

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 Investment Association

* 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.

The Investment Association (IA) champions UK investment management, a world-leading industry that helps millions of households save for the future while supporting businesses and economic growth in the UK and abroad. Our 270 members range from smaller, specialist UK firms to European and global investment managers with a UK base. Collectively, they manage €11 trillion for savers and institutions, such as pension schemes, insurance companies, and investment funds in the UK, Europe, and beyond. Of this total, €2.7 trillion is managed for EU investment funds that are due to transition to the PRIIPs regime at the end of 2022. More information can be viewed on our website (theia.org).

The IA and its members are highly supportive of the need to provide consistent, transparent, and meaningful information to help investors in their investment decision-making. In designing the frameworks for providing such information it is essential to recognise that EU households access – and will continue to access – financial products on a highly intermediated basis, particularly through banks and insurance companies. While there is no doubt that direct-to-customer distribution via mobile phones or other devices is the shape of the future, it is not the current reality.

The product disclosure landscape needs to be holistically reassessed with a more investor-focused approach rather than purely focusing on products and intermediaries. There are significant divergences between sectoral legislation (MiFID and IDD) and product disclosures under PRIIPs. In particular, the misalignment between the MiFID II and PRIIPs rules requires different cost figures to be produced,

unnecessarily confusing retail investors. Moreover, the complexity and inappropriate reliance on assumptions inherent in the PRIIPs methodologies that underpin the presentation of performance and costs is unlikely to have improved investors' understanding of these products.

Standardised disclosure documents such as the PRIIP KID need to be consigned to history and replaced by smarter, digitally-adapted disclosures that can genuinely inform investors and help them make better decisions. Legislators need to shift the specification of the content and presentation of information into sectoral legislation and use product regulation to define technical methodologies to ensure the delivery of standardised data through the chain of intermediation. Where products are marketed direct to customers, product disclosures should read across from sectoral legislation to ensure consistency.

While the ambition behind the PRIIP KID was a positive one, its outcome appears far less so. The complexity and inappropriate reliance on assumptions inherent in the methodologies underpinning the presentation of performance and costs, designed to give the impression of comparability between dissimilar products, make it impossible to make meaningful comparisons between similar products. In the end, the information in the PRIIP KID has proved to have little value for intermediaries and alternative industry-led pan-European frameworks have become established to provide intermediaries of all types with the data they actually need.

We recommend the PRIIP Regulation should become a data standard and the review should focus on providing standardised performance, risk, and cost data that intermediaries can use to make investor-focused, digitally-adapted disclosures about their services and the products they offer, for which the design should be wholly within the realms of sectoral legislation. Any review should be guided by the following core principles:

- The information provided to investors must be meaningful and the methodology should not produce results that are misleading to investors
- Comparability between products should not be more important than providing meaningful information to investors
- The approach taken should be pragmatic and as simple as possible to calculate (without producing misleading results)
- Firms that have fewer resources or are less able to incur additional data costs should not be put at a disadvantage by the chosen methodology
- The benefit of the approach to investors must outweigh the costs incurred to deliver the new methodology as ultimately costs are borne by the end investor

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?

3. In your position as product distributor or financial advisor, to what extent do you make use of KIDs to choose or compare between the products you offer to your clients? In case of trading online, does your platform offer an automatised tool that can help the retail investor in making comparisons among products, for instance using KIDs?

4. If this is the case, what is preventing distributors or financial advisors from using the KID when they choose a product for a client?

5. In your experience, e.g. as a retail investor or association representing retail investors, to what extent are KIDs used by distributors or financial advisors to support the investment process? Is marketing material used instead or given greater emphasis?

6. What are your experiences regarding the extent of the differences between marketing information and the information in the KID? What types of differences do you consider to be the most material or relevant in terms of completeness, plain language, accuracy and clarity? What do you think might be the reason(s) for these differences?

3.2 General survey on the operation of the comprehension alert

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?

8. Do you have or are you aware of the existence of data on the number and type of products that include a comprehension alert? If you have such data, would you be in a position to share it with the ESAs?

