any additional useful information or protection to investors, especially noting that which is made readily available through other means, including trade confirmations and readily available market data. We also expect that further analysis would result in a negative cost-benefit across providers and users.

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.

See our response to Question 23.

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 agree with the ESAs' approach regarding the exclusion of bonds with a make whole from the PRIIPS regime and otherwise support an exclusion where the investment return is not linked to the relevant reference values. For example, we support the exclusion of all plain vanilla bonds and corporate bonds.

We note, however, that it would be difficult to capture all products with indirect exposure even if other product types are excluded. Perhaps an appropriate approach would be one where specific types of indirect exposure are included within PRIIPs, while all others are presumed not to be included.

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

Yes, we do agree with the ESA Supervisory Statement. We also note that although the ESA's guidance of 2019 on the application of the PRIIPs regulation to corporate bonds has been extremely helpful, we agree with the ESA's advice at the time that when the Level 1 text is reviewed, it should "specify more precisely which financial instruments fall within the scope of the Regulation." We further agree with the ESAs that the text should "reflect more expressly the stated intention of the PRIIPs Regulation to address packaged or wrapped products rather than assets which are held directly". Clarity on these issues would avoid any remaining legal uncertainty on the issue, with great advantage to all.

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

Members are not supportive of including pension products or decumulation products within the scope of PRIIPs as these products are already, and would be best, governed by national law rather than a one-size-fits-all approach. We are also not supportive of including products where the retail investor signs no active enrolment.

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, we believe that a financial instrument with a minimum denomination or minimum investment of at least €100,000 should not be deemed to be made available to retail investors. However, a financial instrument with a minimum denomination or minimum investment of under €100,000 should not automatically be seen as directed at, or made available to, retail investors, and therefore should not necessarily require a KID. It is possible to have financial instruments with a lower denomination or minimum investment lower than €100,000 that are still offered only to professional clients or eligible counterparties and are not intended for retail investors. These products should not require KIDs. This would be consistent with the established parallel exempt offer provisions under the Prospectus Regulation 2017/1129 (minimum denomination and offers addressed solely to qualified investors).

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

We should avoid a taxonomy of PRIIPs, particularly an over prescriptive one, since the revised RTS already allows for different methodologies for OTC and structured products. It is also important to keep in mind that one size will not fit all, and the level of granularity that the proposed taxonomy is intended to achieve is unclear. There could be a large number of potential classes, types and subtypes of products and participants may expose themselves to unnecessary risks and uncertainty in trying to define and characterise all relevant products. Additionally, a taxonomy of this type would require constant and frequent updates, and would, we believe, bring no value to retail investors. It would be better to maintain some level of flexibility and room for interpretation in this complex area.

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?

We believe that the current KID document works well considering its purpose, taking into account some of the issues that we have raised in this paper. Please see our responses to 34.

It would be most helpful for investors if they are able to compare products on a like for like basis. In particular, we believe that comparability would be much more beneficial if it was recognised that typically

investors will compare two products of the same type (e.g. two investment funds, or two structured notes) rather than comparing different products between each other.

Currently the RTS enable product differentiation only at the level of the calculated values. However it is almost impossible for manufacturers to adapt the KID templates to ensure a more comprehensive description of the product characteristics. The 3 page limits severely reduces the ability for a manufacturer to provide meaningful information on the product characteristics (which are fundamental to understand for an investor before it can really assess the SRI value, the performance and the cost values).

Questions and issues around this may be answered through a consumer testing exercise to establish and address the level of investor understanding of the KID and its utility in providing relevant information to such investors.

Comparability is an advantage of a PRIIPs KID, and to keep comparability to a sufficiently high level, we recommend that the number and order of the KID sections, the format of the risk indicator, the scenario table, and cost table remain unchanged across all products, to preserve a look and feel comparability.

However, for insurance products (IBIPs and MOPs), the overly standardised KID raises issues of understanding, because some of the KID prescribed sections are not consistent with the terms and concepts used in the general conditions of insurance products, which generates misunderstandings at the level of distributors and customers, notably in France. More worrying, the absence in the KID of a section dedicated to guarantees offered by insurance contracts does not allow a “fair” comparability of products.

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

No response.

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

No response.

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?

Please see our response to Question 28 for our specific suggestions on this point.

In addition, with reference to the Commission's requirements for questions on "Information on sustainability-aspects of the product", it may be difficult without further guidance to understand exactly what information is expected or required. We understand that such guidance may be provided by the adoption of the RTS of the Sustainability Financial Directive Disclosure and, to a relevant extent, the Delegated Acts of the Taxonomy Regulation. We believe that it may be difficult to define and ensure compliance absent such guidance. We propose that the requirement for this information is postponed until finalisation of the relevant regulatory framework.