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

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

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

3.3 Survey on the practical application of the rules

Extract from the call for advice:

A survey of the practical application of the rules laid down in the PRIIPs Regulation, taking due account of developments in the market for retail investment products, which should include practical evidence on:

- *To the extent feasible, the amount and nature of costs per PRIIP to various market participants of complying with the requirements of the PRIIPs Regulation, including the costs of manufacturing, reviewing, revising, and publishing PRIIPs KIDs, including as a proportion of total PRIIP costs.*
- *To the extent feasible, the extent to which the PRIIPs Regulation is applied in a consistent manner across the EU for the most commonly sold types of PRIIPs.*
- *The supervision of the PRIIPs KID, including the percentage of cases where inaccurate PRIIPs KIDs were identified by NCAs.*
- *The number of relevant mis-selling events before and after the introduction of the PRIIPs KID, including through data on the number of complaints received, number of sanctions imposed, and other relevant data.*

Concerning this topic, the ESAs would like to ask for feedback to the following questions:

12. For PRIIP manufactures or sellers:

12. a) Please describe the different types of costs incurred to comply with the PRIIPs Regulation.

12. b) Can you provide an estimate of the average costs per PRIIP of complying with the requirements of the PRIIPs Regulation? Where possible, please provide a breakdown between the main types of costs, e.g. manufacturing, reviewing, publishing, etc.

12. c) Can you provide an estimate of what proportion of the total costs for the product are represented by the costs of complying with the PRIIPs Regulation?

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

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?

15. What are your experiences as a product manufacturer or product distributor or financial advisor regarding the preferred media for retail investors to access or read the KID? Are there challenges for retail investors to receive the KID in their preferred media, such as due to a certain medium not being offered by the distributor?

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

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

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

Yes. Both customer expectations and the day-to-day experience of accessing information have transformed in the decade during which the PRIIP KID has been debated, with mobile devices increasingly becoming a default. The PRIIPs framework hinders the ability to offer digital solutions providing the most relevant information to investors in PRIIPs. The PRIIPs framework describes a rigid one-size-fits-all paper document, or durable image thereof, the maximum length of which is defined by reference to pieces of paper of a fixed size. It necessitates reliance on core assumptions when interactive digital solutions could allow investors to explore a range of personal circumstances. Effective digital solutions will rely on good quality, consistent core data uncompromised by assumptions.

By way of example, in respect of online cost calculator tools anticipated in the PRIIPs Regulation, recital 16 states that: “in order that the calculators are as useful as possible to consumers, they should cover the costs and fees charged by the various PRIIP manufacturers, together with any further costs or fees charged by intermediaries or other parts of the investment chain not already included by the PRIIP manufacturers.” This reflects the highly intermediated market for PRIIPs. Nevertheless, the cost information contained in the KID is based on assumptions about the size, time horizon, and future performance of an investment in a PRIIP that make it impossible to align with an individual investor's circumstances or to combine with the costs of intermediation.

In order to reflect the highly intermediated market for PRIIPs, the PRIIPs framework needs to complement the investor protection provisions of sectoral legislation (MiFID and IDD). These Directives require the intermediaries to disclose to their clients aggregated costs taking into account both their own costs and the costs of the products they sell (regardless of whether intermediaries' costs are extracted from product costs or levied directly on their clients). Therefore, the PRIIPs framework needs to provide consistent factual cost data to intermediaries in order to facilitate aggregation.

In order to provide the most coherent information to investors, product information specified under the PRIIPs framework needs to be a standard specification of data items that must be transmitted to intermediaries in order that they can fulfil their onward obligations to their clients most effectively. Rules concerning the format and layout of documentation should be stripped out of product regulation and specified instead, to the extent necessary, in sectoral legislation in a form fit for the digital era.

Achieving this requires a wholesale review of the PRIIP Regulation and the role it plays in the regulatory framework. Assumption-laden information should be stripped away to leave a reliable and consistent product data standard, and thereby provide a robust regulatory underpinning of the data required by intermediaries to fulfil their obligations under MiFID and IDD.

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

Yes. Notwithstanding our view that the content and presentation of investor information should be the subject of sectoral legislation, we prefer the approach taken in the PEPP Regulation. In particular, the use of digital media, rather than paper, should be the norm.

Although it is too early to judge the impact of the PEPP approach in the market, IA consumer testing (2019) showed that the layering of information makes information more accessible and better suited to a digital format. In addition, inherent cognitive differences between individuals mean that investors should have the ability to select different presentations of core disclosure concepts (e.g. graphical or data table) provided these different visual presentations are all based on the same underlying data.

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.

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

22. Do you think changes should be made to specify more precisely which types of financial instruments fall within the scope of the PRIIPs Regulation? Please specify the amendments that you think are necessary to the Regulation.

23. Do you have specific suggestions regarding how to ensure that the scope of the PRIIPs Regulation captures packaged or wrapped products that provide an indirect exposure to assets or reference values, rather than assets which are held directly?

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

25. Do you think that the definitions in the PRIIPs Regulation relating to the scope should take into account other elements or criteria, e.g. relating to the maturity of the product, or relating to a product only having a decumulation^[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

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 think it would be helpful to clarify this concept in order to provide clarity on when it is, and is not, necessary to produce a PRIIP KID. It should be sufficient to regard a product as not being made available to retail investors when the marketing materials (including the prospectus) make it clear that it is being offered only to professional investors and is not intended for retail investors and the marketing and distribution strategy support this, and there is a minimum investment amount of €100,000.

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?

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?

Yes. Although we support the ambition to create a single uniform disclosure document, the sheer diversity of types of PRIIP has led to the compromises necessary for such diverse products to produce the same disclosures making it impossible to compare products of the same type in a meaningful way.

Overall, the broad structure of the KID and the content of each section is satisfactory, but the KID has been derailed by an insistence that diverse products should be considered substitutable and hence must follow the same detailed methodologies. This has led to overly-complex, assumption-laden technical methodologies that do not fairly represent any of the different types of PRIIP. In effect, the best solution for each type of product has been discarded in favour of a sub-optimal solution for all products.

In our view, standardisation should go only as far as specifying the inclusion of appropriate information about

the risks, rewards, and costs of a product with more emphasis being put on the need to “take into account the various types of PRIIPs, the differences between them and the capabilities of retail investors” in the development of the detailed technical methodologies underpinning the information presented. For example, past performance is widely accepted as the most appropriate performance information for UCITS, AIFs, and IBIPs, but simulated performance is more appropriate for structured products. A risk indicator based on the volatility of historical price series is appropriate for vehicles investing in instruments that are actively traded in public markets, but is likely to misrepresent the risks associated with private investments and venture capital. Cost indicators expressed as reductions in yield are prone to underplay the significance or high entry costs in very long-term products, and the concepts underpinning an approach to calculating transaction costs that can give technically accurate negative costs that is incomprehensible to probably all retail investors.

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

Yes. Political interventions have hampered the ESAs efforts to create meaningful differentiation between dissimilar products, and we applaud the ESAs tenacity in trying to find solutions. Nevertheless, these solutions are compromised by the constraints of level 1, and it would be helpful to establish some principles for grouping products. We note the ESAs have made progress in this area in the final advice submitted to the Commission in February 2021.

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

Product differentiation should be driven by characteristics such as being structured or non-structured, having a past performance record, the nature of the risks the investor assumes, and the purpose of the product.

More rigorous or legalistic groupings carry the risk of unintended consequences. For example, funds and listed investment trusts are generally substitutable and investors in each are often looking for similar investment risk profiles but with different exit terms. Funds are open-ended and redeemable through the fund manager, whilst investment trusts are closed-ended and traded on public markets. Past performance would be considered as the most appropriate performance information for both vehicles, yet investment trusts are excluded from Annex VIII of the ESAs February 2021 final advice because they are closed-ended AIFs.

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?

Yes. As set out in our answer to question 34, we recommend replacing “appropriate performance scenarios and the assumptions made to produce them” with “appropriate information on performance” in Article 8(3)(d) (iii).