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

We strongly recommend that no changes be made to the layout of the KID during the Level 1 review.

We do not believe that visual icons are appropriate for a regulatory disclosure document. We would recommend that any visual icon from a marketing nature remain in the marketing brochure. Layering the information through pop-ups and visual icons focusing the investor's attention on specific sections of the KID may cause confusion, implying increased importance of those sections (or decreased importance to others) or may otherwise unduly affect the investor's decisions, or even push some invetsors out of the market entirely.

3.8 Performance scenarios and past performance

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

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

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

Besides the issue of past performance, the ESAs' work under the empowerment in Article 8(5) regarding the methodology underpinning the performance scenarios has raised significant challenges. Since the ESAs first started to develop these methodologies from 2014 onwards, it has proved very difficult to design

appropriate performance scenarios for the different types of products included within the scope of the PRIIPs Regulation that would allow for appropriate comparisons between products, avoid the risk of generating unrealistic expectations amongst retail investors and be understandable to the average retail investor. In particular, no academic consensus has been reached on how to develop common performance scenarios that would be equally appropriate for all types of PRIIPs, proving the inherent difficulty of such an approach.

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

[1] EIOPA's Board of Supervisors agrees on changes to the PRIIPs key information document | Eiopa (europa.eu).
[2] Implementing and delegated acts | European Commission (europa.eu)
[3] JC 2020 66 (30 June 2020)

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

We generally note that information related to past performance may be excessive and not suitable for all kinds of PRIIPs products. We have also noted before that if past performance is included, it should only be applicable to Category 2 PRIIPs. We believe that past performance is most relevant for Category 2 PRIIPs, as those would allow past performance comparability between actively managed and passive fund structures /trackers but avoids the following products: OTC derivatives, structured products and other products with non-linear payoffs, from showing potentially misleading figures.

Proxy performance data, or simulated performance data, should not be used instead of, or linked to, actual performance history. In case the performances are illustrated through proxy, intermediaries shall clearly inform clients that the scenario presented has been defined by the investment firm according to some underlying assumptions and that data presented do not represent past performance of the product.

While we agree that illustrating how a product may have performed in the past may be useful to show a retail investor how the payoff varies under different market conditions, there remains a risk that retail investors unduly rely on past performance as an indicator of future performance, causing problems down the road. We believe that where relevant, past performance information should be limited to those products that have sufficient actual performance history rather than relying on proxy performance or simulated data.

Otherwise, we generally support an appropriate extension of the KID 3-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?

We believe that, overall, the PRIIPs KID performance scenarios are working properly and do not require any modification during the Level 1 Review. In our opinion, any additional work in this respect should be performed during Level 2, depending on the product scope.

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.

> We do not support the preparation of a KID for each investment option in the MOP as this would mean a significant increase in the number of KIDs that would need to be produced and digested by the market. This would also likely result in an overload of information for investors that may already be struggling to keep pace with regulatory and other changes to the PRIIPS Regulation and KID.

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?

A well calibrated generic KID can be useful in certain situations, where pricing changes frequently, perhaps even intra-daily. It would have to be carefully calibrated to ensure that it satisfies the objectives of the Regulation. For example, if such document requires significantly more figures than a traditional KID, this may increase investor confusion and it may be more difficult for them to invest in the relevant products.

It is also worth noting that some types of PRIIPs may offer multiple (hundreds of) investment options which have a specific risk, performance and cost profile, and which differ from option to option. Moreover, the underlying investment options may be investments in PRIIPs or other investments of a similar nature, or standardized portfolios of underlying investments.

For these reasons, we would not support a proposal that requires provision of only one information document for the whole multi-option-product, depending on the underlying investment options that the retail investors would prefer, as this would be problematic. It would risk introducing an enormous burden on manufacturers (i.e. it would force manufacturers to prepare a single customized KID based on underlyings).

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 response.

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 response.

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 (PRIPs)[1]. One of the aims of these changes is to achieve a better alignment with disclosure requirements in MiFID and IDD.

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

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

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

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

> We recommend that regulators ensure that the cost tables and calculations for the PRIIPs KID are aligned, if not identical, to the information provided under MiFID cost disclosure requirements. We note, however, that the new PRIIPs RTS adopted by the European Commission on 7 September 2021 goes some way in aligning these frameworks.

3.11 Other issues

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

> It has come to our attention that the PRIIPs rules sometimes allow for discrepancies in information provided, for example with respect to SRIs. The rules around numerical components still allow for discrepancies that sometimes result in the same product having significantly different SRIs. This may result in competitions in which manufacturers are chosen because they show a lower SRI, which would not necessarily mean that the product is most appropriate for the client.

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