Good quality cost disclosure has become compromised by over-regulation with both sectoral and product legislation trying to define what should be disclosed. We are hopeful the Commission’s work later in 2022, supported by the ESAs, will take steps to resolve this. In particular, we recommend shifting the specification of content and presentation of cost information into sectoral legislation and using product regulation to define technical methodologies to ensure standardisation. For example, PRIIPs should define how to calculate one-off, ongoing, transaction, and incidental costs and require their electronic transmission to intermediaries in percentage terms. MiFID should define how cost information is combined and presented to end investors and how intermediaries’ costs should be separated from product costs, or aggregated with them, as the case may be.

To support this approach we recommend deleting “and, to ensure comparability, total aggregate costs expressed in monetary and percentage terms, to show the compound effects of the total costs on the investment” from the first paragraph of Article 8(3)(f) and “so as to enable the retail investor to understand the cumulative effect that these aggregate costs have on the return of the investment” from the second paragraph. This would keep the requirement to show costs by means of summary indicators, which should be simple, annual percentages for each of the main types of cost according to the driver, and to highlight that intermediaries may impose additional costs.

Finally, these changes should be accompanied by a new direction to the ESAs to develop draft regulatory technical standards specifying the presentation and content of this information, which should take into account the various types of PRIIPs and the differences between them.

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

As set out in our answer to question 31, detailed specification of the structure, format, or presentation of information to retail investors should be the subject of sectoral information. Notwithstanding this view, we support the PEPP approach of electronic communication being the default position and support the layering approach to the presentation of information. The PRIIP regulation should focus on the technical methodologies for calculating the necessary data and ensuring it is made available to the parties that need it.

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 agree with the ESAs preferred approach of including past performance in the KID. We would prefer not to include scenarios at all as they are potentially misleading.

We have long-supported a form of past performance presentation in the KID, and we believe this should replicate the approach currently used in the UCITS KIID. Such an approach would provide a simple and familiar form of factual information to investors. This presentation, based on a series of discrete one-year periods, is effective at illustrating the volatility of returns that can arise.

In this regard, the position of the industry has been consistent since the advent of the UCITS KIID, which both included past performance and tested the views of consumers to justify that inclusion. Although the research (UCITS Disclosure Testing Research Report Prepared for the European Commission by IFF Research and YouGov, June 2009, p.13 and p.89) is now over a decade old, we have seen no evidence that invalidates its key findings which state that past performance was "generally correctly interpreted" and

“information that consumers expected to see” which also led to a conclusion that “its exclusion could reduce likelihood to engage with the document altogether”.

Information about past performance should be included, where it is available, which provides a product’s delivery history, a point generally shared by customer groups rightly concerned about the identification of poor delivery. Abandon the use of complex performance scenarios for non-structured products and find a different way to communicate with customers about the investment process.

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?

In Article 8(3)(d)(iii), we recommend replacing “appropriate performance scenarios and the assumptions made to produce them” with “appropriate information on performance”. This change should be accompanied by a new direction to the ESAs to develop draft regulatory technical standards specifying the presentation and content of this information, which should take into account the various types of PRIIPs and the differences between them.

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?

Information about product charges and transaction costs should answer the question “What am I paying?” in as simple and accessible a form as possible. This means headline numbers and not complex approximations based on multiple assumptions. In particular, the use of reductions in yield should not be used to present costs and charges information, prone as it is to mask the existence of one-off charges spread over long holding periods, and transaction costs should not be calculated using slippage, which relies on benign markets and random trading strategies to validate its inherent assumptions. Critically, this information should be consistent in form and content with similar information being presented across the market under MiFID.

To support this approach, and as set out in our answer to question 31, we recommend deleting “and, to ensure comparability, total aggregate costs expressed in monetary and percentage terms, to show the compound effects of the total costs on the investment” from the first paragraph of Article 8(3)(f) and “so as to enable the retail investor to understand the cumulative effect that these aggregate costs have on the return of the investment” from the second paragraph. This would keep the requirement to show costs by means of summary indicators, which should be simple, annual percentages for each of the main types of cost according to the driver, and to highlight that intermediaries may impose additional costs.

3.11 Other issues

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

Contact

timothy.walters@eiopa.europa.eu